

GRAIN STORAGE AGREEMENT

AGREEMENT ENTERED INTO BY AND BETWEEN:

SENWES LIMITED

1 Charl de Klerk Street

KLERKSDORP

(**“the HEAD OFFICE”**)

Herein represented by _____

(hereinafter referred to as **“the GRAIN SILO OWNER”**)

and

Full names and surname, or name of enterprise

Senwes client number: _____

If an individual or partners, identity number (the ID-number of each partner must be provided) : _____

In the case of a Company, Trust or Close Corporation, the registration number:

(as well as a copy of the **authorising resolution**)

In the case of a Trust, a copy of the Master’s letter of appointment and a copy of the authorising trustee resolution must be attached.

Represented by: _____

Capacity: _____

Physical address

Postal address:

Telephone number: _____ / _____

Fax number: _____ / _____

Cell number: _____ / _____

(hereinafter referred to as “**the GRAIN SILO USER**”).

WHEREAS the Grain Silo User wishes to store grain and/or oilseeds (“**the product**”) in the grain silos of the Grain Silo Owner;

AND WHEREAS the Grain Silo Owner is willing to make available storage facilities for such products, together with certain concomitant services (“**the services**”) at his silos to the Grain Silo User;

THE PARTIES HEREBY AGREE AS FOLLOWS:

1.

1.1 This agreement shall commence upon signature thereof and shall apply for an undetermined period and thus for multiple production years. The agreement may be cancelled at any time by any of the parties upon one calendar month’s notice.

1.2 The storage facilities are made available by the Grain Silo Owner and are used by the Grain Silo User in accordance with the provisions of this agreement.

2.

- 2.1 Since the planting and harvesting season of the various products differ, the Grain Silo User shall be obliged to withdraw the products which he delivers during a specific production season to the Grain Silo Owner for storage, by no later than the dates indicated against the products below, and which follow immediately after the date of delivery thereof by the Grain Silo User, namely:

Maize	-	30 April
Sorghum	-	30 April
Wheat	-	30 September
Soya beans	-	28 February
Sunflower	-	28 February
Barley	-	30 September

- 2.2 Should the product not be withdrawn by the final date, the Grain Silo Owner shall be entitled to charge the daily storage tariff applicable at the time as from the final date up to and until the date of withdrawal of the product.

3.

- 3.1 The net mass of a product shall be determined by deducting the difference between the moisture content upon delivery and the prescribed moisture basis of each product as indicated below, from the gross delivered mass:

$$\text{Gross mass} \times \frac{100 - \text{Actual moisture}}{100 - \text{Moisture of grain type indicated below}}$$

Maize	-	12.5% (14% regarded as dry with deductions to 12.5%)
Sorghum	-	12.5% (14% regarded as dry with deductions to 12.5%)
Wheat	-	12,5% (if wet wheat with a moisture content of more than 13% is delivered)

- Soya beans - 12.0% (13% regarded as dry with deductions to 12.5%)
- Sunflower - 9% (10% regarded as dry with deductions to 9%)

Malt and feedgrade barley - 12.5%

("the adjustment")		
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3.2 Since the Grain Silo User delivers a product on a cleaned basis, the Grain Silo Owner shall make the deductions indicated below from the gross mass of the delivered product after having done the moisture adjustment, in order to determine the net mass which may eventually be withdrawn by the Grain Silo User, namely:

- Maize - Below the grid more than 2% is 1%, and less than 2% is 0.85%
- Sorghum - 2.28%
- Wheat - The actual percentage foreign material and screenings
- Soya beans - Actual percentage foreign material and sclerotinia.
- Sunflower - Actual percentage foreign material, screenings and sclerotinia (hereinafter referred to as "the net mass")
- Malt - None
- Feedgrade barley - 0.5%
- Malt and feedgrade barley - Screenings more than 2,5% mass
2,5% (re-evaluated before every season)

Green kernels of wheat more than 1,5% mass, adjustment to 1,5% (re-evaluated before every season)

3.3 All products delivered to the Grain Silo Owner must comply with the grading regulations of the Directorate Plant and Quality Control of the National Department of Agriculture. Particulars regarding the grading

regulations will be available at the silos of the Grain Silo Owner and the Grain Silo User undertakes to familiarise himself with the regulations before each date of delivery. The delivery of any product after signature of this document shall serve as acknowledgement thereof. The Grain Silo Owner shall, on the basis of the grading regulations, determine and note the grade of the product upon delivery of the product and the determined grade shall be accepted as final and binding for all purposes in terms hereof.

- 3.4 The Grain Silo User shall not be able to lay claim to more than the net mass of a product or a higher grading than the grading determined and noted by the Grain Silo Owner. In the case of wheat it will be dealt with in accordance with the annual circular letter. Please note that all grain loses its identity as soon as it is delivered.
- 3.5 In the event of a dispute between the parties regarding the determination of the net mass or grading of a product, which the Grain Silo User alleges that he is entitled to when withdrawing grain, a certificate signed by an official designated by the Grain Silo Owner (whose status need not be proven), shall serve as *prima facie* proof of the manner in which such net mass was determined and the grading and total mass for all purposes hereof, and more specifically, for purposes of litigation between the parties. The onus shall be upon the Grain Silo User to prove that any particulars contained in such a certificate, are incorrect.

4.

Unless agreed differently in writing with the Grain Silo Owner, the Grain Silo User shall be obliged to withdraw the product at the silo where it was originally delivered or, alternatively, at a silo indicated by the Grain Silo Owner.

5.

- 5.1 The Grain Silo Owner shall insure the product against risks and shall determine the value thereof from time to time at his sole discretion (“the insurance value”). Particulars regarding the relevant insurance shall be made available to the Grain Silo User upon request.
- 5.2 Should the Grain Silo Owner be unable to deliver product or any portion thereof to the Grain Silo User due to loss or damage or bacterial or other contamination (rendering the product totally or partially unsuitable for human and/or animal consumption), or due to any other reason whatsoever, or should the damaged or contaminated product as indicated above be delivered back to the Grain Silo User, the Grain Silo Owner shall not be liable for any consequential damage which the Grain Silo User may suffer as a result of the inability to return the grain or for consequential damage as a result of the delivery of damaged or contaminated product.
- 5.3 In the circumstances as set out in the preceding sub-paragraph, the Grain Silo Owner shall be obliged to pay damages to the Grain Silo User to an amount equal to the insured value referred to in 5.1 in respect of the damaged or contaminated grain.
- 5.4 The Grain Silo Owner shall, at his sole discretion and from time to time, determine the tariff at which the Grain Silo User shall remunerate him for his services, which shall include the storage, handling, weighing, cleaning, drying, fumigation and estimated insurance costs in respect of the product, calculated on a proportionate basis (“the tariff”).
- 5.5 Particulars of the tariff shall at all times be available for inspection at the head office of the Grain Silo Owner.

- 5.6 By delivering a product to the Grain Silo Owner, the Grain Silo User implies that he has familiarised himself with the applicable tariff and undertakes to familiarise himself continuously with any adjustments to such tariffs as determined by the Grain Silo Owner from time to time.
- 5.7 The Grain Silo User undertakes to pay all amounts due in terms of the tariffs which may have become payable by him in respect of services rendered during the preceding calendar month, on or before the last day of each month.
- 5.8 Should the product be sold, all outstanding grain silo costs shall be recovered first from the product yield of the Grain Silo User.

6.

- 6.1 The Grain Silo Owner shall not be obliged to deliver products to the Grain Silo User, unless all outstanding tariffs relating to the products have been paid in full.
- 6.2 Until full payment of the tariff monies by the Grain Silo User, or for as long as any monies whatsoever are due to the Grain Silo Owner, the Grain Silo Owner shall be entitled to retain product tonnage to the value of the outstanding monies as security for the amount payable or which may become payable for a further period of 12 (twelve) months or until all amounts due have been paid. The value of the tonnage shall be determined by the average SAFEX price applicable at the date on which the withdrawal of the product is to take place.
- 6.3 Interest shall be payable on all outstanding tariff monies and shall be calculated as from the first day following the date of payment on daily

balances at a rate equal to the prime lending rate on overdraft facilities of the Bank of the Grain Silo Owner for lenders with no security, plus 2 (two) additional percentage points.

7.

- 7.1 Withdrawal of product shall take place upon demand. The risk relating to products being withdrawn shall revert to the Grain Silo User as soon as the product is released from the grain silo concerned.
- 7.2 The removal of the delivered product from the premises of the Grain Silo Owner shall serve as confirmation of and acknowledgement by the Grain Silo User that he is satisfied with the mass thereof as indicated by the Grain Silo Owner and that the product is of the same quality and grade as the product delivered for storage. Please note that grain loses its identity as soon as it is delivered (particularly sub-grade grain should it be taken in).

8.

The Grain Silo User chooses his address and *domicilium citandi et executandi* for the delivery of all notices and legal documents for all purposes relating hereto as indicated on the covering page hereof. All notices in terms of or arising from this agreement shall be reduced to writing and served upon the other party. Any documents or notices shall be deemed to have been received by the debtor:

- 8.1 If delivery by hand, on the date of delivery.
- 8.2 If by pre-paid registered or certified mail, on the 10th day after lodgement

at the Post Office.

- 8.3 If by telegram, telex or fax or e-mail, one day after dispatch thereof, with the understanding that any document or notice actually received, will be sufficient for purposes of this clause 8.

9.

- 9.1 This agreement records the total agreement between the parties.
- 9.2 No amendment or agreed cancellation of this agreement or any of the terms and conditions contained herein, or negotiable document or other documents issued or executed in terms of this agreement; and no settlement of any dispute flowing from this agreement and no deferment, waiver, relaxation or suspension; or any agreement not to enforce the agreement, shall be binding unless it is reduced to writing and signed by a party and served upon the counter-party.
- 9.3 No deferment, waiver, relaxation of any term or condition or any other agreement, negotiable document or other document issued or executed in terms of this agreement, shall serve as an estoppel against the other party in terms of his rights in accordance with this agreement and it shall not prevent the other party to exercise his rights in terms of this agreement. Any such deferment, waiver, relaxation or suspension shall only be applicable in respect of the specific subject in respect of which such arrangement has been made,
- 9.4 No party shall be bound to any express or implicit term, representation, guarantee, promise or anything similar not contained herein, irrespective of whether it gave rise to the conclusion of the contract and irrespective of whether it was negligent (to the extent allowed in terms of legislation).

10.

A certificate signed by an official designated by the Grain Silo Owner (whose status need not be proven), shall serve as *prima facie* proof of the amounts payable by the Grain Silo User to the Grain Silo Owner in terms hereof, and of amounts already due and payable, for purposes of (including but not limited to) provisional or summary judgement. The status of the person issuing such a certificate need not be proven and, for purposes thereof, such person shall be entitled to call on a certificate, issued by the bankers of the Grain Silo Owner from time to time, relating to the current prime rate, and to incorporate it and attach it to his own certificate to form part thereof.

11.

The Grain Silo User shall be liable for all costs incurred by the Grain Silo Owner relating to the recovery of any monies in terms hereof (including recovery commission and attorney and own client costs) incurred before or during the institution of legal proceedings, including any appeals or, should judgement have been granted, regarding the enforcement of or payment of such judgement.

12.

Nothing contained herein shall be interpreted that the Grain Silo Owner would be obliged to accept all products offered by the Grain Silo User for storage purposes. Acceptance thereof shall at all relevant times be at the discretion of the Grain Silo Owner, who shall exercise his discretion on the basis of, inter alia, his own requirements, the availability of space or the functionality of specific silos.

DATED and SIGNED on this _____ day of _____ 20__.

AS WITNESSES:

1. _____

**On behalf of SENWES LIMITED
GRAIN SILO OWNER**

2. _____

(who confirms that he is duly authorised thereto)

DATED and SIGNED on this _____ day of _____ 20__.

AS WITNESSES:

1. _____

**On behalf of GRAIN SILO
USER**

2. _____

GRAIN SILO USER

(who confirms that he is duly authorised thereto in terms of a company resolution

dated _____

BY VIRTUE OF COMPANY RESOLUTION DATED