

Sales Agreement Specific Terms and Conditions

- These terms and conditions should be read together with the **MatchMX Terms of Services**.
- **If you (either as Seller or Buyer) “Accept” the commercial conditions on the Match MX Platform or sign the Term Sheet you are to these specific terms and conditions.**

1. General provisions applicable herein

- A. This document and the Addendum (where applicable) together with the Term Sheet make up the full contract (“**the Contract**”) concluded between the BUYER and SELLER for the sale of the Product. **TAKE NOTE: Match MX is not a party to this Contract.**
- B. A failure by one party or both parties to sign this document will not affect its binding nature, providing that the parties have, in fact, consented to its terms by oral agreement or by conduct.
- C. The current INCOTERMS (The Incoterms® rules, as published by ICC, are the world’s essential terms of trade for the sale of goods) or subsequent versions of INCOTERMS will apply to the contract except insofar as they may be inconsistent therewith.
- D. Any provision of the Contract which is void or invalid for any reason is to be severed, leaving the balance of the contract in force. However, where such provision is material for the validity of the contract as a whole, then the parties undertake to each other that they will negotiate in good faith to agree a valid provision in place of the void or invalid provision and thereby preserve the contract in force.
- E. Written terms of this document may only be altered and/or varied by stating same on the Addendum. Alterations and/or variations shall only apply subsequent to signing of the Addendum by both the SELLER and the BUYER. The Addendum shall then form part of the Contract. For purposes of ‘signed’ under this par. E shall include the click of a button that states “Accept” or “Submit”.
- F. Where any conflict exists between this document and the ADDENDUM, the latter shall prevail.
- G. Where any party is required to give notification to the other party herein, such notification shall be in writing and may be by way of letter or e-mail or other form generally utilised in the course of business, addressed to the other party at an address supplied by the other party in terms of clause 26 below (“**the designated address**”).

2. Commercials

The Product type (commodity), Period available, Position (place from where available), Price, Payment terms shall be as agreed to under the Match (or **Term Sheet**).

3. Specific conditions

3.1. Pricing:

- 3.1.1. The Seller’s and Buyer’s selection of pricing shall be as confirmed on the Match MX Platform or the Term Sheet.
- 3.1.2. No Product will be made available for delivery before the full price has been paid as agreed to, unless otherwise agreed to between the parties on the Term Sheet.

3.2. Payment Terms:

- 3.2.1. Payment shall be made to the Seller subsequent to receipt of required documents and/or information listed on the Match MX Platform or the Term Sheet.
- 3.2.2. Payment shall be by way of Electronic Fund Transfer into the designated account of the Seller or as per the MatchMX Clearing Facility (subject to specific MatchMX Clearing Facility terms and conditions).
- 3.2.3. Where MatchMX is appointed as payment agent (see separate terms and conditions), MatchMX shall issue the required invoice on behalf of the Seller to the BUYER via the MatchMX Platform;
- 3.2.4. Should the BUYER make payment after the stipulated date or any written extension thereof, the BUYER shall be in default and may be liable (as per sole discretion of the SELLER) to pay interest at 2% percent above the lending rate of the SELLER’s commercial bank per annum, from the date on which payment was due until the date on which payment is made. Such default shall not be grounds for cancellation by the SELLER of any balance of the contract for which payment has been made.

3.3. Quality:

- 3.3.1. All Products to which this Contract refers shall be good, sound and merchantable, and fit in all respects for the purpose for which they were purchased.
- 3.3.2. The BUYER shall have the right of rejection if the Products do not comply with this requirement. (Refer Clause 3.8).
- 3.3.3. Contractual quality and condition of commodity for each individual consignment shall be as agreed to under the Term Sheet (or Addendum where applicable) and such specifications as per the laws governed by the RSA Agricultural Products Standards Act 1990, or any amendments thereof or any Act replacing

3.4. Quantity

- 3.4.1. The % variation allowed on Quantity is referred to as the “**tolerance**”. Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the BUYER, if he so wishes, to reject the excess. If the BUYER does not so reject, the price of any quantity in excess of the upper tolerance shall be settled by mutual agreement, or otherwise in accordance with the dispute resolution agreement herein.
- 3.4.2. If the SELLER delivers less than the minimum quantity permitted by the tolerance the SELLER shall be deemed to be in default and shall compensate the BUYER in accordance with the Default clause herein. Calculation of damages shall be against the mean contract quantity. Where deliveries of individual consignments reach a tonnage within the tolerance of the contractual quantity, the contract shall be deemed to have been completed.

3.5. Delivery

- 3.5.1. The Delivery of the Products shall be in accordance with the INCOTERMS as agreed to between the Buyer and the Seller subsequent to the Match either on Match MX Platform or the Term Sheet;
- 3.5.2. Any other specific delivery terms that may amend the standard delivery terms, shall be as agreed to under the Sales Agreement **Addendum**, and may include:
 - 3.5.2.1. Number of trucks and/or tons per day and/or week
 - 3.5.2.2. Loading hours, i.e. 08:00 tot 16:00 Monday to Friday and Saturday 08:00 to 13:00 and No loading on Sundays or public holidays.
 - 3.5.2.3. Place where load will be weighted – on premises of Seller or such other facility close to Seller or will the weight be as indicated by the Seller be accepted as the final weight.
- 3.5.3. **Extension of delivery:** The Contract period of delivery shall be extended by an additional period of not more than 21 consecutive days, provided that the BUYER serves notice claiming extension not later than the next business day following the last day of the delivery period. In this event SELLER shall carry the Product for BUYER's account and all charges for storage, interest, insurance and other such normal carrying expenses shall be for BUYER's account, unless the trucks present in readiness to load within the contractual delivery period. Any differences in export duties, taxes, levies etc., between those applying during the original delivery period and those applying during the period of extension, shall be for the account of the BUYER. If required by the BUYER, the SELLER shall produce evidence of the amounts paid. Should the BUYER fail to present a truck in readiness to load under the extension period, the SELLER shall have the option of declaring the BUYER to be in default, or shall be entitled to demand payment at the contract price plus such charges as stated above.
- 3.5.4. MatchMX will not be liable for any delays in the delivery of the Product whatsoever.

3.6. Warehouse and/or silo Storage and Handling costs:

All Warehouse and/or silo storage and handling costs shall be as confirmed by the parties on Match MX Platform or the Term Sheet.

3.7. Mass Determination

- 3.7.1. Where the commodity has been sold delivered to the BUYER's nominated store (hereinafter called "**the Receiver**"), basis DAP or DDP, and fails to meet the quantity as specified herein, the Receiver shall not unload the commodity, and shall notify the SELLER as soon as possible, but no later than 24 hours from the time of the arrival of the commodity. Failure of the Receiver to give such notice shall preclude the BUYER from claiming for deficiency against the SELLER. The SELLER has 24 hours after receipt of such notice to verify the quantity by inspection. If the SELLER does not inspect timeously, the SELLER is deemed to accept the Receiver's findings as to quantity. If after timeous inspection by the SELLER there is a dispute as to quantity, such quantity shall be determined by an independent party/surveyor forthwith. The independent party/surveyor shall be agreed by the parties, or nominated by the AFSA Secretariat, if the parties cannot agree. MatchMX may (but not obliged) direct the parties to independent surveyors, close to the relevant nominated store/delivery location, to assist in the determination.
- 3.7.2. The BUYER shall advise the SELLER by email or Match MX Platform (where available) within 24 hours of the end of each delivery period, or at such times as may be otherwise agreed (see clause 6) between the parties, the following information:
 - (a) The SELLER's contract No.
 - (b) Lorry or Rail Truck Registration No's.
 - (c) Gross, Tare and Nett Mass.
- 3.7.3. In the case of delivery EXW, FCA, CPT or CIP, with sender's mass final, the mass as determined at the silo/warehouse shall be final and shall be accepted by both the SELLER and the BUYER. The SELLER and the BUYER shall have the right to superintend.
- 3.7.4. In the case of delivery to a silo/warehouse, the mass taken in by the silo/warehouse shall be final and shall be binding on the parties.
- 3.7.5. Where the commodity has been sold "on-farm" the party as confirmed on the Term Sheet shall have the commodity weighed at the nearest as sized weighbridge. Weighing costs shall be paid by the party as agreed to on the Term Sheet.
- 3.7.6. All weighing tickets shall be mechanically or electronically printed. Weighbridges used to determine mass shall conform to the verification periods for weighing and measuring instruments used in trade, as required by the RSA laws governing trade metrology.
- 3.7.7. If the commodity being traded is in a silo/warehouse, as indicated on a Silo Certificate/ Document of Title, the mass, as indicated on the Silo Certificate/Document of Title, shall be final and shall be accepted by both the SELLER and the BUYER.

3.8. Quality Determination

- 3.8.1. Where the commodity has been sold delivered to the BUYER's nominated store, basis DAP or DDP, and fails on an immediate inspection conducted by the Receiver to meet the quality as specified herein, the Receiver shall not unload the Product, and shall notify the SELLER as soon as possible, but no later than 24 hours from arrival of the commodity. Failure of the Receiver to give such notice, as required, shall preclude the BUYER from claiming for deficiency of quality against the SELLER, where such deficiency would or should have been apparent on reasonable inspection. The SELLER shall be allowed 24 hours from time of the notice of deficiency being given to inspect the Product to verify the quality. If the SELLER does not do so, he shall be deemed to accept the Receiver's findings as to quality.
- 3.8.2. Should the SELLER and the BUYER fail to agree on the quality of the commodity, a second sample shall be drawn in accordance with the Agricultural Products Standards Act 1990 (and any amendments thereof or replacement Acts) with a suitable double tube probe in the case of bulk deliveries, or a suitable bag-probe in the case of deliveries in bags, or by such other method and by such person or persons agreed to by the parties. Such sample shall be sealed and shall bear on the label all relevant information required

for analysis. All analysis shall be done by an independent analyst/surveyor agreed to by the parties or else nominated by the AFSA Secretariat. The results so determined shall be final and binding upon the parties. If allowances resulting from this analysis cannot be mutually agreed by the parties the matter shall be submitted to arbitration for determination in terms of clause 15. All costs of sampling and analysis shall be borne by the defaulting party.

- 3.8.3. Where the commodity has been sold EXW, FCA, CPT or CIP, the quality shall be determined by the Silo/Warehouse operator and the quality so determined shall, unless the parties agree otherwise in writing, be final and binding on the parties.
- 3.8.4. Where commodity represented by Silo Certificate/s is traded, the quality or grade determined at the time of outloading shall be final and binding on the parties.
- 3.8.5. Where commodity is despatched for export by sea the quality shall be determined from a sample taken by a recognised first class surveyor or inspection agency upon arrival of the commodity at the port of export. The quality so determined shall be final and binding on the parties.
- 3.8.6. Where commodity has been sold "on EXW" the commodity shall be graded as follows: **[ADD DETAILS]**

4. Force Majeure

- 4.1. Neither the BUYER nor the SELLER shall be responsible for delay in dispatch or delivery of commodity or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within RSA or elsewhere if Products are imported), lockout, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause dispatches written notice to the other party within 5 (five) business days of the occurrence, or not later than 5 (five) business days after the beginning of the contract period, whichever is the later. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 (thirty) consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 (thirty) consecutive days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.
- 4.2. **Crop failure resulting from weather conditions of any nature, or damage to or destruction of crops by any other means will NOT be considered grounds for invoking Force Majeure under the terms of this clause.**
- 4.3. **The SELLER is advised that failure to execute the contract in part or in total by reason of shortage of the commodity herein described may render him liable to a claim for damages by the BUYER.**

5. Pre-delivery Storage

Products sold for delivery against this Contract must at all times be stored in clean and hygienic conditions. The SELLER shall allow the BUYER, by prior written agreement, access to any store containing the contract Products and, if required, shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the Products.

6. When notices take effect for the purposes of this document

- 6.1. A business day is any day other than a Saturday, Sunday or public holiday;
- 6.2. Business hours are the hours between 9h00 and 17h00 on a business day;
- 6.3. Any notice received at a party's designated address during business hours on a business day operates with immediate effect whether or not it actually comes to the attention of the addressee;
- 6.4. Any notice received at a party's designated address on a non-business day or after hours on a business day shall be deemed to operate from 9h00 on the next business day unless it can be shown that such notice came to the attention of the addressee before then, in which case it will operate from the day on which it came to the attention of the addressee.

7. Default

- 7.1. In the event of the SELLER failing to complete deliveries, or to make the Products available for dispatch/collection by the BUYER (whichever is his duty under the contract) as agreed to or the quantity not delivered against the contract quantity as per the Term Sheet (or Addendum) shall be deemed in default. The BUYER may, after giving prior written notice:
 - 7.1.1. purchase against such default, the SELLER to make good the loss, if any, on such purchase, or
 - 7.1.2. claim damages to be agreed mutually or settled by arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default.
- 7.2. In the event of the BUYER not accepting delivery of or collecting the contract quantity on date as agreed the SELLER may at his option after having given prior written notice by recorded delivery to the BUYER:
 - 7.2.1. sell the Products at the market price, the BUYER being liable to compensate the SELLER for any resultant loss (including any reasonable expenses arising from the sale) suffered by the SELLER, or
 - 7.2.2. claim damages to be settled by mutual agreement or arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default. All damages to be calculated on the mean contract quantity.

The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been either claimed as under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

- 7.3. In all cases the claim for damages may include any proved additional reasonable expenses which arise directly and naturally in the ordinary course of events from the defaulting party's breach, but it shall not include any loss of profit on any sub-contract made by the claimant party, nor shall it include the cost of any management or staff time resulting from their involvement with matters arising directly or indirectly from the default.

8. Insolvency

If either party to this Contract:

- 8.1. be placed in liquidation or under business rescue or curatorship (in either case, whether provisionally or finally); or
 - 8.2. effect a compromise with its creditors; or
 - 8.3. commit any act or omission which would be an act of insolvency in terms of the Insolvency Act; or
 - 8.4. fail to satisfy any final judgement against it within 21 days of the date when it should have become
- then the non-defaulting party shall, without prejudice to any other remedies which it may otherwise have in terms of the Contract or at law, be entitled to terminate this Contract or claim specific performances, in which event such termination shall be without prejudice to, and shall not constitute a release or waiver of, any claims which the non-defaulting party may have for damages against the defaulting party occasioned by the termination of this Contract in terms of this clause.

9. Dispute Resolution Agreement

- 9.1. Unless otherwise agreed to under the Contract, any dispute between the parties arising from or in connection with the contract shall be finally resolved by way of a dispute resolution procedure administered by the Arbitration Foundation of Southern Africa (AFSA) in accordance with its Expedited Rules and the directions of its Secretariat, which shall be binding on the parties. (AFSA can be contacted at www.arbitration.co.za, Telephone No. 011 320 0600;
- 9.2. The parties may agree, or the AFSA Secretariat may direct, that the dispute first be submitted to mediation in accordance with the AFSA Mediation Rules. In which case, if the dispute is not resolved within 20 business days thereafter, it shall proceed to arbitration, unless both parties agree to extend the mediation period and the AFSA Secretariat approves such extension. Where there is no agreement to mediate, and/or the AFSA Secretariat does not so direct, then the dispute shall be submitted directly to arbitration.
- 9.3. Where both parties are in agreement therewith, they may employ legal representatives to appear for them at any arbitration hearing. Where there is no such agreement, then legal representatives shall not be present at the hearing, unless the arbitrator otherwise directs in the special circumstances of the case.
- 9.4. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 15 (fifteen) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 9.4 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 9.5. Unless the parties otherwise expressly agree in writing, any dispute shall be resolved in accordance with the law of the Republic of South Africa and the seat of the arbitration will be in South Africa.
- 9.6. Any matter pertaining to the mediation, if applicable, or to the arbitration of any dispute herein, if not provided for by this agreement or by the AFSA Rules, shall be referred to the AFSA Secretariat, which shall issue appropriate directions which are binding on the parties.
- 9.7. This clause 9 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 9.8. This clause shall survive termination of the Sales Agreement.

10. Time Limits and Mandatory Procedures for Pursuing any Claim

- 10.1. The parties affirm that it is necessary that any dispute between them should be notified without delay and then pursued promptly. They therefore agree that, unless a party making a claim does so in accordance with time limits specifically relating thereto, as set out elsewhere in this document, or if no specific time limits apply, then in accordance with the requirements of clause 10.2, such claim shall be barred and deemed to have been waived and abandoned for all purposes whatever.
- 10.2.
 - 10.2.1. This clause regulates the time limits for making and pursuing any claim where such time limits are not specifically set out elsewhere in this document.
 - 10.2.2. Any claim for any failure to deliver the Products in accordance with this Contract must, if such failure was not, and would not have been, apparent from a reasonable inspection on delivery, be notified in writing to the other party within 28 consecutive days from the last day of the period of delivery and thereafter, if such claim has not been settled, then it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.
 - 10.2.3. Any claim for any other failure to perform in terms of this Contract, shall be notified in writing to the other party within 28 consecutive days from the date on which the other party could reasonably have become aware of such failure. Thereafter it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.
- 10.3. The arbitrator shall determine whether there has been compliance with the provisions of this clause 10, but only if, and to the extent that, any party in the arbitration proceedings raises the issue.

11. Vehicle Cleanliness

Acceptance or rejection of any road vehicle or rail truck for fitness to carry Product to enter the food chain shall be at the discretion of the party responsible for loading the vehicle. Any additional haulage costs arising from the rejection of any road vehicle or rail truck shall be the liability of the party responsible for the movement of the

Products. In the event of any road vehicle or rail truck being rejected as above, within three business days of the end of the delivery period, the delivery period shall be extended by three business days.

12. Passing of Ownership and Risk

- 12.1. Risk shall pass as per the specific INCOTERM selected and agreed to be applicable to the Contract.
- 12.2. Ownership remains with the Seller until such time that the Buyer has paid in full.

13. Claims Analysis

- 13.1. When Products are sold subject to a specification requiring analysis, the BUYER shall have the right to claim an allowance to be agreed or to reject the Products on the basis of an analysis made by him or on his behalf. When the BUYER exercises this right a representative sample shall be drawn, sealed and, if required by the SELLER, shall be submitted to an agreed independent analyst for the justification of any claim or rejection. If required by the SELLER this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable.
- 13.2. Costs of independent sampling and analysis so incurred shall be for the SELLER's account if the claim or rejection is upheld, otherwise for the BUYER's account.
- 13.3. All such claims must be notified so as to be received by the SELLER within 60 days from the last day of the contract period.
- 13.4. Where the contract between the parties denotes that that the quality/ specifications will be final at load/ place of loading, and a specified certificate is to be provided in terms of this contract, denoting the quality/ specifications at place of loading (and as detailed under item 3, or item 24 of this contract), then the specifications on such a certificate will be final and binding. The Buyer will have no recourse, if upon arrival of the commodity at destination, the quality/specifications is/ are different from those stated on the applicable certificate, as provided for in this contract.

14. Demurrage

In cases of unreasonable delay in the arrival, loading or discharge of vehicle/trucks collecting or delivery Products howsoever caused (including delays resulting from the non-provision of essential documentation), the party (SELLER or the BUYER) responsible for said delay, loading or discharge of vehicle,/trucks collecting or delivery, shall be liable for the additional haulage costs that result from that delay.

15. Non-Payment

The SELLER reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this Contract with him by the BUYER have been received. the SELLER reserves a lien upon - and the right to sell or otherwise dispose of - all Products the subject of this Contract, whether appropriated to it or not, in respect of any such payments.

16. Statutory Changes

The price of the Products is subject to alteration by reason of the imposition of or alteration by the Government of RSA in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon Products of this description, whether at the time of or if the change is retrospective, at any time after the date of this contract, provided that the change is applicable to the date of delivery.

17. Warranties and Indemnifications.

- 17.1. **Warranty of Title.** The SELLER represents and warrants that the SELLER is the true and lawful owner of the Products conveyed by this Contract and has full power to convey such Products, and the title so conveyed is free, clear, and unencumbered.
- 17.2. **Authority to Sign Agreement.** The SELLER and the BUYER hereby warrants that they respectively have the authority necessary to sign this Contract.
- 17.3. **Indemnification.** Each Party agrees to indemnify and save harmless the other Party as well as Match MX from and against any and all claims, lawsuits, actions, damages, loss, costs and expenses (including attorneys' fees), and demands, by third parties, that in any manner result from a party's breach of his/her/its warranties and undertakings in this Contract. This indemnification binds the heirs, executors, administrators, and assigns of the indemnifying party.

18. Designated Addresses: Addresses of the parties at which all notifications may be given and all processes served shall be addresses and contact details as made available by the SELELR and BUYER on Match MX Platform (or Term Sheet). Each party hereby gives MatchMX the right to make available the business address / physical address and the email address or telephone number to the other party during the Contract process, which either party may use for purposes of this Contract. Although Match MX is not a party to this Contract, Match MX may be utilized to facilitate the sending and receiving of said notices on each other.