

MASTER STORAGE AGREEMENT

1. PARTIES

The Parties to this Agreement are –

1.1. **GRIEKWALAND WES KORPORATIEF LIMITED**, a company registered in terms of the laws of the Republic of South Africa with registration number 1997/022252/06, herein represented by _____ whose details are recorded in GWK's records as authorised by the Board of Directors of the GWK ("GWK") with it is address being:

Physical address: De Villiers Street, Douglas

Postal Address: P.O. Box 47, Douglas

E-mail: _____

1.2. Name: _____

Identity / Registration number: _____

Sole Proprietor	Partnership	Trust	Close Corporation	Private Company	Public Company

Herein represented by _____ he/she being duly authorised thereto in terms of the authority ("the User") with its address being:

Physical address: _____

Postal address: _____

E-mail: _____

2. RECORDAL

2.1 GWK is the owner and operator of the storage facilities.

2.2 The User is the owner or rightful possessor of the product and wishes for the delivery, drying, storage and/or despatch of the product in the storage facilities.

2.3 GWK is prepared to render the services in 2.2 at the facility subject to the terms and conditions contained herein.

2.4 No delivery of the product shall take place until such time as the User has signed this agreement and provided the authority to the satisfaction of GWK.

2.5 The parties record that this agreement was not entered into as a result of any "direct marketing" by GWK or any of its employees or agents as defined in section 1 of the Consumer Protection Act, 68 of 2009.

3. INTERPRETATION

3.1 The headings of the clauses in this agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this agreement nor any clause hereof.

3.2 In this agreement, unless a contrary intention clearly appears, words importing any one gender include the other, the singular include the plural and vice versa and persons include created entities (corporate or non-incorporated), natural persons and vice versa.

3.3 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

3.4 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

- 3.5 Expressions defined in this agreement shall bear the same meanings in annexures to this agreement which do not themselves contain their own definitions.
- 3.6 The *contra proferentum* rule shall not apply to the agreement and the agreement shall not be interpreted in favour of or against a party whose advisors prepared or assisted in the preparation of the agreement.
- 3.7 The content of the agreement should not be interpreted or construed in any manner as to establish a partnership between any of the parties.

4. DURATION OF AGREEMENT AND CONSEQUENCES OF CANCELLATION

- 4.1 This agreement shall commence upon the date that the User signs the agreement and continues indefinitely, until such time as the agreement is cancelled by a party.
- 4.2 This agreement may be terminated by 30 (Thirty) days written notice to the other party, but even with notice of termination will remain in effect until such time that all product stored by GWK is dispatched to the User or its agent.
- 4.3 The cancellation or termination of the agreement shall not in any form or manner affect the obligations of the parties to fulfil its obligations, nor shall it limit the parties rights to recourse provided for in the Law other than in the manner agreed to in terms of this agreement.

5. GUARANTEES BY THE USER

- 5.1. The User herewith confirms that it is the owner or lawful possessor of the product to be delivered.
- 5.2. The User herewith confirms that it is not prohibited in terms of the law from entering into this agreement.

6. MIXING OF PRODUCTS

- 6.1. GWK is entitled to mix products from different Users provided that products which do not comply with the original grade of delivery or withdrawal, can be corrected by means of offsetting (upgrading or downgrading).
- 6.2. All corrective payments between the parties must take place on the date on which the product is withdrawn by the User.
- 6.3. Corrective payments will be determined per delivery season by GWK and the norms and calculation methods are available at the head office of GWK and on GWK's website at www.gwk.co.za.

7. RETENTION RIGHT

- 7.1. GWK has a right of retention on all products stored in terms of this agreement in respect of any tariffs or any other amount owed by the User to GWK.
- 7.2. GWK has a legal claim to all income generated from the sale of the product for settlement of any debt owed by the User to GWK in terms of clause 7.2 of this agreement.

8. PAYMENT OF TARIFFS

- 8.1. All tariffs will be invoiced twice a month, on the first business day after the fifteenth day of the relevant month and on the last day of the relevant month
- 8.2. All invoices are payable within 7 (Seven) days from date of invoice.
- 8.3. Tariffs will be charged for handling costs, storage costs, silo certificate costs, administrative costs and drying expenses and/or any other tariffs known, or which may become applicable plus VAT, where applicable.
- 8.4. The tariffs will be determined per delivery season per product within GWK's sole discretion and will be available at GWK's head office or website. By signing this agreement, the User agrees to the tariffs and their inclusion in this agreement.
- 8.5. The User shall be liable for a penalty payment equal to the prime interest rate determined by Standard Bank South Africa Limited plus 7% (Seven percent) calculated daily and capitalized on a monthly basis for the period during which the payment remains in arrears.
- 8.6. No product shall be supplied, transferred to the account of another User or silo certificate issued to the User until all amounts due in terms of this agreement are paid in full.

9. DELIVERY OF THE PRODUCT BY THE USER

- 9.1. All products will be delivered either by the User to the GWK storage facility, physically by GWK off-loading the Users nominated road or rail carrier, silo certificate or transfer to another User's account number.
- 9.2. Physical delivery of the product must be pre-arranged with the manager of the storage facility where delivery will take place.
- 9.3. In the case of the first physical delivery, excluding Silo Certificates and transfer to the account of another User, at the storage facility the User will be responsible for paying a handling cost available at the head office of GWK and on GWK's website.
- 9.4. In the case of the first physical delivery, excluding Silo Certificates and transfer to the account of another User, at the storage facility, GWK will deduct a standard percentage for screenings in addition to any other regulatory requirement, which is available at the head office of GWK and on GWK's website.
- 9.5. All deliveries at the storage facility have to be accompanied by the User's delivery note, clearly indicating the User for which it is been delivered, the Users account number and the product that is being delivered.
- 9.6. In the case of physical delivery, GWK will grade the product according to the Agricultural Products Standards Act, 119 of 1990 as amended from time to time and any regulations promulgated in terms thereof, or any legislation which replaces the provisions of the Act and the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 36 of 1947 as amended from time to time and any regulations promulgated in terms thereof, or any legislation which replaces the provisions of the Fertilizers Act.
- 9.7. In the case of a silo certificate or transfer to the account of another USER the grade or quality as indicated on the silo certificate or User's stock confirmation will be final.
- 9.8. All products delivered in terms of this agreement and where the moisture exceeds the moisture levels as indicated GWK's website, will be dried by GWK and the User shall be responsible for the drying costs available at the head office of GWK and on GWK's website.
- 9.9. Delivery shall be deemed to be completed as and when the product has been offloaded the final delivery weight has been determined and is under the sole physical control of GWK.
- 9.10. GWK retains the right, within its sole discretion, to refuse any delivery of the product if it is not able to do so due to any reason whatsoever. GWK will not be liable for any damages that the User may suffer as a result of GWK's refusal to take delivery of the product.
- 9.11. GWK will issue to the User a receipt confirming the delivery of the product as determined by way of practices and processes implemented, from time to time, by GWK within its sole discretion.

10. FUMIGATION OF PRODUCT

- 10.1. All products delivered by the User to GWK in terms of this agreement will be fumigated by GWK in accordance with the provisions means the Agricultural Pests Act, 36 of 1983 and as amended from time to time and any regulations promulgated in terms thereof, or any legislation which replaces the provisions of this ACT. GWK retains the right to repeat fumigation processes if required to do so in terms of the Law.
- 10.2. All products delivered by the User to GWK in terms of this agreement may only be collected by the User after the processes contained in clause 10.1 has been completed to the satisfaction of GWK.

11. STORAGE OF THE PRODUCT

- 11.1. The products which GWK is willing to take delivery of and store will be available at GWK's head office and on its webpage.
- 11.2. The product will be stored by means of any silo, bag, bunker or other facility allowed for in terms of the Law as owned and/or operated by GWK in which the product delivered in terms of this agreement will be stored by GWK.
- 11.3. The User will be responsible for paying a storage cost form delivery until dispatch of the product, which is available at the head office of GWK and on GWK's website.
- 11.4. The risk in respect of the Product, which is delivered, passes from the User to GWK at delivery and ends immediately upon its dispatch to the User or its agents.
- 11.5. GWK will issue a monthly stock report reflecting the product stored. No stock report will be issued for any product for which GWK issued a silo certificate.

12. DISPATCH OF PRODUCT TO THE USER

- 12.1. All products will be dispatched by GWK to the User on an ex-silo basis.
- 12.2. The User has the right to inspect the product prior to its dispatch.
- 12.3. The User must give at least 7 (Seven) business days written notice to GWK of its intention to withdraw the product from the storage facility as to enable GWK to make the required logistical arrangements.
- 12.4. The User must arrange an out-loading time at least 7 (Seven) days before the date of withdrawal.
- 12.5. No product may be withdrawn without a valid dispatch instruction being issued by GWK.
- 12.6. If the withdrawal of a GMO-Free product is being requested, the User must specify it as such in writing, failing which the User will have no claim for damages against GWK in respect of such a withdrawal.
- 12.7. If the product received by the User does not concur with the grade, mass or moisture content of the Product as dispatched to it or if it is infected with insects, the User should inform GWK and not offload the product. Telephonic as well as written notice should reach GWK within 24 (Twenty-four) hours of arrival of the product at the User's nearest station/s or premises, failing which the User will be obliged to accept the product as if it has been delivered as dispatched. Where weekends or public holidays apply, notice should be given within 48 (Forty-eight) hours. GWK cannot be held responsible for any demurrage or any claims when the process contained in this clause has not been complied with. If a period of 14 (Fourteen days) have passed since the product was dispatched, GWK shall not be responsible for any insect infestation of any product dispatched due to any reason whatsoever.
- 12.8. If the User, according to GWK repeatedly declare unfair and/or unsubstantiated disputes, GWK may decide to offload the product to the User concerned on an ex-silo basis. Any decision by GWK in this regard will be confirmed to the User in writing by letter or by e-mail. The User is entitled to inspect every consignment before it leaves the facility. If the User in this instance does not wish to inspect the product before it leaves the facility, the consignments will be regarded as an ex-silo dispatch and the User will not be entitled to lodge any dispute or have any claims in respect of such consignments.
- 12.9. All products that are dispatched to persons/institutions outside the borders of the Republic of South Africa are dispatched on an ex-silo basis. It is thus incumbent upon the User to ensure that such products meet the requirements for phytosanitary certification and GWK bears no responsibility in this regard. GWK shall thus not be responsible for any damages or claims instituted or suffered by the User or its clients if phytosanitary certification cannot be provided or the quality and quantity as dispatched by GWK differs from the quality and quantity at the destination outside the borders of the Republic of South Africa.
- 12.10. The responsibility to inspect the product at the operational point from where the product is dispatched remains that of the User and if it fails to carry out the inspection, it is accepted that the User is satisfied with the quality and quantity and no claims can be lodged against GWK if the quality and quantity differ at the destination.
- 12.11. No product will be loaded by GWK on any motor vehicle which is wet, dirty or contravenes the law.
- 12.12. In the event of the User requiring more product than GWK has in stock, GWK reserves the right to make a stock or financial adjustment, which the User will be obliged to accept.

13. OWNERSHIP

- 13.1. GWK retains the right to mix the product with products of other Users in the same grain silo for storage purposes.
- 13.2. If GWK exercises its rights as contained in clause 13.1 of this agreement, the products of the respective Users shall constitute joint property of all of the Users in question, each of whom shall be deemed to be the owner of an undivided share therein expressed as a fraction equal in extent to the quotient of the total product from time to time as divided by the mass of each individual User's product which will be adjusted according to the same formula whenever a portion of the joint property is withdrawn from the storage facility by one or more of the Users, or, if a further product is added to the storage facility.
- 13.3. The User hereby authorizes GWK to act as the agent in *rem suam* of each User of the joint property as made provision for in clause 13.2 of this agreement and as agent, to give effect to the provisions of clause 13.2 of this agreement.
- 13.4. In the event of joint ownership as made provision for in clause 13.2 hereof, the User retains the right to alienate his shareholding in the joint property. Transfer of ownership in the shareholding of the joint property will only be deemed to have been transferred if GWK issues a silo receipt to the new owner (User) of the shareholding in question, said receipt which will be issued once GWK has been provided with the required documents to issue such a silo receipt.
- 13.5. If GWK is unable to issue the silo receipt made provision for in clause 13.4 of this agreement, the User shall not be entitled to transfer ownership of the shareholding until such time as the User has taken physical possession of the product and the product has left the applicable storage facility.

14. FORCE MAJEURE

- 14.1. Force Majeure will be any circumstance which is beyond the reasonable control of the party giving notice thereof and which could not reasonably have been foreseen by the affected party, which shall be limited to an invasion, insurrection, civil commotion, mob violence, sabotage, blockade, embargo, boycott, fire, explosion, theft, storm, flood, drought, wind, lightning or other adverse weather conditions, epidemic, quarantine, accident, strikes, lockouts, load-shedding or other labour disturbances (in the last instance to a maximum of 28 days) and acts or restraints or government imposition.
- 14.2. GWK will in any event not be responsible for any delays of the product or any part thereof, irrespective of whether or not it is brought about by any Force Majeure. The User cannot institute any claim against GWK for the delay or non-delivery.

15. INSURANCE AND SHORTAGES

- 15.1. GWK shall insure the product from date of delivery to the termination date against insurable risks.
- 15.2. GWK may elect to ensure the product after the termination date against insurable risk subject to the condition that the costs associated with such insurance shall be recoverable from the User.
- 15.3. GWK shall not be liable to the User or any other subsequent owner of the product for any loss of profit or business or any indirect or consequential losses, damages, costs and expenses arising under or from this agreement.
- 15.4. Notwithstanding any clause to the contrary contained in this agreement, GWK's liability towards the User or any other subsequent owner of the product is limited to the lower of the total storage fees (and/or related fees) payable to GWK under this contract, in the contract year (contract year means each consecutive 12 (twelve) month period from the signature date) immediately preceding that in which the event giving rise to the liability arises [or where such event arises in the first contract year of this contract, the actual total storage fees (and/or related fees) paid together with the projected fees for the remainder of the first contract year] or the physical market value of the product in question with regards to the claim/s at the time of the incident.
- 15.5. GWK shall be entitled to dispute the existence or any shortage or any amount claimed, provided that it informs the User by written notice of the basis of its grounds for dispute.

16. GENERAL

- 16.1. Apart from the provisions to the contrary contained in this agreement, no party may without prior written notice of the other party, delegate, assign, cede, transfer or in any other way alienate or dispose of any of its rights or obligations in terms of this agreement to any other person.
- 16.2. No provision of this agreement (including, without limitation, the provisions of this clause) may be amended, substituted or otherwise varied, and no provision may be added to or incorporated in this agreement, except (in any such case) by an agreement in writing signed by the duly authorised representatives of the parties.
- 16.3. Any relaxation, indulgence or delay (collectively referred to as the "Indulgence") by any party in exercising, or any failure by any party to exercise, any right under this agreement shall not be construed as a waiver of that right and shall not affect the ability of that party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that party or any other person).
- 16.4. This agreement supersedes all prior agreements, representations, communications, negotiations and understandings between the parties concerning the subject matter (the product details) of this agreement.
- 16.5. Whenever possible, each provision of this agreement shall be interpreted in a manner which makes it effective and valid under applicable law, but if any provision of this agreement is held to be illegal, invalid or unenforceable under applicable law, that illegality, invalidity or unenforceability shall not affect the other provisions of this agreement, all of which shall remain in full force.
- 16.6. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either party in terms of this agreement or relating to it shall be given in writing, and shall be sent by registered post, or delivered by hand, or transmitted by facsimile to the recipient party at its relevant address set out below:
- 16.6.1. if to GWK, at the address set out clause 1.1 hereof; and
 - 16.6.2. if to User, at the address set out clause 1.2 hereof.

- 16.7. Any party may, by written notice to the other party, change any of the addresses at which, or the designated person for whose attention those notices, or other communications are to be given. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant party until it nominates a new physical address within the Republic of South Africa in writing, to be its new *domicilium citandi et executandi*.
- 16.8. Any notice or other communication given by any party to the other party which –
- 16.8.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the 7th (SEVENTH) day after the date of posting; or
- 16.8.2. is delivered by hand during the normal business hours of the addressee at its specified address or via e-mail to its specified e-mail address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
- 16.8.3. is transmitted by facsimile copier to the addressee at the addressee's specified facsimile number or via e-mail shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report, unless the contrary is proved.
- 16.9. The parties choose their respective physical addresses in clauses 1.1 and 1.2 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served.
- 16.10. The parties agree to perform, or procure the performance, of all further things, and delivery of all further documents, as may be required by Law or as may be desirable or necessary to implement or give effect to this agreement and the transactions contemplated therein.
- 16.11. By entering into this agreement, the parties confirm that there are no impediments or restrictions to their doing so and that this agreement does not violate the provisions of any agreement between any of the parties and any third party.
- 16.12. This agreement constitutes the entire agreement between the parties in regards to matters dealt with herein and no representations, terms, conditions, warranties or material evidence (express or implied) not contained herein shall be binding to the parties.
- 16.13. The User shall not be entitled to claim any consequential damages from GWK.
- 16.14. A certificate issued by an employee of GWK shall serve as prima facie proof of amount owed by the User to GWK without the person issuing the certificate having to prove his authority to do so.

17. DISPUTE RESOLUTION

- 17.1. The Dispute Resolution Procedure set out in this clause (the "Dispute Resolution Procedure") of this agreement shall apply to any dispute which may arise as a result of or in terms of this agreement.
- 17.2. To constitute a dispute, any one of the parties must serve a notice conveying the nature and scope of the dispute to the other party.
- 17.3. All disputes shall first be attempted to be resolved through a joint meeting between the parties. Any agreement reached at such a joint meeting shall be reduced to writing and shall be binding on the parties.
- 17.4. If the parties have been unable to resolve any dispute within 15 (Fifteen) days of the notice referred to in clause 17.2 of this agreement, either party may refer the dispute for arbitration.
- 17.5. The arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 42 of 1965, as amended from time to time), provided that –
- 17.5.1. a single arbitrator shall be appointed;
- 17.5.2. the arbitrator shall be a practicing advocate or attorney of not less than 10 (TEN) years standing agreed upon by the parties within 10 (Ten) days after the date on which the arbitration is called for;
- 17.5.3. If the parties fail to reach agreement within 10 (Ten) days after arbitration has been called for on the arbitrator to be appointed, such arbitrator shall be appointed by the President for the time-being of the Cape Law Society or any of its legal successors;
- 17.5.4. The arbitration proceedings shall take place in Kimberley;

17.5.5. The arbitration proceedings shall be held informally and in a summary manner, and all procedural requirements and formalities shall be determined by the arbitrator and the parties. In determining such formalities and procedure, the arbitrator does not need to observe the normal strict rules of evidence or usual formalities of procedure;

17.5.6. The decision of the arbitrator shall be final and binding; and

17.5.7. The cost of the arbitration proceedings shall be borne by the Parties as decided by the arbitrator.

17.6. No referral of any dispute to any resolution process in terms of this clause shall relieve any party from any liability for the due and punctual performance of its obligations under this agreement.

17.7. This arbitration clause shall not prevent the parties from acquiring urgent relief in terms of the Law.

17.8. Without detracting from any of the rights that might exist in Law, any party to this agreement may, if the other party breaches any material term of this agreement, be entitled to notify the other party by way of notice to rectify or remedy such breach within 7 (seven) days after receipt of a written notice requiring it to do so, failing which the aggrieved party shall be entitled without notice, in addition to any other remedy available to them at Law or under this agreement, including obtaining an interdict, to cancel this agreement against the defaulting party and acquire or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved parties' rights to claim damages.

18. IDENTITY PRESERVATION STORAGE

Unless agreed to in writing between the parties, GWK shall not store any product as identity preserved.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__

AS WITNESSES: On behalf of GWK

1. _____

2. _____

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__

AS WITNESSES: On behalf of USER

1. _____

2. _____