

SEED ORDER AND SALE AND/OR LICENSE AGREEMENT

ORDER NO / BESTELLING NO

00000

ENTERED INTO BY AND BETWEEN

TECHNOLOGY LICENSE



SENSAKO (PTY) LTD, REG NO. 1997/021469/07 (MARNE RESEARCH FARM, BETHLEHEM) - AND

PURCHASER	Individual			Company/CC/trust Mpy/BK/trust		
	Full /Volle Name/s			Name/Naam		
	ID No.			Reg No		
	VAT/BTW No.			Cell No		
	E-Mail address (1)			Tel No.		
	Farm name and address/ Plaas naam en address (domicilium citandi at executandi)			Postal/Pos address		
Magisterial district		GPS - Longitude		GPS - Latitude	Postal code	

PAYEE	Finance <input checked="" type="checkbox"/>		Please complete "Bill to" details below. A Sensako "Sales Order" will be sent to financier
	EFT <input checked="" type="checkbox"/>		A Sensako "Sales Order" will be sent to the E-Mail Address (1). Please use the ORDER # as payment reference
	Sensako Acc <input checked="" type="checkbox"/>		A Sensako "Sales Order" will be sent to the E-Mail Address (1).

BILL TO	Name/Naam		Member/Lid No	
	Approval/PO no		Other/Ander	

DELIVER TO	Sensako Store		Distribution code		Delivery method	
	Delivery/Aflewering Address			Contact person		
				Relationship/ Position		
				Cell No.		
	Posatal Code		Mag/Land Dist		GPS - Latitude	GPS - Long

SALES AGENT	Name/naam		Sales agent No.		E-mail address	
	Cell No.		Tel No.			

Jointly "the parties"/ gesamentlik "die paytje" in terms of which the following certified seed 'the seed' is to be supplied by Sensako (or its agents) to the customer subject to the terms and conditions set out on the front and back of this agreement ('the terms')

Cultivar/Kultivar	Seed Size (if applicable)	Kg/Kernels per Bag/Sak	Unit price/Eenheidsprys	No Bags/Sakkies	Amt/Bedrag (Exc VAT)	VAT/BTW	Amt/Bedrag (Inc VAT)
1							
2							
3							
4							
5							
Other instructions / Ander Instruksies				Subtotal/Subtotaal			
				Discount Korting	%		
				Discount Korting	%		
				Discount Korting	%		
Delivered seed remains the property of sellers, until payment has been received in full.				Total			
Gelewerde saad bly die eiendom van verkopers, totdat betaling ten volle ontvang is.				Totaal			

Customer confirms that he is aware of the terms, that he is authorised to agree to the terms and sign the agreement and that he has sufficient opportunity to study and consider the terms prior to signing the agreement, and by signing this document (FIRST SIGNATURE), purchaser confirms that he agrees to the terms and that this is the only basis upon which the sellers supply seed to him. Further, by signing below, purchaser confirms the accuracy of the order set out herein.

Koper bevestig dat hy bewus is van die terme, dat hy gemagtig is om tot die terme toe te stem en dit te onderteken en dat hy voldoende geleentheid gehad het om die terme te bestudeer en te oorweeg voor ondertekening daarvan en deur hierdie dokument te onderteken (EERSTE ONDERTEKENING), bevestig hy dat hy tot die terme toestem en bevestig hy dat dit die enigste basis is waarop verkopers aan hom saad verkoop. Verder deur hieronder te teken, bevestig koper die akkuraatheid van die bestelling hierin uiteengesit.

FIRST SIGNATURE

Signed at the date of order at (district): _____ on this (date) _____ by CUSTOMER
 Onderteken met bestelling te (distrik) _____ op Hieldei (datum) _____ deur KOPER _____

Further by signing below (SECOND SIGNATURE) customer and sellers confirm that sellers' quotation regarding the variety, quantum, kernel size and price ('the quotation') has been accepted by the purchaser and agreed to by the parties; that the terms have been pointed out and explained to the purchaser, in particular the suretyhip provided for; that purchaser understands the terms and agrees thereto; and that a sales agreement in accordance with the terms (set out on the front and back of this document) has been entered into between the parties. The words on the front apply to the terms on the front and the back hereof.

Verder deur hieronder te teken (TWEED E ONDERTEKENING), bevestig koper en verkopers dat verkopers se kwotasie aangaande die varieteit, hoeveelheid, pitgrootte, en prys ('die kwotasie') deur die koper aanvaar en ooreengekom is tussen die partye; dat die terme aan koper uitgewys en verduidelik is, in besonder die borgstelling wat voorsien word; dat koper dit verstaan en daartoe toestem; en dat 'n koopoorreenskoms volgens die terme (vervat op die voor en agterkant van hierdie dokument) tussen die partye tot sta nd gekom het. Die woorde wat op die voorkant hiervan gedefinieer word, is op die terme op die voor- en agterkant hiervan van toepassing.

SECOND SIGNATURE

Signed at the date of order at (district): _____ on this (date) _____ by CUSTOMER
 Onderteken met bestelling te (distrik) _____ op Hieldei (datum) _____ deur KOPER _____

Where the purchaser is not a natural person, then by the signature of the purchaser's representative on the front of the agreement, the purchaser's representative binds himself as surety and co-principal debtor in solidum with the purchaser for the due and punctual payment by the purchaser of any amount that may now or in the future be or become due to the sellers from whatever cause. 1. Indien die koper nie 'n natuurlike persoon is nie, dan bind die koper se verteenwoordiger, deur die voorkant van die ooreenskoms te onderteken, homself as borg en medeskuldenaar in solidum van die koper vir die tydige betaling van enige bedrag wat tans verskuldig is of in die toekoms verskuldig mag word aan die verkopers, ongeag die oorsprong daarvan.

Signed at the date of order at (district): _____ on this (date) _____ by AGENT
 Onderteken met bestelling te (distrik) _____ op Hieldei (datum) _____ deur VERTEENWOORDIGER _____

At acceptance of the quotation, and conclusion of the sale agreement / Met aanvaarding van die kwotasie, en sluit van die koopoorreenskoms

TERMS AND CONDITIONS

1. The front and back of this document constitutes the entire agreement between the parties in respect of any seed (hereinafter referred to as 'the seed') delivered by or on behalf of the seller, to or on behalf of the purchaser, and in respect of the order, sale, delivery and payment of the purchase price of the seed, including any chemical treatment to the seed.
2. The seed is supplied and accepted for the sole purposes of producing any crop (either before or after harvest) of the protected varieties produced from the seed or from progeny thereof, but not for the purposes of producing seed (hereinafter referred to as 'harvested material').
3. The purchaser warrants that the person signing this agreement and any document relating thereto is doing so on his behalf and is duly authorised to do so.
4. The purchase price and also the price of chemical treatment of the seed, shall be paid by the purchaser to the seller without any deduction whatsoever, free of exchange on or before the payment date stipulated on the invoice and if no payment date is specified on the invoice, within 30 (thirty) days from the invoice date, unless credit has been approved by the seller and separate credit terms are signed between the parties.
5. If the purchaser fails to pay on or before the date specified in clause 4 above, any discounts granted to the purchaser are abandoned and the purchaser shall be liable for the full purchase price without any discount.
6. The purchaser shall not be entitled to withhold any payment from the seller after delivery, for any reason whatsoever.
7. The seller shall be entitled to appropriate any payment received from the purchaser to any indebtedness of the purchaser to the seller from whatever cause arising notwithstanding the purchaser's stipulation to the contrary.
8. The purchaser shall be liable for interest at the rate of 24% per annum on any outstanding amount, calculated from the due date for payment until payment in full.
9. If there is any dispute about the exact price payable by the purchaser to the seller, the purchase price for the seed shall be the seller's standard list price for the seed or similar seed in effect on date of signature of the agreement, which is available for inspection by the purchaser.
10. In the event of any order being given to seller on an order form reflecting the purchaser's name as the entity from which the order emanates, or in the event of any telephonic order being given to seller via a telephone call emanating from the purchaser, such order shall be deemed to have emanated from the purchaser, notwithstanding the fact that such order may have been given or signed by a person not authorised by the purchaser.
11. Seller will confirm acceptance of an order by sending a sales order and confirmation of payment to the purchaser. Confirmation of payment will either take the form of a receipt from the seller where payment has been made by way of cash or cheque, a purchase order from a financing organisation or the sales order will serve as confirmation of payment where the purchaser has an account with the seller in terms of which payment is not due upon presentation of an invoice.
12. All orders will be accepted subject to availability of seed. When the quantity of seed in an order is unexpectedly high compared to the orders usually placed by the purchaser, seller reserves the right to refuse to deliver whole or part of the order and seller will advise the purchaser as soon as possible of such refusal.
13. Should seller be unable to supply the order placed by the purchaser or any portion thereof, whether because of stock-shortages, customer receiving capacity, credit management issues or any other reason, the order or the portion of the order which seller can't supply will be cancelled and under no circumstances shall such order or portion of the order be regarded as a backorder.
14. Unless otherwise agreed to in writing by the seller, the seller shall give the delivery of the seed at the delivery point as defined in the sales order. Delivery of the seed to a transport contractor or to the purchaser will be deemed to be delivery to the purchaser.
15. 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.
16. The seed reflected in the delivery notice, shall constitute an agreed variation of the agreement, insofar as it differs from the agreement.
17. Failure on the part of the purchaser to record any dispute on the contents of any unsigned delivery notice in writing to the seller within 5 (five) days from delivery, shall constitute final and conclusive acceptance by the purchaser of everything recorded in the unsigned delivery notice.
18. The purchaser shall provide sufficient labour and equipment at the delivery point on the delivery date, failing which all transport and storage costs in respect of the seed shall be paid by purchaser prior to any further delivery.
19. The signature of any employee or agent of the purchaser on the seller's delivery notice or waybill or that of the carrier will constitute conclusive evidence of the receipt of the seed by the purchaser.
20. The seller shall be entitled to suspend or withhold any delivery until the purchaser has provided seller with a payment guarantee covering the purchase price or while the purchaser is in breach of any of the terms of this or any other agreement between the seller and the purchaser.
21. The seller shall ensure that the delivered seed corresponds with the label description prescribed by law. Except for this obligation, and subject to the terms of the Consumer Protection Act 68 of 2008, the seed, being a natural product exposed to uninvited factors, is provided 'voetstoots', or free of any representations or influence, and without any express, tacit or common law warranty of whatsoever nature or concerning quality or fitness for any purpose, which warranties the purchaser expressly waived by his signature to the agreement. The purchaser expressly confirms that the above voetstoots and waiver of rights clause is fair and reasonable taking into account the type of product that is being provided to the purchaser.
22. The purchaser undertakes to make himself familiar with all relevant characteristics of the seed, as described in the seller's catalogue, and described on the seller's website (www.sensako.co.za), within 5 (five) days of the effective date, and which description being deemed sufficient disclosure of all patent and latent characteristics of the seed.
23. No claim by the purchaser for damage to seed or containers or shortages arising during delivery shall be made or considered unless the delivery notice has been signed by or on behalf of the purchaser and the alleged damage to the seed has been specified on the delivery notice and the claim is received by the seller within 5 (five) days after the date of delivery.
24. Any liability of the seller in respect of a breach of any term of this agreement shall be limited to the substitution of such seed free of charge or refund of the paid purchase price, by the seller to the purchaser, provided the purchase price has been paid in full.
25. Except for the remedy in clause 23 and 24 above, the purchaser shall not have any claim of whatever nature against the seller pursuant to this agreement or for any other cause or reason, be it for damages or otherwise, for defective or incorrect seed (being latent or patent), or for incomplete or late delivery.
26. The purchaser is hereby notified that, solely in cases of seed provided through direct marketing, he would be entitled to cancel the seed sale agreement in terms of the Consumer Protection Act only within a period of 5 (five) days from the delivery date of the seed, strictly on condition that the seller is notified in writing of the cancellation within the said period of 5 days and the seed is returned to the seller within the said period of 5 days at the cost of the purchaser and in the same condition in which it was delivered and in which case the purchaser shall on return pay a handling fee to the seller of 5% (five percent) of the purchase price and provided further that the purchaser is not a juristic person having an annual turnover of more than R2,000,000 (two million rand). The seller shall be entitled to charge any wasted transport costs, damages and a reasonable administration fee in respect of cancellation of the agreement in terms of this clause.
27. If any shortages of seed occur for any reason whatsoever:
 - 27.1. the seller shall take reasonable steps to inform the purchaser thereof as soon as it is practicable to do so;
 - 27.2. the seller shall offer other seed to the purchaser at the list price of such other seed; and
 - 27.3. the purchaser shall not under any circumstances have any claim against the seller of whatever nature resulting from shortages of seed.
28. The seller shall be entitled at its election to terminate this agreement or to a reasonable extension of time to comply with its obligations in terms of this agreement if delayed by circumstances beyond the control of the seller and shall not be liable to the purchaser by reason of such termination or extension.
29. The purchaser waives all other existing or future claims of whatsoever nature against the seller not expressly recorded herein, in particular, but without any limitation, the seller shall not be liable to the purchaser for any direct or indirect claims or consequential damages which may arise as a result of this agreement, the sale, late delivery, short or incomplete or defective performance, substituted seed, use, cancellation or return/repossession of the seed.
30. After delivery, but prior to full payment, the purchaser acquires no proprietary rights in the seed, but the purchaser carries all risk and responsibility pertaining to the seed, including the duty to preserve the seed in its original delivered packaging unless the seed was supplied on credit, to take out insurance against any loss, and the purchaser gives unrestricted right of repossession to the seller in case of any form of payment default.
31. The purchaser:
 - 31.1. acknowledges that this agreement binds the purchaser's heirs, agents, representatives, employees, members or shareholders, successors in title and/or assigns;
 - 31.2. acknowledges that the ownership of all seed vests with seller until the purchase price has been paid in full;
 - 31.3. undertakes not to or attempt to propagate, multiply, clone, breed, reverse engineer, genetically or otherwise modify the harvested material and seed (hereinafter referred to as 'plant material') in any way;
 - 31.4. undertakes to comply at all times with any statutory conditions that relate to the import, export, handling, storage, utilisation or disposal of any plant material, including, but not limited to, the acts;
 - 31.5. shall not do or permit the doing of anything which would constitute an infringement of any of seller's rights in terms of section 23A of the Plant Breeders' Rights Act or otherwise;
 - 31.6. hereby confirms seller's rights in terms of section 24(A) of the Plant Breeders' Rights Act, 15 of 1976; section 25 of the Plant Improvement Act, 53 of 1976; and section 15 of the Genetically Modified Organisms Act, 15 of 1997;
 - 31.7. grants seller the same rights granted in the abovementioned sections in case of *prima facie* infringement of seller's intellectual property by the Purchaser confirmed on oath in a court of competent jurisdiction stipulated for herein; and
 - 31.8. undertakes not to publish any data or information pertaining to the Protected Varieties without the express permission of seller.
32. The purchaser shall never use, sell or otherwise make available the seed directly or indirectly as propagating material, in breach of which the purchaser shall be liable to pay the seller within 30 (thirty) days an amount of 20 (twenty) times the price at which the seller could have provided the propagating material, or the seller's actual damages (at the seller's election). The seed shall in no circumstances be used for breeding purposes.
33. If the seed is genetically modified the purchaser hereby agrees to sign the seller's standard technology agreement and undertakes unreserved acceptance thereof.
34. If the seed is supplied subject to a supply and non-propagation agreement, the purchaser hereby agrees to sign such agreement and undertakes unreserved acceptance thereof. Where seed is subject to a supply and non-propagation agreement, seed is supplied and accepted for the sole purposes of producing harvested material on a commercial basis without transferring ownership in supplied seed, while existing as seed, to the purchaser.
35. The seller is the proprietor and/or rightful title holder and/or authorised purchaser 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 parental seed or plant produced therefrom, and shall destroy all forms thereof under his control or in his possession.
36. The purchaser shall immediately disclose and, without limitation and costs, grant access and assign to the seller, any new varieties emanating from the planting of the seed and the seller shall remain the proprietor and titleholder of all such new varieties and plant material therefrom.
37. The purchaser shall not infringe or dispute the seller's intellectual property rights (whether registered or unregistered and especially its plant breeders' rights, trade marks and patents) in respect of the seed, and shall also not assist anybody else in doing so, but shall actively support and protect it by advising the seller immediately if the purchaser becomes aware of any other party dealing with any of the seller's seed in a manner which is in contravention with the terms of this agreement and/or infringes any of the seller's intellectual property rights.
38. The purchaser shall familiarise himself and comply with all statutory provisions in the handling of the seed and plant material produced from it.
39. Seller warrants that the chemicals have been applied to the seed according to the specification supplied to the seller by the chemical manufacturer and within tolerances set by the manufacturer.
40. **The purchaser hereby acknowledges** that he is aware that:
 - 40.1. the germination and/or vigour level of seed, being a biological product, will decrease after delivery dependant on a plurality of factors beyond the control of Sensako;
 - 40.2. storage and handling conditions and carrying over of treated seed to subsequent seasons affect seed's germination and/or vigour;
 - 40.3. the germination results reflected on the label reflects the germination as at date of bagging. The Seller warrants that all seed supplied will have been tested for germination within a period of 6 months prior to delivery;
 - 40.4. In the event that the germination is lower than the prescribed amounts at date of bagging or subsequent testing, and the seed is sold as uncertified seed, the Seller warrants that it will have obtained the necessary approvals and also have notified the purchaser thereof;
 - 40.5. the seed has been treated with potentially harmful chemicals, indicated on the seed label, and that he has been adequately informed hereof by the seller. The purchaser undertakes to take all precautionary measures and provide his employees, handling the seed, with protective gear and equipment to prevent any harm that may occur as a result of handling the seed treated with the said chemicals. The purchaser hereby indemnifies the seller against any liability or claims resulting from the handling of the seed.
 - 40.6. different varieties of seed react differently to chemicals and that some varieties may have a specific sensitivity for particular chemical treatments and that any warranty given in respect of seed will immediately become void should any chemical substance be applied to seed after delivery or to germinated seed, plants and crop produced from planted seed and in those instances purchaser indemnifies the Seller against any claim.
41. The purchaser hereby confirms the seller's rights in terms of section 24(A) of the Plant Breeders' Rights Act, 15 of 1976; section 25 of the Plant Improvement Act, 53 of 1976; and section 15 of the Genetically Modified Organisms Act, 15 of 1997. The purchaser grants the seller the same rights granted in the abovementioned sections in case of infringement on the face of it of the seller's intellectual property rights by the purchaser confirmed on oath in a court of competent jurisdiction stipulated for herein.
42. 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 therefrom and shall continue to be of force and effect.
43. This agreement records the entire agreement between the parties. No representation, warranty, disclosures, prior oral agreement or expressions of opinion which are not contained herein shall be valid and binding. 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.
44. No indulgence, extension of time, relaxation or latitude which the seller may permit at any time in regard to the carrying out of any of the purchaser's obligations shall prejudice the seller in any manner whatsoever or be a waiver by the seller of any of its rights against the purchaser nor is such relaxation or indulgence a novation (renewal or replacement) of any of the terms and conditions of this agreement.
45. The seller is entitled to cancel this agreement summarily if any judgement is granted against the purchaser or if the purchaser commits any statutory act of insolvency.
46. Without derogating from any specific term herein, should either party (hereinafter referred to as 'the defaulting party') commit any other breach of any of the provisions hereof, then the other party (hereinafter referred to as 'the aggrieved party') shall be entitled to require the defaulting party to remedy the breach within a period of 10 (ten) days from receipt of the written notice to do so. Such written notice may be sent by post, fax or email.
47. If the purchaser, after 10 (ten) calendar days from receipt of a written demand to rectify any breach, fails to remedy the breach, then the seller 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 the seller's rights to claim damages. The foregoing is without prejudice to such other rights as the seller may have at law.
48. The purchaser hereby gives express permission to the use of personal information which has been provided by the purchaser to the seller for the purpose of recording the transactions contemplated herein and to disclose such information to third parties if required or permitted by law or specifically authorised to do so by any credit bureau.
49. The purchaser hereby consents to and authorises the seller, 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.
50. The purchaser and surety consent to the jurisdiction of the Magistrate's Court in respect of litigation resulting from this agreement. However, the seller shall be entitled to refer any dispute emanating from this agreement to the High Court, and in this regard the purchaser and surety consent to the jurisdiction of the High Court of South Africa – Gauteng Local Division, Johannesburg.
51. The purchaser is obliged to pay the seller's legal costs at the attorney own-client-scale, including tracing and collection costs.
52. A certificate issued and signed by a director or duly authorised manager of the seller, whose authority need not be proved, stating the amount owing by the purchaser shall be proof in the first instance of the facts stated therein and may be used in any legal proceedings, including in support of any application for judgment by default or summary judgment.
53. The purchaser may not cede or assign any of his rights or obligations hereunder without the written consent of the seller.
54. The purchaser shall not be entitled to stop payment of any cheque issued to the seller in respect of the purchase price.
55. Upon the cancellation of the agreement for any reason whatsoever the seller may repossess the seed if ownership has not been passed to the purchaser and/or recover all amounts owed by the purchaser to the seller.
56. No representative, agent or salesman has any authority to waive or vary any of these conditions or make any representations whatsoever on behalf of the seller.