

## DISTRIBUTION AGREEMENT FOR CONSIGNMENT STOCK

This Distribution Agreement for Consignment Stock (the '**Agreement**') is made and entered into as of \_\_\_\_\_ day of \_\_\_\_\_ 2015 ('**Effective Date**') by and between:

### SENSAKO (PTY) LTD

<b>Registration number</b>	1997/021469/07		
<b>Physical Address</b>	MARNE RESEARCH FARM, BETHLEHEM		
<b>Email Address</b>			
<b>Fax No.</b>			
<b>Signed at</b>		<b>Date</b>	
<b>Name</b>		Who warrants that they are duly authorised to sign	
<b>Office</b>			

('Sensako')

<b>Name</b>			
<b>Registration number</b>			
<b>Physical Address</b>			
<b>Email Address</b>			
<b>Fax No.</b>			
<b>Signed at</b>		<b>Date</b>	
<b>Name</b>		Who warrants that they are duly authorised to sign	
<b>Office</b>			

('Stockist')

(each a '**Party**', together the '**Parties**')

## **BACKGROUND:**

Sensako wishes to appoint Stockist as a non-exclusive distributor for the promotion and sale of the Seed as Consignment Stock in accordance with the terms and conditions of this Agreement, and Stockist wishes to accept such appointment.

## **THE PARTIES AGREE AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following terms (and variants of such terms) shall have the following meanings unless the context otherwise requires:

<b>Affiliate</b>	Means any entity which controls, is controlled by or is under common control with a Party, and ' <b>control</b> ' means the ability, directly or indirectly, to direct the affairs of another by means of: (i) ownership of at least fifty percent (50%) of the voting shares in any entity, or, in the case of an entity that has no outstanding securities, having the right to fifty percent (50%) or more of the profits of the entity, or having the right in the event of dissolution to fifty percent (50%) or more of the assets of the entity; or (ii) by contract or otherwise.
<b>Agreement</b>	The main body of this agreement and all schedules and any appendices and materials contained herein.
<b>Change of Control</b>	Means: (i) a transaction or series of related transactions involving Stockist and a third party (or a group of third parties acting in concert), as a result of which the persons or entities controlling Stockist following such transaction or series of transactions are not the same as the persons or entities controlling Stockist immediately prior to the effective date of such transaction or series of transactions; or (ii) a sale of all or a substantial proportion of Stockist's seed-related distribution assets to any entity or organization that was not an Affiliate of Stockist before such sale.

**Confidential Information**

Means any and all data and information not in the public domain, including know-how and trade secrets relating to, or contained or embodied in the products, technology, services, business, finances, or affairs of the disclosing Party and its Affiliates, and other confidential and proprietary information of the disclosing Party and its Affiliates, which information shall include all trade secrets, technology, financial information, client information, materials, manufacturing processes, marketing, advertising, promotion and/or distribution methods. Confidential Information may be communicated orally, visually, in writing or in any other recorded or tangible form. All data and information hereunder shall be considered to be Confidential Information if: (i) the disclosing Party has marked it as such; (ii) the disclosing Party has, orally or in writing, advised the receiving Party of their confidential nature; or (iii) if, due to their character or nature, a reasonable person in a like position and under like circumstances would treat them as confidential.

**Consignment Stock**

Means Seed that is supplied, but not sold or invoiced by Sensako to the Stockist for purposes of sale to the Stockist's customers.

**Effective Date**

Means the date from which this Agreement shall have legal effect as specified on the cover page of this Agreement.

**Intellectual Property Rights**

Means any and all intellectual property rights in any country or jurisdiction owned by Sensako or licensed to Sensako including without limitation in patents, plant breeder's rights, plant variety protection certificates, plant inventions, rights in seed, plants, germplasm, disease resistance breeding techniques and quality analysis techniques, all biological material utilized in breeding and development of varieties including parental seed stocks of commercial and advance lines, all advance breeding and parental lines, all segregating populations, all breeding and development records, trade secrets and other rights in know-how, copyrights (including any extensions or renewals), rights affording equivalent protection to copyright, data, rights in databases, registered designs, design rights, industrial designs and utility models, trademarks, service marks, trade names, business names, trade dress, brand names, logos, domain names, rights to goodwill or to sue for passing off or for unfair competition, and all registrations or applications to register any of the foregoing.

**Seed**

Means seed as specified in Schedule 1 which has been produced by conventional breeding methods, which has not been genetically modified and which may be protected by plant breeder's rights, that Stockist is authorised to sell and distribute as Consignment Stock.

**Storage Facility**

Means a fixed structure, approved by Sensako to store the Consignment

Stock with the least chance of damage to the Seed, which shall be the only premises at which Stockist is allowed to store Consignment Stock belonging to Sensako.

**Trademarks**

Means the trademark registrations and applications listed in Schedule 3 and any further trademarks that Sensako may permit, or procure permission for, Stockist to use in the Territory in respect of the Seed.

- 1.2 Reference to (a) days means calendar days; (b) person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) one gender includes other gender; (d) a party includes that party's personal representatives, successors or permitted assigns; (e) a statute, statutory provision or subordinated legislation includes such items as amended or re-enacted from time to time, whether before or after the date of this Agreement; (f) writing or written includes faxes but not e-mail; (g) a document includes varied or novated documents; (h) the words "including", "include", "in particular" or similar expressions is illustrative and does not limit the preceding words; and (i) words in the singular include the plural and vice versa.
- 1.3 In the event of any inconsistency the order of priority shall be (a) main body of this Agreement; (b) Schedule 1 (Seed and Price); (c) Schedule 4 (Sensako Seed Order and Sale Agreement); (d) Schedule 2 (Forecast Requirements); and (e) Schedule 3 (Trademarks).

**2. APPOINTMENT**

- 2.1 Sensako hereby appoints Stockist as a non-exclusive distributor of the Seed held as Consignment Stock, which function the Stockist shall carry out in its own name and for its own risk and account, subject to the terms and conditions of this Agreement and Stockist hereby accepts such appointment.
- 2.2 Sensako shall consign the Seed to the Stockist.
- 2.3 Stockist agrees that it shall:
  - (a) not directly or indirectly sell any of the Seed to any person Stockist knows, or has reason to believe, would resell the Seed; and
  - (b) not sell or provide any Seed to any competitors of Sensako in the relevant seed market.
- 2.4 Sensako retains the right to sell, or otherwise provide the Seed, directly or through other stockists, agents or re-sellers selected or appointed by Sensako from time to time in the area wherein the Stockist is situated. Stockist shall not be entitled to any compensation with respect to any sale made by Sensako or made by any other stockist, agent or re-seller of Sensako in the area wherein the Stockist is situated.
- 2.5 Stockist shall not without Sensako's prior written consent make any promise or guarantee with reference to the Seed and those contained in promotional material supplied by Sensako or otherwise, and shall not incur any liability on behalf of Sensako.

- 2.6 Each Party represents and warrants that it has the full right and authority to enter into this Agreement.
- 2.7 Sensako hereby authorises Stockist only and exclusively to supply Seed to the Stockist's customers subject to Sensako's Terms and Conditions indicated in Schedule 4 hereto, and Stockist hereby agrees to take the necessary steps to bring Sensako's Terms and Conditions to the attention of its customers purchasing the seed and to ensure that the customers consent thereto in writing, failing which Stockist indemnifies Sensako against all claims and associated legal fees.

### **3. NATURE OF RELATIONSHIP**

Stockist is and shall remain independent and shall act for its own account and this Agreement shall not be construed to create an association, partnership or joint venture, relationship of principal and agent, franchisee, legal representative, or of employer and employee between Sensako and Stockist or any of Stockist's employees, contractors, agents and representatives within the meaning of any law.

### **4. STOCKIST'S OBLIGATIONS**

- 4.1 Stockist shall at its own cost use its best efforts to sell and distribute, promote and develop the market for the Seed, including:
- (a) storing Consignment Stock and selling Seed only from the registered business address of the Stockist indicated in this agreement;
  - (b) establishing the price, terms and conditions of sale for the Seed to its customers; and
  - (c) ensuring that all employees involved in selling seed undergo annual product training by Sensako.
- 4.2 Stockist shall at its own cost:
- (a) employ a sufficient number of suitably qualified personnel to ensure the proper fulfillment of Stockist's obligations under this Agreement;
  - (b) keep full and proper books of account and records clearly showing all enquiries, quotations, transactions and proceedings relating to the Seed held as Consignment Stock;
  - (c) take out insurance policies for third party liability, product liability, professional negligence insurance and for the Consignment Stock held by Stockist within 30 days of written request of Sensako;
  - (d) comply with any instructions or guidelines given by Sensako in relation to handling, storage and safety norms applicable to the Seed; and
  - (e) inform Sensako immediately of any Change in Control, and of any change in its organization or method of doing business that might affect the performance of Stockist's duties in this Agreement.
- 4.3 Stockist shall be solely responsible for all sales of Seed to its customers, including any credit or accounts receivable risks.

- 4.4 Stockist shall not cede or assign or purport to cede or assign this Agreement or any rights or obligations thereunder except to an entity in the same group but with the prior written approval of Sensako. Sensako's approval shall not unreasonably be withheld.
- 4.5 Stockist shall not alter, obscure, remove, conceal or otherwise interfere with any markings or name plates or their indications of the source or origin of the Seed.
- 4.6 Stockist shall on reasonably agreed times give Sensako access to its records that relate to a disputed issue regarding this Agreement or that relate to the sale of Seed.
- 4.7 Stockist shall unload and inspect the Consignment Stock when delivered by Sensako, and at the moment of delivery notify Sensako of any existing damage to or discrepancies in the Consignment Stock, Seed or the packaging of the Seed.
- 4.8 Stockist shall be liable for any loss of or damage to the Consignment Stock after delivery resulting from any cause whatsoever and for any loss or damage that was not reported upon delivery.
- 4.9 Until the Seed is removed from the Storage Facility, the Stockist shall maintain and store the Seed under the conditions specified in this Agreement or recommended by Sensako in a segregated area clearly marked to show that the Seed within that area is Sensako's sole property and on consignment from Sensako, ensuring that the Seed is not stored, commingled or processed with any other products or seed present at said location.
- 4.10 Stockist shall promptly execute and return to Sensako all forms or documents which Sensako deems necessary to protect its title and interest in the Seed delivered into the Consignment Stock.
- 4.11 The Stockist undertakes to only remove Seed from the Consignment Stock on a "first-in, first-out" basis as applied separately to each respective type of Seed.
- 4.12 The Stockist shall maintain proper records showing full details of Seed in Consignment Stock together with details of all movements and transactions, and on or before the twenty fifth (25<sup>th</sup>) day of each month, the Stockist shall promptly notify Sensako of:
- (a) the quantities of each of the Seed varieties in the Consignment Stock as of the 25<sup>th</sup> day of the previous month;
  - (b) the quantities of each of the Seed varieties removed from the Consignment Stock since the 25<sup>th</sup> day of the previous month; and
  - (c) the quantities of each of the Seed varieties remaining in the Consignment Stock as of this date.
- 4.13 Stockist shall allow Sensako's representatives, employees and agents at any time during normal business hours, with prior notice, to inspect and/or take a physical inventory of the Consignment Stock in order to confirm that the provisions of this Agreement relating to storage of Consignment Stock in the Storage Facility are being complied with by the Stockist.
- 4.14 Stockist shall be liable for any shortfall in the Consignment Stock after a stock take has been performed by Sensako's representatives or the Stockist in conjunction with Sensako's

representatives. Sensako will invoice the Stockist for any shortfall whereafter the Stockist shall make payment directly to Sensako on or before the payment date indicated on such invoice.

- 4.15 The quantity and product range of the Consignment Stock to be issued to the Stockist shall be determined by mutual agreement between the parties from time to time and shall be dictated by economical delivery volumes. All Consignment Stock orders will be made on Sensako's standard seed order and sale agreement (Schedule 4).
- 4.16 Stockist recognizes and understands that no estimate given by Sensako regarding the expected volume of sale of Seed shall be construed as a guarantee of any nature.
- 4.17 It is Sensako policy not to accept products back for credit. In the case of defective products being sold by Stockist to one or more of its customers, Stockist shall immediately notify Sensako as set out in clause 6.5 below.

## **5. SUPPLY OF THE SEED**

- 5.1 Sensako shall use its reasonable efforts to produce sufficient Seed to satisfy Stockist's forecast requirements set out in Schedule 2. The Parties acknowledge and agree, however, that production is subject to uncertainty due to events such as weather and other natural or biological occurrences beyond the reasonable control of Sensako, and that all orders are subject to availability of acceptable quantity and quality of Seed realized from Sensako's production efforts. Stockist shall have no claim whatsoever against Sensako for short delivery on the Stockist's forecast requirements and in case of a shortage of stock of a particular variety, Sensako shall be entitled to offer seed of alternative varieties should seed of such alternative varieties be available.
- 5.2 Sensako may remove Seed and/or varieties thereof from Schedule 1 at any time on three (3) months prior written notice to Stockist if such Seed and/or varieties are no longer produced by or available from Sensako or (for other reasonable commercial reasons) are no longer going to be made available, or on immediate notice if they cease to be capable of being imported into the country wherein Stockist conducts its business.
- 5.3 Stockist shall place orders (Schedule 4) with Sensako in a timely manner so as to maintain inventories of Seed necessary to ensure that at all times uninterrupted supplies of the Seed are available in Consignment Stock for sale in accordance with actual market demand.
- 5.4 Unless agreed in writing to the contrary, all delivery dates shall be approximate only, however Sensako shall where practicable use its reasonable efforts to deliver, or shall procure the delivery, of the Seed by the dates requested by Stockist in its orders. If no dates are specified, Sensako shall deliver the Seed within a reasonable time.

## **6. SEED QUALITY**

- 6.1 Sensako represents and warrants on a Lot-by-Lot basis that:
  - (a) the labeling of the Seed as to kind, variety, purity, producer and Lot number is accurate;

- (b) the germination test results provided for each Lot included in the Seed accurately represent the results of properly conducted germination testing on the Lot as of the date of such test; and
- (c) the Seed have been produced in accordance with prevailing industry standards for production of such seed.

6.2 Sensako may (at its expense) perform quality inspections of the Seed held as Consignment Stock in the Storage Facility by Stockist and for such purpose Stockist authorizes Sensako to visit Stockist's Storage Facility where the Seed is stored as Consignment Stock as required by Sensako. Such visits shall be made by Sensako during normal business hours and upon reasonable written notice to Stockist.

6.3 Any Seed held by Stockist which is found by Sensako in its reasonable opinion to not meet Sensako's quality standards shall at the sole discretion of Sensako be returned, disposed of or destroyed by Stockist in accordance with Sensako's instructions.

6.4 In case of disputes relating to the germination or genetic purity of the Seed the Parties shall jointly engage an International Seed Trade Association (ISTA) certified laboratory to provide an opinion on such matters. The costs of such laboratory shall be shared equally by the Parties.

6.5 The Stockist shall, as soon as it becomes aware of a matter which may result in a third party claim that the Seed is defective:

- (a) give Sensako written notice of the details of the matter;
- (b) provide Sensako with the original of the signed Sensako's Terms and Conditions document (Schedule 4) pertaining to the sale of the Seed in question and any additional documents and information in the control or possession of Stockist and required by Sensako to address the claim;
- (c) comply with Sensako's instructions in relation to the matter;
- (d) give Sensako access to and allow Sensako to take samples of the relevant Seed and copies to be taken of any materials, records or documents as Sensako may require to take action under Clause 6.5(e);
- (e) allow Sensako the exclusive conduct of any proceedings and take any action that Sensako directs to defend or resist the matter, including using professional advisers nominated by Sensako; and
- (f) not admit liability or settle the matter without Sensako's written consent.

## **7. COMPLIANCE WITH LAWS AND REGULATIONS**

7.1 Stockist hereby acknowledges that it is aware that the Seed may be treated with potentially hazardous chemicals and has adequately been informed thereof by Sensako. Stockist undertakes to take all reasonable precautionary measures and to provide staff with appropriate protective clothing, equipment and training to prevent harm to either the Stockist or such staff that may result from handling treated Seed. Stockist hereby indemnifies Sensako against any liabilities or claims resulting from or connected to the handling of treated Seed.

7.2 Stockist represents and warrants that:



- (a) it has obtained and shall maintain, at its own cost any permits, licenses, registrations, regulatory or governmental approvals and authorizations required for it to perform its obligations under this Agreement; and
- (b) it shall comply with all applicable laws, rules, regulations and certification standards that may exist in the country where the Stockist conducts its business. Should Stockist become aware of any existing or proposed laws, regulations or standards that are or may be inconsistent with the provisions of this Agreement, Stockist shall promptly notify Sensako thereof and the Parties shall attempt to resolve such inconsistency.

## **8. PRICE AND PAYMENT**

- 8.1 The price for the Seed is specified in Schedule 1. This is the price of Sensako to the Stockist and the price at which Sensako will invoice the Stockist for Consignment Stock sold. The Stockist will determine its own retail price to its customers and therefore determine its own margin. Sensako may provide a recommended but non-binding retail price to the Stockist.
- 8.2 Unless otherwise specified in Schedule 1, all prices for the Seed are exclusive of VAT and all other taxes, costs of shipment, insurance and import duties.
- 8.3 Sensako may on notice to Stockist amend the price terms for the Seed.
- 8.4 Any and all expenses, costs and charges incurred by Stockist in the performance of its obligations under this Agreement shall be paid by Stockist, unless Sensako has expressly agreed in advance in writing to pay such expenses, costs and charges.
- 8.5 The Stockist will pay Sensako not later than the payment date specified in Sensako's invoice, and if no such date is given, no longer than 30 days from the date of Sensako's invoice.
- 8.6 Interest shall be chargeable on any amounts overdue at the rate of 2% per month. The interest period shall run from the due date for payment until receipt of the full amount by Sensako whether before or after judgment and without prejudice to any other right or remedy of Sensako.
- 8.7 Stockist shall not withhold payment of any amount due to Sensako because of any set-off, counter-claim, abatement, or other similar deduction.
- 8.8 Upon the request of Sensako, Stockist shall provide Sensako with a guarantee of payment for the Seed to the satisfaction of Sensako.

## **9. CONDITIONS OF SALE**

- 9.1 The Seed delivered to Stockist by Sensako remains the property of Sensako until Stockist has sold the Seed to its customers. The Seed not sold at the end of a particular season will be returned to Sensako in its original state to the extent possible, subject to normal deterioration expected of seed stored under acceptable conditions, and Stockist will not become owner of any Consignment Stock at any stage.

9.2 Stockist will responsible for any damage to Seed that is held as Consignment Stock after delivery of such Seed to the Stockist by Sensako.

## **10. INTELLECTUAL PROPERTY RIGHTS / BREEDING RESTRICTIONS**

10.1 Sensako represents and warrants that it owns or is licensed to use and sub-license (including for the purposes of this Agreement) the Seed and all Intellectual Property Rights in and related to the Seed and the Trademarks.

10.2 Sensako grants to Stockist for the term of this Agreement a limited, revocable (at Sensako's sole discretion), royalty free license to:

- (a) use the Trademarks on Seed bags, literature and any other promotional material solely for the purposes of marketing, promoting, advertising, selling and distributing the Seed in the Territory. Such license shall be subject and according to the Trademark license appended to this Agreement (if any); and
- (b) sell, distribute, market and promote the Seed in the Territory under the Intellectual Property Rights.

10.3 Stockist acknowledges and agrees that:

- (a) Stockist's rights to use the Seed, all other Intellectual Property Rights in and related to the Seed and the Trademarks shall be limited to the purposes authorized in this Agreement and subject to the restrictions of Clause 10.4;
- (b) Sensako (or its Affiliates) may register or obtain patents and any other Intellectual Property Rights in the Seed (and any improvements to the Seed and related technology) and Stockist shall not do anything that would interfere with Sensako's proprietary rights in the Seed or any other Intellectual Property Rights; and
- (c) except as specifically provided in this Agreement, Stockist shall not make any claim to any right, title or interest in or to the Seed, all Intellectual Property Rights in and related to the Seed and the Trademarks, whether during or after the term of this Agreement. Should Stockist acquire any such right, title or interest, it shall assign the same to Sensako whenever requested to do so by Sensako free of charge.

10.4 Stockist is prohibited from using the Seed in any breeding programs or for any other purpose not specified in this Agreement or expressly authorized in writing by Sensako. Stockist shall not undertake any of the following acts:

- (a) multiplication of Seed for subsequent production or for production of second-generation seed;
- (b) bi-parental crossing or backcrossing of the Seed in any form;
- (c) biotechnological processes, including such technologies as tissue culture, mutagenesis, or transformations utilizing any plants, plant parts or progeny seed derived from the Seed;
- (d) selection, including collecting pollen, seed, or other plant parts from a single plant or a population of seed or plants derived from the Seed for the purpose of propagating and identifying unique individuals from the population; and
- (e) use of pollen, seed, or other plant parts derived from the Seed for any other purpose.

10.5 Stockist shall immediately, when it comes to its attention, notify Sensako in writing of any actual, or threatened infringement of the Seed, Intellectual Property Rights in and related to

the Seed and the Trademarks (or use of the Seed contrary to any applicable Plant Variety Protection/UPOV laws in the Territory), or any allegation made by any third party that any of the Intellectual Property Rights infringes any third party rights. Sensako shall decide at its absolute discretion whether or not to take action, and what action to take, in respect of any such matters. Sensako shall have exclusive control over any resulting claims, actions and proceedings. Stockist shall, at the costs of Sensako, provide all reasonable assistance including all relevant information in its possession, which Sensako requires in connection with any such matters. Any award of costs or damages or other compensation payment recovered in connection with any of those matters shall be for the account of Sensako.

10.6 If requested by Sensako, Stockist shall:

- (a) provide reasonable cooperation to Sensako to register Seed varieties or other Sensako seed; and
- (b) transfer any such registrations to Sensako or its designate and for this limited purpose Stockist grants Sensako a power of attorney to carry out all necessary formalities to transfer such registrations.

## **11. SENSAKO WARRANTIES: DISCLAIMER**

11.1 The express warranties set forth in clause 6.1 constitutes the only warranties with respect to the Seed. Sensako makes no other warranty or representation of any kind, whether express or implied (either in fact or by operation of law), with respect to the seed and all other additional warranties are hereby disclaimed. Sensako expressly disclaims all warranties of merchantability, fitness for a particular purpose or otherwise. There are no guarantees of crop yield or freedom from seed borne disease. Any recommendations for use of sensako's Seed or materials or apparatus in connection therewith are based upon Sensako's best judgment, but there is no warranty of results to be obtained in connection therewith. For Seed sold in Sensako's packaging and labeling, Stockist shall make its customers aware of the terms of Sensako's warranty and the limitations thereon under this Agreement prior to the sale of the Seed to Stockist's customers. Sensako's liability under this warranty shall not exceed the price paid to Sensako by stockist for the specific Seed for which a claim is made.

11.2 Sensako shall not be liable for any breach of warranty unless Stockist notifies Sensako within a reasonable period after discovery (not to exceed fourteen (14) days) of any circumstance which would indicate that such Seed is in violation of such warranty. Sensako specifically reserves the right to inspect such Seed prior to replacement or any refund, and, if requested by Sensako, Stockist shall return to a location designated by Sensako any such Seed specified by Sensako, freight prepaid. Sensako shall grant credit to Stockist for such prepaid freight if the Seed are found to be defective.

## **12. INDEMNITY**

12.1 Stockist holds Sensako harmless against all claims including third party claims and losses resulting from:

- (a) any unauthorised representations or Seed warranty made by the Stockist, except if this warranty or guarantee is required by law and has been made with prior consultation with Sensako;
- (b) any negligent acts of the Stockist its agent or staff regarding use of the Seed;
- (c) any loss, damage or liability resulting from, or arising out of the use, transport or storage of the Seed after it has been delivered to the Stockist in accordance with this

Agreement, except if this loss is attributable to the wilful act of Sensako. The Stockist acknowledges that it is familiar with, *inter alia*, the characteristics and inherent dangers and usage of the Seed;

- (d) Stockist's failure to comply with any provision of this Agreement, including but not limited to Stockist's failure to sell the Seed under the Sensako Terms and Conditions (Schedule 4); and
- (e) claims by third parties for damages to property, or the injury or death of a person by anybody as a result of the Stockist's failure to provide them with information in respect of all and any inherent dangers of the Seed, the correct use and proper handling and storage of the Seed.

### **13. LIMITATION OF LIABILITY**

- 13.1 Whether or not a Party has been advised of the possibility of such loss or damage, neither Party shall be liable for loss of profits, loss of anticipated savings, loss of business opportunity, loss of goodwill or any indirect, special, incidental, consequential or exemplary damages, arising out of or in connection with this Agreement or any collateral contract.
- 13.2 Subject to the other terms of this agreement, the total liability of Sensako, whether in contract, delict (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract, shall be limited to the substitution of the Seed, free of charge, or refund of the purchase price paid by Stockist to Sensako.
- 13.3 The exclusions in this Clause shall apply to the fullest extent permissible by law but neither Party excludes liability for:
  - (a) fraud or fraudulent misrepresentation;
  - (b) willful misconduct; or
  - (c) any other liability which cannot be excluded by law.

### **14. CONFIDENTIALITY**

- 14.1 Each receiving Party hereby agrees:
  - (a) to hold the Confidential Information in strict confidence, to apply to such Confidential Information at least the same standard of care with which it treats its own proprietary and confidential information (not being less than a reasonable standard of care), and to refrain from using any Confidential Information for its own or any third party's benefit or in any other manner not authorized in writing by the disclosing Party;
  - (b) to limit the dissemination of any Confidential Information within its organization to those of its personnel who have a need to know such Confidential Information for the purposes of this Agreement and who are subject to confidentiality obligations substantially similar to those contained herein;
  - (c) to accept responsibility for any use or disclosure of Confidential Information in violation of the terms of this Agreement and to take such steps as may be required by applicable law to enforce this obligation;
  - (d) upon request (at any time) from the disclosing Party, return to the disclosing Party all written and/or other materials containing Confidential Information provided to it by the disclosing Party and/or its Affiliates in connection with this Agreement within thirty (30) days of receipt of such request; and

- (e) to notify the disclosing Party immediately if the receiving Party is requested or required to disclose any Confidential Information to a third party in connection with any civil or criminal investigation or any judicial or administrative proceeding, so that the disclosing Party may if it chooses seek an appropriate protective order.

14.2 The receiving Party's obligation of confidentiality contained in this Agreement shall not apply to information that:

- (a) at the time of disclosure was in the public domain or comes into the public domain other than through breach of this Agreement by the receiving Party;
- (b) was known by the receiving Party (as established by the receiving Party's own records or other competent proof) before disclosure by the disclosing Party;
- (c) is lawfully disclosed to the receiving Party by a third party acting in good faith and not bound by a confidentiality obligation; or
- (d) the disclosure of which is required by law, by any court of competent jurisdiction, or by any official regulatory body.

14.3 The obligations of confidentiality contained in this Agreement shall continue in force during the term of this Agreement and for a period of ten (10) years thereafter.

## **15. TERM AND TERMINATION**

15.1 This Agreement shall commence on the Effective Date and, subject to the other provisions of this Clause 15, shall continue for a period of 12 (twelve) months from the Effective Date.

15.2 Notwithstanding Clause 15.1 above, either Party may terminate this Agreement at any time in accordance with Clause 15.3, 15.4 and 20.

15.3 This Agreement may be terminated by any Party by giving the other Party 90 days (ninety days) written notice of such intent.

15.4 A Party may immediately terminate this Agreement by giving notice to the other Party, if the other Party:

- (a) commits a continuing or material breach of this Agreement and where such a breach is capable of remedy fails to remedy it within twenty one (21) days of a notice requiring the breach to be remedied;
- (b) is dissolved, becomes insolvent, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets;
- (c) ceases, or threatens to cease, to carry on its business; or
- (d) pursuant to Section 18.3 (Force Majeure).

- (a) Sensako may immediately terminate this Agreement by giving notice to Stockist in the event of a Change of Control of Stockist; or

15.5 Upon any termination or expiration of this Agreement, all Seed in the Consignment Stock will remain the property of Sensako and will be returned to Sensako, and the Stockist will

remain responsible to pay for any damaged Seed or Seed that is missing from the Consignment Stock.

15.6 Subject to Clause 15.5, all other rights and licenses of Stockist under this Agreement shall terminate on the termination or expiration date.

15.7 Upon expiry or termination of this Agreement in accordance with this Clause 15 (Term and Termination) neither Party shall be entitled to any compensation, damages or other form of payment (including for loss of profits or goodwill) for such termination or expiry or the consequences thereto. Termination or expiration of this Agreement shall be without prejudice to any obligations contained herein which survive the termination or expiration of this Agreement, and any prior rights which a Party has accrued prior to the termination or expiration of this Agreement.

## **16. SUB-CONTRACTING**

16.1 Stockist may not subcontract its obligations under this Agreement unless it receives the prior written consent of Sensako and any such sub-contracting (including sub-contracting to Stockist's Affiliates) shall be subject to the following:

- a) Stockist remains solely responsible to Sensako for the performance of all obligations under this Agreement even those which have been subcontracted;
- b) Stockist remains solely responsible for all actions and omissions of its subcontractors; and
- c) nothing contained in any agreement with Stockist's subcontractors shall contravene the terms of this Agreement or impair Stockist's ability to perform its obligations towards Sensako, in this respect Stockist shall ensure that its subcontractors shall comply with all terms of this Agreement.

## **17. RECORDS AND AUDIT**

Stockist shall keep complete books and records of the Seed in stock and all transactions pursuant to this Agreement. Sensako and its internal and/or independent auditors shall have the right to audit such books and records (as well as actual inventories reported in such books and records), and for FCPA purposes such other books and records as reasonably required, during normal business hours upon reasonable notice to Stockist. Stockist shall provide Sensako and its auditors with full co-operation during any such audit.

## **18. FORCE MAJEURE**

18.1 If either Party is rendered unable, in whole or in part by force majeure to perform or comply with any obligation or conditions of this Agreement, such obligation or condition shall be suspended to the extent and for the duration of the continuance of the inability so caused.

18.2 The term "force majeure" shall mean any cause of any kind not within a Party's reasonable control and shall include without limitation, Acts of God, when the supply of the Seed or any facility of production, manufacture, storage, transportation, distribution, or delivery contemplated by either Party is interrupted, unavailable or inadequate due to inter alia acts of war or the public enemy, strikes, lockouts, or other disturbances, riots, hurricanes, floods, fire, explosion, plant breakages or destruction from any involuntary cause of any character either similar or dissimilar to the foregoing reasonably beyond the control of the Party failing to comply.

- 18.3 The Party affected must notify an event of force majeure in writing to its co-contractor within fifteen (15) days following the date of occurrence of the event of force majeure in question. The time period that either Party may continue to claim force majeure shall be limited to a maximum of ninety (90) days. During the ninety (90) day period, the Parties shall use their best endeavours to find mutually satisfactory alternative methods to overcome or abate the force majeure as quickly as possible and shall fairly allocate available resources in order to facilitate this. At the expiry of a period of ninety (90) days following the occurrence of an event of force majeure, the non-defaulting party shall have the possibility of terminating this Agreement with immediate effect through written notice to its co-contractor.
- 18.4 No termination in terms of this Clause 19 shall relieve either Party from the payment of sums or the performance of any other obligation which may be owing to the other Party as a result of the operation of this Agreement prior to its termination.
- 18.5 Upon the occurrence of force majeure the Party so affected may suspend or reduce deliveries during the period of such force majeure. Any reductions of deliveries shall affect all other export customers of Sensako in the same ratio for the same Seed unless that reduction is due to specific transportation to the Stockist not being available.

## **19. GOVERNING LAW AND ARBITRATION**

- 19.1 This Agreement and disputes arising out of or connected to the Agreement, including disputes regarding the existence, validity, enforceability, breach or termination thereof shall be governed by and construed in accordance with the laws of South Africa, with the exception of its choice or conflicts of law provisions.
- 19.2 Any dispute arising out of or connected to this Agreement, which cannot be settled by discussions between senior representatives of each Party within thirty (30) days of notification of such dispute by a Party to the other Party, shall be settled under the Commercial Rules of Arbitration of the Arbitration Foundation of South Africa by 3 arbitrators appointed under said Rules, and the Parties shall have the right to appeal a decision of the arbitrators. The venue shall be Johannesburg, South Africa and the proceedings shall be conducted in the English language. Sensako may nevertheless bring claims in any court of competent jurisdiction, including without limitation in the country in which Stockist has a registered office, and may bring claims for interim relief.

## **20. GENERAL**

- 20.1 **Press Statements.** No press release, public announcement or confirmation regarding this Agreement, its subject matter or its contents shall be made by Stockist without the prior written consent of Sensako. Stockist shall not use the name of Sensako or of any member of Sensako's personnel, staff, or agents in any publicity, advertising, or news release without the prior written approval of Sensako.
- 20.2 **No Waiver.** No delay, omission or failure by either Party to exercise any of its rights or remedies hereunder shall be deemed to be a waiver thereof or an acquiescence in the event giving rise to such right or remedy, but every such right and remedy may be exercised from time to time and as often as may be deemed expedient by the Party exercising such right or remedy.

- 20.3 **Amendment.** Except for Schedule 1 (Seed Price), Schedule 2 (Forecast Requirements) and Schedule 4 (Sensako Seed Order and Sale Agreement) which may be modified by Sensako for subsequent seasons, this Agreement shall not be modified, amended or changed except by an agreement in writing signed by the Parties.
- 20.4 **Severability.** If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 20.5 **Entire Agreement.** Subject to Clause 21.3, this Agreement sets forth the entire agreement between the Parties and supersedes all prior agreements, arrangements and understandings, oral or written, between the Parties on the subject matter hereof. The pre-printed terms and conditions of any of Stockist's business forms shall be without legal effect in transactions under this Agreement.
- 20.6 **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their respective successors and assigns. Stockist shall not, nor purport to, assign or encumber all or any part of its obligations or rights hereunder without the prior written consent of Sensako. Sensako shall have the right to assign all or any part of its rights hereunder to any of its Affiliates without prior written consent or notice of/to Stockist.
- 20.7 **Survival.** The provisions of Clauses 10 (Intellectual Property Rights / Breeding Restrictions), 11 (Sensako Warranties: Disclaimer), 13 (Limitation of Liability), **Error! Reference source not found.** (FCPA) and 19 (Governing Law / Arbitration) and any other assignments, warranties, indemnities and confidentiality obligations shall survive the termination or expiration of this Agreement.
- 20.8 **Legal Notices.** Notices given under this Agreement by one Party to the other Party shall be in writing and may be delivered personally with signed confirmation of receipt, by registered post or courier or by fax provided confirmation is sent by sender via registered post or courier within three (3) days after fax transmission. Notices will be deemed to have been given in the case of personal delivery at the time of delivery, in the case of registered post or courier five (5) days after the date of posting and in the case of fax at the time of transmission. Notices shall be sent to the addresses of the Parties set out on the cover page of this Agreement, or to any other address notified in writing by one Party to the other at any time after the Effective Date for the purpose of receiving notices.
- Any notice given under or in connection with this Agreement shall be in the English language unless otherwise required by applicable law in which case a certified English translation shall be provided together with the notice.
- 20.9 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one instrument.
- 20.10 **Language.** The official language of this Agreement is English. This Agreement may be translated into the language of Stockist, but the English version shall prevail and remain the only official version.



**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date below written.

**SENSAKO (PTY) LTD**

**[Insert Full Stockist Legal Entity Name]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Place of Signature: \_\_\_\_\_

Place of Signature: \_\_\_\_\_

**SCHEDULE 1**

**Seed and Price**

**Seed**

Refer to price list for available varieties.

**Price**

[Insert price list]

**SENSAKO (PTY) LTD**

**[Insert Full Stockist Legal Entity Name]**

Signature: \_\_\_\_\_  
\_\_\_\_\_

Signature:

Name: \_\_\_\_\_  
\_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

Date:

Place of Signature: \_\_\_\_\_  
\_\_\_\_\_

Place of Signature:

**SCHEDULE 2**

**Forecast Requirements**

For each season, Stockist shall provide Sensako with its estimated Consignment Stock requirements by June of each year.

**SENSAKO (PTY) LTD**

**[Insert Full Stockist Legal Entity Name]**

Signature: \_\_\_\_\_  
\_\_\_\_\_

Signature:

Name: \_\_\_\_\_  
\_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

Date:

Place of Signature: \_\_\_\_\_  
\_\_\_\_\_

Place of Signature:

**SCHEDULE 3**

**Trademarks**

All Seed varieties will be promoted and sold under the following trademarks. No exceptions will be allowed.

**SENSAKO (PTY) LTD**

**[Insert Full Stockist Legal Entity Name]**

Signature: \_\_\_\_\_  
\_\_\_\_\_

Signature:

Name: \_\_\_\_\_  
\_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_

Date:

Place of Signature: \_\_\_\_\_  
\_\_\_\_\_

Place of Signature:



## 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 unlimited 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](http://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



**SENSAKO (PTY) LTD**

**[Insert Full Stockist Legal Entity Name]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_  
Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Place of Signature: \_\_\_\_\_

Place of Signature: \_\_\_\_\_

\_\_\_\_\_