



**FPT GROUP (PTY) LTD**

Reg no. 1986/001611/07

**STANDARD TRADING CONDITIONS**

**1. DEFINITIONS**

1.1 In this Agreement, unless inconsistent with the context, the following words and expressions shall bear the following meanings assigned thereto:

- 1.1.1 "Affected Goods" being produce tainted, decayed, affected or infested with disease, virus, spores, fungus, bacteria, inherent vice, insects or contamination, of whatsoever nature or degree which renders it unfit or unacceptable for human consumption and/or export and/or marketing purposes for whatsoever reason, irrespective of when such condition may have arisen, and shall include Goods in transit and/or in bond in terms of any Act, Statute, Proclamation, Phyto-sanitary Requirements or lawful directive being issued by any relevant authority, and includes Goods having been treated with chemicals unacceptable to the country of destination;
- 1.1.2 "Agreement" means this Agreement between the parties contained in this document, including the Credit Application;
- 1.1.3 "Company" means FPT Group (Pty) Ltd;
- 1.1.4 "Credit Application" means the written application for credit signed by the Customer or its representative, in terms whereof credit facilities were applied for and granted by the Company in favour of the Customer;
- 1.1.5 "Customer" means the customer referred to in the Credit Application, in terms whereof the Customer applied to the Company for

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credit facilities in relation to the Services to be rendered by the Company as stipulated herein;

1.1.6 "Goods" means any goods and/or agricultural produce and includes any container, transportable tank, flat pallet, package or any other form of covering, packaging, container or equipment used in connection with or in relation to such goods and produce, in respect whereof the Customer transacts with the Company to render Services;

1.1.7 "Parties" means the parties to this Agreement, being the Company and the Customer;

1.1.8 "Services" means:

1.1.8.1 the handling, transporting, receipt, transfer, or storage of Goods, and includes;

the receipt, transfer and storage of Goods at ambient or specified controlled temperatures; and

the handling of goods according to specified protocols and or written instructions of the Customer, or in the absence thereof, according to the guidelines issued by the Perishable Products Export Control Board (PPECB) or the Company's reasonable discretion, and/or the eventual transfer and stowing thereof upon a vessel; and

1.1.8.2 all such actions and conduct leading up to and including the delivery of the Goods to any third party; and

1.1.8.3 the compliance with any other reasonable written instructions by the Customer; and

1.1.8.4 the provision of controlled atmospheric storage; together with

1.1.8.5 all ancillary actions relative to the above.

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2. **TERMS AND CONDITIONS OF AGENTS AND SUBCONTRACTORS**

Notwithstanding anything to the contrary contained herein the Customer agrees that all goods shall be dealt with by the Company on the terms and conditions, whether or not inconsistent with these trading terms and conditions, stipulated by the carriers, warehouseman, government departments, and all other parties (whether acting as agents or subcontractors to the Company or not) into whose possession or custody the goods may pass, or subject to whose authority they may be at any time be.

3. **OWNERS RISK**

All Services rendered by or on behalf of or at the request of the Company are affected at the sole risk of the Customer and/or the owner, and the Customer indemnifies the Company accordingly.

4. **INSURANCE**

The Customer acknowledges that the Company has not and does not assume, the responsibility for insuring the Goods at its own instance or on behalf of the Customer and it is further recorded that any quoted price or rate bears reference to and does not include any insurance premiums.

5. **PAYMENT TERMS**

The Parties agree that:

- 5.1 charges for all Services rendered by the Company to the Customer shall be as agreed between the Parties; or
- 5.2 be that price or rate as quoted by the Company for a specific service, as accepted by the Customer;
- 5.3 all payments shall be made without deduction or setoff of whatsoever nature irrespective of any pending claim or dispute within 30 (thirty) days of the invoice date;
- 5.4 the amount due and payable to the Company may be determined and proven by a certificate issued and signed by any senior manager of

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the Company whose appointment and capacity shall not be required to be proved. Such certificate shall be binding and be *prima facie* proof of the indebtedness of the Customer.

6. **INTEREST**

The Customer shall be liable to pay interest as follows:

- 6.1 In the event of any invoice rendered not having been paid within 30 (thirty) days of production thereof, the Customer shall pay interest calculated at 5% (five per centum) above prevailing prime rate applied by Standard Bank of South Africa, and which shall be computed and capitalised monthly in advance from the date of the rendition of the said account, up to and including date of payment, both dates inclusive;
- 6.2 In the event of any dispute with regard to the prevailing prime rate of interest, or in the event of legal action having been taken against the Customer to recover amounts due in terms hereof, then and in such event a certificate issued by the Manager of Standard Bank of South Africa, Cape Town, shall be *prima facie* proof and evidence of such prime rate and of the date or period of application thereof.

7. **WARRANTIES AND REPRESENTATIONS BY THE COMPANY**

The Company makes no warranties and representations to the Customer save as may be specifically provided herein or as notified in writing by the Company to the Customer from time to time. The Customer acknowledges that the Company is not in any way bound by any oral statement, representation, guarantee, promise, undertaking, inducement or otherwise which may have been made at any time by any salesman, employee, representative or any person acting or purporting to act for and on behalf of the Company, whether negligently or otherwise, unless such statements, representations, guarantees, promises, undertakings, warranties or inducements are supplied or made in writing by an employee duly authorised by written resolution of the board of directors of the Company in response to a written enquiry specifying accurately and in complete detail what information is required.

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8. **PACKAGING**

- 8.1 The Customer shall deliver the Goods palletised and/or unitised and shall ensure that the packaging and securing mechanism complies with all relevant statutory and/or practical handling requirements.
- 8.2 Packaging and securing mechanism shall be sufficiently robust, which would meet handling and/or export requirements, and which would limit any exposure of its contents to damage in transit.
- 8.3 All packaging and Goods shall bear sufficient identifying marks, information and/or data, in order that the Company may identify, manage and administer same and also its contents

9. **FIRE RISK**

The Customer acknowledges that the Company maintains an active fire control system at its premises where Goods are stored. In instances or premises where there is no sprinkler system installed as part of that fire control system, the Company will apply other reasonable precautionary measures as part of its fire control system so as to combat the outbreak and/or spreading of fire.

10. **LIEN**

The Customer hereby acknowledges that the Company holds a lien over the Customer's Goods in its possession in respect of any amount owing, whether overdue or otherwise. Should the Customer owe any monies to the Company which are overdue, and whilst holding its Goods, the Company may inform the Customer that it intends to exercise its lien over such Goods. If the Customer, in such event, nevertheless fails to pay such monies due, (in which event all monies due shall be deemed to be immediately payable without notice) then the Customer hereby irrevocably nominates, constitutes and appoints the Company as its lawful agent and representative to sell on its behalf such Goods as advantageously as possible, and then to retain such amounts owing by the Customer. Any excess amount shall, however, be paid to the Customer after deduction of monies due and charges plus interest and the costs of such sale. In the

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event of such sale, the Company is furthermore hereby authorised to deliver the Goods and ownership therein to the purchaser and then to issue a valid receipt for the proceeds of such sale.

11. **AFFECTED GOODS**

11.1 Should it be discovered at any time that Goods are Affected Goods, the Company may in its absolute discretion, refuse to accept and/or retain in its terminals such Goods, in which circumstance the Company may in its sole and absolute discretion deal with or dispose of the Goods in such manner as it deems appropriate having regard to the prevailing circumstances. In such event the Company shall not incur any liability for such action, and the Customer shall thereupon at its own expense summarily because such Goods to be returned and/or removed. Alternatively the Company may remove or cause the removal thereof, in which event the Customer shall immediately pay, upon demand, such costs and disbursements the Customer assumes such liability whether or not the Customer was aware of such inherent vice or condition. With regard to the recovery of any of such amounts the following provisions shall apply:

11.1.1 The Customer now irrevocably indemnifies the Company against any claims and/or any damages which it may suffer, as a result of it having received into its terminals any such Affected Goods;

11.1.2 It shall however be incumbent upon the Parties who detect such condition to immediately notify the other Parties thereof by facsimile or email.

11.2 The Customer acknowledges that it is of material to the Company that no such Affected Goods be received in its terminals by virtue of the fact it may affect and contaminate and/or taint other Goods in the Company Terminals, and that the business of the Company may be adversely affected it is therefore pertinently recorded that all the provisions in this Agreement, and specifically those relating to Affected Goods, go to the root of this contract.

11.3 Goods which has been subjected to chemical or other treatment which is unacceptable to the protocol and/or legislation of the country of

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destination shall be deemed to be Affected Goods.

12. **SUBCONTRACTING**

- 12.1 Any business entrusted by the Customer to the Company may, in the absolute discretion of the Company, be fulfilled by the Company itself, by its own servants performing part of all the relevant services, or by the Company employing, or entrusting the goods or services to third parties on such conditions as may be stipulated by, or negotiated with, such third parties for the purposes of such services, or such part thereof as they may be employed to carry out.
- 12.2 Where the Company employs third parties to perform all or any of the functions which it has agreed to perform the Customer agrees that the Company shall have no responsibility or liability to its Customer for any act or omission of such third party, even though the Company may be responsible for the payment of such third party's charges.

13. **NO CLAIMS AGAINST COMPANY DIRECTORS AND EMPLOYEES**

The Customer undertakes that no claim shall be made against any director, servant or employee of the Company which imposes or attempts to impose upon him any liability in connection with the rendering of any services which are the subject of these trading terms and conditions and hereby waives all and any such claims.

14. **LIMITATION OF COMPANY'S LIABILITY**

- 14.1 The Company shall not be liable for any claim of whatsoever nature (whether in contract or in delict) and whether for damages or otherwise, howsoever arising including but without limiting the generality of the aforesaid:
- 14.1.1 any negligent act or omission or statement by the Company or its servants, agents and nominee; and/or
- 14.1.2 any act or omission of the Customer or agent of the Customer with whom the Company deals; and/or
- 14.1.3 any loss, damage or expense arising from or in any way

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connected with the marking, labelling, numbering, non-delivery or mis-delivery of any goods; and/or

- 14.1.4 any loss, damage or expense arising from or in any way connected with the weight, measurements, contents, quality, inherent vice, defect or description of any goods; and/or
- 14.1.5 any loss, damage or expense arising from or in any way connected with any circumstance, cause or event beyond the reasonable control of the Company, including but without limiting the generality of the aforesaid, strike, lock-out, stoppage, boycott or work stoppage; and/or
- 14.1.6 any loss, damage or expense arising from or in any way connected with war, whether declared or not, civil war, civil violence, riots and revolutions, acts of piracy, acts of sabotage; and/or
- 14.1.7 any loss, damage or expense arising from or in anyway connected with any natural disaster such as violent storms, cyclones, earthquakes, tidal waves, floods, destruction by lightning, or fire; and/or
- 14.1.8 any loss, damage or expense arising from or in any way connected with a deliberate or unintentional interruption in the supply of electricity or other utility as result of load shedding or other interruption of supply by either the local authority or nominated Government service provider; and/or
- 14.1.9 damages arising from loss of market or attributable to delay in forwarding or in transit of failure to carry out any instructions given to the Company; and/or
- 14.1.10 loss or non-delivery of any separate package forming part of a consignment or for loss from a package of an unpacked consignment or for damage or mis-delivery; and/or
- 14.1.11 damage or injury suffered by the Customer or any person whatsoever arising out of any cause whatsoever as a result of the Company's execution or attempted execution of its obligations to the Customer and/or the Customer's requirements or mandate; and/or

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14.1.12 and loss, damage or expense occasioned to Goods while stored at the Company's premises caused by fire for any reason whatsoever, including failure or proper functioning of any fire control equipment installed at the premises;

unless:

- (a) such claim arises from a grossly negligent act or omission on the part of the Company or its servants; and
- (b) such claims arises at a time when the goods in question are in the actual custody of the Company and under its actual control; and
- (c) in the instance provided in clause 13.1.7 above, the Company receives a written notice within 5 days after the end of the transit where the transit ends in the Republic of South Africa or within 14 days after the end of transmit where the transit ends at any place outside the Republic of South Africa.

14.2 Notwithstanding anything to the contrary contained in these trading terms and conditions, the Company shall not be liable for any indirect and consequential loss arising from any act or omission or statement by the Company, its agents, servants or nominees, whether negligent or otherwise.

15. **GENERAL**

15.1 The Company to the Customer, shall be deemed in any way to effect, prejudice or derogate from the rights under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or as a novation of the terms hereof.

15.2 The terms of this Agreement form the sole present and future contractual relationship between the Parties and no variation of this Agreement shall affect the terms hereof unless such a variation shall be reduced to writing and signed by the Parties hereto. It is agreed that this proviso may not, under any circumstances, be revoked, varied amended or cancelled verbally.

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- 15.3 In the implementation of the provisions of this Agreement, the Parties undertake to observe the utmost good faith and they warrant that in their dealings with each other they shall neither do anything nor refrain from doing anything which might prejudice or detract from the rights, assets or interests of each other.
- 15.4 Should it at any time appear that any other proviso, agreement or arrangement be in conflict with the terms and conditions of this Agreement, then and in such event such conflicting proviso, arrangement or agreement shall be null and void and *pro non scripto*, unless such be recorded in writing, duly signed by both Parties and have the specific intention to vary or amend such conflicting provision in this Agreement. In as much, this agreement or any portion thereof shall not be amended or varied other than in writing and duly signed by both Parties. This proviso shall not be verbally revoked.
- 15.5 Should legal action be instituted against the Customer occasioned by its failure to perform and/or its breach of this Agreement and/or other agreement, the Customer shall in such event be liable to pay all such legal costs and expenses calculated on Attorney and Own Client scale.

16. **DEFAULT**

- 16.1 In the event of the Customer failing to pay on due date all or any amounts payable hereunder, or should it be in default or breach of any other term or condition of this Agreement, the Company may, without prejudice to its other legal rights and remedies, including the right to claim payment of damages and/or exercise its lien over the Customer's Goods in its possession, be entitled either:
- 16.1.1 to cancel this Agreement by notice in writing to the Customer and to claim damages; and/or
- 16.1.2 to claim specific performance and/or payment of all the Purchaser's obligations in terms hereof; and/or
- 16.1.3 to claim damages which it may have suffered due to the Customer's breach of contract.
- 16.2 The Company shall, however, not be entitled to exercise the rights

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granted to it in terms hereof, unless the Customer received notice in writing to make the payment, or to remedy such default or breach and the Customer failed to make the payment or to remedy the default or breach within a period of 24 (twenty four) hours reckoned from the time of receipt or deemed receipt of such notice.

17. **NON WAIVER**

No extension of time or waiver or relaxation of any of the trading terms and conditions shall operate as an estoppel against any party in respect of its rights under these trading terms and conditions, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with these trading terms and conditions.

18. **GOVERNING LAW**

These trading terms and conditions and all agreements entered into between the Company and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

19. **SUBMISSION TO JURISDICTION**

The Customer consents to the jurisdiction in the Magistrate's Court with jurisdiction in terms of Section 28 of the Magistrate's Court Act 1944, in regard to any legal proceedings instituted by the Company in connection with this Agreement; provided that the Company shall be entitled to institute such proceedings in the High Court in its sole discretion.

20. **SEVERABILITY**

If any provision of these terms and conditions is unenforceable, then the Company shall be entitled to elect (which election may be made at any time) that such provision shall be severed from the remaining provisions of these terms and conditions which shall not be effected and shall remain in full force and effect.

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SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

WITNESSES: 1. \_\_\_\_\_

2. \_\_\_\_\_

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