

GRAIN STORAGE AGREEMENT

AGREEMENT CONCLUDED BY AND BETWEEN:

SENWES BEPERK

Registration Number 1997/005336/06

1 Charel de Klerk Street

KLERKSDORP

2570

(“the Registered Office”)

(hereinafter referred to as **“the Operator”**)

and

the person/entity whose particulars were captured on the electronic platform upon acceptance of the terms and conditions set out herein.

(hereinafter referred to as **“the Customer”**)

SINCE the Customer wishes to store grain and/or oilseeds (**“the product/products”**) in the grain storage facilities (**“Storage facilities”**) operated by the Operator;

AND as the Operator is prepared to make storage facilities for such products, together with certain concomitant services in the Storage Facilities available to the Customer (**“the services”**);

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1.

In this agreement the terms set out below will have the meanings linked thereto, unless specifically indicated otherwise in the document:

- 1.1 **“Tariff document”** – the seasonal tariff document which is issued by the Operator from time to time in which storage options, tariffs, terms and conditions for a specific

season relating to a specific product/products are set out. The Tariff document may also indicate the following additional:

- services and concomitant costs offered at some of the Storage facilities;
 - terms and/or conditions which may be applicable to a specific season and/or product; and/or
 - administrative procedures.
- 1.2 **“Interest rate”** - the interest rate as set out in a specific Tariff document. Such interest rate will be applicable to all products delivered at a Storage facility during the period for which the Tariff document makes provision, which also includes Carry-over stock; and
- 1.3 **“Carry-over stock”** - any product already stored at a Storage facility at the commencement of the season (period) as set out in the Tariff document, and which Tariff document relates to the type of product already stored.

2.

- 2.1 This agreement will commence upon the electronic acceptance thereof by the Customer and will endure for an undetermined period and therefore for multiple production years. The agreement may be terminated at any time, in writing (which includes electronic communication), by any of the parties, upon one calendar months' notice of termination to the other party.
- 2.2 Should the agreement be cancelled by any of the parties, the Customer must pay all outstanding Storage facility costs as well as the products withdrawn from the Storage facility on or before the day on which the agreement terminates. However, no product may be withdrawn should all costs relating thereto not have been settled in full.
- 2.3 **This agreement will be supplemented with the Tariff documents published from time to time. The terms and conditions set out in a specific Tariff document are supplemental to and incorporated by reference to this agreement, which incorporation will apply for the duration of the Tariff document.**
- 2.4 Subject to clause 2.7 below, should there be a conflict between the terms and conditions of this agreement and those of a Tariff document, the provisions of the Tariff document will receive precedence.
- 2.5 The Storage facilities are made available by the Operator and used by the Customer in accordance with the terms and conditions of this agreement.

- 2.6 In the event of Products being stored in terms of a silo certificate issued by the Johannesburg Security Exchange Agricultural Commodities Division (generally known as "SAFEX"), such Products shall be stored subject to:
- The prevailing SAFEX storage requirements as issued by SAFEX from time to time and applicable to the Operator; and
 - The SAFEX requirements applicable to a SAFEX registered storage operator ("SAFEX requirements").
- 2.7 Notwithstanding clause 2.5 above, should there be any conflict between the provisions of this Agreement and/or the Tariff document and the SAFEX requirements, the provisions of the SAFEX requirements shall prevail.

3.

- 3.1 Since the planting and harvesting seasons of the various products differ, the Customer is obliged to withdraw the products delivered to a Storage facility during a specific production season for storage, by no later than the last date of withdrawal, as provided for in the applicable Tariff document ("last date").
- 3.2 Should the product not be removed by the last date of withdrawal, the Operator will be entitled to charge the then current day storage tariff on such Carry-over stock from the day after the last date until the date of final withdrawal thereof.

4.

- 4.1 The mass of a product is determined by deducting the difference between the delivered moisture content and the Tariff document prescribed moisture content basis of each product (as published from time to time), from the gross delivered mass of the product (the "adjustment"). The formula for the calculation of the adjustment is as follows:

$$\text{Gross Mass} \times \frac{100 - \text{Actual moisture content}}{100 - \text{Tariff document prescribed moisture content of specific product}}$$

100 – Tariff document prescribed moisture content of specific product.

(Should the Tariff document prescribed moisture content be amended at any stage, the latest prescribed amended moisture content will be used from the date on which the Tariff document amended moisture content comes into effect).

- 4.2 The Operator may, at its sole discretion, receive a product of which the moisture

- content is higher than the Tariff document prescribed moisture content, subject thereto that drying facilities are available at the Storage facilities for the drying of such product equal to the Tariff document prescribed moisture content. Should the Operator exercise its discretion in this regard, the particulars of products which will be received on the basis set out herein, as well as the Storage facilities where it will apply, will be published in the relevant Tariff document.
- 4.3 Since the Customer delivers a product on a cleaned basis, the Operator will make further deductions from the gross mass as set out in the relevant Tariff document. The deductions make provision for the deduction of foreign materials, poisonous seeds, screenings, etcetera. The deductions will be made from the delivered product after the moisture content mass adjustment (as explained above), has been made, in order to determine the net mass which may eventually be withdrawn by the Customer.
- 4.4 Screenings are determined by making use of statutory prescribed screens/sieves.
- 4.5 The results of the deductions mentioned in clauses 4.1 and 4.3 are the net mass of the product received.
- 4.6 All products delivered to the Operator, must comply with the grading regulations relating to a specific product as determined from time to time by the Department of Agriculture. Particulars of the grading regulations will be available at the Storage facilities. **The Customer undertakes to familiarise himself/herself with the provisions thereof. By delivering product at a Storage facility, the Customer guarantees that he/she has read and understands the grading regulations.**
- 4.7 The Operator will, according to the grading regulations, determine the grade of a product and record it upon receipt of the product. The grading of the product by the Operator is final and binding. Should the Customer not agree with the grading, the product must not be delivered for storage at the Storage facility. As soon as the product has been delivered for storage, it will be deemed that the Customer agrees with the grading of the product as determined by the Operator.
- 4.8 The Customer cannot lay claim to more than the net delivered mass of a product delivered being returned to him, or to a grading better than the grading recorded by the Operator in accordance with the provisions hereof (subject to clause 4.9).
- 4.9 In the case of wheat, the grading and grading variances will be dealt with in accordance with the relevant Tariff document.
- 4.10 A product loses its identity as soon as it is stored with a similar product (blending). The Operator will therefore only be obliged to return a product similar to the product delivered by the Customer.

- 4.11 In the event of a dispute between the parties regarding the calculation of the net mass or grading of a product - in respect of which the Customer alleges that he is entitled delivery of - a certificate, signed by an official appointed by the Operator (whose status and appointment need not be proven), will serve as *prima facie* proof of the net mass and/or the grading of the product. The certificate may be used for purposes of any court proceedings, application and/or arbitration (or similar processes) between the parties and the onus is on the Customer to prove that any of the particulars contained in such a certificate, are incorrect.
- 4.12 The Customer is obliged to withdraw his product from the Storage facility where he/she initially delivered the product, or alternatively from a Storage facility indicated by the Operator should the Parties agree in writing to an alternative Storage facility where delivery will be affected.
- 4.13 Nothing contained herein will be interpreted in such a way as to indicate that the Operator will be obliged to accept all or any products offered by the Customer for storage purposes. The acceptance of the product for storage purposes will, at all times, vest with the Operator, who may exercise his discretion based on, inter alia, its own requirements, the availability of space or the functionality of the specific Storage facility and the quality of the Product offered by the Customer for storage purposes.

5.

- 5.1 The Operator will insure the product against risk equal to the amount of the value thereof, as determined from time to time at its sole discretion ("the insured value"). Particulars regarding the insurance involved, will be made available to the Customer on its demand.
- 5.2 Should the Operator not be able to:
- (i) deliver the product or any portion thereof back to the Customer as a result of it having perished, being damaged or bacterially or otherwise infected (which resulted in the product being totally or partially unsuitable for human and/or animal consumption), or for any other reason whatsoever; or
 - (ii) should the damaged or infected product as referred to above, be delivered to the Customer, the Operator will not be liable for any consequential damage which the Customer may suffer as a result of the delivery of the damaged or infected product.
- 5.3 In the circumstances as set out in the preceding clause, the Operator will be obliged to pay damages equalling the insured value referred to in 5.1 for the destroyed, damaged and/or infected product. Where product is delivered in accordance with clause 5.2(ii), the value thereof will be taken into account in

respect of any amount payable to the Customer in accordance with this clause.

6.

- 6.1 The Operator will, at his sole discretion and from time to time, by means of a product-specific Tariff document, determine the tariffs at which its services will be rendered, which will include the storage and handling tariffs and, where applicable, weighing, cleaning, drying and fumigation tariffs (“**the tariff**”). The customer must familiarise himself with the applicable tariff as set out in the seasonal Tariff document, as well as the availability of the above services per the relevant Storage facility.
- 6.2 **By delivering product at a Storage facility, the Customer guarantees that he/she has read and understands the relevant Tariff document/agreement and that he/she accepts the terms and conditions contained therein.** The Customer further undertakes to keep himself/herself informed of any amendments to such Tariff document as may be affected by the Operator from time to time.
- 6.3 Particulars of the relevant tariffs will at all times be available at the Operator’s Registered office.
- 6.4 The Customer undertakes to and must pay all fees due to the Operator relating to services rendered during a specific calendar month on or before the last day of the following calendar month.
- 6.5 Should the Customer sell or wish to take delivery of the product or any portion thereof, all outstanding fees and levies relating to the product must be paid prior to the withdrawal or transfer of the product onto the name of the Buyer.
- 6.6 The Operator will not be obliged to deliver products to the Customer unless the tariff and levies referred to, have been paid in full.
- 6.7 Until such time as the Customer has paid the tariffs and levies in full, or for as long as any monies are due to the Operator for any reason, the Operator will be entitled to hold back product equal to the value of all monies due to it as a pledge, which monies will include an estimated amount in respect of tariff fees which may become due in respect of the pledged products over a further 12 (twelve) month period, or until such time as all monies have been recovered. The pledge is also applicable in respect of any interest payable in accordance with the interest rate. The Customer unconditionally agrees to the abovementioned pledge in favour of the operator.
- 6.8 The value of the tonnage of product held in terms of the pledge referred to above, will be determined with reference to the average product price applicable on the day on which the product would have been withdrawn, as established by SAFEX.

- 6.9 Interest is payable on all overdue tariffs and/or levies and will be calculated from the first day following the date on which such tariff and/or levy becomes payable and will be calculated on the daily outstanding tariff and/or levy balances. Interest will be calculated at the applicable Interest rate.

7.

- 7.1 Withdrawal of product will be done upon request and on the basis as set out in the applicable Tariff document. The risk in respect of delivered products will be transferred to the Customer immediately upon the release thereof from the Storage facility.
- 7.2 The removal of the delivered product from the premises of the Storage facility by either the Customer or by the person/entity who receives the product on behalf of the Customer, will serve as confirmation and acknowledgement of the mass and quality of the delivered product as determined by the Operator.

8.

- 8.1 The Customer chooses and appoints his address as indicated on the Operator's electronic platform on which the Customer accepted this agreement and to serve as his/her *domicilium citandi et executandi* where all notices and legal process documentation in respect of or flowing here from, may be delivered and/or served. All notices must be in writing and must be served on the other party. Any document or notice will be deemed to have been received by a Party herein should it:
- 8.1.1 have been delivered by hand, on the date of delivery.
- 8.1.2 have been sent by email, one day after the dispatch thereof, with the understanding that any document or notice which is actually received, will be sufficient for the purposes of this clause 8.

9.

- 9.1 This agreement constitutes the entire agreement between the parties.
- 9.2 No amendments, agreed cancellation, reinstatement or novation of this agreement or of any term or condition contained herein; or
- i. of a negotiable document or other documents issued or executed in terms of this agreement;

- ii. no settlement of any dispute which may arise from this agreement and no deferment, waiver, relaxation or suspension;
- iii. or any agreement not to enforce this agreement; or to postpone or suspend it,

will be binding unless reduced to writing and signed by an authorised official of the Operator.

- 9.3 No deferment, waiver or relaxation of any terms or conditions of this agreement or any other agreement, negotiable document or other document issued or executed in terms of this agreement, will serve as an estoppel towards the other party in terms of his rights in accordance with this agreement, and it will further not prevent the other party from exercising his rights in terms of this agreement. Any such deferment, waiver, relaxation or suspension will only be applicable in respect of the specific subject in terms of which such an arrangement has been made and must be reduced to writing and signed by an authorised official of the Operator in order to become effective.
- 9.4 No party will be bound to any express or tacit term, representation, guarantee or anything similar which is not contained herein, irrespective of whether it resulted in the conclusion of this agreement and irrespective of whether it had been made negligently (to the extent allowed in terms of legislation).

10.

- 10.1 A certificate signed by an official appointed by the Operator (whose appointment and capacity need not be proven), which certificate reflects the amounts due by the Customer to the Operator, will serve as prima facie proof of such amounts. Such certificate will also be deemed to be a liquid document and may be used in any processes (including, but not limited to) provisional judgement and summary judgement.

11.

- 11.1 The Customer will be liable for all costs incurred by the Operator relating to the recovery of any costs due by the Customer in terms of this agreement, as read in conjunction with the applicable Tariff document. Such costs will include interest, recovery commission and attorney and client costs, which costs have been incurred prior to or during the institution of any legal steps, including any appeals and reviews, or if judgement has been obtained, all costs relating to the enforcement of or payment of such judgement.

12.

- 12.1 The Customer may not cede, transfer or in any other way assign his rights and obligations to another party, unless prior written consent is granted by the Operator in this regard. The Operator is entitled to cede and/or transfer his rights and obligations contained herein.
- 12.2 The Operator will not be liable for any damage which may arise as a result of factors which are beyond the control of the Operator, which include, but are not limited to electricity interruptions, riots, strikes, infrastructure decline, government actions, etcetera.

13.

ACKNOWLEDGMENT AND CONSENT

By signing this agreement, the Customer hereby acknowledges and agrees that It is fully aware of its rights in terms of the Protection of Personal Information Act No 4 of 2013 (“the Act”).

The Parties agree that they are aware of the provisions and definitions of the Act and will at all times comply the Act’s Regulations and that the Operator shall only collect, use, process and store personal information disclosed in a lawful manner, and only to the extent required to perform their respective obligations in terms of this agreement.

The Customer likewise agrees and consents to the following:

- 13.1 Use of Personal Information
 - 13.1.1 The Customer consents to the Operator processing its Personal Information and acknowledges that all Personal Information provided will only be used for the purposes for which it is collected. Should the Operator require to process such Personal Information for other purposes, the Customer’s prior consent will be requested.
 - 13.1.2 Where personal information of minors is provided, the Customer consents that it is the legal guardian of such minor, provides the required consent to process such minor’s personal information. Where the Customer is not the legal guardian of the minor, it confirms that the legal guardian of the minor has consented to the Customer providing the Operator with the minor’s personal information as well as to the Operator processing such personal information.
- 13.2 Accuracy of Information and Onus

- 13.2.1 The Act requires that all Personal Information and related details supplied, are complete, accurate and up to date. The Customer declares that all Personal Information supplied to the Operator is accurate, up to date, not misleading and that it is complete in all respects.
- 13.2.2 Whilst the Operator will always use its best endeavours to ensure that the Customer's Personal Information is reliable, it remains the responsibility of the Customer to advise the Operator of any changes thereto. The Customer therefore agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the information, failing which the Operator will not be liable for any inaccuracies.
- 13.3 Sharing of Information
- 13.3.1 Personal information will be made available to employees who require these details for their functions within the company of the Operator. All employees who have access to Personal Information are aware of the sensitive nature thereof.
- 13.3.2 The Customer consents to the Operator disclosing its personal information:
- 13.3.2.1 Where such disclosure is required by law, in compliance with a duty to the public to disclose and/or necessary to further the interests of the Operator;
- 13.3.2.2 To third party service providers;
- 13.3.2.3 To any person who needs the information to carry out or protect any of the Operator' rights or obligations.
- 13.3.3 The Operator has the right to cede any or all of its rights or to delegate any or all of its obligations it may have arising out this agreement for *inter alia* the following purposes:
- 13.3.3.1 To obtain finance,
- 13.3.3.2 The sale of its business or part thereof; or
- 13.3.3.3 To give effect to the rights of the Operator.
- 13.3.4 The Operator may disclose the Customer's personal information, outside the borders of South Africa, for any reason which the Operator deems appropriate, provided that the Operator will notify the Customer of such disclosure.
- 13.4 Storage, Retention and Destruction of Information
- 13.4.1 All Personal Information which you provide to the Operator will be held and/or stored securely. Personal Information may be stored electronically and as such may be accessible to the company's within the Senwes Group. Where appropriate, some information may be retained in hard copy. In either event, storage will be secure.
- 13.4.2 Where data is stored electronically outside the borders of South Africa, such is done only in countries that have similar privacy laws or where such facilities

are bound contractually to no lesser regulations than those imposed by the Act.

- 13.4.3 The Operator will ensure that all the systems and operations which it uses will at all times be of a minimum standard required by applicable laws and be of a standard no less than the standards which are in compliance with the Best Industry Practice for the protection, control and use of Personal Information.
- 13.4.4 The Operator will take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Personal Information as well as the unlawful access to or processing of Personal Information.
- 13.4.5 Once the Customer's Personal Information is no longer required, such Personal Information will be safely and securely archived, as per the requirements of applicable legislation. Thereafter, the Personal Information may be permanently destroyed.

13.5 Right to Object

- 13.5.1 In terms of section 11(3) of the Act, the Customer has the right to object in the prescribed manner to the Operator processing its Personal Information. On receipt of the objection the Operator will place a hold on any further processing until the cause of the objection has been resolved.
- 13.5.2 The Customer acknowledges that should it refuse to provide the required consent and/or information, the Operator will be unable to assist the Customer.
- 13.5.3 In the event of the Customer refusing to give the required consent, the Operator will still have the right in terms of the Act to process personal information without the Customer's consent under any of the following circumstances:
 - 13.5.3.1 Where such processing and use is necessary in order to give effect to a contractual relationship that exists between the Customer and the Operator;
 - 13.5.3.2 Where such processing is required in terms of the law; or
 - 13.5.3.3 Where such processing is necessary to protect the legitimate interests of the Operator or a third party.

13.6 Access to Information

In terms of section 23 of the Act as well as section 50 of the Promotion of Access to Information Act, 2 of 2000, the Customer may request in writing that the Operator provide it with the details of its Personal Information which the Operator holds and what the Operator has done with such personal information. This request must be sent to the Operator's Information Officer together with the Customer's proof of identity. The contact details of the Information Officer are as follows:

Information Officer: Elmarie Joynt

Physical address: 1 Charel de Klerk street, Klerksdorp, 2570

Postal address: PO Box 31, Klerksdorp, 2570

Telephone: 018 464 7104

Email: Elmarie.joynt@senwes.co.za

13.7 Complaints

You have the right to address any complaints to the Information Regulator or to the Information Officer at the contact details provided above.

13.8 Declaration and Informed Consent

- 13.8.1 The Customer agrees that by making its personal information available, the Operator is not responsible for any loss, whether direct or indirect, that may arise from the use of such information.
- 13.8.2 The Operator will not be liable for inaccurate information on its systems as a result of the Customer's failure to update its personal information.
- 13.8.3 The Customer confirms that it has had an opportunity to read this agreement, and fully comprehends the terms, conditions and consequences of its consent.
- 13.8.4 The Customer confirms that it has had sufficient opportunity to ask questions about this agreement and has had these questions, if any, answered to its satisfaction.
- 13.8.5 The Customer's consent to the terms of this agreement is provided of its own free will and without any undue influence from any person whatsoever.