

neXgro SALES TERMS AND CONDITIONS

(© neXgro Bemarking (Pty) Ltd 2023 Copyright Reserved)



Entered into by and between:

FORM NEX028/2023 04

The Buyer

NAME OF Buyer										
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										
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 Seller

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

- African Grain Investments (Pty) Ltd** **Reg No 2017/088570/07**
- neXgro Bemarking (Pty) Ltd**..... **Reg No 2020/698522/07**
- Unigrain Commodities (Pty) Ltd**..... **Reg No 1996/012583/07**
- Unigrain Trading (Pty) Ltd**..... **Reg No 2001/016989/07**

(Where all these companies are cumulatively referred to, they are styled as "the neXgro Group of Companies")

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 SELLER AND BUYER

- 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.
- The general Trading Terms and Conditions applicable between the Parties are contained in this Agreement, as will be applicable between the Parties to all Transactions entered into by them hereafter.
- In addition to, and subject hereto, the Parties will from time to time, after signing this Agreement, sign further documentation that includes specific provisions, regarding the sale of certain agricultural products, by the Seller to the Buyer (Transactions), in a document styled "Transaction Agreement" as issued by the neXgro Group of Companies from time to time.
- The Trading Terms and Conditions in this Agreement together with each Transaction Agreement constitute a total, complete agreement between the Parties. The two agreements (Trading 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 incorporated herein.

1. Interpretation

- 1.1. In this Agreement (Trading 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.
- 1.2. Unless the context shows a contrary intention, words shall include the following meanings: -
- 1.2.1. any one gender includes the reference to other gender;
 - 1.2.2. natural person includes a legal person and vice versa;
 - 1.2.3. singular includes the plural and vice versa.
 - 1.2.4. 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: -
 - 1.2.5. **"Agreement"** means this agreement entered into between the Parties;
 - 1.2.6. **"Business Days"** means Mondays to Fridays and excludes Saturdays, Sundays and officially recognised holidays;
 - 1.2.7. **"Buyer"** means the individual or entity whose details appear on the first page of this Agreement, under "the Buyer";
 - 1.2.8. **"Commodity"** means the grain product purchased by the Buyer from the Seller, as set out in each Transaction Agreement entered into between the Parties;
 - 1.2.9. **"Contract Price"** the price agreed between the Buyer and the Seller in this Agreement, as supplemented by the Transaction Agreement;
 - 1.2.10. **"Delivery method"** means any one of CIP, CPT, DAP, 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 international meaning attached to it in terms of INCOTERMS 2020, 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 	Risk passes upon transfer of title document to Buyer's name.

	Commodities at Seller's storage location at own carriage and handling out cost.	
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 from 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 to the name of the Buyer, alternatively by the transfer to the Buyer's folio account with the Storer. 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. 3 Storage fees shall thereafter be for the account of the Buyer as from date of such transfer. 	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 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.

1.2.11. "ECTA" the Electronic Communication and Transactions Act, Act 25 of 2002.

1.2.12. "Electronic message" or "Data message" means data or information that is generated, sent received or stored electronically;

1.2.13. "Parties" means the Seller and the Buyer and "Party" shall mean any one of them as the context requires;

1.2.14. "Pricing Confirmation" or "Transaction Confirmation" means an attachment to a Transaction Agreement in terms of which the price or pricing method of the Commodity is notified by the Seller to the Buyer;

1.2.15. "Regulations" means the Regulations issued under the Agricultural Product Standards Act, 119 of 1990 and the Marketing of Agriculture Products Act, 47 of 1996;

1.2.16. "SAFEX" means the South African Futures Exchange, a division of the Johannesburg Stock Exchange (managed and operated by the JSE Limited);

1.2.17. "Seller" shall mean in the context of this Agreement, each one of the 4 (four) neXgro Group of Companies as indicated in the preamble to this Agreement under the description of the Seller, and in respect of each Transaction Agreement, the Seller will be any **one** of the said neXgro Group of Companies, as indicated in each separate Transaction Agreement;

1.2.18. "Suspensive condition" the condition as set out in clause 20 of this Agreement;

1.2.19. "Trading Terms" means this Agreement and the Trading Terms and Conditions contained herein;

1.2.20. "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;

1.2.21. "Transaction Agreement" means an agreement entered into between the Parties hereafter in which the commercial details of a Transaction are embodied, and to which these Trading Terms will be incorporated;

1.2.22. "VAT" Value Added Tax, as referred to in the Value Added Tax Act, Act 89 of 1991.

1.3. These Trading Terms apply to all Transaction Agreements referred to herein/below and agreed upon between the Parties hereafter.

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. Quantity

The quantity of the Commodity will be as indicated in the Transaction Agreements.

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 the Transaction Agreements 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.

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 Buyers who are registered for VAT must make a VAT certificate or registration number available to the Seller in respect of each Transaction, within 3 (three) days of the date of each Transaction Agreement that may become part of this Agreement.
- 6.3. The Seller, who is a registered VAT-vendor, will issue a VAT invoice to the Buyer within 7 (seven) days of the date of each Transaction Agreement that may become part of this Agreement.

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 acknowledges and accepts the waiver of the common law protection which a *force majeure* exclusion clause would have offered it, and hereby expressly waives the same. The Seller therefore accepts the risk and liability in the event that delivery cannot take place due to any reason of weather conditions, 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, 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

- 8.1. The Commodity as delivered by the Seller shall meet the quality and specifications as prescribed by the Agricultural Product Standards Act, 1990.
- 8.2. The total quantity and quality of the Commodity delivered by the Seller must comply with the sub-class ratios as indicated in Transaction Agreements.
- 8.3. If the Commodity is delivered or to be delivered by the Seller and specified in the sub-class relationship, as set out in Transaction Agreements, 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, but with prior written notice to the Seller: -
 - 8.3.1. amend the sub-class relationship to a sub-class relationship as determined by the Buyer;
 - 8.3.2. or to reduce the contracted quantity of the Commodity until the Commodity actually delivered, meets the prescribed and stipulated ratios;
 - 8.3.3. or to classify it into a sub-class as determined by the Buyer; and/or
 - 8.3.4. still purchase the Commodity and claim delivery thereof based on the classification as determined by the Buyer in the Transaction Agreement.
- 8.4. Given legislation such as, inter alia, the Consumer Protection Act, 68 of 2008, it is required of both the Seller and Buyer 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.
- 8.5. 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 above-mentioned legislation.
- 8.6. Since the Buyer can be held liable for any form of aforementioned 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: -
 - 8.6.1. Agricultural Product Standards Act, No 119 of 1990, including the grading regulations issued in terms thereof;
 - 8.6.2. 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;
 - 8.6.3. The Marketing of Agricultural Products Act, No 47 of 1996;
 - 8.6.4. The Agricultural Pests Act, No 36 of 1983;

- 8.6.5. The Trade Metrology Act, No 77 of 1973;
 - 8.6.6. The National Health Act, No 63 of 1977;
 - 8.6.7. The Fertilizers, Farm Feeds, Seeds and Remedies Act, No 36 of 1947;
 - 8.6.8. The Conservation of Agricultural Resources Act, No 43 of 1983;
 - 8.6.9. The Genetically Modified Organisms Act, No 15 of 1997;
 - 8.6.10. All and general requirements and Regulations issued and published under any of the above Acts;
 - 8.6.11. The Rotterdam Convention in relation to the Prior Informed Consent Procedure (PIC) and circular; and
 - 8.6.12. Any other legislation and regulations applicable in the Republic of South Africa regarding toxic seeds, pesticides, microtoxin residues and other substances deemed not to be suitable for human consumption, and as published from time to time by the South African Government.
- 8.7. 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 Seller and relevant agricultural business and/or company.
- 8.8. 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 (excluding any consequential damage caused) where the unloading site of the Buyer and/or its customer is infected with the insects/pest. However, the Buyer will not be entitled to recover any indirect or associated costs, damages and/or losses from the Seller in terms of the breach of contract clause contained in this Agreement.
9. **Delivery**
- 9.1. 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, however with due regard being had to clause 25.1. Any additional costs caused by such concession, including rolling costs, (as calculated on day of early or late delivery), and agreed with the Seller as being due by the Seller as a result of 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 (if such costs are not disputed by the Seller). Delivery will be deemed to be the time at which the Commodity is unloaded at the delivery point, or the silo certificate is in the Buyer's possession (depending on the delivery method). The delivered Commodity will only become due for payment from the commencement date of the delivery period under the conditions set out in clause 9 of this Agreement.
- 9.2. 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, and the additional period contemplated in clause 25.1.
- 9.3. Delivery of the Commodity (where applicable to the delivery method) will take place on Business Days and at certain peak times on Saturdays as agreed between the Parties.
- 9.4. In the event that the delivery method is Ex-Farm, the onus rests at all times upon the Buyer to ensure that the identity of the persons/institutions and vehicles who load the Commodity at the loading points designated by the Seller, is duly communicated and confirmed with the Seller. 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 Buyer where loads of the Commodity are loaded by unauthorised persons/institutions and vehicles. The Seller's contractual right to deliver without risk is confirmed and agreed between the Parties.
- 9.5. The Seller shall, at its own expense – depending on delivery method agreed, deliver the Commodity in the agreed volume to the Buyer at the points of delivery as specified in the Transaction Agreements entered into in terms of this Agreement. The Buyer reserves the right to extend the delivery date from time to time in writing.
- 9.6. The allocation of the order of delivery of the volume of Commodity will be assigned by the Seller in its sole discretion, and not necessarily in the chronological order of the signed Transaction Agreements. Thus, the Seller will be entitled to give preference according to his own needs, and not necessarily to the oldest Transaction Agreement. If there is any uncertainty in relation to the number of Transaction Agreements deemed to be one agreement, the delivery allocation will be according to the numbering of the Transaction Agreements.
- 9.7. In the event of an addendum to the Agreement, the order of delivery will still be at the discretion of the Seller, and not necessarily be according to the date of the addendum.
- 9.8. Ownership and risk of loss or damage to the Commodity shall pass to the Buyer upon delivery of the Commodity at the points of delivery, and once inspection and a quality assessment thereof by the Buyer has been completed. If a silo certificate is used, ownership and risk will pass from the Seller to the Buyer on the date of receipt and transfer thereof to the Buyer.
10. **Payment**
- Payment for the Commodity will be made by the Buyer as follows unless otherwise stated in the Sales Notes of the applicable Transaction Agreement: -

- 10.1. Upon delivery of silo certificates by the Seller to the Buyer, payment of the Contract Price of the silo certificates shall be made by the Buyer before or within 48 (forty-eight) hours. The period of 48 (forty-eight) hours will commence upon receipt by the Buyer of the silo certificate as well as all fully completed relevant documents.
- 10.2. In the event of Ex-Farm, or with delivery by Seller at an agricultural business or company silo, or on client folio, payment of the Contract Price of each consignment of the Commodity delivered by the Seller to the Buyer shall be made by the Buyer within 48 (forty-eight) hours of Business Days following the Friday of any specific week during which the deliveries were made.
- 10.3. Notwithstanding the provisions of clause 10.1 and 10.2, no payment shall be made before the commencement date of the delivery period as contemplated in clause 9.1.
- 10.4. If the Buyer becomes aware of any conflicting claims in respect of the Commodity, the Buyer will contact the Seller immediately in order for a determination and decision to be made by agreement in respect of such conflicting claims.
- 10.5. All payments in the event of a dirty grading, as well as a clean grading, will be based on the net mass of the Commodity.
- 10.6. If an incidental cost arises for which the Buyer is liable, and which could not be included by the Seller in the Seller's invoice in respect of payments due, a separate invoice shall be raised by the Seller in respect thereof, and payment thereof by the Buyer to the Seller shall take place within 5 (five) business days after the Buyer has been notified thereof.

11. Handling, Storage, Insurance and Other Charges

- 11.1. Storage costs, handling, fumigation, preparation, storage costs and any administration costs, as well as insurance premiums will be paid by the Seller until ownership and risk of loss or damage of the Commodity passes to the Buyer, unless otherwise specified in the Transaction Agreement.
- 11.2. 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 8.1 of this Agreement, the Seller will be responsible for the following costs: -
 - 11.2.1. Any screening costs and/or drying costs;
 - 11.2.2. Any additional transport costs;
 - 11.2.3. Any incidental costs arising from the fact that the Commodity does not meet the quality specifications set out in clause 8.1;
- 11.3. The Buyer will notify the Seller of the need to incur such costs, and the Seller shall attend thereto as soon as is reasonable possible, such costs to be for the Seller's account.

12. Volume Disputes

In the event of discrepancies and/or deviation from the agreed quantity/mass as specified in the Transaction Agreement, the generally accepted practice of dispute resolution process of the relevant agricultural business, processor or company silo will be followed.

13. Sampling and Analyses

Subject to the provisions of clause 8.1 above, in the event of discrepancies and/or deviation from the quality as specified in the Transaction Agreement, the generally accepted practice of the relevant agribusiness, processing point or company silo will be followed.

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 of the Buyer binds himself/herself as surety and co-principal debtor with the legal entity as Buyer herein for the prompt and proper fulfilment of the obligations of the legal entity of the Buyer in terms of this Agreement and the surety waives the legal of exception of excussion and division as well as any other legal exception that may be raised by the Buyer and or surety against a claim of the Seller 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 Buyer, each Buyer accepts that his/her liability is *in solidum*, and that the Seller may at any

time seek performance against any one of the Buyers of its choice.

15. Set-off

- 15.1. Under no circumstances shall the Buyer 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, unless so agreed to by the Seller.
- 15.2. The Seller shall be entitled to use or allocate any amount(s) owed to him by the Buyer as set-off against monies which may become due to the Buyer by the Seller 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 Seller shall be entitled to cede and/or assign its rights acquired under 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.
- 17.3. The Buyer shall be entitled to cede or assign its rights in terms of this Agreement, only with the prior written consent of the Seller being had and obtained.

18. Transfer of Obligations

The Seller shall be entitled to transfer or delegate its obligations in terms of this Agreement.

19. Administration of Agreement

The Seller 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.

20. Suspensive Conditions

- 20.1. The Buyer is bound by the terms of this Agreement from date of signature, or by the signing of any Transaction Agreement incorporating these Trade Terms. Acknowledgment of receipt of the version of this Agreement as signed by the Seller will therefore not be a prerequisite for the conclusion of this Agreement.
- 20.2. The Seller shall be bound by the terms of this Agreement and any Transaction Agreement entered into hereafter:
 - 20.2.1. upon signature of the agreements by a duly authorised representative of the Seller; or
 - 20.2.2. upon entering into a verbal Transaction Agreement after signature of this Agreement.
- 20.3. When any Transaction Agreement is hereafter entered into by the Parties in writing, a copy thereof will be sent to the Buyer after signature by the Seller or its agent, if the administrative burden of the Seller allows it. Alternatively, as in the case of a verbal Transaction Agreement, the Seller will send an electronic message via mobile phone, e-mail or alternative electronic format to the Buyer to confirm the Transaction Agreement. However, it remains the responsibility of the Buyer to make enquiry if the written Transaction Agreement or electronic confirmation has not reached it and the Agreement remains valid whether the Buyer has received a copy of the Agreement or electronic confirmation, or not. The Buyer will also be able to download the Transaction Agreement electronically from the neXgro Portal electronic system.
- 20.4. For the purposes of section 22 of ECTA, and the receipt theory applicable thereto, the Parties hereby agree that these Trading Terms and Conditions and any subsequent Transaction Agreements signed electronically, shall upon its conclusion, be deemed to have been initially offered by the Seller at the premises of its registered address, and to be accepted by the Buyer at its physical address indicated herein, which acceptance is subsequently communicated to and accepted by the Seller at its registered address. The conclusion of this Agreement and any subsequent Transaction Agreement will therefore take place upon receipt by the Seller of the Buyer's electronic acceptance thereof, which will be deemed to take place at the Seller'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.

21. Transaction Agreements

- 21.1. The following shall apply in respect of all the Sales Notes contained in Transaction Agreements (whether entered into in writing or verbally) entered into pursuant to this Agreement: -
 - 21.1.1. Any application for deviation in terms of the intended delivery silo(s) must be made in writing by the Buyer to the Seller, in any written format, including text messages by mobile phone or any other form of electronic written communication.
 - 21.1.2. 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.

- 21.1.3. Should delivery not take place at a SAFEX approved silo, the Seller 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, in the event that the delivery method dictates the Seller to be responsible for transport costs.
- 21.1.4. Transaction Agreements may be concluded verbally (directly or by telephone) between the Parties. The Seller may then send a written Pricing / Transaction Confirmation to the Buyer for his convenience of reference but is not obliged to do so.
- 21.1.5. If Transaction Agreements are concluded verbally, the Seller may record those calls electronically, although the Seller shall not be obliged to do so. The Buyer 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 Buyer hereby consents that such electronic recordings may be used in any proceedings or forum where it may be necessary in the enforcement of this Agreement or any aspect thereof, as further detailed in clause 27.1.

22. Seller's Delivery of Grain

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.

23. Notices and Domicilia

- 23.1. 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 below their signatures at the end 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.
- 23.2. 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.
- 23.3. A notice shall be deemed to have been given, unless the contrary is proved: -
 - 23.3.1. if sent by post, 4 (four) calendar days after dispatching it by post;
 - 23.3.2. if delivered by hand during normal business hours on a Business Day, on the day of such delivery;
 - 23.3.3. 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.

24. Retention of Ownership in Commodity

All right, title and interest in and to any crop/stock, including ownership thereof or to the proceeds of any crop/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 reserved to the Seller as security for the proper fulfilment of this Agreement by the Buyer and the payment of the Commodity on the agreed dates.

25. Breach of Agreement

- 25.1. Should the Seller not be able to deliver the Commodity within the agreed delivery period, and thereafter fail to rectify such breach within 14 (fourteen) Business Days after receipt of written notice calling upon it to do so, the Buyer shall continue as contemplated in clause 25.4 and 25.5.
- 25.2. Should either Party breach any of any other 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, 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: -
 - 25.2.1. cancel this Agreement without delay with or without a claim for damages; or
 - 25.2.2. obtain an order against such defaulting Party for specific performance with or without a claim for damages; and
 - 25.2.3. 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.
- 25.3. Notwithstanding anything to the contrary contained in this Agreement, the Seller shall be entitled to cancel this Agreement, if the Buyer:-
 - 25.3.1. is sequestered;
 - 25.3.2. is placed under judicial management; or
 - 25.3.3. is liquidated, whether compulsorily or voluntarily; or
 - 25.3.4. colludes with his creditors, or attempts to collude or reach or try to reach a *concursum creditorum*; or
 - 25.3.5. commits any act of insolvency as defined in the Insolvency Act 24 of 1936 as amended.

- 25.4. 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"). It is further common practice that the Buyer 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 and within the further period contemplated in 25.1, the Buyer 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 "buyout price").
- 25.5. In respect of undelivered tonnage, insofar as the buy-out price per undelivered tonnage may be higher than the hedge price, the Buyer shall be entitled to recover the difference from the Seller, together with 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 hedging, which prices and pricing periods are determined by SAFEX for the period from the date of hedging up to and including the date of buyout (hereinafter referred to as "spread").

26. Arbitration

- 26.1. Any dispute, of whatever nature, between the Buyer and the Seller in connection with any matter arising out of or in connection with this Agreement or its interpretation shall be subject to and decided by arbitration provided that either Party has the option not to refer the dispute to arbitration, and to have the dispute settled by the courts of law.
- 26.2. Should the dispute be referred to arbitration, the following sub-clauses will apply: -
- 26.2.1. The arbitration will be held in Pretoria.
- 26.2.2. 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 26.2.3 below, do not properly provide for procedures.
- 26.2.3. In particular, the following procedure will apply in an attempt to bring about a speedy arbitration procedure: -
- 26.2.3.1. 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;
- 26.2.3.2. 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;
- 26.2.3.3. after the expiry of the aforementioned twenty (20) days, if no response has been received to the notice per 26.2.3.1 or if the appointment of the arbitrator is disputed, the Party requesting arbitration may approach the chairman of said bar for an appointment;
- 26.2.3.4. 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.
- 26.2.3.5. Failure by either Party to respond to any notice given in terms of clause 26 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.
- 26.2.3.6. 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 31.2 below, and the Parties agree and undertake that they will comply with the rules, fees scale and expenses determined by the arbiter.

27. Entire Agreement

- 27.1. This Agreement constitutes the entire agreement between the Parties and no amendment, addition, or agreed cancellation shall be binding unless it is in writing and signed by both Parties, provided that:
- 27.1.1. the Seller and Buyer agree that the Transaction Agreement 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 Seller is able to do so;
- 27.1.2. the Buyer consents thereto that all telephone conversations after date of signature of this Agreement may be recorded on tape. The Parties agree that any Transaction Agreement agreed upon by telephone or otherwise verbally shall be binding and the Buyer agrees that such tape recording, alternatively any confirmatory electronic message may be used as evidence by the Seller in any dispute, of whatever nature, which may arise between the Parties;

- 27.1.3. such telephone agreements will for record purposes only be put in writing at the request of the Buyer, signed by the Seller and sent by the Seller to the Buyer by electronic mail or by registered mail. The Buyer will immediately sign it on receipt and send a copy of it to the Seller within 48 (forty-eight) hours by facsimile or electronic mail or within 5 (five) calendar days if by registered mail;
- 27.1.4. such document as detailed in 27.1.3 is only for the Seller's administrative purposes. Any failure of the Buyer to sign the document and to provide the Seller 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;
- 27.1.5. the Buyer may give Transaction Agreements and/or Sales Notes in the aforementioned manner by electronic dispatch message and may also authorise the Seller as agent in the aforementioned manner or by electronic message to enter into Transaction Agreements and/or pricing sheets on behalf of the Buyer. The Seller will confirm the Transaction in the aforementioned manner or by electronic message and will perform accordingly.
- 27.2. 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.
- 27.3. The Parties agree that no other conditions or provisions, whether verbal (unless agreed as referred to above) or written, and whether express or implicit, apply.
- 27.4. The Parties agree that these Trading Terms and Conditions may be signed in counterparts which together will constitute this Agreement. The Buyer is required to send a copy thereof to the Seller in advance by electronic mail or other electronic message, or by registered mail within 48 (forty-eight) hours by facsimile or within 5 (five) calendar days by registered post, upon request to that effect. The Seller 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).
28. **Consent**
- 28.1. During the term of this Agreement, the Buyer authorises the Seller to make enquiries into the credit record of the Buyer. The Buyer authorises the Seller to make such inquiries from time to time with its Bankers and creditors, and the Buyer will ensure that all information which may be relevant to its credit record is provided to the Seller from time to time.
- 28.2. The Buyer shall duly complete and deliver the credit profile information sheet as provided by the Seller from time to time and deliver it on demand and warrants the correctness of its contents.
- 28.3. If required, the Buyer shall make all reasonable financial information available to the Seller upon request.
- 28.4. 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.
29. **Privacy and Security**
- 29.1. The Buyer hereby consents that the Seller may 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.
- 29.2. 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 Seller 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>.
- 29.3. The Buyer agrees that the Seller may transfer its personal information to third parties, insofar as it may be necessary to give effect to the provisions of this Agreement.
- 29.4. 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 Seller, insofar as it is related to reasons why it is collected, retained, distributed and used.
- 29.5. The purpose for collecting the personal information and the reason why the Seller needs the personal information from the Buyer is to enable the Seller: -
- 29.5.1. 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;
- 29.5.2. To establish the contractual relationship between the Buyer and the Seller in order to ensure the correct administration of the relationship;
- 29.5.3. To obtain the Buyer's credit record and repayment history from any third party, including but not limited to any credit bureau;
- 29.5.4. To obtain any financial statements from accountants and/or auditors;
- 29.5.5. For operational reasons;
- 29.5.6. To protect the legal interests of the Seller, the Buyer or of a third party.
- 29.6. All personal information that the Buyer provides to the Seller 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

organisation of the Seller 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.

- 29.7. The Buyer 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 Seller will only use personal information provided as requested and required and will not disclose more personal information than necessary.
- 29.8. The conditions of how any such third party, such as a responsible party will process the Buyer's personal information in accordance with the conditions set out in POPIA, is a matter between the Buyer and the third party and the Seller will not accept any responsibility on behalf of such third parties.
- 29.9. The Buyer may enquire from the Seller, 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 Seller or the third party to discard of its personal information.
- 29.10. The Buyer 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
- 29.11. The Buyer acknowledges that it has the right to request the Seller at any time to provide it with: -
- 29.11.1. details of any of the personal information that the Seller holds on behalf of the Buyer; and
- 29.11.2. details of what the Seller has done with that personal information.
- 29.12. Furthermore, the Buyer gives the Seller permission to collect and process personal information, as set out above, and acknowledges that it understands the purposes for which it is required and for which it will be used.

30. Waiver

No waiver of any of the Terms and Conditions of this Agreement shall be binding for any purpose unless recorded in writing by the Party granting it, and any such waiver shall be effective only in the particular case and for the purpose given. 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.

31. Jurisdiction and Legal Fees

- 31.1. In the event of a dispute where the Seller 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 Seller shall be entitled to bring legal proceedings against the Buyer 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 Buyer hereby consents.
- 31.2. 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.

32. Formalities

- 32.1. The signatory of this Agreement, as or on behalf of the Buyer, 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:** _____
- 32.2. The signatory to this Agreement declares that he is fully familiar with the outline of these Trading Terms and guarantees the correctness of the information provided by him.
- Initial:** _____
- 32.3. The signatory as or on behalf of the Buyer 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 BUYER

NAME: _____

IDENTITY NUMBER: _____

ADDRESS: _____

**(WILL SERVE AS DOMICILIUM CITANDI ET EXECUTANDI
FOR PURPOSES OF THE GUARANTEE CONTAINED ABOVE)**

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

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