

**DEFINITIONS**

In these standard Conditions -

“**Applicable Incoterm**” means the relevant Incoterm® 2022 referred to in the Confirmation of Order or the Order as being applicable to the sale of the Product;

“**Authority**” means any duly constituted legal or administrative person charged with the administration of any law;

“**Conditions**” means these standard conditions of sale, as may be amended by the Seller from time to time;

“**Confirmation of Order**” means the formal written confirmation of order issued by the Seller following acceptance by the Purchaser of a quotation;

“**Contract**” means an individual contract between the Seller and the Purchaser for the sale and purchase of the Product comprising of the Order, Confirmation of Order and these Conditions;

“**CPA**” means the Consumer Protection Act 68 of 2008, as amended;

“**Credit Application Form**” means the credit application form completed and signed by the Purchaser to apply for credit terms from the Seller, to which these Conditions are attached;

“**Event of Force Majeure**” means (i) any circumstances beyond the control of the Seller (including, but not limited to, acts of God, governmental actions, strikes or other labour disputes (whether or not relating to the Seller’s workforce), lock-outs, accidents, war or national emergency, acts of terrorism, protests, riot, civil commotion, explosion, flood, adverse weather conditions, epidemic, fire, reduction in or unavailability of power at manufacturing plant, breakdown, stoppage, slow working or reduced efficiency of plant or machinery, restraints or delays affecting carriers, shortage or unavailability of raw materials from normal sources of supply), unexpected cost increases (including in the cost of manufacture and processing or obtaining raw materials from alternative sources of supply) caused by unexpected events such as severe weather, or (ii) the amendment or coming into force of any legal provision adversely affecting the Seller in relation to the production, import, export or sale of any the Product or any ingredients or materials for production of any the Product, including any economic sanctions laws;

“**Importer**” means the person (if not the Purchaser) importing the Product that is to be delivered by the Seller, and/or any other third party to whom the Seller delivers the Product, on the instructions of the Purchaser;

“**Loss(es)**” means any loss, claim, liability, expenses or damages suffered or payable whether arising directly or indirectly;

“**Order**” means an oral or written order submitted by the Purchaser to the Seller to purchase the Product, including any relevant Specifications;

“**Parties**” means, together, the Purchaser and the Seller and “**Party**” means either of them; and

“**Product**” means sugar, molasses, animal feeds and/or any other product manufactured by the Seller from time to time, which is to be sold by the Seller to the Purchaser in terms of the Contract;

“**Purchaser**” means the company, partnership or person placing an order for the Product. In these Conditions, a person includes a natural person, corporate or unincorporated body (whether or not a separate legal entity);

“**Rand**” or “**R**” means the lawful currency of the Republic of South Africa;

“**Seller**” means the Tongaat Hulett Limited (in business rescue) or any one of its South African affiliates;

“**Specification(s)**” means any specification(s) of the Product may be agreed between the Parties from time to time.

**APPLICATION OF THESE CONDITIONS**

1 Unless otherwise agreed in writing these Conditions shall apply in respect of all sales of the Product by the Seller to the Purchaser, and shall constitute the entire agreement between the Parties.

2 Unless otherwise agreed in writing, these Conditions are the only conditions of sale upon which the Seller is prepared to deal with the Purchaser and they shall govern and are incorporated into every Contract made by or on behalf of the Seller. They apply to the entire exclusion of all and prevail over other terms or conditions (whether or not in conflict or inconsistent with these Conditions), including those of the Purchaser or which are implied by trade custom, practice or course of dealing, unless specifically excluded or varied in writing by an authorised representative of the Seller and any purported provisions to the contrary are hereby excluded or extinguished.

3 Acceptance by the Purchaser of delivery of the Product is (without prejudice to any other manner in which acceptance of these Conditions may be evidenced) deemed to constitute unqualified acceptance of these Conditions.

4 Save as set out herein, no warranties, representations or undertakings have been made by, or are binding upon, the Seller.

5 The Seller reserves the right to amend these Conditions from time to time upon written notice to the Purchaser, who shall, after receipt thereof, be bound by the same as if they were part of the original Conditions, if the Purchaser thereafter continues to purchase and accept delivery of the Product from the Seller. No other variation or consensual cancellation of these Conditions shall be effective unless reduced to writing and signed by the Seller.

6 The Parties acknowledge that the Seller is in business rescue. The Seller confirms that the appointed joint Business Rescue Practitioners Messrs’ Trevor Murgatroyd, Peter van den Steen and Gerhard Albertyn currently believe that there is a reasonable prospect of success with regard to the business rescue, and it is with this understanding that these Conditions of Sale are applicable.

7 The Seller reserves the right to accept or refuse any Order from the Purchaser, in whole or in part and to withdraw from any Order and/or Contract at any time prior to delivery of the Product ordered.

**CONSUMER PROTECTION ACT (WHERE APPLICABLE)**

8 The Purchaser, if an entity registered in the Republic of South Africa, hereby warrants that it qualifies as an exempt enterprise as defined in Section 5.2(b) of the CPA as its asset value or annual turnover exceeds the current threshold determined by the Minister, being R2,000,000.00 (two million Rand). As such, the provisions of the CPA do not apply to these Conditions. The Purchaser specifically undertakes that it shall notify the Seller in writing should its asset value or annual turnover at any time fall below the aforesaid threshold.

OR

9 The promulgation of the Consumer Protection Act No. 68 of 2008 (the “CPA”) has created potential joint and several liability for participants in a supply chain responsible for making goods available to consumers. It has accordingly become necessary for the Seller and the Purchaser to regulate potential liability in terms of the CPA vis-a-vis each other.

10 The Seller and the Purchaser accordingly agree that the provisions contained in this clause shall only be applicable to claims made against the Seller and/or the Purchaser in terms of the CPA, or, as a result of any of the rights granted or obligations imposed by the CPA (the “CPA Claims”), and, that the indemnities granted in this clause shall cover any and all losses suffered by either party as a result of a judgment (in a competent court) against it in respect of any CPA Claims (“CPA Losses”);

11 The Seller and the Purchaser agree, in respect of the CPA claims, that :

10.1 the Seller indemnifies the Purchaser and holds it harmless against any and all CPA Losses suffered by the Purchaser; provided that the Purchaser is able to demonstrate, on a balance of probabilities, that negligence on the part of the Seller was primarily responsible for the CPA Losses (notwithstanding the fact that the demonstration of negligence is not legally required in respect of the CPA Losses);

10.2 the Purchaser indemnifies the Seller and holds it harmless against any and all CPA Losses suffered by the Seller; provided that the Seller is able to demonstrate, on a balance of probabilities, that negligence on the part of the Purchaser (which shall include, without limitation, failure to follow policy or procedure specified by the Seller from time to time) was responsible for the CPA Losses (notwithstanding the fact that the demonstration of negligence is not legally required in respect of the CPA Losses);

12 Should any CPA Claims be made against either party, such party shall give written notice thereof to the other party (hereafter the “Affected Party”) as soon as reasonably possible. If the Affected Party wishes to defend or oppose any CPA Claims, the Affected Party shall render to the other, at its cost, such assistance as may reasonably be required, including with respect to any proceedings instituted in respect of any CPA Claims.

**CREDIT FACILITY (WHERE APPLICABLE)**

13 The Parties hereby acknowledge and agree that any credit afforded to the Purchaser by the Seller constitutes an Incidental Credit Agreement as defined in Section 1 of the National Credit Act No. 34 of 2005.

14 The Purchaser warrants that all information concerning the Purchaser set out in the Credit Application Form are true and

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correct in each and every respect and acknowledges that the Seller agrees to sell the Product to the Purchaser and to extend credit to the Purchaser, relying on these warranties and the information contained in the Credit Application Form.

- 15 The Purchaser agrees that the Seller and/or its credit insurer may perform a credit search on the Purchaser with any credit bureaux when assessing the Purchaser's credit-worthiness, use any information so obtained in assessing any credit to be extended to the Purchaser, record the Purchaser's account with the Seller and the manner in which such account is conducted with any credit bureaux, and agrees that any information regarding its defaults in payment and the conduct of its account, may be disclosed to any other creditor or potential creditor of the Purchaser or to any credit bureaux or credit insurer,

### SAMPLES

- 16 Any samples supplied to the Purchaser are supplied solely for information and in no way import any express or implied conditions or warranties as to the quality, description or fitness for purpose of the Product and the Purchaser shall be deemed to have satisfied itself as to such matters prior to ordering the Product.

### SALE

- 17 The Seller hereby sells the Product to the Purchaser on the terms set out in the Contract.  
18 The Product is sold on the basis of the Applicable Incoterm specified in the Contract.  
19 The volume and Specification of the Product sold is that set out in the Contract.

### ORDERS

- 20 Each Order shall be deemed to be an offer by the Purchaser to buy the Product subject to the Contract and is subject to acceptance by the Seller.  
21 Any quotation issued by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time.  
22 No Order or quotation shall be binding on the Seller unless and until the Seller has:  
22.1 issued a Confirmation of Order; or  
22.2 an Invoice has been issued the Seller on the basis that an Order has been performed by the Seller.

### DELIVERY

- 23 The Seller shall use its reasonable endeavours to meet the Purchaser's requested delivery timings but reserves the right to vary delivery deadlines where operationally necessary. The Purchaser may not cancel the Order except with the prior written agreement of the Seller and on terms that the Purchaser must indemnify the Seller in full against all Losses to the extent such Losses cannot reasonably be mitigated by the Seller (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses reasonably and properly incurred by the Seller as a result of the cancellation.  
24 Time shall not be of the essence in relation to any delivery of the Product and the Seller will incur no liability for delays in delivery. The Purchaser shall not be entitled to cancel any order unless the Product is not delivered within 30 (thirty) days of the indicated delivery date, but in the event of such cancellation the Seller shall not be liable to the Purchaser for damages or any other claim.  
25 Unless another Applicable Incoterm is specified in the Contract, the Product will be delivered Ex-Works (as such term is defined by Incoterms® 2022) at the point of loading of the Product onto the Purchaser's transport at the Seller's warehouse premises (as notified to the Purchaser). If the Purchaser requests delivery in any other manner, and the Seller has agreed to such changes in writing, any difference in price shall be charged to the Purchaser's account.  
26 Each Order and delivery shall be deemed to be a separate Contract in respect of the Product forming the subject matter of such delivery. If the Product is delivered in more than one consignment, each consignment shall be deemed to be a separate Contract divisible from the others and the Purchaser shall pay the purchase price in respect of each consignment on due date, unless otherwise agreed by the Seller in writing. The validity of the sale of the Product shall in no way be affected in the event of any other order being cancelled for any reason whatever.  
27 The Seller's delivery note signed by a person purporting to be an employee or agent of the Purchaser, or by any carrier appointed

by the Purchaser, shall be adequate proof of delivery and shall be deemed to be accurate in all respects, and binding on the Purchaser, unless the Purchaser is able to prove fraud or dishonesty on the part of the Seller.

- 28 The Seller shall be deemed to have fulfilled its contractual obligations in respect of any delivery notwithstanding that the quantity delivered may deviate by up to 5% (five percent) more or less than the quantity specified in the Contract and in such event the Purchaser shall pay for the quantity actually delivered.  
29 The Seller undertakes that the Product will at the time of dispatch meet the Specifications. The Seller undertakes to notify the Purchaser if the Specifications are changed. All descriptions, drawings, photographs, illustrations, performance and technical data, dimensions, weights and the like, contained in any promotional or technical literature issued by the Seller are subject to variation without notice and are not designed to constitute sales specifications and are not binding on the Seller  
30 The Seller will transfer the Product with good title, free from any lawful lien or encumbrance.  
31 The Purchaser shall inspect and take samples of the Product supplied immediately after delivery. If any of the supplied Product is rejected because of non-conformity to Specifications, the Purchaser shall have the right to return it to the Seller only after:  
31.1 notification to the Seller as to the reasons why the Product or any part thereof is unacceptable to it;  
31.2 inspection by the Seller or their appointed representative; and  
31.3 receipt of definite shipping instructions from the Seller.  
32 Failure by the Purchaser to give written notice of any claim to the Seller within 10 (ten) days from the date of receipt by the Purchaser of the Product, will constitute an unqualified acceptance of such Product by the Purchaser and a waiver by the Purchaser of all claims in respect of such Product.

### WEIGHT, PACKAGING, QUANTITY AND QUALITY

- 33 The weight, quality, quantity and packaging certificate provided by the Seller shall be final and binding evidence of weight, quantity, quality and packaging of the Product delivered in terms of the Contract, save for manifest error.

### INSURANCE

- 34 If required in terms of the Applicable Incoterm, the Seller shall arrange and pay for insurance of the Product on the Purchaser's behalf in terms of the Institute Cargo Clauses (A) (ICC (A)).

### EXPORT AND IMPORT LICENCES

- 35 The Seller is responsible for obtaining and maintaining any necessary export licence(s) required by authorities of the country of origin.  
36 The Purchaser is responsible for obtaining and maintaining any necessary import licence(s) and permit(s) required by authorities of the country of destination. Failure to obtain and or to maintain in force such licence(s) and permit(s) shall not be sufficient grounds for Force Majeure.

### OWNERSHIP AND RISK

- 37 The ownership of the Product shall remain vested in the Seller, notwithstanding delivery, until the purchase price of the relevant consignment of the Product sold and delivered to the Purchaser by the Seller has been paid in full. If the Purchaser fails to pay the purchase price of any the Product on due date, the Seller may, without prejudice to any other rights and without notice, cancel the sale and recover possession of the Product.  
38 All risk of loss or damage to the Product shall pass to the Purchaser on delivery in accordance with the Applicable Incoterm.  
39 Until title to the Product has passed to the Purchaser, the Purchaser shall: (a) hold the Product on a fiduciary basis as the Seller's bailee; (b) store the Product separately from all other the Product held by the Purchaser so that they remain readily identifiable as the Seller's property; (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Product; (d) maintain the Product in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; (e) notify the Seller immediately if it becomes subject to any of the events listed in Condition 39; and (f) give the Seller such information relating to the Product as the Seller may require from time to time. Notwithstanding the foregoing, the Purchaser may resell or use the Product in the ordinary course of its business, provided that the proceeds of any such resale are

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- received and held by the Purchaser in a separate bank account as identifiable funds on trust for the Seller
- 40 The Purchaser's right to possession of any the Product for which payment has not been made in full and cleared funds in the specified currency to the Seller shall terminate immediately if: (i) the Purchaser has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, business rescue practitioner or administrator or administrative receiver appointed of the Purchaser's undertaking or any part thereof, or the Purchaser's credit-worthiness materially deteriorates; or documents are filed with the court for the appointment of an administrator of the Purchaser's undertaking or notice of intention to appoint an administrator or a business rescue practitioner is given by the Purchaser or the Purchaser's directors, or a resolution is passed or a petition presented to any court for the winding-up of the Purchaser's undertaking or for the granting of an administration order in respect of the Purchaser, or any proceedings are commenced relating to the Purchaser's insolvency or possible insolvency; or (ii) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on the Purchaser's property or to be obtained by the Purchaser, or the Purchaser fails to observe or perform any of the Purchaser's obligations under the Contract or any other contract between the Seller and the Purchaser, or is unable to pay its debts or (iii) the Purchaser encumbers or in any way charges any of the Product; or (iv) analogous proceedings or events to those specified in this Condition 39 are instituted or occur in relation to the Purchaser elsewhere other than in the Republic of South Africa.
- 41 The Purchaser grants to the Seller, its agents and employees an irrevocable licence at any time during normal business hours to enter any premises where the Product is or may be stored in order to inspect them, or, where the Purchaser is in default with respect to its payment obligations to the Seller under the Contract or the Purchaser's right to possession has terminated, to recover them.
- 42 Notwithstanding any other Condition to the contrary, the Seller shall be entitled to bring an action against the Purchaser for the price of the Product in the event of non-payment by the Purchaser by the due date even though property in the Product has not passed to the Purchaser and/or has the right by notice to the Purchaser at any time after delivery to pass property in the Product to the Purchaser as from the date of such notice.
- SHIPMENT**
- 43 As soon as possible after each road consignment or marine shipment has been loaded the Seller shall notify the Purchaser of the vehicle details or the name of the vessel upon which the Product has been loaded, the number of packages dispatched, marks and numbers on the packages as specified and required by the Purchaser, the quantity in each package, and the invoice value of the Product shipped, and shall send copies of, inter alia, the following non-negotiable transport documents to the Purchaser:
- 43.1 commercial invoice;
- 43.2 ocean bill of lading (if applicable);
- 43.3 certificate of country of origin ;
- 43.4 certificate of analysis issued by the Seller;
- 43.5 packing list (on request); and
- 43.6 insurance certificate (on request).
- 44 The Seller shall not be required by the Purchaser (nor any of its employees, officers, agent or sub-contractors) to comply with any terms or requests, including documentary requests, which the Seller reasonably considers would result in a breach of any economic sanctions laws, any tax, customs or other laws or regulations in the country of origin and/or the destination country. Any refusal by the Seller with respect to any such term or request shall not, for the avoidance of doubt, constitute a breach of the Contract.

## PRICE, PAYMENT AND CREDIT FACILITIES

- 45 The purchase price for the Product will be that specified in the Contract and or Order Confirmation.
- 46 The Purchaser acknowledges that the Seller has the right, in the event of an unexpected imposition by third parties of increases (e.g., surcharges, fuel prices) affecting the cost of supplying the Product, to claim such additional costs from the Purchaser prior to delivery.
- 47 Any prices quoted by the Seller in a Quotation or stipulated in an Order Confirmation shall be deemed to be exclusive of value added tax, customs or other duties and delivery charges, unless stated to the contrary in writing by the Seller. All delivery charges shall be for the account of the Purchaser.
- 48 Unless credit facilities have been extended to the Purchaser, the purchase price of the Product shall be payable in cash prior to delivery of the relevant consignment of the Product. Prices are net and are exclusive of any banking charges which will be for the account of the Purchaser and not subject to any settlement or other discount unless agreed in writing between the Seller and the Purchaser. The purchase price shall be paid by the Purchaser in the same currency (Rand, Dollars or Euros) quoted by the Seller in the relevant Confirmation of Order.
- 49 Any credit facilities extended by the Seller to the Purchaser shall be in the sole discretion of the Seller who may at any time terminate or curtail such facilities and/or require the Purchaser to furnish security or additional security for the payment of all amounts payable by the Purchaser. Notwithstanding anything to the contrary contained herein, the Seller shall be entitled to suspend or reduce deliveries at any time if it considers that the amount owing to the Seller by the Purchaser (whether due or not) has reached the credit limit allowed to the Purchaser, or if the Purchaser's financial position (in the opinion of the Seller) has deteriorated, or if it no longer considers the Purchaser creditworthy. The Seller shall be entitled to withhold delivery and/or to cancel any sale if the Purchaser is in arrears with any payment due to the Seller, irrespective of the cause of indebtedness.
- 50 The Purchaser shall be liable for interest on any amount not paid on due date at an interest rate equal to 2% (two percent) above the publicly quoted prime bank overdraft interest rate charged by the Standard Bank of South Africa Limited from time to time on monies lent and advanced on unsecured overdraft. In the event that the Purchaser is a natural person, interest on the amount outstanding shall be on the maximum percentage permitted for Incidental Credit Agreements in terms of the National Credit Act (as updated by the Minister from time to time), calculated daily and added to the outstanding amount monthly
- 51 The Seller shall be entitled in its sole discretion to appropriate any payment made by the Purchaser to any amount owing by the Purchaser from any cause of indebtedness.
- 52 The Seller shall be entitled, notwithstanding any credit facilities granted to the Purchaser, to declare the whole of the purchase price of any the Product sold to the Purchaser immediately due and payable if the Purchaser :-
- 52.1 fails to pay any amount at any time owing to the Seller on due date or the Purchaser breaches any other provision of the Contract; or
- 52.2 commits any act of insolvency or is provisionally or finally sequestrated, wound up or made subject to a judicial management order, or applies for an administration order, or ceases to carry on business or gives notice of its intention to do so; or
- 52.3 fails to satisfy any judgment granted against it within 7 (seven) days, unless such judgment shall be the subject of an appeal, review or application for rescission.
- 53 The Purchaser shall not be entitled to deduct or set-off any amount against any invoice or statement issued by the Seller, nor shall the Purchaser be entitled to withhold payment of any amount by reason of any alleged claim or counter-claim against the Seller.
- 54 A certificate signed by any director or manager of the Seller (whose authority need not be proved) stating the amount of the Purchaser's indebtedness to the Seller at any time (including interest, costs and the rate of interest) shall constitute *prima facie* proof of the amount of the Purchaser's indebtedness to the Seller and shall be valid as a liquid document against the Purchaser in



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any competent Court for the purposes of obtaining provisional sentence, summary judgment or any other judgment thereon.

### TAXES AND LEVIES

55 Any taxes, import and export duties, levies or any other charges relating to delivery of the Product shall be paid by each Party in accordance with the relevant Applicable Incoterm. Any other taxes or liabilities shall be dealt with as follows:-

55.1 any taxes, or levies in the nature of taxes whatsoever imposed by the country of origin affecting the Contract, shall be for the account of the Seller; and

55.2 any taxes, or levies in the nature of taxes affecting the Contract other than those contemplated in clause 55.1, shall be for the account of the Purchaser.

56 If the Purchaser is responsible for clearing the Product for export, the Purchaser must ensure that it, or the Importer, does so without delay and must ensure that within 14 (fourteen) days of export of each consignment of the Product, the Purchaser shall, if requested by the Seller, deliver, or procure that its Importer or clearing agent delivers, documentary proof of export to the satisfaction of the relevant Authority to the Seller.

### ADDITIONAL COSTS

57 The Purchaser shall indemnify the Seller on demand in respect of any Losses incurred by the Seller caused as a result of the Purchaser's specifications or instructions or lack thereof, or through any failure or delay by the Purchaser in taking delivery or any use or mis-use by the Purchaser of any containers in which the Product may be supplied or through any other act, neglect or default on the part of the Purchaser, its servants, agents or employees.

### PURCHASER'S OBLIGATIONS

58 The Purchaser undertakes (and will procure that its Importer also undertakes) to:

58.1 comply with its obligations in terms of these Conditions and/or the Contract and the Applicable Incoterm;

58.2 comply with all applicable laws, rules and regulations relating to the Purchaser, the Product, the Contract, in particular applicable customs duties and taxes;

58.3 obtain and maintain all necessary licences, permits, registrations and approvals required to perform its obligations under the Contract, to purchase, import and in any way deal with the Product and to conduct its business;

58.4 ensure that the Product is not sold or otherwise disposed of in a manner that would directly or indirectly result in the Seller breaching any laws or regulations of any country (including without limitation those relating to sanctions);

58.5 familiarize itself with any Product literature or information that the Seller provides;

58.6 follow safe handling, use, selling, storage, transportation and disposal practice, including special practices as its use of the Product requires and instruct its employees, contractors, agents and customers in these practices;

58.7 ensure that the vehicle's tanks or storage tanks into which the Product is delivered are free from contamination, are in a sound and (where applicable) roadworthy conditions and comply with all local legislation relative to the transportation of hazardous substances;

58.8 take appropriate action to avoid spills or other dangers to persons, property or the environment;

58.9 be familiar with its obligations in terms of applicable laws in respect of its use of the Product;

58.10 if re-selling the Product, to have a returns policy in place that complies with the applicable laws;

58.11 to take all reasonable steps to ensure that any advice given in relation to the Product is accurate, not misleading and in compliance with applicable laws; and

58.12 where applicable, to warn third parties about a particular hazard, unsafe characteristic or risk associated with using the Product in the manner intended by the third party.

### WARRANTY, LIABILITY AND INDEMNITY

59 Other than the warranty set out in Condition 810, the Seller does not warrant or represent that the Product is fit for any particular purpose (whether or not the Seller is aware of the purpose for which the Product is intended), the Purchaser being solely responsible to satisfy itself as to the fitness of the Product. No statement, recommendation, advice or assistance given by the Seller, its employees or agents, to the Purchaser, be it express,

tacit or implied, shall be binding on the Seller nor shall the Seller incur any liability in the event of any such statement, recommendation, advice or assistance proving to be incorrect or inappropriate. No official and/or representative of the Seller nor any employee or agent of the Seller is authorised to amend this stipulation.

60 The Purchaser hereby indemnifies and holds the Seller, its directors, employees and agents, harmless from all claims which may be made against the Seller, and against all loss, demands, liability or expenses of whatsoever nature which the Seller may at any time suffer, sustain or incur, by reason of the sale of the Product by the Seller to the Purchaser.

61 The Seller, its directors, employees or agents shall under no circumstances incur any liability to the Purchaser or any other person for any indirect or consequential damages arising out of any alleged breach of contract by, or negligence on the part of the Seller, its directors, employees or agents, nor for any alleged damage sustained as a result of the use of the Product. If the Seller is held to be liable to the Purchaser for any claim, the Seller's liability for any such claim shall under no circumstances exceed the purchase price paid by the Purchaser for the Product in respect to the relevant Contract.

62 The Purchaser shall have no claim against the Seller for any alleged defect in the Product, all sales of the Product being *voetstoets*, or for any short delivery, nor for any failure to deliver the Product sold, or for any default by the Seller resulting from any Event of Force Majeure or any other circumstances outside the Seller's control.

63 The Product sold may not be returned for credit unless the Seller agrees thereto in writing.

64 Notwithstanding any other provision in this Contract, the Seller shall not be liable under any circumstances whatsoever for claims arising from or in any way connected with:

64.1 an act or omission of the Purchaser or any person acting on its behalf; or

64.2 the Seller complying with instructions given by or on behalf of the Purchaser; or

64.3 an act or order of any Authority; or

64.4 the handling, storage or transporting of the Product by the Purchaser itself or any person other than the Seller, its servants, sub-contractors or agents.

65 The Purchaser hereby indemnifies and holds harmless the Seller from all damages, losses, penalties, demurrage claims and/or costs of whatsoever nature (including legal costs on a scale of attorney and own client) arising directly or indirectly as a result of any non-compliance by the Purchaser or an Importer with any of the Purchaser's obligations in terms of the Contract.

66 The provisions of Condition 64 shall also constitute a *stipulatio alteri* in favour of any party providing services to the Seller in order for the Seller to fulfil its obligations in terms of this Contract.

### THIRD PARTY CLAIMS

67 Any contracts relating to the Product concluded by the Purchaser with third parties shall include a provision prohibiting the making of any claim against the Seller, its servants, agents and independent contractors, and a provision that the Seller, its servants, agents and independent contractors shall have the benefit of any rights, defences or liberties in such contracts excluding or limiting the liability of the Purchaser in respect of Product as if such provisions were expressly for their benefit.

68 The Seller hereby authorises the Purchaser to contract on its behalf with third parties so as to limit the liability of the Seller to such parties.

69 To the extent that the Purchaser contracts with third parties to stipulate in favour of the Seller so as to limit the liability of the Seller to those third parties such stipulations are hereby accepted.

70 The Purchaser warrants that no claim shall be made against the Seller by any third party in connection with the Product or dealings with them by any third party, and shall indemnify the Seller for any loss suffered by the latter in respect of any such claim.

### BREACH

71 In the event of either Party committing any breach of the Contract, the aggrieved Party shall be entitled to cancel the Contract forthwith or to claim specific performance thereof if either:

71.1 such breach constitutes a failure to perform timeously and the Party in default fails to remedy such breach within 14

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- (fourteen) days of receipt of written notice by the aggrieved Party to do so; or
- 71.2 such breach constitutes the doing of something that the Party in default is prohibited from doing or performing in a defective or inadequate manner and the breach is so serious that the aggrieved Party would not have entered into the Contract if they had known that the Contract would be breached in that manner.
- 72 The foregoing rights shall not in any way prejudice or exclude any other rights which either Party may have.

### NON PERFORMANCE

- 73 If the Purchaser fails to perform any of its obligations under the Contract when due, the Seller may, at its option, decline to make further deliveries, except for cash, or may recall or defer shipments until such default is made good, or may treat such default as final refusal to accept further shipments and cancel the Contract.

### JURISDICTION AND COSTS

- 74 In the event of any disputes arising out of or in relation to the Contract, without prejudice to any rights either Party may have (including but not limited to the right to obtain injunctive relief and any right of the Seller if it reasonably believes that the Purchaser has repudiated the Contract or is in material breach), either Party may request that the Parties attempt to settle it first by negotiation. If the Parties have not settled such dispute within 30 (thirty) days of the commencement of negotiations the provisions of Condition 754 shall apply
- 75 The Contract and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, shall in all respects be governed by and construed in accordance with the laws of the Republic of South Africa and the Parties irrevocably submit to the non-exclusive jurisdiction of the South African courts, including (without limitation) in respect of any application for injunctive or ancillary relief.
- 76 In the event of the Seller instructing its attorneys to institute proceedings against the Purchaser, the Purchaser shall be liable for and pay all legal costs incurred by the Seller on the attorney and own client scale including any collection commission.

### DOMICILIUM / REGISTERED ADDRESS AND NOTICES

- 77 The Parties choose the following addresses as their respective *domicilium citandi et executandi* for all purposes under the Contract:
- 77.1 the Seller: – the address specified on the invoice or in the Contract, failing which its registered address.
- 77.2 the Purchaser – the address specified on the invoice or in the Contract, failing which its registered address.
- 78 Any notice will only be deemed to have been received by either Party when delivered by way of hand or prepaid courier.
- 79 Either Party may stipulate a new domiciliary address by way of written notice to the other Party, provided that such new domiciliary address is a physical address (and not a post office box).

### GOVERNMENT CONTROLS

- 80 If the price, freight allowance, terms of payment, or any price increase, change in freight allowance, or change in terms of payment, or the Seller's ability to make any payment should be altered or prohibited by reason of any law, government decree, order or regulation, the Seller may cancel the Contract upon 14 (fourteen) days' written notice. However, at its option, the Seller may by written notice elect to postpone the effective date of any such price increase or proposed change to the extent so prevented until such date or dates as it is not so prevented. By electing to postpone rather than cancel, the Seller will not waive its right to cancel thereafter because of such continued or further alterations or prohibitions.

### INTELLECTUAL PROPERTY RIGHTS

- 81 The Seller warrants that the manufacture of the Product, and the Product itself, does not infringe any third party patent registered in the country of manufacture of the Product, but makes no other warranties with respect to any intellectual property rights relating to the Product.

### SEVERABILITY OF PROVISIONS

- 82 Should any provision of the Contract be held to be invalid or unenforceable, the validity and enforceability of the remaining

provisions shall not be affected. Any invalid or unenforceable provision shall be replaced with a new provision, which will allow the Parties to achieve the intended economic result in a legally valid and effective manner.

### FORCE MAJEURE

- 83 If either Party is prevented from fulfilling its obligations in terms of this Contract due to force majeure (including, without limitation, strikes, lock-outs, acts of God, fire, war or warlike acts, civil insurrection, plant breakdown, government interference or restrictions or other circumstances entirely beyond the control of that Party) that Party shall be relieved of performance of its obligations to the extent that it is so prevented from doing so for the duration of the intervening circumstance.

### ASSIGNMENT

- 84 These Conditions of Sale and the relevant Order may not be assigned without the written consent of the other Party, prior to such assignment. Provided, however that the Seller may without such consent, assign same in connection with the transfer or sale of its entire or substantial part of the business to which this Agreement pertains, or in the event of its merger or consolidation with another company, or in connection with a transfer to a wholly-owned subsidiary.

### CODE OF CONDUCT – ETHICAL STANDARDS AND HUMAN RIGHTS UNDERTAKING

- 85 The Seller aspires to be a responsible corporate citizen and hence requires its suppliers, service providers and stakeholders to adhere to and abide by the fundamental principles concerning ethical business conduct. Accordingly, as an approved customer of the Seller, the Purchaser shall adhere to the Seller's Code of Conduct and Business Ethics which can be found on [www.tongaat.com](http://www.tongaat.com).

### DOCUMENT PRECEDENCE

- 86 In the event of a conflict between the various documents that constitute the Contract, the documents shall take precedence over one another as follows:
- 86.1 Confirmation of Order (excluding these Conditions);
- 86.2 the Quotation; and
- 86.3 these Conditions.