

neXgro PURCHASE TERMS AND CONDITIONS

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FORM NEX026/2023 06

APPLICABLE TO ALL TRANSACTION AGREEMENTS FOR THE PURCHASE BY neXgro OF SOUTH AFRICAN ORIGIN BULK OR BAGGED AGRICULTURAL COMMODITIES

Entered into by and between:

The Seller

neXgro Contract Number

NAME OF SELLER									
LEGAL ENTITY	CC		Company		Trust		Partnership		Sole Proprietor
REGISTRATION NUMBER									
INITIALS & SURNAME (Representative)									
KNOWN AS NAME							SPOUSE		
IDENTITY NUMBER									
MARRIAGE STATUS (If married)	In community of property					Out of community of property			
VAT REGISTRATION NUMBER									
VOLUNTARY GSA LEVY	YES				NO				
RESIDENTIAL ADDRESS (DOMICILIA)									
POSTAL ADDRESS							POSTAL CODE		
TOWN / CITY							PROVINCE		
TELEPHONE NUMBER	CODE						CELL NUMBER		
E-MAIL ADDRESS									
AGRICULTURAL BUSINESS and MEMBER NUMBER									

and

The Buyer

This Agreement is entered into with each of the following entities who in the future may each separately contract as Buyer with the Seller in Transaction Agreements, in which these Purchase Terms and Conditions will be incorporated:-

1. **African Grain Investments (Pty) Ltd** **Reg No 2017/088570/07**
2. **neXgro Bemarking (Pty) Ltd**..... **Reg No1996/008579/07**
3. **Unigrain Trading (Pty) Ltd**..... **Reg No 2001/016989/07**

(Where all these companies are cumulatively referred to, they are called "the neXgro Group of Companies", and each company will individually be referred to as "the Buyer")

Domicilium address: 22 Furrow Road, Diswilmar AH, Krugersdorp, 1747
 Postal address: Postnet Suite 031, Private Bag X 2, Ruimsig, 1732

GENERAL TRADING TERMS AND CONDITIONS BETWEEN THE BUYER AND SELLER

- The Seller is desirous from time to time to sell certain Commodities, and the Buyer is able and willing to purchase Commodities from the Seller from time to time.

- In addition to, and subject hereto, the Parties will from time to time, after signing this Agreement, sign further documentation or enter into verbal agreements that include specific provisions, regarding the purchase of certain agricultural Commodities, by the Buyer from the Seller (Transactions), in a document called "Transaction Agreement" as issued by the neXgro Group of Companies from time to time.
- The Purchase Terms and Conditions in this Agreement combined with each Transaction Agreement constitute a fully integrated agreement between the Parties. The two agreements (Purchase Terms and Conditions and Transaction Agreement, with all and any annexures thereto), shall be read together as if the provisions of the Transaction Agreement were contained herein in one document and were specifically traversed and incorporated herein.

1. Interpretation

- 1.1 In this Agreement (Purchasing Terms and Conditions) and in the annexures/additions (e.g. Transaction Agreements) to this Agreement, clause headings are there for convenience and will not be used in the interpretation of the Agreement. Unless the context shows a contrary intention, words shall include the following meanings: -
- 1.1.1 any one gender includes the reference to other gender;
- 1.1.2 natural person includes a legal person and *vice versa*;
- 1.1.3 singular includes the plural and *vice versa*.
- 1.2 In this Agreement, as well as any annexures/additions hereto, the following words shall have the meanings assigned to them below and expressions shall have corresponding meanings: -
- 1.2.1 **"Agreement"** means this agreement entered into between the Parties;
- 1.2.2 **"Business Days"** means Mondays to Fridays and excludes Saturdays, Sundays and officially recognised holidays;
- 1.2.3 **"Buyer"** shall mean in the context of this Agreement, each of the neXgro Group of Companies as indicated in the preamble to this Agreement under the description of the Buyer, and in respect of each Transaction Agreement, the Buyer will be any **one** of the said neXgro Group of Companies, as indicated in each separate Transaction Agreement;
- 1.2.4 **"Commodity"** means the grain product purchased by the Buyer from the Seller, as set out in each Transaction Agreement entered into between the Parties;
- 1.2.5 **"Contract Price"** the price agreed between the Seller and the Buyer in this Agreement, as supplemented by the Transaction Agreement;
- 1.2.6 **"Delivery method"** means any one of DAP, DDP, DPU, Ex Farm, Ex-Silo, Ex-Worx, FCA, Milldoor, or Title Transfer, and shall be indicated in each Transaction Agreement. The aforesaid terms shall firstly have the meaning attached to it in terms of INCOTERMS 2020, which (and where it is not a known INCOTERM, it) shall have the following meanings attached to them, except where the context of this Agreement or the Transaction Agreement clearly determines otherwise:-

TERM MEANING	DESCRIPTION	TRANSFER OF RISK (which shall in all cases only be once inspection and a quality assessment thereof by the Buyer has been completed to the Buyer's satisfaction)
Ex-Farm	<ol style="list-style-type: none"> 1 The Commodity purchased by the Buyer from the Seller is physically delivered by the Seller at a farm or farm storage facility. 2 Buyer responsible for and collects Commodities at the Seller's farm location at own carriage cost to and from the farm storage facility. 3 Seller responsible for loading onto Buyer's truck. 	Risk passes from Seller to Buyer after Commodity is loaded onto Buyer's means of transport.
Ex-Silo	<ol style="list-style-type: none"> 1 Refers to the instance where the Commodities has been stored by or on behalf of the Seller after it was harvested and delivered as described in the applicable Transaction Agreement; 2 Buyer responsible for storage costs from date of transfer of title document to Buyer's name. 3 Buyer responsible for and collects Commodities at Seller's storage location at own carriage and handling out cost. 	Risk passes upon transfer of title document to Buyer's name.
Milldoor	<ol style="list-style-type: none"> 1 Seller arranges carriage and delivers to Buyer's chosen Miller's location at own carriage cost. 2 Risk passes form Seller to Buyer upon outloading to the Miller's premises. 	Risk transfers to Buyer after the Commodities have been offloaded at the Buyer's named place.
Title Transfer	<ol style="list-style-type: none"> 1 Upon receipt of payment by the Seller, the Seller shall issue a transfer instruction to the Storer in order to effect the transfer of the Silo Certificate 	Risk in the Commodity transfers to the Buyer at the current storage location upon the transfer of the Silo Certificate (or title document) to the name of

	<p>to the name of the Buyer, alternatively by the transfer to the Buyer's folio account with the Storer.</p> <p>2 No transport of Commodities is arranged prior to transfer, and Buyer entitled to arrange collection of Commodity at any time thereafter at its own cost, upon own arrangements with Storer.</p> <p>3 Storage fees shall thereafter be for the account of the Buyer as from date of such transfer.</p>	<p>the Buyer, alternatively upon the transfer to the Buyer's folio account with the Storer. No physical loading of the Commodity is thus required before the transfer of Risk, and the Storer remains in control of the Commodity.</p>
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- 1.2.7 "ECTA" the Electronic Communication and Transactions Act, Act 25 of 2002.
- 1.2.8 "Electronic message" or "Data message" means data or information that is generated, sent received or stored electronically;
- 1.2.9 "Parties" means the Buyer and the Seller and "Party" shall mean any one of them as the context requires;
- 1.2.10 "Purchase Terms" means this Agreement and the Purchase Terms and Conditions contained herein;
- 1.2.11 "Regulations" means the Regulations issued under the Agricultural Product Standards Act, 119 of 1990 and the Marketing of Agriculture Products Act, 47 of 1996;
- 1.2.12 "SAFEX" means the South African Futures Exchange, a division of the Johannesburg Stock Exchange (managed and operated by the JSE Limited);
- 1.2.13 "Price Confirmation" or "Transaction Confirmation" means a notification which may be issued by the Buyer after the Transaction Agreement in terms of which the price or pricing method of the Commodity is confirmed;
- 1.2.14 "Seller" means the individual or entity whose details appear on the first page of this Agreement, under "the Seller";
- 1.2.15 "Transaction" means the purchase and sale of an agreed quantity of the Commodity, physical and/or future, of which the price and/or pricing date, delivery date or period, delivery method, delivery place and any other material or relevant aspects between the Parties have been agreed to in a Transaction Agreement;
- 1.2.16 "Transaction Agreement" means an agreement entered into between the Parties hereafter in which the commercial details of a specific Transaction, negotiated and concluded between the Parties are embodied, to include without limitation the applicable specific grade / type / specification, and price of a Commodity, to be delivered by the Seller to the Buyer, during a specified time period, with payment to the Seller due, by a specified date. The Transaction Agreement shall be deemed to incorporate the terms and conditions of these Purchase Terms. The Transaction Agreement shall only be binding upon the parties to the Transaction Agreement. For the avoidance of doubt, no Party shall have any obligations under these Purchase Terms unless it is a Party to a Transaction Agreement;
- 1.2.17 "VAT" Value Added Tax, as referred to in the Value Added Tax Act, Act 89 of 1991.
- 1.3 These Purchase Terms apply to all Transaction Agreements referred to herein/below and agreed upon between the Parties hereafter. This Agreement shall endure for an indefinite period, until terminated by agreement, or until cancelled in terms of clause 22 or 23 below.
- 1.4 Any definitions of terms contained in this Agreement shall have the same meaning as the definitions in the regulations issued in connection with the agricultural industry in South Africa from time to time unless a different intention is clearly indicated in the context.

2. Product/Commodity

The Commodity delivered by the Seller to the Buyer in terms of this Agreement is of South African origin. The Commodity must comply with the Regulations on Nutrients, Cosmetics and Disinfectants issued in terms of Act No. 54 of 1972 (as amended) relating to pesticide residues and toxins caused by *fungi* in foodstuffs.

3. Mass Determination and Quantity Disputes

- 3.1 The quantity (or volume or mass) of the Commodity to be delivered by the Seller will be as indicated in each Transaction Agreement, and may be adjusted to the nearest truck load, or as specified in the Transaction Agreement. The said variation is hereinafter referred to as the "tolerance".
- 3.2 Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitles the Buyer, if he so wishes, to reject the excess. If the Buyer does not so reject, the price of any quantity in excess of the upper tolerance shall be settled by mutual agreement, or otherwise in accordance with the dispute resolution agreement herein.
- 3.3 In the event of an Ex-Farm delivery method, the volume of the Commodity sold shall be reduced by 0.5% (nil point five percent) for purposes of calculation of the purchase price of the Commodity (even if the product is loaded out of a silo).
- 3.4 If the Seller delivers less than the minimum quantity permitted by the tolerance the Seller shall be deemed to be in default and shall compensate the Buyer in accordance with this Agreement. Calculation of damages shall be against the mean contract quantity. Where deliveries of individual consignments reach a tonnage within the tolerance of the contractual quantity, the contract shall be deemed to have been completed.
- 3.5 Where the Commodity has been sold delivered to the Buyer's nominated store (hereinafter called "the Receiver"), delivery method DAP or DDP, and fails to meet the quantity as specified in the Transaction Agreement, the Receiver shall not unload the

Commodity, and shall notify the Seller as soon as possible, but no later than 24 (twenty-four) hours from the time of the arrival of the Commodity. Failure of the Receiver to give such notice shall preclude the Buyer from claiming for deficiency against the Seller. The Seller has 24 (twenty-four) hours after receipt of such notice to verify the quantity by inspection. If the Seller does not inspect timeously, the Seller is deemed to accept the Receiver's findings as to quantity. If after timeous inspection by the Seller there is a dispute as to quantity, such quantity shall be determined by an independent party/surveyor forthwith. The independent party/surveyor shall be agreed by the Parties, or nominated by the AFSA Secretariat, if the parties cannot agree.

- 3.6 The Buyer shall advise the Seller in writing within 24 (twenty-four) hours of the end of each delivery period, or at such times as may be otherwise agreed between the parties, the Seller's contract number, Truck Registration numbers, and Gross, Tare and Nett Mass.
- 3.7 In the case of delivery EXW or FCA, CPT or CIP, with sender's mass final, the mass as determined at the silo/warehouse shall be final and shall be accepted by both the Seller and the Buyer, unless otherwise agreed between the Parties.
- 3.8 In the case of delivery to a silo/warehouse, the mass taken in by the silo/warehouse shall be final and shall be binding on the parties.
- 3.9 Where the Commodity has been sold "Ex farm" the Seller shall have the commodity weighed at the nearest assized weighbridge. Weighing costs shall be paid by the Seller.
- 3.10 All weighing tickets shall be mechanically or electronically printed. Weighbridges used to determine mass shall conform to the verification periods for weighing and measuring instruments used in trade, as required by the RSA laws governing trade metrology.
- 3.11 If the Commodity is in a silo/warehouse, as indicated on a Silo Certificate/ Document of Title, the mass, as indicated on the Silo Certificate/Document of Title, shall be final and shall be accepted by both the Seller and the Buyer.

4. **Price**

It is possible that the Contract Price may vary from silo to silo and delivery point to delivery point. The price applicable to this Agreement is indicated in each Transaction Agreement as entered into pursuant to this Agreement from time to time.

5. **Levy**

- 5.1 Any statutory levy payable to any statutory body, committee, authority, or organisation, shall be payable as specified by way of the relevant statutory measures under the authority of the Marketing of Agricultural Products Act of 1996 or any other applicable legislation.
- 5.2 All such levies will be recovered from the Contract Price. Levies will be recovered inclusive of VAT, where applicable.
- 5.3 If so indicated in this Agreement, the voluntary Grain South Africa levy on all purchases, will be recovered from the Seller and remitted to Grain South Africa on behalf of the Sales.

6. **Value Added Tax**

- 6.1 All prices indicated in this Agreement, as well as in Transaction Agreements entered into pursuant hereto, always exclude VAT, unless otherwise indicated.
- 6.2 All Sellers who are registered for VAT must make a tax certificate available to the Buyer in respect of each Transaction, within 7 (seven) days of the date of each Transaction Agreement.
- 6.3 The Seller hereby grants consent that the Buyer may issue an invoice, or a VAT invoice (depending on the Seller's VAT status) on behalf of the Seller. Such tax invoice is therefore issued by the Buyer in his capacity as agent on behalf of the Seller, and in terms of section 54(1) of the VAT Act, such VAT delivery is deemed to be made by the Seller as principal, and not by the Buyer, who is merely acting therein as agent.
- 6.4 The Buyer will hand over all such VAT invoices issued on behalf of the Seller as contemplated herein, to the Seller in order to record the output tax of the VAT supply in its books. The supply will not form part of the Buyer's own VAT transaction chain and it will not declare any output tax on it. Pursuant to section 54(3) of the VAT Act, the Buyer, as agent of the Seller, will keep a record of the sales invoiced on behalf of the Seller.

7. **Force Majeur**

- 7.1 The Seller is under no circumstances entitled to invoke *force majeure* as a defence against the contracted required delivery in whole or in part and hereby expressly waives the same and acknowledges and accepts the implications of the waiver of the common law protection which a *force majeure* exclusion clause would have offered it. The Seller therefore accepts the risk and liability in the event that delivery cannot take place due to any reason of weather conditions, acts of God, or any circumstances beyond the control of the affected Party and not due to that Party's doing, or not due to any circumstance caused by the affected party or could have been prevented by the application of reasonable precautions.
- 7.2 For purposes of this Agreement, *force majeure* includes (but is not limited to) war, revolution, invasion, riot, violence, sabotage, blockade, boycott, strike, lockout, power failure, military execution or misuse of power, fire, explosion, theft, storm, flood, drought, wind, lightning, epidemic, pandemic, quarantine, accident, mechanical breakdown, government restrictions, sanctions or restrictions on imports and exports.

8. **Quality Standards, Determination and Disputes**

Quality Determination

- 8.1 Weight, moisture, grade and specifications, shall be determined and be binding on the Parties by the applicable silo / applicable intake facility, or as issued by the Buyer or its nominated receiver, as indicated in the Transaction Agreement, upon first arrival at the Buyer's nominated premises, unless otherwise agreed in these Purchase Terms or any Transaction Agreement.
- 8.2 Where the Commodity has been bought EXW, the quality shall be determined by the Silo/Warehouse Operator and the quality so determined shall, unless the Parties agree otherwise in writing, be final and binding on the Parties.
- 8.3 Where Commodity represented by Silo Certificate/s is traded, the quality or grade determined at the time of outloading shall be final and binding on the Parties.
- 8.4 Where Commodity is despatched for export by sea the quality shall be determined from a sample taken by a recognised first-class surveyor or inspection agency upon arrival of the Commodity at the port of export. The quality so determined shall be final and binding on the Parties.

Quality Standards and Claims

- 8.5 The Commodity as delivered by the Seller shall meet the quality and specifications as prescribed in clause 8.11 below. The only qualitative and measurable way in which a Commodity sold to the Buyer in terms of each Transaction Agreement can be measured, in order to fulfill the aforementioned purpose, is compliance with the said legislation.
- 8.6 The total quantity and quality of the Commodity delivered by the Seller must comply with the sub-class ratios as indicated in Transaction Agreements.
- 8.7 If the Commodity specified in the sub-class relationship as set out in Transaction Agreements, delivered or to be delivered by the Seller, does not meet the agreed sub-class relationship or does not meet any sub-class relationships, as provided in Transaction Agreements, the Buyer shall, in its sole discretion, be entitled, but not obliged, to, with or without prior written notice to the Seller:-
- 8.7.1 amend the sub-class relationship to a sub-class relationship as determined by the Buyer;
- 8.7.2 or to reduce the contracted quantity of the Commodity until the Commodity actually delivered, meets the prescribed and stipulated ratios;
- 8.7.3 or to classify it into a sub-class as determined by the Buyer; and/or
- 8.7.4 still enforce the purchase of the Commodity and claim delivery thereof based on the classification as determined by the Buyer in the Transaction Agreement.
- 8.8 If the product is to be "GMO free", such needs to be clearly stated in the Transaction Agreement(s). The methodology by which such "GMO free status" is determined, which must have already been agreed to by both parties, must also be clearly stated. In addition, if the product is to be "GMO free", the Seller confirms that the product complies with the Genetically Modified Organisms Act 15 of 1997, as amended, or any / and all other legislation, relating to genetically modified organisms.
- 8.9 Given legislation such as, *inter alia*, the Consumer Protection Act, 68 of 2008, it is required of both the Buyer and Seller to deliver Commodities fit for their generally accepted purpose and free from any defect which may result in product claims or damage claims, personally, physical, or otherwise.
- 8.10 The only qualitative and measurable way in which a Commodity sold to the Purchaser in terms of each Transaction Agreement can be measured, in order to fulfill the aforementioned purpose, is compliance with the above-mentioned legislation.
- 8.11 Since the Buyer can be held liable for any form of damage caused by the use of the Commodity sold by the Seller, as may the Seller himself, it is required of the Seller to guarantee, and the Seller is required to warrant, and the Seller hereby warrants that the Commodity sold to the Buyer from time to time per Transaction Agreements shall comply with the minimum requirements of at least the following legislation and any regulations made thereunder and in force from time to time: -
- 8.11.1 Agricultural Product Standards Act, No 119 of 1990, including the grading regulations issued in terms thereof;
- 8.11.2 The Nutrients, Cosmetics and Disinfectants Act, No 54 of 1972 (as amended), including the South African Department of Health Regulations issued in terms thereof, as well as any parts thereof or other regulations relating to pesticide residues and toxins caused by fungi in foodstuffs;
- 8.11.3 The Marketing of Agricultural Products Act, No 47 of 1996;
- 8.11.4 The Agricultural Pests Act, No 36 of 1983;
- 8.11.5 The Trade Metrology Act, No 77 of 1973;
- 8.11.6 The National Health Act, No 63 of 1977;
- 8.11.7 The Fertilizers, Farm Feeds, Seeds and Remedies Act, No 36 of 1947;
- 8.11.8 The Conservation of Agricultural Resources Act, No 43 of 1983;
- 8.11.9 The Genetically Modified Organisms Act, No 15 of 1997;
- 8.11.10 All and general requirements and Regulations issued and published under any of the above Acts;
- 8.11.11 The Rotterdam Convention in relation to the Prior Informed Consent Procedure (PIC) and circular; and
- 8.11.12 Any other legislation and regulations applicable in the Republic of South Africa regarding toxic seeds, pesticides, micro toxin residues and other substances deemed not to be suitable for human consumption, and as published from time to time by the South African Government.
- 8.12 The onus rests on the Seller to inform the Buyer from time-to-time which Commodities offered for sale and/or sold do not meet

the aforementioned minimum requirements and to which extent.

- 8.13 Should it appear that the Seller's Commodity has not met or cannot meet the aforementioned minimum standards, and if any subsequent purchaser of the Commodity from the Buyer in the chain or any end consumer institutes a legal claim against the Buyer for e.g. a breach of the Consumer Protection Act, No 68 of 2008, or the other laws and regulations aforesaid, then the Seller hereby indemnifies the Buyer against any such claim, whether it: -
- 8.13.1 consists of direct or indirect damage, or
- 8.13.2 is a claim for product replacement, or
- 8.13.3 is a claim for the monetary value of the Commodity sold, or
- 8.13.4 is a claim for contractual damages, or
- 8.13.5 is a warranty claim where the Buyer, at the strength of the Seller's warranty, has hereby provided a similar warranty, or any other claim of whatever nature which may arise from the use or resale of the Commodity sold by the Seller to the Buyer by virtue of a Transaction Agreement.
- 8.14 Where a claim as aforesaid is made against the Buyer, the Buyer shall notify the Seller thereof as soon as practically possible to give the Seller the opportunity to intervene and defend the claim at the Seller's expense and include the aforesaid indemnification, the legal costs incurred and to be incurred by the Buyer in the defence of such claim and/or payable to a successful claimant.
- 8.15 The Seller will pay the Buyer the value of a successful claim and any legal costs within 7 (seven) days after the Buyer has become obliged to pay the claim and legal costs incurred, and upon communication of the value thereof and obligation to pay.

Quality Disputes

- 8.16 Where the Commodity has been sold delivered to the Buyer's nominated store (the "Receiver"), delivery method DAP or DDP, and fails on an immediate inspection conducted by the Receiver to meet the quality as specified herein, the Receiver shall not unload the Commodity, and shall notify the Seller as soon as possible, but no later than 24 (twenty-four) hours from arrival of the Commodity. Failure of the Receiver to give such notice, as required, shall preclude the Buyer from claiming for deficiency of quality against the Seller, where such deficiency would or should have been apparent on reasonable inspection. The Seller shall be allowed 24 (twenty-four) hours from time of the notice of deficiency being given to inspect the Commodity to verify the quality. If the Seller does not do so, he shall be deemed to accept the Receiver's findings as to quality.
- 8.17 Should the Seller and the Buyer fail to agree on the quality of the Commodity, a second sample shall be drawn in accordance with the Agricultural Products Standards Act 1990 (and any amendments thereof or replacement Acts) with a suitable double tube probe in the case of bulk deliveries, or a suitable bag-probe in the case of deliveries in bags, or by such other method and by such person or persons agreed to by the Parties. Such sample shall be sealed and shall bear on the label all relevant information required for analysis. All analysis shall be done by an independent analyst/surveyor agreed to by the Parties or else nominated by the AFSA Secretariat. The results so determined shall be final and binding upon the Parties. If allowances resulting from this analysis cannot be mutually agreed by the Parties, the matter shall be submitted to arbitration for determination in terms of clause 23. All costs of sampling and analysis shall be borne by the defaulting party.

Fumigation

- 8.18 In the event that the relevant Commodity must be fumigated for the purposes of legislation herein referred to and/or as required by the relevant agricultural business or company, the Seller undertakes to carry out such fumigation at its own expense prior to delivery. Fumigation may not be done on the premises of the relevant agricultural business or company and must be done by an appropriately certified person who is accredited in terms of the relevant legislation stated to the satisfaction of the Buyer and relevant agricultural business and/or company.
- 8.19 In the event that the Seller fails to carry out such fumigation and treatment as required herein, and this causes damage to the Buyer, the relevant agricultural business or company, the Seller hereby indemnifies the Buyer against such damage of whatever nature that may arise from such failure, including the consequential damage caused where the unloading site of the Buyer and/or its customer is infected with the insects/pest. Furthermore, the Buyer will be entitled to recover any associated costs, damages and/or losses from the Seller in terms of the breach of contract clause contained in this Agreement.

Moisture content applicable to wheat and maize

- 8.20 The Buyer has the right to reject without any liability any South Africa produced wheat consignment supplied by the Seller, where the moisture content exceeds 13% (thirteen percent) on an "as is" basis. The Seller confirms and agrees that the moisture content of any maize consignment supplied to the Buyer hereunder shall not exceed 14% (fourteen percent). The Buyer has the right to reject any maize consignment supplied, where the moisture content exceeds 14% (fourteen percent) on an "as is" basis. The purchase price agreed by the Parties will be based on delivery by the Seller of maize with a moisture content (on an "as is" as basis) of 12.5% (twelve point five percent).
- 8.21 For any consignment of maize supplied by the Seller to Buyer, where the moisture content is between 12.5%, and the maximum 14%, the weight will be adjusted downwards in accordance with the following formula:

A multiplied by (100 less B)

100 less 12.5 percent

where A equals the weight of the consignment, and B equals the actual moisture content of the consignment.

9. **Analyses of Specification**

- 9.1 When Commodities are sold subject to a specification requiring analysis, the Buyer shall have the right to claim an allowance to be agreed or to reject the Commodities on the basis of an analysis made by him or on his behalf. When the Buyer exercises this right a representative sample shall be drawn, sealed and, if required by the Seller, shall be submitted to an agreed independent analyst for the justification of any claim or rejection. If required by the Seller, this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable.
- 9.2 Costs of independent sampling and analysis so incurred shall be for the Seller's account if the claim or rejection is upheld, otherwise for the Buyer's account.
- 9.3 All such claims must be notified so as to be received by the Seller within 60 (sixty) days from the last day of the contract period.

10. **Transfer of Ownership and Risk**

- 10.1 It is fully understood by the Parties, that ownership and risk may not pass simultaneously between the Parties.
- 10.2 Risk of loss or damage to the Commodity shall pass to the Buyer variably as intended per delivery method as specified in clause 1.2.6 above. Thus, the respective moment when transfer of risk passes from the Seller to the Buyer, differs in each delivery method, but shall in all instances and delivery methods only be once inspection and a quality assessment thereof by the Buyer has been completed to the Buyer's satisfaction (thus whichever is the later of the two).
- 10.3 Ownership in the Commodity shall pass to the Buyer upon payment of the Contract Price made in full to the Seller.

11. **Delivery**

- 11.1 The contracted Commodity must be delivered within the period as indicated in the Transaction Agreement, and by the delivery method indicated therein. The Buyer reserves the right, at its own discretion and without prejudice to any other rights the Buyer may have in terms of this Agreement, to allow the Seller to deliver before or after the contracted delivery period but shall under no circumstances be obliged to do so. Any additional costs caused by such concession, including rolling costs, (as calculated on day of early or late delivery), will be paid in full by the Seller on demand, alternatively, at the option of the Buyer, said costs will be brought into set-off with any amount owed by the Buyer to the Seller.
- 11.2 Delivery time and place shall be effected differently in accordance of each respective delivery method, as stipulated in each Transaction Agreement. The moment and place the risks passes from the Seller to the Buyer (as set out in clause 10.2 above), shall be regarded as the moment and place that delivery has been made to the Buyer.
- 11.3 The Buyer reserves the right to cancel a Transaction Agreement in respect of any Commodity not delivered within the period as indicated in the relevant Transaction Agreement.
- 11.4 Delivery of the Commodity (as applicable to each delivery method) will take place on Business Days and at certain peak times on Saturdays as determined by the Buyer.
- 11.5 In the event that the delivery method is Ex-Farm or Ex Worx, the onus rests at all times upon the Seller to ascertain and confirm the identity of the persons/institutions and vehicles who load the Commodity at the loading points designated by the Seller. Where the Buyer is involved in the loading of the Commodity, the Buyer will in advance confirm in writing to the Seller the identity of the persons/institutions and vehicles tasked with loading the Commodity. The risk of loss rests solely on the Seller where loads of the Commodity are loaded by unauthorised persons/institutions and vehicles. The Buyer's contractual right to receive delivery without risk is confirmed and agreed between the Parties.
- 11.6 The Seller shall deliver the Commodity in the agreed volume to the Buyer at the agreed points of delivery and as applicable to the agreed delivery method as specified in the Transaction Agreements. The Buyer reserves the right to reasonably extend the delivery date from time to time in writing, and the Seller shall be obliged to accommodate such extension.
- 11.7 The allocation of the order of delivery of the volume of Commodity will be assigned by the Buyer in its sole discretion, and not necessarily in the chronological order of the signed Transaction Agreements. Thus, the Buyer will be entitled to give preference according to his own needs, and not necessarily to the oldest Transaction Agreement. In the event of an addendum to the Agreement, the order of delivery will still be at the discretion of the Buyer, and not necessarily be according to the date of the addendum.

12. **Payment**

- 12.1 The delivered Commodity will only become due for payment from the commencement date of the delivery period under the conditions set out in clause 11 of this Agreement. Payment for the Commodity will be made by the Buyer as set out in each Transaction Agreement.
- 12.2 If delivery method is Ex Silo, payment will be made within 3 (three) Business Days after delivery of silo certificates by the Seller to the Buyer or by transfer on client folio. The period of 3 (three) Business Days will commence upon receipt by the Buyer of the silo certificate as well as all fully completed relevant documents.
- 12.3 If delivery method is Ex-Farm or Ex Worx and thus by loading at an agricultural business or company silo, payment of the Contract Price of each consignment of the Commodity delivered by the Seller to the Buyer shall be made by the Buyer before or on the third Business Day following the Friday of any specific week during which the loading was done.
- 12.4 Notwithstanding the provisions of clause 12.2 and 12.3, no payment shall be made before the commencement date of the delivery period as contemplated in clause 11.1.
- 12.5 Notwithstanding any provision to the contrary in this Agreement, the Seller hereby gives the Buyer an irrevocable authorisation to withhold all payments due to the Seller in the fulfillment of the Buyer 's obligations under this Agreement, and to pay same

directly to any agricultural business, other person or institution which holds a ranking bond, cession, pledge, mortgage or any other encumbrance over the Commodity.

- 12.6 If the Buyer becomes aware of any conflicting claims in respect of the Commodity, the Buyer may, without prejudice to any rights and pending a determination and decision of such conflicting claims, withhold any payment due by it from the Seller, alternatively remit to the trust account of any firm of legal practitioners as agreed between the Parties, to be held in trust by such firm pending settlement of the dispute. The Seller is aware that the funds thus held in trust during the dispute period will not yield any interest benefit to either Party.
- 12.7 All payments will be based on the net mass of the Commodity, whether a dirty or clean grading.
- 12.8 The Seller will also have an obligation to check that payments made to it are correct and to immediately correct any erroneous payments that may occur due to administrative human errors. If an overpayment or an erroneous payment is made to the Seller, for whatever reason, the Seller will refund the amount to the Buyer within 5 (five) Business Days.
- 12.9 If an incidental cost arises for which the Seller is liable, and which could not be recovered by the Buyer by means of set-off against delivery payments due, payment thereof by the Seller to the Buyer shall take place within 5 (five) business days after the Seller has been notified thereof.

13. **Handling, Storage, Insurance and Other Charges**

- 13.1 Storage costs, handling, fumigation, preparation, storage costs and any administration costs, as well as insurance premiums will be paid by the Seller as indicated by the delivery method as set out under clause 1.2.6 until ownership and risk of loss or damage of the Commodity passes to the Buyer as set out in this Agreement, unless otherwise specified in the Transaction Agreement.
- 13.2 In the event that the Buyer has purchased the Commodity on an Ex-Farm delivery method and the Commodity does not meet the quality specifications set out in clause 8 of this Agreement, the Seller will be responsible for the following costs: -
- 13.2.1 Any screening costs and/or drying costs;
- 13.2.2 Any additional transport costs;
- 13.2.3 Any incidental costs arising from the fact that the Commodity does not meet the quality specifications set out in clause 8.
- 13.3 The Buyer may, at its own discretion, incur such costs on behalf of the Seller and set them off against the Seller's purchase price, or alternatively, the Seller will receive the amount from the Buyer within 5 (five) Business Days after an invoice has been issued.

14. **Guarantees, Suretyship and Personal Liability of Persons Signing on behalf of Legal Entities**

Each person signing this Agreement on behalf of any company, partnership, close corporation, cooperative, trust or other legal person other than natural persons (hereinafter referred to as "the legal person") personally guarantees that:-

- 14.1 He/she is personally authorised by the legal person to sign this Agreement;
- 14.2 The entering into of this Agreement by the relevant legal entity, fall within the scope of the legal entity's powers, purpose and authorisation, and does not breach any provision of the Companies Act 71 of 2008, the Close Corporations Act 69 of 1984, the Cooperatives Act 14 of 2005 or the Trust Assets Control Act no. 57 of 1988.
- 14.3 All necessary steps have been taken by the legal entity to grant the signatory the power to execute this Agreement on its behalf, and in particular the directors in the case of a company, the members in the case of a close corporation, cooperative or partnership or the trustees in the case of a trust, have expressly approved the signing of this Agreement.
- 14.4 Should any legal person intended to be bound by this Agreement, is not so legally bound, for any reason whatsoever, including, but not limited to, a breach of warranty contained in this clause, the person who signs the Agreement on behalf of the legal entity, hereby personally binds himself/herself will full legal liability to the terms, obligations, and consequences of this Agreement.
- 14.5 The signatory to this Agreement acting on behalf of the legal entity binds himself/herself as surety and co-principal debtor with the legal entity as Seller herein for the prompt and proper fulfillment of the obligations of the legal entity in terms of this Agreement and the surety waives the legal right of exception of excussion and division as well as any other legal exception that may be raised by the Seller and or surety against a claim of the Buyer by virtue of this Agreement and/or suretyship, the scope and content of which the surety/signatory acknowledges and it shall confirm to have understood the same by affixing his/her signature hereto.
- 14.6 In the case of more than one Seller, each Seller accepts that his/her liability is *in solidum*, and that the Buyer may at any time seek performance against any one of the Sellers of its choice.

15. **Set-off**

- 15.1 Under no circumstances shall the Seller be entitled to withhold or postpone any performance stipulated in this Agreement for any reason whatsoever and shall not be entitled to apply any form of set-off.
- 15.2 The Buyer shall be entitled to use or allocate any amount(s) owed by him to the Seller as set-off against monies owed by the Seller to the Buyer under this Agreement.

16. **Other Agreements**

The Seller hereby guarantees that no other agreements which may affect the delivery of the Commodity in terms of this Agreement have been entered into by it, prior hereto. No other higher-ranking security therefore exists in respect of the Commodity, and the Buyer will therefore have the first right to the quantity of the Commodity as indicated in this Agreement on

the date of delivery.

17. Cession of Rights

- 17.1 The Buyer shall be entitled to cede and/or assign its rights acquired under this Agreement. The Buyer shall also be entitled to transfer or delegate its obligations in terms of this Agreement.
- 17.2 It is the Seller's responsibility to ensure that an agricultural business or other cession holder notifies the Buyer in writing of any cession or any change or release of the Seller's stock, upon which the Buyer will acknowledge receipt in writing, subject to its own rights in terms hereof.
- 17.3 The Seller shall be entitled to cede or assign its rights in terms of this Agreement, only with the prior written consent of the Buyer being had and obtained.

18. Administration of Agreement

The Buyer reserves the right to refer this Agreement to a representative (including an agricultural business) or an agent for the execution and administration thereof. However, handing it over to a representative (including an agricultural business) will not detract from any of the terms and conditions of this Agreement.

19. Conclusion of this Agreement and Transaction Agreements

- 19.1 The Parties are bound by the terms of this Agreement from date of signature hereof by the Seller, or by the signing by the Seller of any Transaction Agreement incorporating these Purchase Terms. Acknowledgment of receipt by the Seller of the version of this Agreement as signed by the Buyer will therefore not be a prerequisite or suspensive condition for the conclusion of this Agreement.
- 19.2 From time-to-time hereafter, the Buyer will finalise with the Seller a Transaction for the procurement of Commodities which Transaction is then formalised under a Transaction Agreement. The Parties shall furthermore be bound by the terms of any such Transaction Agreement entered into hereafter, even if such Transaction Agreement is verbally entered into.
- 19.3 When any Transaction Agreement is hereafter entered into by the Parties in writing, a copy thereof will be sent to the Seller after signature by the Buyer or its agent, if the administrative burden of the Buyer allows it.
- 19.4 Transaction Agreements may be concluded verbally (directly or by telephone) between the Parties. The Buyer may then send a written Pricing Confirmation (or Transaction Confirmation) to the Seller for his convenience of reference but is not obliged to do so.
- 19.5 Alternatively, as in the case of a verbal Transaction Agreement, the Buyer will send an electronic message via mobile phone, e-mail or alternative electronic format to the Seller to confirm the contract price of the Transaction Agreement. However, it remains the responsibility of the Seller to make enquiry if the written Transaction Agreement or electronic confirmation has not reached it and the Agreement remains valid whether the Seller has received a copy of the Agreement or electronic confirmation, or not. The Seller will also be able to download the Transaction Agreement electronically from the neXgro Portal electronic system.
- 19.6 For the purposes of section 22 of ECTA, and the receipt theory applicable thereto, the Parties hereby agree that these Purchase Terms and any subsequent Transaction Agreements signed electronically, shall upon its conclusion, be deemed to have been initially offered by the Buyer at the premises of its registered address, and to be accepted by the Seller at its physical address indicated herein, which acceptance is subsequently communicated to and accepted by the Buyer at its registered address. The conclusion of this Agreement and any subsequent Transaction Agreement will therefore take place upon receipt by the Buyer of the Seller's electronic acceptance thereof, which will be deemed to take place at the Buyer's registered address, regardless of the physical location of the authorised representatives of the Parties respectively, at that moment when the electronic transmission takes place.
- 19.7 The parties recognise that written execution of the Transaction Agreement serves to capture and formalise an agreement to procure Commodities. If such agreement has already been reached verbally by the Parties, then for that reason failure by the Seller to sign a written Transaction Agreement does not in any way invalidate the agreement already reached by the Parties. The Parties recognise that any such Transaction may be substantiated through presentation of evidence as to the existence and terms agreed in the normal course of business. The Transaction Agreement in those instances then merely reflects confirmation of the applicable Transaction that in some instances have been progressed or completed by the Parties.
- 19.8 For non-Safex-traded commodities, if the Seller fails to return a duly signed copy of the Transaction Agreement (or the notification sent as Transaction Confirmation / Transaction Summary) or fail to object to such document within 24 (twenty-four) hours after such document has been dispatched by the Buyer, the Transaction Agreement shall be deemed to have been accepted by the Seller. For Safex-traded commodities, the Transaction Agreement shall be final, binding and deemed to have been accepted immediately once the Safex-traded transaction book-over is accepted by the Seller.
- 19.9 If Transaction Agreements are concluded verbally, the Buyer may record those calls electronically, although the Buyer shall not be obliged to do so. The Seller hereby expressly consents that such verbally agreed Transaction Agreements may be recorded electronically, with or without mention of a recording during such conversation, either directly or by telephone. Furthermore, the Seller hereby consents that such electronic recordings may be used as indisputable evidence by the Buyer in any proceedings or forum of whatever nature, in the enforcement of this Agreement or any aspect thereof, where it may be necessary, of the content of such conversations, unless the Seller, on whom the onus will rest, can deliver proof that such recording does not interpret the conversations correctly.
- 19.10 Telephonically agreed Transaction Agreements will for record purposes only be put in writing at the request of the Seller, signed by the Buyer and sent by the Buyer to the Seller by electronic mail or by registered mail. The Seller will immediately sign it on receipt and send a copy of it to the Buyer within 48 (forty-eight) hours by facsimile or electronic mail or within 5 (five) calendar days if by registered mail. However, any failure of the Seller to sign the document and to provide the Buyer with the signed

Transaction Agreement within the given time will be considered a breach of the Agreement reached but have no effect on the binding Agreement existing between the Parties, the content of which can be proven, *inter alia*, by the recording or electronic message.

- 19.11 The Seller may sign Transaction Agreements and/or Amendments and/or Pricing Confirmations in the aforementioned manner by electronic dispatch message or pin code and may also authorise the Buyer as agent in the aforementioned manner or by electronic message to enter into Transaction Agreements and/or Sales Notes on behalf of the Seller. The Buyer will confirm the Transaction in the aforementioned manner or by electronic message and will perform accordingly.
- 19.12 The following shall apply in respect of all the Sales Notes/ Transaction Confirmations contained in Transaction Agreements (whether entered into in writing or verbally) entered into pursuant to this Agreement: -
- 19.12.1 Any application for deviation in terms of the intended delivery silo(s) must be made in writing by the Seller to the Buyer, in any written format, including text messages by mobile phone or any other form of electronic written communication.
- 19.12.2 Should circumstances require it, and the aforementioned communication is not possible at that stage, the Party deviating from the agreed delivery silo may, at its own risk, take a decision which appears under the circumstances at that time, to be the most reasonable.
- 19.12.3 Should delivery not take place at a SAFEX-approved silo, the Buyer reserves the right to apply an adjusted transport costs discount derived at in relation to the surrounding SAFEX-approved silos, closest to the relevant silo.
- 19.13 The Seller hereby consents thereto and permits the Purchaser to enquire about any information regarding all or any of the Seller's deliveries at any agricultural business or cooperative or company before delivery has taken place, in order to verify stock.

20. Notices and Domicilia

- 20.1 The Parties choose as their *domicilia citandi et executandi* for the purposes of legal proceedings and for the purposes of sending any notice provided for or required in terms of this Agreement, the addresses as indicated in the preamble to this Agreement (or set out below their signatures at the bottom of this Agreement), or such other address as may be substituted by notice. Each of the Parties shall be entitled to change its *domicilia* from time to time by written notice to the other to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 20.2 Any notice addressed to a Party may be delivered to the Party's chosen physical address, given by hand, sent by post, email or SMS (mobile phone messaging system) or by any other form of data message, as intended and subject to the provisions of ECTA.
- 20.3 A notice shall be deemed to have been given, unless the contrary is proved: -
- 20.3.1 if sent by post, 14 (fourteen) calendar days after dispatching it by post;
- 20.3.2 if delivered by hand during normal business hours on a Business Day, on the day of such delivery;
- 20.3.3 if by e-mail, SMS or as a data message, as intended stated and subject to the provisions of ECTA, on the first Business Day after the dispatch date of such telefax, e-mail, SMS or other data message.

21. Cession in Security of Commodity Stock and Proceeds of Stock

- 21.1 All right, title and interest in and to any stock or to the proceeds of any stock of the Seller, in total or to the extent and type of the Commodity sold in terms of this Agreement and/or in terms of a Transaction Agreement pursuant to this Agreement, is hereby ceded to the Buyer as security for the proper fulfillment of this Agreement by the Seller and the delivery of the Commodity on the agreed dates.
- 21.2 In due compliance with the Seller's obligation created by this cession, the Seller undertakes to: -
- 21.2.1 to notify the Buyer of all prior cessions and securities ranking higher than the cession to the Buyer in terms hereof, and;
- 21.2.2 to notify all third parties of this cession as may be determined in writing by the Buyer from time to time.
- 21.3 Insofar as the Seller fails to fulfill its obligations in terms of this Agreement and more specifically to deliver the Commodity as and when agreed, the Seller irrevocably authorises the Buyer to ensure proper compliance with this Agreement by the Seller at the expense of the Seller and delivery, whether it be to harvest the Commodity and/or by loading and/or arrange delivery of the Commodity wherever it may be found, regardless of same has still to be harvested, already harvested, stored or in whatever condition, on the Seller's property and/ or at any other location whatsoever, and the Seller may in no way obstruct and/or interfere directly or indirectly in the execution of this clause by the Buyer.
- 21.4 This cession is enforceable by the Buyer regardless of whether payment of the contract price has been made or not by the Buyer to the Seller, or whether the latter can enforce its rights for payment in terms of this Agreement or not.

22. Breach of Agreement

- 22.1 Should either Party breach any of its obligations under or in terms of this Agreement or otherwise be in default and fail to rectify such breach within 3 (three) Business Days after receipt of written notice calling upon it to do so, the other Party shall be entitled (unless the contrary appears from the context herein), but not obliged to do so, in addition to any other rights he may have or remedies that may be available to him by operation of law or as intended in this Agreement, to: -
- 22.1.1 cancel this Agreement without delay with or without a claim for damages; or
- 22.1.2 obtain an order against such defaulting Party for specific performance with or without a claim for damages; and
- 22.1.3 claim such damages as he may have suffered instead of specific performance, together with payment of any amount due as agreed between the Parties and/or request delivery of Commodity due under or in terms of this Agreement.

- 22.2 Notwithstanding anything to the contrary contained in this Agreement, any Party shall be entitled to cancel this Agreement, if the other Party:-
- 22.2.1 is sequestrated;
 - 22.2.2 is placed under judicial management; or
 - 22.2.3 is liquidated, whether compulsorily or voluntarily; or
 - 22.2.4 colludes with his creditors, or attempts to collude or reach or try to reach a *concursum creditorum*; or
 - 22.2.5 commits any act of insolvency as defined in the Insolvency Act 24 of 1936 as amended.
- 22.3 It is specifically recorded and noted, that the specified delivery period detailed in any Transaction Agreement, does not allow for any extension of delivery by the Seller or its agent, and delivery must take place between the first day of the agreed delivery period, and the last day of the delivery period, both days included. Time is of the essence for all Transactions. Notwithstanding anything to the contrary stated above, in the event of the Seller's failure to deliver or short delivery by the final delivery date, the Buyer shall be entitled, without prior demand for delivery, to simply claim damages that it may have suffered instead of claiming specific performance from the Seller and/or to collect any other sums due from the Seller per agreement between the Parties and/or dealt with hereunder. The Seller acknowledges that time is of the essence and its failure to comply with its obligations under a Transaction Agreement will cause immediate and often irreparable harm to the Buyer which money damages alone cannot adequately remedy. Therefore, upon any actual impending violation of this Agreement, the Seller consents and agrees that, notwithstanding the contents herein, the Buyer shall be entitled, at its option, to specific performance and injunctive relief, in addition to any remedies available herein or at law.
- 22.4 It is common practice known between the Parties that, upon entering into individual Transaction Agreements as intended herein for future delivery, the Buyer discounts the Buyer's risk against price fluctuations by taking a selling position on SAFEX at a then prevailing SAFEX-price (hereinafter the "Hedge Price"), through facilitation of its SAFEX-agent, whether it be Unigrain Trading (Pty) Ltd or any other agent. It is further common practice that the Buyer's agent must then perform vis-à-vis SAFEX in respect of the stated sales position and indeed on the delivery dates therein intended. In the event that the Seller refuses and/or fails to deliver the agreed tonnage by the agreed delivery dates, the Buyer and/or its said agent, shall have the right, without further notice, to honour the sale position held at SAFEX by buying out the amount of tonnage initially sold to SAFEX (the sell position) at SAFEX at the then prevailing market price or strike price determined by SAFEX (hereinafter the "Buy-Out Price").
- 22.5 In respect of undelivered tonnage, insofar as the Buy-Out Price per undelivered tonnage may be higher than the hedge price, the Buyer and/or its agent, shall be entitled to recover the difference from the Seller, together with the Buyer's relevant margin as applicable to the Buyer at the time (but which will not be less than R45.00 (forty-five rand) per ton), unless otherwise agreed to in writing, together with administration costs as applicable to the Buyer at the time (but which will not be less than R10.00 (ten rand) per ton), and all periodic upward SAFEX-price movement of the Commodity hedged as aforesaid, upward in relation to the price determined for the preceding pricing period or the Hedge Price, whichever may be applicable, calculated for each pricing period after obtaining the Hedge Price, which prices and pricing periods are determined by SAFEX for the period from the date of the Hedge Price up to and including the date of buyout (hereinafter referred to as "spread") and together with all option costs incurred in terms of a Transaction contemplated herein and if applicable. All amounts owed by the Seller to the Buyer in terms of this clause are payable in full upon notification of buyout and bear interest calculated from buyout date at 2% above the prime Lending Rate of ABSA Bank Limited, as published from time to time, interest calculated daily on the amount due from date of buyout, monthly compounded in arrears from the due date until date of final payment.
- 22.6 With reference to paragraphs 22.4 and 22.5 above, the Seller will not benefit from a price position where the buyout price is lower than the Hedge Price nor where periodic spread costs are lower than for preceding pricing periods.
- 22.7 Any certificate of balance presented by the SAFEX-trading manager or price manager of the Buyer or its agent, whose appointment need not be proven, setting out the amounts payable by the Seller pursuant to paragraph 22.5 above, as well as setting out the applicable pricing periods starting with price movement, will be sufficient proof of the content of the said certificate and the indebtedness of the Seller to the Buyer or its agent, in the absence of rebuttal, for the purposes of summary judgment or preliminary judgment, and the total stated in said certificate shall be considered a liquid amount.
23. **Dispute Resolution**
- 23.1 Any dispute, of whatever nature, between the Seller and the Buyer in connection with any matter arising out of or in connection with this Agreement or its interpretation may be subjected to and decided by arbitration provided that any Party requiring remedy or seeking to resolve a dispute, has the option not to refer the dispute to arbitration, and to have the dispute settled by the courts of law.
- 23.2 Should the dispute be referred to arbitration, the following sub-clauses will apply: -
- 23.2.1 The arbitration will be held in Pretoria.
 - 23.2.2 The provisions of the Arbitration Act (42 of 1965) will apply insofar as the procedures contained below and more specifically those referred to in paragraph 23.2.3 below, do not properly provide for procedures.
 - 23.2.3 In particular, the following procedure will apply in an attempt to bring about a speedy arbitration procedure: -
 - 23.2.3.1 the Party raising a dispute must put the dispute in writing, notify the other Party in writing and request in the notice that the dispute be decided by arbitration and said Party will propose an arbitrator. The arbitrator must be a member of the Pretoria Bar with at least 10 (ten) years' experience as an advocate. A statement of the case from the Party raising the dispute must be attached to the notice;
 - 23.2.3.2 the Party to whom the notice of the dispute is addressed (the other Party) shall respond within twenty (20) Business Days after dispatch of the aforementioned notice in writing to the Party's allegations regarding the

dispute and the request for the appointment of arbitrator. Attached to the notice must be a plea on the case statement;

23.2.3.3 after the expiry of the aforementioned twenty (20) days, if no response has been received to the notice per 23.2.3.2 or if the appointment of the arbitrator is disputed, the Party requesting arbitration may approach the chairman of said bar for an appointment;

23.2.3.4 the arbiter appointed by the Parties or, in the absence of agreement, by the chairman mentioned above, will notify the Parties of the holding of a preliminary arbitration meeting at the arbiter's discretion. The arbiter will determine all periods and the process to be followed and will as far as possible follow the Rules of the High Court of South Africa in the continuation, procedure and administration of the arbitration process. The terms of the arbitration agreement will be determined by the arbiter. The sole duty of the arbiter is an expeditious arbitration process with the aim of concluding the arbitration within ninety (90) days.

23.3 Failure by either Party to respond to any notice given in terms of clause 23.2.3.4 or to participate in the arbitration process does not prevent the other Party of continuing the arbitration process in accordance with the provisions and regulations given by the arbiter. An arbitration order of any kind may be given in the absence of a Party against such Party and shall be enforceable.

23.4 The Parties will be obliged to initially contribute equally to the costs of the arbiter and the arbiter may make any costs order in accordance with any scale referred to in clause 28.2 below, and the Parties agree and undertake that they will comply with the rules, fees scale and expenses determined by the arbiter.

24. Entire Agreement and Amendment

24.1 This Agreement constitutes the entire agreement between the Parties and no amendment, addition, waiver or agreed cancellation shall be binding unless it is in writing and signed by both Parties, provided that the Buyer and Seller have agreed herein that any pursuant Transaction Agreement (or amendment thereto) referred to in this Agreement may be agreed upon and/or confirmed by telephone or verbally and/or in writing by means of electronic mail or other electronic messages if the Buyer is able to do so.

24.2 No failure or delay on the part of either Party in the exercise of any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege serve to preclude other or further exercise thereof or the exercise of any other right, power or privilege.

24.3 If any provisions herein and/or of the Transaction Agreement appear to be illegal, invalid, or unenforceable for whatever reason, such provision shall be deemed *pro non scripto*, but without any impairment, impediment or invalidity in relation to remaining provisions of the Agreement.

24.4 The Parties agree that these Purchase Terms may be signed in counterparts which together will constitute this Agreement. The Seller is required to send a copy thereof to the Buyer in advance by electronic mail or other electronic message. The Buyer has the right to withhold any performance in terms of this Agreement and/or a Transaction Agreement until and including receipt of the original or electronic copy as mentioned above of this document and the original or electronic copy of any written Transaction Agreement (where applicable).

25. Consent to Information

25.1 During the term of this Agreement, the Seller authorises the Buyer to make enquiries into the credit record of the Seller. The Seller authorises the Buyer to make such inquiries from time to time with its Bankers and creditors, and the Seller will ensure that all information which may be relevant to its credit record is provided to the Buyer from time to time.

25.2 The Seller shall duly complete and deliver the credit profile information sheet as provided by the Buyer from time to time and deliver it on demand and warrants the correctness of its contents.

25.3 If required, the Seller shall make all reasonable financial information available to the Buyer upon request.

25.4 The Parties consent that the other Party may inquire about its B-BBEE status, and that this information will be made available upon request in writing.

25.5 The Seller hereby consents thereto and permits the Buyer to enquire about any information regarding all or any of the Seller's deliveries at any agricultural business or cooperative or company before delivery has taken place, in order to verify stock.

26. Privacy and Security

26.1 The Parties hereby mutually consent that the other Party may collect, receive, store, process, and use its personal information, as defined in the Personal Information Protection Act, Act No. 4 of 2013 (hereinafter referred to as "POPIA"), for all purposes relating to the execution of this Agreement.

26.2 POPIA regulates and defines the collection, storage, distribution, and use of personal information relating to the personal information of natural persons as well as legal persons. The Buyer undertakes to comply with the provisions of POPIA, as set out in its privacy policy, which can be found at https://www.nexgro.co.za/wp-content/uploads/2022/09/POPI-Policy_-NeXgro-V3-2022-09-12.pdf.

26.3 The Seller agrees that the Buyer may transfer its personal information to third parties, insofar as it may be necessary to give effect to the provisions of this Agreement.

26.4 The type of personal information that is collected, retained, distributed and used by third parties, serves to a large extent the same purposes as that of the Buyer, insofar as it is related to reasons why it is collected, retained, distributed and used.

26.5 The purpose for collecting the personal information and the reason why the Parties need the personal information from each

other is to enable them: -

- 26.5.1 To comply with legal obligations, including all financial legislation such as the Financial Advisory and Intermediary Services Act 37 of 2002 and the National Credit Act;
 - 26.5.2 To establish the contractual relationship between the Seller and the Buyer in order to ensure the correct administration of the relationship;
 - 26.5.3 To obtain the other Party's credit record and repayment history from any third party, including but not limited to any credit bureau;
 - 26.5.4 To obtain any financial statements from accountants and/or auditors;
 - 26.5.5 For operational reasons;
 - 26.5.6 To protect the legal interests of the Buyer, the Seller or of a third party.
- 26.6 All personal information that any Party provides to the other will only be used for the purposes for which it was collected. Personal information will be stored electronically in a central database that will be accessible to everyone within the organisations of the Parties for operational reasons. Where applicable, certain information may be retained in copy. In any case, the storage will be regularly audited regarding the safety and security of information.
- 26.7 The Seller agrees and acknowledges that the personal and financial information disclosed in this way will only be shared and used for the purposes of the Buyer's business with relevant third parties. The Buyer will only use personal information provided as requested and required, and will not disclose more personal information than necessary.
- 26.8 The conditions of how any such third party, such as a responsible party will process the Seller's personal information in accordance with the conditions set out in POPIA, is a matter between the Seller and the third party and the Buyer will not accept any responsibility on behalf of such third parties.
- 26.9 Each Party may enquire from the other, as well as any third parties to whom information has been transferred, about which of its personal information it holds and has the right to correct its personal information or to request the other Party or the third party to discard of its personal information.
- 26.10 Each Party has the right to revoke this consent and to lodge a complaint with the Information Regulator at:
Website: <https://www.justice.gov.za/inforeg/>; Telephone Number: 012 406 4818; Email Address: inforeg@justice.gov.za / complaints.IR@justice.gov.za
- 26.11 Each Party acknowledges that it has the right to request the other Party at any time to provide it with: -
- 26.11.1 details of any of the personal information that the other Party holds on behalf of the requesting Party; and
 - 26.11.2 details of what the other Party has done with that personal information.
- 26.12 Furthermore, each Party acknowledges that it understands the purposes for which personal information is required and for which it will be used.

27. **Anti-Bribery Undertaking by Seller**

- 27.1 This Agreement shall be subject to, and the Seller shall at all times adhere to the Unigrain Anti-Bribery Compliance Policy (the "Anti-Bribery Policy"), as may be amended from time to time, and any other applicable laws relating to anti-bribery. The Seller represents, warrants and covenants that, to its knowledge, neither the Seller nor its officers nor anyone acting on its behalf has in the past five years nor shall it in the future, corruptly make any offer, payment, promise of gifts or money or any other thing of value to either (i) a government official (or (ii) any representative of a third party for the purpose of improperly influencing any act or decision of such person or a government official to act in violation of his/her lawful duty for the purpose of securing any improper advantage or obtaining or retaining business.
- 27.2 The Seller represents that none of its shareholders, officers, directors or employees is a government official.
- 27.3 The Seller agrees to promptly report to the Buyer any request or demand for any undue financial or other advantage of any kind offered, demanded or received by the Seller in connection with the performance of this Agreement.

28. **Jurisdiction and Legal Fees**

- 28.1 In the event of a dispute where the Buyer does not consent to arbitration, the Parties consent and submit to the jurisdiction of a Local Division or the Provincial Division of the High Court of South Africa, whichever is applicable, for any dispute arising out of or relating to this Agreement. Notwithstanding such submission, the Buyer shall be entitled to bring legal proceedings against the Seller in any Magistrates' Court having logistical jurisdiction, regardless of whether the amount of the claim exceeds the jurisdiction of that court, to which jurisdiction the Seller hereby consents.
- 28.2 Any Party hereto who wishes to enforce its rights in terms hereof shall be entitled to all legal costs incurred in enforcing the terms of this Agreement and/or any claims for damages and/or payment and/or delivery, either by way of arbitration or by way of legal action, to recover from the Party in default on a scale as between attorney and own client, including attorney's fees and costs, trail costs and all attorneys' costs, whether incurred before or after the institution of proceedings.

29. **Formalities**

- 29.1 The signatory of this Agreement, as or on behalf of the Seller, confirms that his attention has been specifically drawn to clause 14 of this Agreement, that he has read it, understands it, and commits himself thereto.

Initial: _____

29.2 The signatory to this Agreement declares that he is fully familiar with the outline of these Purchase Terms and guarantees the correctness of the information provided by him.

Initial: _____

29.3 The signatory as or on behalf of the Seller acknowledges that this Agreement was complete in all respects when it was signed by said signatory.

SIGNED at _____ on this _____ day of _____ 202__

As duly authorised representative of the SELLER

NAME: _____

IDENTITY NUMBER: _____

ADDRESS: _____

(Will serve as *domicilium citandi et executandi* for purposes of the suretyship contained above)

SIGNED at **KRUGERSDORP** on this _____ day of _____ 202__

As duly authorised on behalf of the BUYER
(The neXgro Group of Companies as indicated)