

# FARMERS AGRI-CARE (PTY) LTD

Reg. No. 1992/001765/07

## TERMS AND CONDITIONS OF TRADE

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### 1 INTERPRETATION

- 1.1 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
- 1.1.1 “**agreement**” means this credit application form, including these terms and conditions of trade;
- 1.1.2 “**business day**” means any day other than a Saturday, Sunday or a statutory holiday;
- 1.1.3 “**CPA**” means the Consumer Protection Act, Act 68 of 2008, as amended or replaced from time to time;
- 1.1.4 “**CUSTOMER**” means the customer referenced in this agreement;
- 1.1.5 “**FAC**” means Farmers Agri-Care (Pty) Ltd, registration number 1992/001765/07, having its principal place of business at 1 The Boulevard, First Floor, Block B, Westway Office Park, Westville, KwaZulu-Natal, Republic of South Africa;
- 1.1.6 “**NCA**” means the National Credit Act, Act 32 of 2005, as amended or replaced from time to time;
- 1.1.7 “**parties**” means FAC and the CUSTOMER and “**party**” means one of FAC or the CUSTOMER as the context may require; and
- 1.1.8 “**products**” means the products to be sold by FAC to the Customer and purchased by the Customer from FAC from time to time.
- 1.2 The headings to the clauses of this agreement are for reference purposes only and shall in no way govern or affect the interpretation, nor modify, nor amplify the terms of this agreement, nor any clause hereof.
- 1.3 Reference to –
- 1.3.1 one gender includes all the genders;
- 1.3.2 the singular form of a word includes the plural and the plural form of a word includes the singular; and
- 1.3.3 a law or regulation is a reference to that law or regulation on the date the CUSTOMER entered into this agreement.
- 1.4 Each of the terms of this agreement shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, that term shall be severable and shall not affect the validity of the other terms.

### 2 ORDERS AND DELIVERY

- 2.1 **FAC will do all that it reasonably can to meet the stipulated dates and time for delivery of products. FAC cannot be responsible for failure to perform or to deliver or delays in performance or delivery due to circumstances beyond FAC's control, such as adverse weather conditions, unpredictable delays caused by traffic congestion, diversions or road works, the unavailability of raw materials, strikes, power outages, industrial disputes and regulatory interference (“force majeure events”). FAC will not be liable to the CUSTOMER for any loss arising from any failure or delay in performance or providing products resulting from force majeure events. FAC will use reasonable endeavours to continue to perform in terms of this agreement as soon as performance becomes possible. FAC may contact the CUSTOMER to agree on alternative dates for delivery of the products, but will not require the CUSTOMER to accept delivery at an unreasonable time.**
- 2.2 Unless otherwise agreed to in writing by FAC, the products will be delivered by FAC or its agent to the premises of the CUSTOMER.
- 2.3 **In the event of the products not being delivered by FAC or its agents to the premises of the CUSTOMER, then the CUSTOMER shall bear all transportation costs and costs incidental to such delivery.**
- 2.4 The CUSTOMER shall have the right to inspect the products against delivery.
- 2.5 The signature by the CUSTOMER or any employee or agent of the CUSTOMER on FAC's delivery note or waybill or that of the carrier, will constitute sufficient evidence of the receipt of the products by the CUSTOMER and that the CUSTOMER has examined the products and is satisfied that that the products -
- 2.5.1 are in accordance with the type and quality ordered by the CUSTOMER;
- 2.5.2 in the case of an order solely on the basis of a sample and/or description, correspond in all material respects and characteristics with samples and/or description;
- 2.5.3 in the case of a special order, reasonably conform to the material specifications of the special order; and
- 2.5.4 are suitable for the purpose for which they have been bought.

- 2.6 **Except to the extent that FAC acted in breach of its obligations in terms of this agreement, with gross negligence or fraudulent intent, the CUSTOMER shall not have any claim against FAC for any loss of or damage to the products, arising from any cause whatever, while they are in transit, irrespective of who is responsible for their delivery.**

### **3 OWNERSHIP AND RISK**

- 3.1 The parties agree that –
- 3.1.1 ownership of the products will, notwithstanding delivery, only pass to the CUSTOMER against payment of the full price of the products;
- 3.1.2 **products to be delivered remain at FAC's risk until the CUSTOMER has accepted delivery of them, as contemplated in this agreement. Once the risk has passed to the CUSTOMER, the CUSTOMER shall be obliged to insure the products for the full price against the usual risks and to maintain the products in good order and condition.**
- 3.2 Until ownership has passed to the CUSTOMER, the CUSTOMER shall have no right to dispose of or part with possession of the products whether by way of sale or pledge or otherwise. In the event of the products being interfered with by any third party, the CUSTOMER shall immediately notify FAC and provide all reasonable assistance in opposing and preventing such interference.
- 3.3 In the event of the products being stored by the CUSTOMER at premises, which are leased by the CUSTOMER, the CUSTOMER –
- 3.3.1 undertakes to notify FAC of this fact and to notify the landlord of the premises in writing of the fact that the products stored are the property of FAC; and
- 3.3.2 hereby authorises FAC to give notice of ownership in the products to the landlord.

### **4 ESTIMATES AND REPRESENTATIONS**

- 4.1 The CUSTOMER acknowledges and agrees that any recommendation, formula, figure, advice, specification, illustration, diagram, price list, dimension, weight or other information and particulars furnished by FAC concerning the products, can only be provided as an approximate and for purposes of information only ("information"). The CUSTOMER should not rely on such information as a basis for entering into this agreement, and unless otherwise expressly stated in writing or unless expressly recorded in this agreement, FAC shall not be liable for any loss or damage arising out of the use by the CUSTOMER of the information provided, unless FAC acted with gross negligence or fraudulent intent.
- 4.2 No representative, agent or salesman has any authority to waive or vary any of the terms and conditions of this agreement or make any representations whatever on behalf of FAC.

### **5 RIGHTS TO RETURN IF THE CPA APPLIES**

**If the CPA applies to this agreement because the CUSTOMER is either a natural person or a juristic person (i.e. a company, close corporation, association, partnership or trust) and the asset value or annual turnover of the juristic person at the time of the transaction does not equal or exceed the threshold established under the CPA, the following terms and conditions will apply to the agreement with the CUSTOMER:**

- 5.1 the CUSTOMER has the right to rescind any transaction or agreement resulting from direct marketing without reason or penalty by written notice to FAC within 5 (five) business days after the later of the date on which the agreement was concluded or the products were delivered to the CUSTOMER;
- 5.2 if the CUSTOMER returns the products for any lawful reason other than a product failure or defect (including as a result of a rescission of the agreement as contemplated in clause 5.1), the CUSTOMER must do so within 10 (ten) business days after the products have been delivered to the CUSTOMER, together with proof of payment. Subject to applicable law, FAC retains the right to charge the CUSTOMER a reasonable amount for use of the products during the time they were in the CUSTOMER's possession, for any consumption or depletion of the products and for necessary restoration costs to render the products fit for re-stocking. The CUSTOMER will not be entitled to return the products and receive a refund if –
- 5.2.1 for reasons of public health or otherwise, a public regulation prohibits the return of those products; or
- 5.2.2 after having been supplied to the CUSTOMER, the products have been partially or entirely disassembled, physically altered, permanently installed, affixed, attached, joined or added to, blended or combined with, or embedded within, other products or property.
- 5.3 if the CUSTOMER returns the products due to a product failure or defect, the CUSTOMER should do so within 6 (six) months after the products have been delivered to the CUSTOMER, provided that the CUSTOMER is able to provide proof of payment. FAC will at the CUSTOMER's direction repair or replace the products, or refund the amount paid for the products. The CUSTOMER will not be able to return the products if the product failure or defect is attributable to non-compliance by the CUSTOMER with the instructions provided by FAC.

## 6 WARRANTIES AND RIGHTS TO RETURN IF THE CPA DOES NOT APPLY

If the CPA does not apply to this agreement because the CUSTOMER is a juristic person (i.e. a company, close corporation, association, partnership or trust) and the asset value or annual turnover of the juristic person at the time of the transaction equals or exceeds the threshold established for purposes of the CPA, the following terms and conditions will apply to the agreement with the CUSTOMER:

- 6.1 FAC does not make any representations nor, unless expressly given in writing (whether set out on any product label, shade card insert, data sheet, circular, current printed product brochure or otherwise), give any warranty or guarantee of any nature whatever in respect of the products or their suitability for any purpose.
- 6.2 if a warranty or guarantee is given by FAC and all or any part of the products fail for any reason whatever to comply with that warranty or guarantee, then -
  - 6.2.1 the CUSTOMER must notify FAC verbally within 48 (forty-eight) hours, and thereafter in writing within 7 (seven) days, of the CUSTOMER becoming aware of the fact that the products in question do not comply with that warranty or guarantee;
  - 6.2.2 FAC shall have the right to inspect the products in question at the CUSTOMER's premises;
  - 6.2.3 the CUSTOMER shall, at its own expense, return those products to FAC if FAC so directs;
  - 6.2.4 subject to compliance by the CUSTOMER with the above, FAC shall, in its discretion, either remedy the failure by adjusting, repairing or replacing the products, or by refunding the whole or part (as the case may be) of the agreement price paid to it by the CUSTOMER in respect of such products;
  - 6.2.5 save as provided for in clause 6.2.4, the CUSTOMER shall not have any other claim whatever against FAC;
- 6.3 the CUSTOMER may not claim any reduction of the agreement price for any short delivery of, or defect in, any of the products unless FAC is notified thereof –
  - 6.3.1 verbally within 48 (forty-eight) hours; and
  - 6.3.2 thereafter in writing within 7 (seven) days,  
of receipt of the products;
- 6.4 the CUSTOMER may not return any products unless –
  - 6.4.1 FAC has consented in writing to such return;
  - 6.4.2 the products and any packaging are in good condition;
  - 6.4.3 it does so entirely at its own cost and risk, to a destination nominated by FAC; and
  - 6.4.4 if required to do so by FAC, it pays to FAC, a handling fee equal to 5% of the agreement price of the products.

## 7 EXCLUSION OF LIABILITY

**FAC shall not be liable for incidental, indirect or consequential damages whether arising from the contract or in delict, for failure in or delay or delivery, except to the extent that the CUSTOMER suffered harm or loss as a result of unsafe products or a product failure, defect or hazard in the products provided by the FAC, as contemplated in the CPA.**

## 8 RESALE OF GOODS

- 8.1 The CUSTOMER shall not be entitled to dispose of any products delivered to it, to any third party, nor to apply or use any products on behalf of any third party without the prior written consent of FAC. **Where any products are disposed of by the CUSTOMER to any third party without such written consent, any warranties given by FAC in respect of the products shall forthwith and by the very fact cease to be of any force or effect. The CUSTOMER indemnifies FAC against all claims of any nature whatsoever that may be made against FAC by any third party arising directly or indirectly from any such disposal and against all damages, losses, costs or expenses incurred by FAC in respect of any such claim.**
- 8.2 Where the CUSTOMER disposes of products to any third party with the written consent of FAC, the CUSTOMER shall only dispose of such products on the terms contained in this agreement, which shall apply with the necessary changes. .
- 8.3 **If the CUSTOMER disposes of the products with the written consent of FAC but on terms other than those contained in this agreement, the CUSTOMER indemnifies FAC against any claim of any nature whatsoever which may be made against FAC by any third party arising directly or indirectly from such disposal.**

## 9 THE AGREEMENT PRICE

- 9.1 Prices of the products are net and not subject to any settlement or other discount unless agreed in writing between FAC and the CUSTOMER.
- 9.2 Any credit facilities allowed by FAC to the CUSTOMER shall be in the sole discretion of FAC who may at any time terminate or curtail such facilities, and/or require the CUSTOMER to furnish security for the payment of any amounts payable by the

CUSTOMER. Any credit granted by FAC to the CUSTOMER shall be in accordance with FAC's credit policy from time to time.

- 9.3 Save as otherwise provided for in 2.3 above, the agreement price includes the cost of delivery by FAC or its agents to the premises of the CUSTOMER.

## 10 PAYMENT

- 10.1 Payment is required -
- 10.1.1 in cash against delivery; or
- 10.1.2 within 30 (thirty) days, or such other period as negotiated and agreed to in writing between the parties, from the date of statement, provided that FAC has agreed to such an arrangement,
- 10.2 The CUSTOMER shall not be entitled to any extension of the due date for payment as recorded in 10.1 above for any reason whatsoever.
- 10.3 FAC has the right to suspend any sales and/or delivery relating to the CUSTOMER, if payment is not received within 60 (sixty) days of the date for payment as required in terms of 10.1.2 above.
- 10.4 All payments by the CUSTOMER are to be effected –
- 10.4.1 by way of electronic transfer or direct deposit into FAC's banking account held with First National Bank, The Pavilion Branch, current account number 6201 8188 898, banking code 224 326, should the payment be made within the Republic of South Africa; or
- 10.4.2 at FAC's head office at 1 The Boulevard, First Floor, Block B, Westway Office Park, Westville, KwaZulu-Natal, Republic of South Africa, in cash against delivery, unless the parties have agreed to make payment at a date agreed upon and as contemplated in 10.1.2 above.
- 10.5 All cheque payments are deemed provisional payments, and such payments shall not be deemed to have been paid until the amount in question has been credited to FAC's bank account and is unconditionally available to FAC.
- 10.6 The CUSTOMER hereby waives notice of dishonour, and protest (where applicable) in respect of any promissory note, bill of exchange or other negotiable instruments delivered by the CUSTOMER to FAC.
- 10.7 In all cases where the CUSTOMER uses the postal service to effect payment, such postal service shall be deemed to be the agent of the CUSTOMER.
- 10.8 Nothing herein contained shall be interpreted as obliging FAC to afford the CUSTOMER any indulgence to effect payment after the due date, as contemplated in 10.1 above.
- 10.9 FAC shall be entitled to levy interest on all overdue amounts (i.e. amounts not paid on the due date as contemplated in 10.1 above) at the prime lending rate (from time to time) of First National Bank plus 2,0% calculated and compounded monthly in arrears, or such other maximum rate that may be prescribed from time to time in terms of the NCA. Interest shall be reckoned from the day upon which such amount becomes overdue until the date of payment, both days inclusive, and shall be-
- 10.9.1 calculated on a compounded basis on the amount owing at the end of each month; and
- 10.9.2 payable on demand.
- 10.10 **FAC will credit each payment made under this agreement to the CUSTOMER on the date of receipt of the payment as follows –**
- 10.10.1 **firstly, to satisfy any due or unpaid interest charges (if any);**
- 10.10.2 **secondly, to satisfy any due or unpaid fees or charges (if any);**
- 10.10.3 **thirdly, to reduce the amount of the principal debt.**
- 10.11 The CUSTOMER shall not be entitled to withhold any sum payable to FAC or to make any deductions therefrom or to set off such sum against any sum which FAC may owe to the CUSTOMER.

## 11 ASSIGNMENT

The CUSTOMER shall not have the right to cede, assign or transfer any of its rights or delegate any of its obligations arising out of this agreement without first obtaining FAC's written consent.

## 12 DEFAULT, IMPLICATIONS OF DEFAULT AND PROCESS TO BE FOLLOWED

- 12.1 The CUSTOMER will be in default of this agreement if –
- 12.1.1 the CUSTOMER does not pay any amount payable to FAC under this agreement on the due date as contemplated in 10.1 above; or
- 12.1.2 the CUSTOMER breaches any of the terms and conditions of this agreement or any agreement in terms of which the CUSTOMER provided security to FAC and the CUSTOMER fails to remedy the breach within (7) seven days of receiving

- written notice to do so;
- 12.1.3 any representation or warranty made in connection with this agreement or any other documents supplied by the CUSTOMER is materially incorrect or false;
- 12.1.4 any person who furnished security to FAC in respect of this agreement (e.g. as surety, guarantor or pledgor), commits any breach of its obligations to FAC in terms of that agreement;
- 12.1.5 the CUSTOMER or any person who furnished security in respect of this agreement-
- 12.1.5.1 being an individual –
- 12.1.5.1.1 publishes notice of the voluntary surrender of his estate or dies;
- 12.1.5.1.2 is placed under administration or commits an act of insolvency as defined in the Insolvency Act 24 of 1936;
- 12.1.5.1.3 has any application or other proceedings brought against or in respect of him in terms of which he is sought to be sequestrated or placed under curatorship in any event whether provisionally or finally and whether voluntarily or compulsory;
- 12.1.5.2 not being an individual –
- 12.1.5.2.1 is wound up, liquidated, dissolved, deregistered or placed under judicial management, in any event whether provisionally or finally and whether voluntarily or compulsory, or passes a resolution providing for any such event;
- 12.1.5.2.2 is deemed to be unable to pay its debts;
- 12.1.5.2.3 resolves that it voluntarily begin business rescue proceedings or has any business rescue proceedings commenced against it, as contemplated in section 132(1) the Companies Act 71 of 2008;
- 12.1.5.3 has a judgment of a competent court against the CUSTOMER or any person who has furnished security for the CUSTOMER for the attachment of assets or for payment of any amount is not satisfied for more than seven (7) days after the date on which it is issued; or
- 12.1.6 compromises or attempts to compromise with the CUSTOMER's creditors generally or defer payment of debts owing by the CUSTOMER to the CUSTOMER's creditors.
- 12.2 If the CUSTOMER is in default and this agreement is subject to the NCA, FAC may -
- 12.2.1 give the CUSTOMER written notice of such default and may propose that the CUSTOMER refer this agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under this agreement or develop and agree on a plan to bring repayments up to date;
- 12.2.2 commence legal proceedings to enforce this agreement including exercising its rights in terms of any of the securities and recover collection costs and default administration charges as defined in the NCA if -
- 12.2.2.1 it has given the CUSTOMER notice as referred to in clause 12.2.1 above or it has given notice to terminate any debt review process under section 86 of the NCA which may then be underway in respect of this agreement;
- 12.2.2.2 the CUSTOMER is and has been in default under this agreement for at least 20 (twenty) business days; and
- 12.2.2.3 at least 10 (ten) business days have elapsed since FAC delivered the notice contemplated in clause 12.2.2.1; and
- 12.2.2.4 in the case of a notice in terms of clause 12.2.1, the CUSTOMER -
- 12.2.2.4.1 has not responded to that notice; or
- 12.2.2.4.2 responded to the notice by rejecting FAC 's proposal.
- 12.3 If the CUSTOMER is in default of this agreement and this agreement is not subject to the NCA, FAC may exercise its rights, as may be permissible in law and without prejudice to any of FAC's other rights, which include any one or more of the following -
- 12.3.1 suspending the delivery and provision of products;
- 12.3.2 demanding immediate payment of all or any overdue amounts;
- 12.3.3 terminating this agreement; and/or
- 12.3.4 enforcing any security furnished in respect of the agreement.
- 12.4 **The CUSTOMER will be liable for all legal costs as on an attorney-own client-basis as may be permissible in law, in recovering any amount that the CUSTOMER owes FAC.**
- 12.5 A certificate signed by a manager of FAC specifying the amount owing by the CUSTOMER and further stating that such amount is due, owing and payable by the CUSTOMER shall be sufficient (prima facie) proof of the amount thereof and of the fact that such amount is so due, owing and payable for the purpose of obtaining provisional sentence or other judgment against the CUSTOMER in any competent court. It shall not be necessary to prove the appointment of the person signing any such certificate.

### **13 THE CUSTOMER'S RIGHT TO TERMINATE**

- 13.1 The CUSTOMER may cancel or terminate this agreement at any time by paying an amount ("settlement amount") equal to the aggregate of –
- 13.1.1 the unpaid balance of the outstanding amount on the CUSTOMER's account(s) with FAC as at that date ("settlement date"); and
- 13.1.2 all unpaid interest and all other fees and charges due or payable by the CUSTOMER in terms of this agreement up to and including the settlement date.
- 13.2 The CUSTOMER may demand to be furnished with a statement specifying the settlement amount, in which event FAC will be obliged to provide such statement, in writing, within 5 (five) business days of the CUSTOMER 's request.
- 13.3 The statement reflected in clause 13.2 will only be binding for the date stated and will not include any transactions effected or processed on or after this date and for which the CUSTOMER will also be liable.

### **14 DECLARATIONS AND WARRANTIES BY THE PURCHASER**

#### **14.1 The CUSTOMER warrants and declares that -**

- 14.1.1 **the CUSTOMER has been given an adequate opportunity to read and understand the terms and conditions of this agreement and is aware of all the terms thereof, particularly those printed in bold. The CUSTOMER understands and accepts its risks and costs as well as its rights and obligations under this agreement;**
- 14.1.2 **the CUSTOMER has full power and authorisation to effect and carry out the obligations in terms of this agreement and, if the CUSTOMER is a corporate entity, association, partnership or a trust, that all necessary corporate and/or other actions were taken to authorise the execution of this agreement and the CUSTOMER will against request provide FAC with the originals or certified copies of all documents confirming such authorisation;**
- 14.1.3 **all the information the CUSTOMER provided to FAC in connection with the conclusion of this agreement is true, complete and accurate and the CUSTOMER is not aware of any material facts or circumstances not disclosed to FAC and which, if disclosed, may adversely affect the decision to enter into this agreement;**
- 14.1.4 **no default event specified in clause 12 has occurred or is occurring;**
- 14.1.5 **entering into this agreement will not cause it to become over-indebted as contemplated in the NCA;**
- 14.1.6 **the CUSTOMER has fully and truthfully answered all and any requests for information addressed to it by or on behalf of FAC leading up to the conclusion of this agreement;**
- 14.1.7 **the CUSTOMER has the necessary legal capacity to enter into this agreement and is not subject to an administration order referred to in section 74(1) of the Magistrates Court Act, any sequestration, liquidation or judicial management order or any business rescue proceedings;**
- 14.1.8 **FAC did not make an offer to the CUSTOMER which would automatically have resulted in an agreement if the CUSTOMER had not declined the offer;**
- 14.1.9 **FAC has not induced, harassed or forced the CUSTOMER to enter into this agreement; and**
- 14.1.10 **this agreement was completed in full at the time of the CUSTOMER signing the agreement.**

### **15 DOMICILIUM CITANDI ET EXECUTANDI**

FAC and the CUSTOMER choose as their respective *domicilium citandi et executandi* (domicile addresses) the physical address set out in the credit application form to which these terms and conditions of trade are annexed for the purpose of giving or sending any notices provided for or required hereunder, or such other address as may be substituted by notice given as required. Each of the parties will be entitled from time to time to vary its domicile address 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.

### **16 WAIVER**

- 16.1 No variation of this agreement shall be binding or effectual for any purpose unless reduced to writing and signed by FAC and the CUSTOMER giving effect to the same, and any such waiver shall be effective only in the specific instance and for the purpose given.
- 16.2 No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercising of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 16.3 No indulgence, extension of time, relaxation or latitude which FAC may permit at any time in regard to the carrying out of any of the CUSTOMER's obligations shall prejudice FAC in any manner whatever or be a waiver by FAC of any of its rights against the CUSTOMER.

## 17 GOVERNING LAW

This agreement is governed by South African Law and is subject to the jurisdiction of the South African courts. FAC is allowed to institute legal proceedings for the recovery of any amount owing hereunder in the Magistrate's Court of any district which by virtue of Section 28 of the Magistrate's Court Act has jurisdiction over the CUSTOMER irrespective of the amount of the claim, but this does not preclude FAC at its own discretion from instituting legal proceedings in the High Court of South Africa which has jurisdiction over the CUSTOMER.

## 18 GENERAL

- 18.1 All agreements concluded between FAC and the CUSTOMER shall be deemed to have been concluded at Durban, KwaZulu-Natal, Republic of South Africa.
- 18.2 **In the event that the CUSTOMER changes its name during the existence of the business relationship between itself and FAC, this agreement shall be equally enforceable by FAC against the CUSTOMER irrespective of the fact that the CUSTOMER, trading under a new trading name, has or has not acknowledged this agreement to be applicable.**

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