



TRADING AGREEMENT

concluded between

PANNAR SEED (PTY) LTD

(Registration number: 1986/002148/07)

("PANNAR")

And

("the purchaser")

I.D.no/Company reg no

for the sale and/or treatment of seed

WHEREAS the purchaser shall from time to time purchase seed and/or order treatment of seed from PANNAR;

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 and/or treatment of seed by PANNAR to and/or for the purchaser; as well as any orders for the sale and/or treatment of seed; 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 the application hereto. Should any of these particulars change, the purchaser is obligated to inform PANNAR in writing of these changes.
4. The seller and/or service provider is PANNAR, 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 PANNAR without any deduction whatsoever, free of exchange on or before the payment date stipulated on the statement or proforma invoice to be issued to the purchaser. If no payment date is specified on the statement or said document, payment shall be due within 30 (thirty) days from the date the invoice first appeared on the statement.
7. The parties record the 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. PANNAR 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. For International trade, the purchaser shall be liable for default interest at the maximum rate allowed in terms of the terms of the Rules and Usages for the trade in Seeds for Sowing Purposes as published by the International Seed Federation
9. If there is any dispute about the exact price payable by the purchaser to PANNAR, the purchase price for the seed shall be PANNAR's standard list price for the seed or similar seed 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, PANNAR shall furnish such prices to the purchaser as soon as they are fixed. The purchaser shall be afforded 7 (seven) days thereafter to accept or reject the fixed prices.
10. Should the purchaser previously have defaulted with any payment on any due date, PANNAR shall be entitled to withhold delivery until the purchaser has satisfied PANNAR that the purchaser will meet its obligation for the purchase price.
11. PANNAR shall be entitled to appropriate any payment received from the purchaser to any indebtedness of the purchaser to PANNAR, in respect of any sale of seed or default interest.

Delivery

12. The seed shall be delivered by PANNAR 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, 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 reflected in the delivery notice differ from the seed as agreed, the purchaser shall be entitled to within 5 (five) days in writing, reject the alternative seed, 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 PANNAR within 5 (five) days of delivery, failing which it shall constitute *prima facie* acceptance of the contents of the delivery notice and/or delivery. PANNAR records that the limitation of a 5 (five) day period is necessary to enable PANNAR to timeously investigate, verify and determine any such dispute.
17. For the same reasons, PANNAR shall not be liable for any damage to seed or packaging caused during delivery, unless PANNAR is likewise informed in writing within 5 (five) days after delivery.

Intellectual property rights

18. No seed, including parental lines, supplied by PANNAR 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 material (commercial grain or fodder), and the purchaser shall never use, sell or otherwise make available the seed or resulting grain directly or indirectly as propagating material.
19. Should the purchaser be in breach of clause 18 above, the purchaser shall be liable to pay PANNAR within 30 (thirty) days an amount of 5 (five) times the price at which PANNAR could have sold the propagating material, or PANNAR's actual damages (at PANNAR's election).
20. PANNAR 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 licences 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 cost, grant access and assign to PANNAR, any new variations emanating from the planting of the seed and PANNAR 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 right, 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 PANNAR immediately if the purchaser becomes aware of any other party dealing with any of PANNAR'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 PANNAR's rights in terms of section 24(A) of the Plant Breeder's Rights Act 15 of 1976; and section 15 of the Genetically Modified Organisms Act 15 of 1997 or the equivalent or similar act of any other country. The purchaser grants PANNAR 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.
24. If the seed is genetically modified the purchaser hereby agrees to sign the Trait Supplier's standard technology agreement and undertakes unreserved acceptance thereof. Such technology agreement is necessary to regulate the sale and use of such seed.

Limitation of PANNAR's liability

25. PANNAR shall ensure that the delivered seed corresponds with the label description prescribed by law.
26. The purchaser undertakes to make himself familiar with all relevant characteristics of the seed, as described in PANNAR's catalogue, available from PANNAR's agent and/or website (www.pannar.com), 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.
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 PANNAR. 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 PANNAR does not otherwise warrant the subsequent suitability; good quality; nor the absence of any defects to the seed.
29. PANNAR 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 occur for any reason whatsoever:
- 30.1 PANNAR shall take reasonable steps to inform the purchaser thereof as soon as it is practicable to do so;
- 30.2 PANNAR shall offer other seed to the purchaser at the list price of such other seed;
- 30.3 The purchaser shall not under any circumstances have any claim against PANNAR of whatever nature resulting from such shortages of seed, should such shortages be beyond the control of PANNAR; and
- 30.4 Seed sizes as ordered and/or agreed, shall only indicate the purchaser's preferred seed size, with such seed size not a material term of the agreement as not impacting on the crop produced. PANNAR shall endeavour to deliver the preferred seed size, but shall be entitled to deliver a different size of the same cultivar, without it being regarded as a shortage.
- 31.
- a) The parties record that given the purpose of seed so purchased, consequential damages in the event of any breach by PANNAR may be astronomical. Should PANNAR accept liability for such consequential damages, it shall impact substantially on the cost of the seed to the purchaser. The purchaser therefore prefers to limit the liability of PANNAR in respect of all breaches, to the substitution of the seed free of charge, or refund of the purchase price paid by the purchaser (at the election of the purchaser).
- b) The purchaser shall provide prompt notice of any claim related to any alleged defect of the seed delivered which must be given within 15 (fifteen) days from the date such alleged defect occurred or should have reasonably been discovered in order that an inspection by PANNAR's representative of the field(s), seed, or plants growing there from may be made promptly and in any event prior to harvest. Failure to give prompt notice within the aforementioned term shall constitute a waiver of all claims in respect of such seed. Any action against PANNAR for breach of this Trading Agreement and/or any warranties arising from it, must be commenced within six (6) months after the cause of action accrues or be barred after such time. Where applicable, all required prerequisites to maintaining a legal action must be complied with prior to initiating the legal action.
32. In addition, the future supply and availability of the seed ordered by the purchaser remain dynamic, unpredictable and beyond the control of PANNAR. PANNAR 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 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 PANNAR 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 PANNAR. 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 PANNAR 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 PANNAR warrants that the chemicals have been applied to the seed according to the specification supplied to PANNAR 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 erroneous delivery by PANNAR.

Ownership

36. Ownership of the seed shall only pass to the purchaser against payment of the full purchase price. The risk in and to the seed shall however pass to the purchaser upon delivery or as per the INCOTERM specified on the invoice (INCOTERMS © 2010) for international transactions. Should the purchaser default in making timeous payment, PANNAR shall be entitled to return of the seed, following due process.

Breach

37. PANNAR 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 PANNAR 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 PANNAR's rights to terminate the agreement and/or claim damages. The foregoing is without prejudice to such other rights as PANNAR may have at law and clauses 38 and 39 may be 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 of South Africa in respect of any legal proceedings resulting from this agreement. However, PANNAR 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 PANNAR 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 PANNAR, if applicable, to make enquires 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 payment obligations, subject to the NCA

Terms divisible

43. If any clause or term 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 PANNAR, shall be deemed to be a waiver by PANNAR of any of 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 PANNAR.

Cooling-off period

- 47. Should any transaction be the result of direct marketing by PANNAR'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. The purchaser shall at its own costs and risk return any seed already delivered. PANNAR shall refund any payment made by the purchaser within 15 (fifteen) business days after such return or, when no seed has been delivered, 15 (fifteen) 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 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
- 52. PANNAR 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. PANNAR 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 PANNAR SEED (PROPRIETARY) LIMITED at

Hildesheim Farm, Pietermaritzburg Road

Greytown

3250

South Africa

PO Box 19, Greytown, 3250

Facsimile Number: (033) 4132618

[e-mail: panseed@pannar.co.za](mailto:panseed@pannar.co.za)

and marked for the attention of "The Managing Director - PANNAR SEED (PTY) LIMITED";

53.1.2 As regards the purchaser at the address recorded below

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

Cession of book debts and claims as security

55. The purchaser hereby cedes all the book debts and/or other claims due to him, to PANNAR as security for the due and proper fulfilment of the purchaser's obligations towards PANNAR arising from whatsoever cause with regard to any amount already due and payable or which may become due and payable in the future. This cession is not limited to but includes any amount due to the purchaser arising from the sale of any agricultural products.

Signatures

Signed at _____ this _____ day of _____ 20 _____

Name: _____

PURCHASER (PLEASE PRINT)

(Signature of Purchaser or duly authorised Representative)

Position held: _____

The purchaser acknowledges that the Trading Agreement limits the liability of PANNAR, 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:

Address: _____

(Signature)

Signed at _____ this _____ day of _____ 20 _____

Name: _____

PANNAR (PLEASE PRINT)

Position Held: _____

(Signature of PANNAR SEED (PTY) LTD representative)

WITNESS:

Address: _____

(Signature)

WITNESS:

Full Name: _____