

STANDARD TERMS AND CONDITIONS
Starke Ayres (Pty) Ltd (Reg: 1984/011013/07)

1. DEFINITIONS

- 1.1. "Agreement" means the Credit Application Form, read with these standard terms and conditions.
- 1.2. "Credit Application Form" means the credit application forms prefixed hereto.
- 1.3. "CUSTOMER" means person or entity that has made the credit application, as detailed on the first page of the Credit Application Form.
- 1.4. "Force Majeure" means war, earthquake, fire, flood, tempest, drought, pandemics, act of God, act of Government or military authority, impassable public road conditions, strikes and other industrial disputes, sabotage, civil commotion, riots and breakdown of machinery lasting longer than 4 (four) days, or any other similar cause wholly beyond the control of the Party affected.
- 1.5. "National Designated Authority" means the South African National Seed Organization NPC (Registration Number 1989/003392/08).
- 1.6. "Parties" means the SUPPLIER and the CUSTOMER.
- 1.7. "Plant Material" shall mean all plants and crops, produced or cultivated out of the Products, and destined for human (and animal) consumption.
- 1.8. "Products" means the seed products and non-seed products (including fertiliser, plant food and chemicals) to be supplied by the SUPPLIER to the CUSTOMER (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the quotations and invoices.
- 1.9. "Services" means services rendered by the SUPPLIER to the CUSTOMER and includes any advice or recommendations (and where the context so permits shall include any supply of Products as defined above).
- 1.10. "SUPPLIER" means Starke Ayres (Pty) Ltd.
- 1.11. "Trade Suppliers" means the trade references referred to in the Credit Application Form.

2. ORDER PROCEDURE

- 2.1. Should the CUSTOMER wish to order any Products or Services from the SUPPLIER, it shall place an order for the Products and/or Services, which order shall:
 - 2.2. be in writing; and
 - 2.3. be placed by a representative of the CUSTOMER duly authorised to do so.
- 2.4. Subject to the availability of the Product, the SUPPLIER will confirm acceptance of the order in writing.
- 2.5. If there is any dispute about the exact price payable by the CUSTOMER to the SUPPLIER, the purchase price for the Products shall be

the SUPPLIER'S standard list price for the Products or Products in effect on date the order is placed by the CUSTOMER. Should the prices not yet be fixed on the date of placing of the order, the SUPPLIER shall furnish such prices to the CUSTOMER as soon as they are fixed. The CUSTOMER shall be afforded five days thereafter to accept or reject the fixed prices.

- 2.6. Notwithstanding anything to the contrary, the prices of any Products are subject to any increase as a result of an increase in the cost of materials, including currency fluctuations to the SUPPLIER before acceptance of the order.

3. DELIVERY, OWNERSHIP AND RISK

- 3.1. The risk in and to the Products shall pass to the CUSTOMER on delivery. In this regard the CUSTOMER shall be responsible for procuring adequate insurance, to the satisfaction of the SUPPLIER, in respect of the Products until such time as the ownership passes to the CUSTOMER, as contemplated below.
- 3.2. Ownership of the Products shall remain vested in the SUPPLIER until receipt of the full purchase price in respect thereof.
- 3.3. Where the SUPPLIER holds paid stock for the CUSTOMER, risk in and to, and ownership of, the paid stock shall pass to the CUSTOMER on invoicing thereof.
- 3.4. **Unless otherwise agreed, the SUPPLIER shall attend to delivery of the Products to the CUSTOMER, in which case delivery shall take place at the address of the CUSTOMER contained on the Credit Application Form, unless otherwise agreed between the Parties, and the CUSTOMER may not refuse or delay accepting delivery of the Products in the quantities and on the dates which the SUPPLIER in its sole discretion determines. The CUSTOMER shall provide sufficient labour and equipment at the delivery point on the delivery date to offload the Products, failing which all transport and storage costs in respect of the Products shall be paid by the CUSTOMER prior to any further delivery.**
- 3.5. Where the SUPPLIER provides the CUSTOMER with an expected lead-time and delivery date, **the CUSTOMER acknowledges that delivery dates may vary, and are provided as an estimate only.** Any delay in the delivery of any Products shall not relieve the CUSTOMER of its obligations to accept such delivery or any other delivery.
- 3.6. Any transporter which collects Products from the SUPPLIER, under instruction of the CUSTOMER, shall be deemed to be the

CUSTOMER'S agent and the loading of Products onto such transporter's vehicle shall be deemed to be delivery to the CUSTOMER.

3.7. **Should the CUSTOMER not collect the Products when the SUPPLIER makes them available for collection or refuses to accept delivery, the SUPPLIER shall be entitled to charge the CUSTOMER a storage fee and such storage shall be at the CUSTOMER'S own risk.**

3.8. The CUSTOMER hereby acknowledges that it is aware of a potential loss in the nominal mass of the Product as a result of moisture loss for whatever reason and the CUSTOMER undertakes not to hold the SUPPLIER liable in respect of any loss in the nominal mass of the Product.

3.9. **Subject to clause 3.10, a delivery note signed by an employee or representative of the CUSTOMER, or an employee or representative of the transporter referred to in clause 3.4 shall constitute prima facie proof that the Products have been delivered to and received by the CUSTOMER in good condition.**

3.10. Should the Products reflected in the delivery note differ from the Products agreed by the SUPPLIER to be delivered in clause 2.4, the CUSTOMER shall be entitled, **within 5 (five) days of delivery**, to dispute the quality or quantity of the Products delivered, in writing, **failing which the delivery notice shall constitute an agreed variation to the order.**

3.11. Should the SUPPLIER receive written notice of a dispute as to the quality or quantity of the Products delivered, as contemplated above, the Parties shall endeavour to resolve the dispute by negotiation. Should the dispute not have been resolved within 10 days of the delivery of the dispute notice, either Party may refer the dispute to the National Designated Authority (the **Expert**) for determination (the **Determination**). In making the Determination, the Expert shall act as an expert and not as an arbitrator and its Determination shall be binding on the Parties, absent manifest error. Any fees or charges raised by the Expert shall be borne by the Party against whom the Determination is made.

3.12. Where the dispute concerns the quantity of the Product delivered, the CUSTOMER shall remain obliged to make payment of the undisputed amount as required in terms of clause 4.2, below.

4. **PAYMENT TERMS**

4.1. The SUPPLIER shall render invoices to the CUSTOMER:

4.1.1. in respect of the Products, following the delivery, or the making available for delivery, of the Products; or

4.1.2. in respect of the Services, following the rendering of the Services, or if the Services are continuous, on a monthly basis; or

4.1.3. in respect of all other charges and/or fees, as and when they are incurred.

4.2. The SUPPLIER's invoices are payable within **30 (thirty) days from date of invoice.**

4.3. **Interest will automatically be levied on overdue payments at 1,25% (one comma two five percent) per month.**

4.4. The CUSTOMER shall not be entitled to set-off any amounts which may be owing to the CUSTOMER by the SUPPLIER, arising from any cause, against any amounts owing by the CUSTOMER to the SUPPLIER.

4.5. The SUPPLIER shall be entitled to appropriate any payment received from the CUSTOMER to any indebtedness of the CUSTOMER to the SUPPLIER, in respect of any sale of Product or default interest.

5. **PRODUCTS AND LIABILITY**

5.1. **The CUSTOMER confirms that it is familiar with all relevant characteristics of the Products and the technical production processes used by the SUPPLIER. The CUSTOMER accepts that when necessary, the SUPPLIER may outsource work to third parties. As the Product is a natural, biological product, it is therefore subject to subsequent conditions, interferences and impacts beyond the control of the SUPPLIER. The Product is therefore offered expressly subject to these unknown conditions and the CUSTOMER expressly agrees to accept the Product in this condition.**

5.2. **The SUPPLIER does not warrant that Products are suitable for a particular purpose. It is the CUSTOMER'S responsibility to satisfy itself of the suitability of the Products prior to delivery. The SUPPLIER acknowledges that the relevant characteristics of the Products are available in the SUPPLIER's catalogue and/or product leaflets, available from the SUPPLIER and/or website (www.starkeyayres.com).**

5.3. **The SUPPLIER shall not be liable to the CUSTOMER for any damages or loss including direct, special or consequential damages whether based upon lost goodwill, lost sales or profits, work stoppage, impairment of other products or otherwise, due to:**

5.3.1. **any delay in delivery of the Products;**

5.3.2. **any defects in the Products;**

5.3.3. **the use by the CUSTOMER or any third party of any Products;**

5.3.4. any act or omission of the SUPPLIER relating to the manufacture or delivery; and/or

5.3.5. any advice connected to the use of such Products,

other than where such damages or expenses are directly caused by the SUPPLIER'S gross negligence or wilful default.

5.4. The Parties record that given the purpose of Products, consequential damages in the event of any breach by the SUPPLIER may be astronomical. Should the SUPPLIER accept liability for such consequential damages, it shall impact substantially on the cost of the Products. The CUSTOMER therefore prefers, and the Parties hereby agree, to limit the liability of the SUPPLIER in respect of all breaches, to the substitution of those Products purchased, specifically to which the liability has arisen, free of charge, or refund of the purchase price paid by the CUSTOMER (at the election of the CUSTOMER).

5.5. For the avoidance of doubt, should the SUPPLIER become liable to the CUSTOMER for any losses suffered by the CUSTOMER or expenses incurred by the CUSTOMER in the circumstances contemplated in clause 5.3 above, the total aggregate liability of the SUPPLIER for any such claims shall be limited to the aggregate sum of all amounts paid by the CUSTOMER to the SUPPLIER for the supply of those Products in respect of which the losses suffered by the CUSTOMER or expenses incurred by the CUSTOMER relate.

5.6. Should the SUPPLIER agree to accept the return of any Products, which will be solely at the SUPPLIER'S discretion, such Products will only be accepted if they are complete, clean, saleable (to be determined by a seed germination test conducted by the SUPPLIER's seed testing laboratory), and in the original undamaged packaging. A handling fee of not more than 10% of the invoice value of the returned Products will be levied by the SUPPLIER. All expenses relating to such return will be for the CUSTOMER'S account. The risk in the Products shall remain with the CUSTOMER until delivery thereof to the SUPPLIER'S premises.

5.7. Any advice or assistance rendered to the CUSTOMER by the SUPPLIER before or after delivery is used at the CUSTOMER'S own risk.

5.8. Conditions regarding chemical treating of seed:

5.8.1. The CUSTOMER hereby acknowledges that it is aware that the Product has been treated with potentially harmful chemicals and has adequately been informed hereof by the

SUPPLIER. The CUSTOMER undertakes to take all precautionary measures and provide his employees, handling the Product, with protective gear and equipment to prevent any harm to either the CUSTOMER or his employees as a result of handling the seed treated with the said chemicals. The CUSTOMER hereby indemnifies the SUPPLIER against any liability or claims resulting from the handling of the Product. The potentially harmful chemicals are clearly recorded on the label of the Product concerned.

5.8.2. The SUPPLIER warrants that the chemicals have been applied to the Product according to the specification supplied to the SUPPLIER by the chemical manufacturer and within tolerances set by the manufacturer.

5.8.3. The CUSTOMER hereby acknowledges that it is aware that treated Product should be planted as soon as possible after treatment. The CUSTOMER further acknowledges that it is aware that storage and handling conditions as well as the carrying over of treated Product to subsequent seasons can have a detrimental effect on the Product's germination and/or vigour.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. No Product, including parental lines, supplied by the SUPPLIER, and no Plant Material or seed produced therefrom may be used for research, breeding, molecular or genetic analysis, crop, seed (re)production, propagation and/or multiplication purposes. The CUSTOMER waives all other rights and entitlements in respect of the seed except for the right to produce harvested product, and the CUSTOMER shall never use, sell or otherwise make available the resulting seed directly or indirectly as propagating material.

6.2. Should the CUSTOMER be in breach of clause 6.1 above, the CUSTOMER shall be liable to pay the SUPPLIER within 30 (thirty) days an amount of 5 (five) times the price at which the SUPPLIER could have sold the propagating material, or the SUPPLIER'S actual damages (at the SUPPLIER'S election).

6.3. The SUPPLIER is the proprietor and/or rightful title holder and/or authorised licensee of the intellectual property in and associated with the Product ("the intellectual property rights") and no rights or licenses are hereby granted to the CUSTOMER. The CUSTOMER may not possess or use any plant produced therefrom

as parental seed and shall destroy all forms thereof under his control or in his possession.

6.4. The CUSTOMER shall immediately disclose and, without limitation and costs, grant access and assign to the SUPPLIER, any new variations emanating from the planting of the Product and the SUPPLIER shall remain the proprietors and titleholders of all such new varieties and Plant Material there from.

6.5. The CUSTOMER shall not infringe or dispute the intellectual property rights (where registered and especially plant breeder's rights, trademark and patents) in respect of the Product, and shall also not assist anybody else in doing so, but shall actively support and protect the intellectual property rights by advising the SUPPLIER immediately if the CUSTOMER becomes aware of any other party dealing with any of the SUPPLIER's products in a manner which is in contravention with the terms of this Agreement or similar agreement and/or infringes any of the intellectual property rights.

6.6. The CUSTOMER hereby confirms the SUPPLIER's rights in terms of section 24A of the Plant Breeder's Rights Act, 15 of 1976; section 25 of the Plant Improvement Act 53 of 1976. The CUSTOMER grants the SUPPLIER the same rights granted in the abovementioned sections in case of infringement on the face of it of the intellectual property rights by the CUSTOMER, confirmed under oath by any deponent having sufficient knowledge of any infringement in a court of competent jurisdiction stipulated for herein.

7. BREACH

7.1. Should the CUSTOMER breach of any terms of this Agreement, the SUPPLIER shall be entitled to give the CUSTOMER not less than 5 (five) days written notice calling upon the CUSTOMER to remedy such breach, and if the CUSTOMER fails to do so, the SUPPLIER shall, in addition to any other remedy it may have in terms of this Agreement or at law, be entitled:

7.1.1. to claim specific performance and damages; or

7.1.2. to do or cause to be done whatever may be necessary to remedy such breach and to claim damages from the CUSTOMER including the cost of remedying such breach; or

7.1.3. to cancel this Agreement and claim damages from the CUSTOMER.

7.2. Should the CUSTOMER previously have defaulted with any payment on any due date, the SUPPLIER shall be entitled to withhold delivery until the CUSTOMER has satisfied the SUPPLIER that the CUSTOMER will meet its obligation for the purchase price. The SUPPLIER is entitled to cancel this Agreement summarily if any judgment is granted against the CUSTOMER or if the CUSTOMER commits any statutory act of insolvency.

8. CREDIT POLICY

The CUSTOMER authorises and consents to the SUPPLIER, either in its own stead or through the services of any registered credit bureau:

8.1. to carry out checks or traces that the SUPPLIER deems fit, to report the CUSTOMER'S payment history and/or to list the CUSTOMER in the event of the CUSTOMER defaulting.

8.2. to the eliciting of trade and credit information by the SUPPLIER from the Trade Suppliers, as well as the CUSTOMER's bankers.

9. ARBITRATION

9.1. If any dispute arises between the Parties at any time with regards to:

9.1.1. any matter arising out of or relating to this Agreement;

9.1.2. the interpretation of this Agreement;

9.1.3. the termination of this Agreement or any matter arising out of the termination of this Agreement; or

9.1.4. a claim for rectification of this Agreement,

such dispute shall, at the election of the SUPPLIER, be declared by written notice delivered to the CUSTOMER and submitted to and decided upon by arbitration.

9.2. Should the SUPPLIER refer the dispute to arbitration, the arbitrator will be such person as may be agreed upon between the Parties, or failing agreement such person as may be appointed at the request of either Party by the Association of Arbitrators of Southern Africa and the arbitration shall be conducted in accordance with the Rules of the Association of Arbitrators of Southern Africa.

9.3. The arbitration proceedings shall be held in Durban and shall be conducted in the English language.

9.4. The decision of the arbitrator shall be final and binding on the Parties and there shall be no right of appeal.

9.5. This clause will remain in force notwithstanding the termination of the Agreement of which it forms a part.

10. CESSION AND ASSIGNMENT

Neither Party may cede, assign or delegate any of its rights and/or obligations in terms of this Agreement without the prior written consent of the other Party.

11. FORCE MAJEURE

11.1. If the performance of any obligation under this Agreement is prevented, restricted or interfered with by *Force Majeure*, the Party whose performance is affected thereby shall immediately give written notice thereof to the other Party and shall be excused from such performance to the extent of such prevention, restriction or interference, but shall use its reasonable endeavours to avoid or remove the circumstances which constitute such *Force*

Majeure and shall continue to perform as soon as the same have been avoided or removed.

11.2. A labour dispute, strike or lockout will be deemed to be an event of *Force Majeure* even if it could have been avoided or resolved by the affected party acceding to the demands of labour.

11.3. Either Party may terminate this Agreement if a *Force Majeure* event continues for more than 90 (ninety) calendar days.

12. **DOMICILIUM**

12.1. **For the purpose of service of process or the giving of notice in terms of this Agreement, the CUSTOMER chooses as its domicilium citandi et executandi the address and email address set out in the Credit Application Form.**

12.2. The CUSTOMER shall have the right to change any of the information set out regarding its domiciliary addresses by giving not less than 1 (one) week's prior written notice to the SUPPLIER of its change of address.

13. **COOLING-OFF PERIOD**

Should any transaction be the result of direct marketing by the SUPPLIER's agent and should such transaction be subject to the Consumer Protection Act, the CUSTOMER shall have the right to terminate the transaction in writing, within 5 (five) business days after conclusion of the transaction or 5 (five) business days after delivery of the Products. The CUSTOMER shall at its own cost and risk return any Products already delivered. The SUPPLIER shall refund any payment made by the CUSTOMER within 30 (thirty) business days after such return or, when no Product had been delivered, 30 (thirty)

business days after receiving notice of the rescission.

14. **GENERAL**

14.1. This Agreement is governed by and shall be construed in accordance with the laws of the Republic of South Africa and any competent South African Court shall have jurisdiction in respect of any dispute arising out of or relating to this Agreement.

14.2. This Agreement contains the entire understanding of the Parties as to its subject matter. No Party in this Agreement shall be bound by any condition, warranty, representation or undertaking of any kind, whether express or implied, except as set forth in this Agreement.

14.3. No purported amendment or modification or agreed cancellation of this Agreement shall be valid unless in writing and signed by the Parties.

14.4. No waiver of any of the terms and conditions of this Agreement or of any right, power or remedy conferred by this Agreement will be binding and effectual for any purpose unless in writing and signed by the Party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given.

14.5. The failure or delay on the part of either Party in exercising any right, power or privilege hereunder, or any indulgence extended by either Party, will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14.6. This Agreement may be signed by the Parties in any number of counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same Agreement.

Signed on behalf of the Customer at _____
by (Print Name) _____,

Designation _____ **who declares that he/she has read all the terms and conditions of credit set out herein, which are understood and accepted on behalf of the Customer and that he/she is duly authorised.**

For and on behalf of the Customer

Date: _____

