



TRADING AGREEMENT

concluded between

STARKE AYRES (PTY) LTD
(Registration number: 1984/011013/07)
("STARKE AYRES")

And

("the purchaser")
(as more fully described in Annexure "B" hereto)
for the sale of seed and/or goods

WHEREAS the purchaser shall from time to time purchase seed and/or goods from STARKE AYRES;

AND WHEREAS the parties have agreed on the terms and conditions that shall apply to all such sales and/or orders;

NOW THEREFORE the parties agree as follows:

APPLICABLE TO ALL TRANSACTIONS

1. The terms and conditions of this Trading Agreement shall be applicable to all sales by STARKE AYRES to the purchaser; all amendments of such orders; all deliveries and all payments.
2. The terms and conditions shall therefore be incorporated by reference into the documents giving effect to the activities listed in clause 1.

THE PARTIES

3. The legal personality and details of the purchaser are recorded in Annexure "B" hereto. Should any of these particulars change, the purchaser is obliged to inform STARKE AYRES in writing of the changes.
4. The seller and/or service provider is STARKE AYRES, with further particulars as set out in clause 53.
5. The purchaser warrants that the person signing this agreement and any document relating thereto is doing so on its behalf and is duly authorised to do so.

PAYMENT OF PURCHASE PRICE

6. The purchase price shall be paid by the purchaser to STARKE AYRES without any deduction whatsoever, free of exchange on or before the payment date stipulated on the statement to be issued to the purchaser. If no payment date is specified on the statement, payment shall be due within 30 (thirty) days from the date the invoice first appeared on the statement.

7. The parties record that discounts may be granted to the purchaser as a *quid pro quo* for timeous payment. Should the purchaser therefore fail to make timeous payment, all such discounts previously granted shall lapse and the full amount shall therefore be immediately due and payable by the purchaser. STARKE AYRES shall accordingly invoice the purchaser for the discounts previously granted on a transaction.
8. The purchaser shall be liable for default interest at the maximum rate allowed in terms of the National Credit Act 34 of 2005 ("NCA") for incidental credit on any outstanding amount, calculated from the due date for payment until payment in full, calculated daily and compounded monthly at the end of each month.
9. If there is any dispute about the exact price payable by the purchaser to STARKE AYRES, the purchase price for the seed and/or goods shall be STARKE AYRES'S standard list price for the seed and/or goods or similar seed and/or goods in effect on date of signature of the order, which is available for inspection by the purchaser. Should the prices not yet be fixed on the date of signing the order, STARKE AYRES shall furnish such prices to the purchaser as soon as they are fixed. The purchaser shall be afforded seven days thereafter to accept or reject the fixed prices.
10. Should the purchaser previously have defaulted with any payment on any due date, STARKE AYRES shall be entitled to withhold delivery until the purchaser has satisfied STARKE AYRES that the purchaser will meet its obligation for the purchase price.
11. STARKE AYRES shall be entitled to appropriate any payment received from the purchaser to any indebtedness of the purchaser to STARKE AYRES, in respect of any sale of seed and/or goods or default interest.

DELIVERY

12. The seed and/or goods shall be delivered by STARKE AYRES to the purchaser, unless otherwise agreed.
13. The purchaser shall provide sufficient labour and equipment at the delivery point on the delivery date to offload the seed and/or goods, failing which all transport and storage costs in respect of the seed shall be paid by the purchaser prior to any further delivery.
14. The purchaser agrees to ensure that the purchaser or an authorised individual shall be present to accept delivery and sign on the delivery notice and warrants the authority of such individual to accept and sign.
15. Should the seed and/or goods reflected in the delivery notice differ from the seed and/or goods as agreed, the purchaser shall be entitled to within 5 (five) days in writing, reject the alternative seed and/or goods, failing which the delivery notice shall constitute an agreed variation to the agreement.
16. The signing of a delivery notice by the purchaser shall constitute acceptance of the contents of the delivery notice, subject to the further terms of this agreement. However, regardless whether the purchaser signs the delivery notice, it shall record and furnish any dispute as to the contents thereof and/or of the delivery in writing to STARKE AYRES within 5 (five) days of delivery, failing which it shall constitute *prima facie* acceptance of the contents of the delivery notice and/or delivery. STARKE AYRES records that the limitation of a 5 (five) days' period is necessary to enable STARKE AYRES to timeously investigate, verify and determine any such dispute.
17. For the same reasons, STARKE AYRES shall not be liable for any damage to seed and/or goods or packaging caused during delivery, unless STARKE AYRES is likewise informed in writing within 5 (five) days after delivery.

INTELLECTUAL PROPERTY RIGHTS

18. No seed, including parental lines, supplied by STARKE AYRES and no plant or seed produced therefrom may be used for breeding or research purposes. The purchaser waives all other rights and entitlements in respect of the seed except for the right to produce harvested product, and the purchaser shall never use, sell or otherwise make available the resulting seed directly or indirectly as propagating material.
19. Should the purchaser be in breach of clause 18 above, the purchaser shall be liable to pay STARKE AYRES within 30 (thirty) days an amount of 5 (five) times the price at which STARKE AYRES could have sold the propagating material, or STARKE AYRES'S actual damages (at STARKE AYRES'S election).

20. STARKE AYRES is the proprietor and/or rightful title holder and/or authorised licensee of the intellectual property in and associated with the seed (“the intellectual property rights”) and no rights or licenses are hereby granted to the purchaser. The purchaser may not possess or use any plant produced there from as parental seed, and shall destroy all forms thereof under his control or in his possession.
21. The purchaser shall immediately disclose and, without limitation and costs, grant access and assign to STARKE AYRES, any new variations emanating from the planting of the seed and STARKE AYRES shall remain the proprietors and titleholders of all such new varieties and plant material there from.
22. The purchaser shall not infringe or dispute the intellectual property rights (where registered and especially plant breeder’s rights, trademark and patents) in respect of the seed, and shall also not assist anybody else in doing so, but shall actively support and protect the intellectual property rights by advising STARKE AYRES immediately if the purchaser becomes aware of any other party dealing with any of STARKE AYRES’S seed 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.
23. The purchaser hereby confirms STARKE AYRES’S rights in terms of section 24(A) of the Plant Breeder’s Rights Act, 15 of 1976; section 25 of the Plant Improvement Act 53 of 1976. The purchaser grants STARKE AYRES the same rights granted in the abovementioned sections in case of infringement on the face of it of the intellectual property rights by the purchaser, confirmed under oath by any deponent having sufficient knowledge of any infringement in a court of competent jurisdiction stipulated for herein.

LIMITATION OF STARKE AYRES’S LIABILITY

25. STARKE AYRES shall ensure that the delivered seed and/or goods corresponds with the label description prescribed by law.
26. The purchaser undertakes to make himself familiar with all relevant characteristics of the seed and/or goods, as described in STARKE AYRES’S catalogue and/or product leaflets, available from STARKE AYRES and/or website (www.starkeayres.co.za), within 5 (five) days of the effective date, and which description shall be deemed sufficient disclosure of all patent and latent characteristics of the seed and/or goods.
27. The seed shall comply with all statutory quality requirements specifically applicable to seed. However, as seed is a natural, biological product, it is therefore subject to subsequent conditions, interferences and impacts beyond the control of STARKE AYRES. The seed is therefore offered expressly subject to these unknown conditions and the purchaser expressly agrees to accept the seed in this condition.
28. In the foregoing STARKE AYRES does not otherwise warrant the subsequent suitability; good quality; nor the absence of any defects to the seed.
29. STARKE AYRES shall therefore not be liable for any non-compliance in respect of the aspects set out in paragraph 28.
30. If any shortages of seed and/or goods occur for any reason whatsoever:
 - 30.1 STARKE AYRES shall take reasonable steps to inform the purchaser thereof as soon as it is practicable to do so;
 - 30.2 STARKE AYRES shall offer other seed and/or goods to the purchaser at the list price of such other seed and/or goods;
 - 30.3 The purchaser shall not under any circumstances have any claim against STARKE AYRES of whatever nature resulting from such shortages of seed and/or goods, should such shortages be beyond the control of STARKE AYRES.

31. The parties record that given the purpose of seed and/or goods so purchased, consequential damages in the event of any breach by STARKE AYRES may be astronomical. Should STARKE AYRES accept liability for such consequential damages, it shall impact substantially on the cost of the seed and/or goods to the purchaser. The purchaser therefore prefers to limit the liability of STARKE AYRES in respect of all breaches, to the substitution of the seed and/or goods free of charge, or refund of the purchase price paid by the purchaser (at the election of the purchaser).
32. In addition, the future supply and availability of seed and/or goods ordered by the purchaser remain dynamic, unpredictable and beyond the control of STARKE AYRES. STARKE AYRES shall therefore not be liable for any early, late, short or insufficient deliveries and/or inability to deliver.
33. The purchaser shall familiarise himself and comply with all statutory prescriptions in the handling of products supplied by STARKE AYRES and the seed and plant materials produced from it.
34. The purchaser hereby acknowledges that he is aware of a potential loss in the nominal mass of the seed as a result of moisture loss for whatever reason and the purchaser undertakes not to hold STARKE AYRES liable in respect of any loss in the nominal mass of seed.

CHEMICAL TREATMENT

35. Conditions regarding chemical treating of seed:
 - 35.1 The purchaser hereby acknowledges that he is aware that the seed has been treated with potentially harmful chemicals and has adequately been informed hereof by STARKE AYRES. The purchaser undertakes to take all precautionary measures and provide his employees, handling the seed, with protective gear and equipment to prevent any harm to either the purchaser or his employees as a result of handling the seed treated with the said chemicals. The purchaser hereby indemnifies STARKE AYRES against any liability or claims resulting from the handling of the seed. The potentially harmful chemicals are clearly stated on the label of the seed concerned.
 - 35.2 STARKE AYRES warrants that the chemicals have been applied to the seed according to the specification supplied to STARKE AYRES by the chemical manufacturer and within tolerances set by the manufacturer.
 - 35.3 The purchaser hereby acknowledges that he is aware that treated seed should be planted as soon as possible after treatment. The purchaser further acknowledges that he is aware that storage and handling conditions as well as the carrying over of treated seed to subsequent seasons can have a detrimental effect on the seed's germination and/or vigour.
 - 35.4 As seed is specifically chemically treated, no returns will be accepted under any circumstances, unless caused by the fault of STARKE AYRES.

OWNERSHIP

36. Ownership of the seed and/or goods shall only pass to the purchaser against payment of the full purchase price. The risk in and to the seed and/or goods shall however pass to the purchaser upon delivery. Should the purchaser default in making timeous payment, STARKE AYRES shall be entitled to return of the seed and/or goods, following due process.

BREACH

37. STARKE AYRES is entitled to cancel this agreement summarily if any judgment is granted against the purchaser or if the purchaser commits any statutory act of insolvency.
38. Without derogating from any specific term herein, should either party ("the defaulting party") commit any other breach of any of the provisions hereof, then the other party ("the aggrieved party") shall be entitled to require of the defaulting party to remedy the breach within a period of 10 (ten) business days from receipt of the written notice to do so.

39. If the purchaser, after 10 (ten) business days from receipt of a written demand to rectify any breach, fails to remedy the breach, then STARKE AYRES shall be entitled to claim immediate payment and/or performance by the purchaser of all the purchaser's obligations, whether or not the due date for payment and/or performance shall have arisen, in either event, without prejudice to STARKE AYRES'S rights to terminate the agreement and/or claim damages. The foregoing is without prejudice to such other rights as STARKE AYRES may have at law and clauses 38 and 39 are subject to sections 129 and 130 of the National Credit Act 34 of 2005 ("NCA").
40. The purchaser consents to the jurisdiction of the Magistrate's Court or Regional Court in respect of any legal proceedings resulting from this agreement. However, STARKE AYRES shall be entitled to refer any dispute emanating from this agreement to a South African High Court with jurisdiction.

DISCLOSURE OF INFORMATION

41. The purchaser hereby gives express permission for the use of the personal information which has been provided by the purchaser to STARKE AYRES for the purpose of consummating the transactions contemplated herein and to disclose such information to third parties if required or permitted by law, subject to the NCA.
42. The purchaser hereby consents to and authorises STARKE AYRES, if applicable, to make enquiries about the purchaser's credit record with any credit bureau and any other party to confirm the information provided by the purchaser and to record the purchaser's details with any credit bureau should the purchaser default on repayment obligations, subject to the NCA.

TERMS DIVISIBLE

43. If any clause or terms of this agreement should be invalid, unenforceable, defective or illegal for any reason whatsoever, then the remaining terms and provisions of this agreement shall be deemed to be severable there from and shall continue to be of force and effect.

GENERAL

44. No relaxation or indulgence, including the acceptance of late payments by STARKE AYRES, shall be deemed to be a waiver by STARKE AYRES of any or their rights to enforce strict compliance by the purchaser of any of its obligations in terms hereof, nor is such relaxation or indulgence to be deemed a novation of any of the terms and conditions of this agreement.
45. This agreement records the entire agreement between the parties. No variation, amendment, addition or consensual cancellation of this agreement or any provision or term hereof or any other document issued or executed pursuant to or in terms of this agreement, shall be binding or have any force or effect, unless reduced to writing and signed by or on behalf of the parties.
46. The purchaser may not cede or assign any of his rights or obligations hereunder without written consent of STARKE AYRES.

COOLING-OFF PERIOD

47. Should any transaction be the result of direct marketing by STARKE AYRES'S agent and should such transaction be subject to the Consumer Protection Act 68 of 2008, the purchaser 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 seed and/or goods. The purchaser shall at its own cost and risk return any seed and/or goods already delivered. STARKE AYRES shall refund any payment made by the purchaser within 30 (thirty) business days after such return or, when no seed and/or goods had been delivered, 30 (thirty) business days after receiving notice of the rescission.

LEGAL COSTS

48. Should any party incur legal costs to enforce the agreement, the unsuccessful party shall pay the legal costs of the successful party on an attorney-and-client scale.

TRADING AGREEMENT APPLICABLE TO ALL TRANSACTIONS

49. The purchaser hereby confirms that he is aware of the above terms and conditions, that he is authorised to sign this agreement and that he has had sufficient opportunity to study and consider the terms and conditions prior to signing the agreement, and by signing the agreement he confirms and agrees that he has read, understood and accepted the terms and conditions of this Trading Agreement, and which terms and conditions will apply to all orders and purchases on the purchaser's Trading Account or otherwise.
50. The parties agree that for an indefinite period any subsequent transactions concluded between them shall be governed by these terms and conditions, which shall be incorporated into each such transaction by reference.
51. In the foregoing the parties agree that it would be sufficient that only an extract of these terms and conditions is reflected on subsequent transaction documents.

BINDING AGREEMENT UPON SIGNATURE BY PURCHASER

52. STARKE AYRES offers to contract with the purchaser on the terms and conditions contained in this Trading Agreement. Upon signing this document, the purchaser accepts such terms and conditions and a valid and binding agreement shall then come into existence. STARKE AYRES shall nevertheless countersign this agreement but any failure to do so, shall not affect the validity of this Trading Agreement.

NOTICES AND DOMICILIUM

53. The parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause for all purposes arising out of or in connection with this Trading Agreement, at which addresses all the processes and notices arising out of or in connection with this Trading Agreement, its breach or termination may validly be served upon or delivered to the parties.

53.1 For the purposes of this agreement the parties' respective addresses shall be -

53.1.1 As regards Starke Ayres (Proprietary) Limited at
Farm Hartebeesfontein
9th Road
Bredell, 1620
South Africa;
P.O. Box 13339, Northmead, 1511
Facsimile Number: (011) 748 3591
e-mail: headoffice@starkeayres.co.za
and marked for the attention of "The Managing Director – Starke Ayres (Pty) Limited";

53.1.2 As regards the purchaser at the address recorded on Annexure "B" hereto.

SOUTH AFRICAN LAW

54. The South African law shall apply to this agreement and all subsequent transactions.
-

SIGNATURES

Signed at _____ this _____ day of _____ 20_____

(Signature of Purchaser or duly authorised representative)

Name: _____
PURCHASER (PLEASE PRINT)

Position Held: _____

The purchaser acknowledges that the Trading Agreement limits the liability of STARKE AYRES, imposes risk and liability on the purchaser and contains indemnities and acknowledgements of fact by the purchaser, which are so accepted.

WITNESS

Full Name: _____

Hereby confirm that the abovementioned Purchaser has signed in my presence.

WITNESS: _____
(Signature)

Address: _____

Signed at _____ this _____ day of _____ 20_____

(Signature of STARKE AYRES (PTY) LTD representative)

Name: _____
STARKE AYRES (PLEASE PRINT)

Position Held: _____

WITNESS: _____
(Signature)

Address: _____

ANNEXURE "B"

TO

THE STARKE AYRES TRADING AGREEMENT
PARTICULARS OF PURCHASER



A.

Purchaser's legal name: _____

Trading name: _____

Contact person: _____ E-mail: _____

Telephone number: _____ Cell number: _____

Person responsible to pay the Account: _____ Cell number: _____

E-mail: _____ Telephone number: _____

Physical address where all notices, including legal notices may be sent: _____

Postal address: _____

B. INDIVIDUAL (OR SOLE PROPRIETOR):

Full names and surname: _____ Identity number: _____

Marital status:

Single Community of property

Antenuptial contract with accrual Antenuptial contract without accrual

C. GOVERNMENT / STATE-OWNED COMPANY OR GOVERNMENT ORGANISATION:

Name of establishment: _____

Name of project: _____

D. OTHER:

Name of legal entity: _____

Registration number: _____

Partnership Close Corporation

Private Company Trust

Co-operative Number of Trustees

Public company Listed

Unlisted

E.

"In respect of any entity listed in paragraph D, a resolution signed by the partners of a partnership; or directors of a company; or members of a close corporation; or all the trustees of the trust, as applicable, must be attached hereto, in which resolution they warrant their authority to sign the resolution; they resolve to conclude the Trading Agreement; and they authorise their representative to sign the Trading Agreement and all related documents. In the case of a Trust, copies of the Trust Deed and most recent Letter of Authority may also be required to be attached hereto."