

TERMS AND CONDITIONS

YOUR ATTENTION IS DRAWN TO THESE TERMS AND CONDITIONS AS THEY ARE IMPORTANT AND SHOULD BE CAREFULLY NOTED. USE OF OUR PRODUCTS AND/ OR SERVICES ARE SUBJECT TO THESE TERMS AND CONDITIONS AS WELL AS THE PRIVACY POLICY PUBLISHED ON OUR ELECTED PLATFORM AND MADE AVAILABLE AT OUR OFFICES. BY CONTINUING TO USE OUR PRODUCTS AND/ OR SERVICES YOU AGREE TO ACCEPT, WITHOUT MODIFICATION, LIMITATION OR QUALIFICATION THESE TERMS AND CONDITIONS. WE (MACADAMIA SERVICES MANAGEMENT COMPANY (PTY) LTD, "MSM") RESERVE THE RIGHT TO UPDATE THESE TERMS AND CONDITIONS AT ANY TIME WITHOUT NOTICE.

1. Introduction

- 1.1. These Terms & Conditions are owned and operated by Macadamia Services Management Company (Pty) Ltd ("MSM"), a company registered under the laws of the Republic of South Africa with its registered offices at Portion 13 of Eden Farm 577 JT, Mbombela (Nelspruit), Mpumalanga, 1200, South Africa.

Main business:

MSM acts as an Intermediary in providing an electronic Trading Platform for the sale and purchase of Macadamia nuts and related products ('the Products').

Disclosures in terms of section 43 of the Electronic Communications and Transactions Act.

The full name and legal status of the proprietor of this document is:

Macadamia Services Management Company (Pty) Ltd

The full address of the proprietor is:

Portion 13 of Eden Farm 577 JT, Mbombela (Nelspruit), Mpumalanga, 1200, South Africa

Email address for lodging of operational complaints: info@macsm.org

Email address for dispute resolution: legal@macsm.org

Physical address for receipt of legal service:

Portion 13 of Eden Farm 577 JT, Mbombela (Nelspruit), Mpumalanga, 1200, South Africa

E-mail address for legal notifications:

Legal @macsm.org

- 1.2. Subject to these General Terms and Conditions, we hereby provide you with a non-exclusive, limited, personal, non-assignable and non-transferable license to use the Trading Platform for the duration of these General Terms, unless the license is terminated in accordance with the provisions of clause 7 below.
- 1.3. We shall, subject to the provisions of these General Terms and Conditions, open an Account for you once the Onboarding Information and Documentation and any additional information and documentation required by us have been provided by you and processed and verified by us.
- 1.4. You should not deal in the Products or sign up to receive the Services described in these General Terms and Conditions unless you understand their nature and the extent of your exposure to risk. You should also be satisfied that the Products and Services are suitable for you in the light of your circumstances and financial position. You should read these General Terms carefully, and any other documents that we have supplied or will supply to you in the future. The User Application which you enter on our website will be deemed to be your declaration that you have read and understood these General Terms and accept it. If you are not experienced in the types of transactions described in these General Terms or if you are unsure about any of the terms and conditions, you should seek advice from your independent financial and/or legal adviser.
- 1.5. Notwithstanding the above, by continuing to use our products and/ or services you agree to accept, without modification, limitation or qualification these Terms and Conditions.

- 1.6. Further provision and in terms of section 11 of the Electronic Communications and Transactions Act 25 of 2002 ('ECTA') and the common law of contracts applicable in the Republic of South Africa, these Terms and Conditions are valid, binding and enforceable against all persons that continue with their use of the Products and/ or Services.
- 1.7. We reserve the right to communicate with you using any Durable Medium, but we will normally contact you in writing, through the Website, or by email in accordance with the Notices Clause below. You may communicate with us via email or by telephoning us.
- 1.8. These General Terms and Conditions; the User Application and the terms of each Contract and Transaction as they may be amended or supplemented from time to time, together constitute a single agreement between you and us.

2. Interpretations And Definitions

2.1 The following words shall, unless the context otherwise requires, have the meanings hereinafter assigned to them:

- 2.1.1 words signifying the singular number shall include the plural and vice versa;
- 2.1.2 words signifying the masculine shall include the feminine;
- 2.1.3 any words defined in the Electronic Communications and Transactions Act 25 of 2005 of the Republic of South Africa not defined hereunder shall bear the same meaning in these Terms and Conditions in relation to matters referred to herein;
- 2.1.4 a reference to any Act shall include any amendment thereto or Act in substitution therefore;
- 2.1.5 each term, power or authority herein shall be given the widest possible interpretation;
- 2.1.6 the headings to the sections in these Terms and Conditions are for reference purposes only and shall not be taken into account in the interpretation of the provisions in these Terms and Conditions.

The following words expressions and abbreviations shall have the meaning hereinafter assigned to them:

- 2.1.7 **'Account'** means the User's personalized profile to access and transact on the Trading Platform;
- 2.1.8 **'Aggregate'** means statistical information relating to finalized and concluded transactions on the Trading Platform. and also for non-concluded transactions in the form of aggregates for orders and aggregates for offers.
- 2.1.9 **'Content'** means any material, in whatever form, including but not limited to any information, posts, photographic shots, 3D conversions of photographic shots, 3D tours, video recordings, adaptations, logos, buttons, icons, software, trading platform, trademarks, texts, graphics, software, music, sound, audio, photographs, videos, data, database, Intellectual Property, Confidential Information contained in our publications, services and/or platform;
- 2.1.10 **'Copyright'** means the Intellectual Property contained in the content which shall vest in all the content contained in our services and/ or trading platform bearing the name of the proprietor, such content irrespective of the form in which it is displayed or presented remains the property MSM;
- 2.1.11 **'Intellectual Property'** means any and all information, content, Copyright, graphics or otherwise containing the name of the proprietor, irrespective of whatever form it takes;
- 2.1.12 **"LCL"** means Less than Container Load, applicable when a Seller of Products wishes to transport less than a full container load to an overseas destination;
- 2.1.13 **'Market Rules'** means the Regulations and Guidelines that govern the Buying and Selling of Agricultural Products within a particular market or region;
- 2.1.14 **'Territory'** means the whole world;
- 2.1.15 **'Terms and Conditions'** means this agreement between the Users or engaged persons and the proprietor of this document and MSM and/ or the MSM related products and services including but not limited to the MSM trading platform/ products;
- 2.1.16 **'Trading Platform'** means any electronic Trading Platform for the sale and purchase of products that is hosted on the macsm.org domain;
- 2.1.17 **'Transaction'** means any exchange in commodity amongst users (most often a buyer and a seller) that is facilitated on the trading platform;

- 2.1.18 **'Party'** singularly refers to a User of the MSM trading platform;
- 2.1.19 **'Parties'** collectively refers to a User of our products and/ or services and the proprietor of this document;
- 2.1.20 **'Products'** means deliverables sold and/or exchanged on the Trading Platform by the User;
- 2.1.21 **'Buyer'** means a person (natural/juristic) using the Trading Platform to obtain and acquire the Products exchanged on the Trading Platform;
- 2.1.22 **'Seller'** means a person (natural/juristic) using the Trading Platform to sell the Products exchanged on the Trading Platform;
- 2.1.23 **'Services'** means the services available to the Users, offered on the platform;
- 2.1.24 **'User'** means any person using the Trading Platform regardless of which form it takes, also referred to as 'you' as the context may require. Depending on the context, the 'User' may be a Buyer or a Seller;
- 2.1.25 **'Referee sample'** a representative extract of Product sold per Order, enabling verification of quality and product description in the event of a dispute between the parties;
- 2.1.26 **'VAT'** means Value added Tax as described in the Value-Added Tax Act No. 89 of 1991, South Africa;
- 2.1.27 **'Written notice'** means any notice sent to MSM by a User, addressed to MSM through the details noted in paragraph 1.1 *supra*.

2.2 Risk Acknowledgement

- 2.2.1 Although we provide a range of warranties, intended to mitigate the risks inherent in transactions of this nature, you acknowledge herewith that the value of the Products may rise as well as fall and there is a risk that you may suffer financial losses.
- 2.2.2 The User's access to and use of the Trading Platform is solely at the User's own risk.
- 2.2.3 Use of our Trading Platform does not confer any rights, licenses and/or permissions on the User unless expressly set out in these Terms and Conditions.

2.3 In the use of the Products and Services of MSM and its relation to the User you acknowledge and agree that:

- 2.3.1 You do not have a claim against MSM in the event of the realization of this risk or as a consequence of us carrying out your instructions unless it can be proved that losses were due to the negligence, fraud, misconduct or dishonesty of MSM or our officers or employees. When you transact on the Trading Platform, any profit or loss arising as a result of a change in the value of the asset or the underlying asset will be entirely at your risk.
- 2.3.2 You are willing and able, financially and otherwise, to assume the risk of trading in the Products, subject to the limited warranties we provide.
- 2.3.3 You are aware that, unless otherwise agreed, we shall not conduct any continuous monitoring of the Products/Transactions already entered into by you. We will not be held responsible for the Transactions developing differently from what you might have expected and/or to your disadvantage.
- 2.3.4 Guarantees of profit or immunity from loss are impossible in transactions facilitated by the Trading Platform; and
- 2.3.5 The warranties received from us is limited to what is reflected in these Terms and Conditions.

3. Authority and acknowledgements

3.1. You acknowledge and agree that:

- 3.1.1 We act as Transaction Facilitator only (and not as principal) in relation to any Transactions you conclude using the Trading Platform.
- 3.1.2 We shall be entitled to reject any User Application to open an Account or reject any User Application for the sale of the Products or any instruction at our sole discretion and shall not be obliged to furnish reasons for such refusal or denial;
- 3.1.3 Subject to verification by us, we will only facilitate a Transaction.

- 3.1.4 Seller of the Products, you understand and accept that you are responsible to ensure that the Products listed by you for sale on the Trading Platform remain available to Buyers utilizing the Platform and indemnify and hold us harmless for any losses that you may suffer as a result of a Transaction not being executed due to the products not being available any longer at the time of receipt by us of the instruction; and
- 3.1.5 As Seller you are responsible for removing your own Products immediately from the Trading Platform if it is no longer available for sale on the platform;
- 3.1.6 Product sold through the use of the platform will automatically be removed from the list of available stock and the Seller need not attend to the removal thereof;
- 3.1.7 If a listing is accepted, and the contract concluded between the Seller and the Buyer, the Seller remains responsible for delivering products to the Buyer(s) at the price contracted for;
- 3.1.8 You will cooperate fully with us, our regulators and/or the relevant authorities in the event of any fraudulent or other activities on your Account and that in the event that you fail to do so, we may limit, restrict or terminate access to your Account.

3.2. You authorize and consent to MSM to conduct background and reference checks (which will include but shall not be exclusive to credit checks).

3.3. You hereby give us permission to request and process your personal information and documentation as required and provisioned for in terms of applicable legislation and in particular in terms of the Protection of Personal Information Act, 2013. You acknowledge and accept that such sharing of requested information may include your personal data being utilised and processed for purposes relating to providing the services to the User.

3.4. You acknowledge that the requested information may be stored on the various secured systems employed by MSM, which may include storage outside of the Republic of South Africa, if we deem it expedient, in our sole discretion.

3.5. The User acknowledges and understands that information which are stored by MSM outside of the Republic of South Africa are subject to the privacy laws applied in that specific territory.

3.6. You hereby give MSM permission to utilize the personal information which comes into our possession, for purposes of providing the Services on the Trading Platform, in the widest possible discretion.

3.7. You hereby authorise MSM to do all things necessary to give effect to the User Application and the Services including but not limited to:

3.7.1. The facilitation of Transactions and Contracts upon your instruction either provided by you or via your Authorised Representative; and/or

3.7.2. Whatever is necessary in our discretion, to protect your rights;

3.7.3. Anti-Money laundering legislation in terms of the Anti-Money Laundering and Proceeds of Crime legislation applicable in South Africa, as amended or replaced (collectively referred to as "AMLL") obliges MSM to report to the relevant authorities any suspicious transactions. You hereby confirm that such legislation and the implication thereof in relation to these General Terms have been brought to your attention. You therefore consent to us providing any information to the authorities in terms of the AMLL. We shall not be liable to the User or any third party in respect of any action or claim for damages arising from the provision of information in terms of the AMLL. The User indemnifies MSM against any claim or liability arising from providing information as contemplated herein. The User hereby confirms that it will not transfer, or Deposit funds to our credit until the obligations in terms of AMLL and/or the Applicable Laws have been complied with. The User further consents to MSM monitoring the Account and trading activity on the Trading Platform for potential incidents of market abuse and financial fraud as contemplated in the Applicable Laws. You further consent to MSM sharing information relating to the Account and activity therein with any of our affiliates or any relevant authority for the purpose of monitoring for market abuse, financial fraud and money laundering.

4. User Application

- 4.1. Before opening and activating your Account MSM will require certain information from you. The minimum information required by MSM includes:
 - 4.1.1 Personal details
 - 4.1.2 Business details
 - 4.1.3 Business References
 - 4.1.4 Food Quality and Safety Information (Sellers)
- 4.2. When assessing your User Application and afterwards when dealing with the User, we will rely on the truth, accuracy and completeness of the information provided by you, including the information provided on the User Application. The User expressly agrees to MSM using and relying on all such information in making its assessment and in their further discretion and interaction with the User.
- 4.3. If there is a change in the User's personal circumstances the User must notify MSM immediately of the change so that MSM can reconsider the User's application.
- 4.4. Should the User fail to immediately notify MSM of the change in its personal circumstances as declared in its User Application, MSM will have the discretion to immediately terminate or suspend its services to the User based on the seriousness of the change of circumstances of the User.
- 4.5. You acknowledge and agree that MSM may update or amend the requirements to open an Account from time to time and that following such amendment you agree to provide us with any further documentation that is required to remain compliant with the requirements of MSM.

5. Services

Subject to the User fulfilling its obligations under these General Terms and Conditions, MSM may facilitate transactions for the User on the Trading Platform. MSM in that process offers to contracting Parties the following additional services which are ancillary and external to MSM's facilitator duties and obligations in the Trading Platform toward the User:

5.1. Services offered to the Seller of the Products:

After a Seller is on-boarded as a User on the Trading Platform, MSM shall-

- 5.1.1 Provide electronic access to the Trading Platform, enabling the Seller to list its Products at the sales price elected by the Seller;
- 5.1.2 Access to verified and vetted Buyers of the Seller's Products;
- 5.1.3 Through its marketing-and advertising programs (including social media advertising, digital marketing and having a presence at international trade conferences and food fairs):
 - 5.1.3.1 Attract Wholesale Buyers for the Product offered by the Seller;
 - 5.1.3.2 Attract Retail Buyers for the Product offered by the Seller;
 - 5.1.3.3 Promote the general consumption of the Products offered for sale by the Seller.
- 5.1.4 Access to aggregate statistics on price and quantity of Products sold on the Trading Platform;
- 5.1.5 Upon mutual acceptance of the purchase price of the Products by the Parties, MSM shall facilitate the conclusion of the agreement between the contracting Parties, which shall include:
 - 5.1.5.1 Electronic drafting and distribution of a Sales Contract at the election of the contracting parties, alternatively they may use their own version of a Sales Agreement;
 - 5.1.5.2 Electronic capturing of concluded sale agreements;
- 5.1.6 Monitor implementation of concluded sale agreements;

- 5.1.7 Retain a referee sample of Product sold, for a period of 3 (three) months from the date of receipt of the Product by the Buyer;
- 5.1.8 Provide mediation services in the event of a dispute relating to Product quality or description;
- 5.1.9 In the event of further dispute processes between the parties, act as an independent source of information, for purposes of those proceedings.
- 5.1.10 In the event of MSM having to consolidate LCL container loads, to ensure dispatch of full container loads, MSM shall act as consolidation agent for the Seller of LCL loads and shall perform its duties within 14 (fourteen) days from instruction for consolidation, received from the Sellers
- 5.1.11 In this regard it is recorded and agreed that MSM shall not be liable for damages to Product or for any cause whatsoever, if instructions from Seller (s) are not received immediately upon request by MSM.
- 5.1.12 Any costs incurred by MSM during such consolidation of LCL containers shall be for the account of the respective sellers involved and be calculated and invoiced by MSM on a pro rata basis.

5.2. **Services offered to the Buyer of the Products:**

After the Buyer onboarding as a User, MSM shall-

- 5.2.1 Enable electronic access to the Trading Platform, enabling the Buyer to:
 - list their product needs at the sales price elected by the Buyer;
 - view the list of Products offered for sale, against a value and listing-number;
 - enable selection of a Transaction or multiple Transactions by the Buyer;
 - 5.2.2 Provide access to verified and vetted Sellers of the Products;
 - 5.2.3 Provide access to aggregate statistics on price and quantity of Products sold, ordered and offered on the Trading Platform;
 - 5.2.4 Upon mutual acceptance of the purchase price of the Products by the Parties, MSM shall facilitate the conclusion of the agreement between the contracting Parties, which shall include:
 - 5.2.4.1 Electronic drafting and distribution of a Sales Contract at the election of the contracting parties, alternatively they may use their own version of a Sales Agreement;
 - 5.2.4.2 Electronic capturing of concluded sale agreements;
 - 5.2.5 Monitor implementation of concluded sale agreements;
 - 5.2.6 Retain a referee sample of Product sold, for a period of 3 (three) months from the date of receipt of the Product by the Buyer;
 - 5.2.7 Provide mediation services in the event of a dispute relating to Product quality or description;
 - 5.2.8 In the event of further dispute processes between the parties, act as an independent source of information, for purposes of those proceedings;
- 5.3 The Services provided and referred to herein under clause 5 will only relate to transactions for the sale and acquisition of the Products.

6. **Conditions precedent to access the services**

- 6.1. The User must complete and submit the User Application and all necessary Onboarding Information and Documentation as per clause 4.1 above.

6.2 MSM will complete the process of verification as described in clause 3 above, to confirm the information provided by prospective Users.

6.3 The issuance of a trading license for use of the Trading Platform as described in clause 1.2 above.

7. Conditions for use of The Platform

7.1 MSM provides the Services for the User's use and wherein the User may not sell, lease, sub-license or provide, directly or indirectly, the Services to any third party except with MSM's written consent. Except for the extraction and reproduction of data pursuant to the normal and intended use of the Services by you, no reproduction, extraction or re-utilisation of any content of the Services is authorised without our prior and express written consent.

7.2 The User acknowledges that all intellectual and proprietary rights in the Services are owned by MSM or any third-party provider of information which is utilised by the Services and the only rights you have in respect of the Services are those specifically provided for in these General Terms and Conditions. The User hereby undertakes to defend, indemnify and hold MSM and its officers, employees and the relevant members of MSM harmless from and against any infringement or alleged infringement by the User, whether or not arising from your use of the Services, of any patent, copyright, or trademark of MSM or any other/ associated third party.

7.3 The User hereby accepts sole responsibility for the designation of the computer terminals and suitability of the personnel which shall access and use the Services and for the selection and application of any computer software utilised to analyse the data provided under the Services. The User also takes full responsibility for all security aspects pertaining to its use of the Services. The User acknowledges that MSM shall have no obligation or liability to provide any further security or to perform any further identification processes other than those set out in the User Application and Onboarding Information and Documentation. The User hereby undertakes to promptly update the Onboarding Information and Documentation and/or the User Application if any of the details therein change. MSM undertakes to use reasonable efforts to update the User's records to reflect the amended Onboarding Information and Documentation and/or the User Application and the User agrees and acknowledges that the User is fully liable for any consequences of MSM not being promptly advised of any such changes. The User agrees that MSM may supply information provided by the User to any regulatory or other similar authorities, as we determine in our sole discretion to be necessary but subject and in line with the purpose and/ or reason of the information provided by the User to MSM.

7.4 The User agrees to be bound by the various conditions of access, disclaimers, terms and conditions and instructions displayed on the Website or related to the Services (collectively, the "Online Terms").

7.5 The User acknowledges and agrees that MSM has the right to change the functional and technical layout of the Services, without prior written notice to you.

7.6 The User acknowledges and agrees that MSM has the right to change the terms and conditions for use of the Platform by giving you reasonable notice.

7.7 Notwithstanding any provisions in these General Terms and Conditions, MSM may terminate or suspend, with cause and with or without prior notice, all or any part of the Services or your access to the Services or the format, nature, composition or availability of the Services.

7.8 The User may only provide MSM with written instructions provisioned below. MSM shall acknowledge receipt of the instructions in writing, as appropriate, which will include an acknowledgement on the Trading Platform.

7.9 The User shall inform MSM in writing by uploading all relevant documentation on the User portal of the Authorised Person to whom the User has granted a Power of Attorney to instruct MSM on the User's behalf, and submit the Authorised Person's identification and proof of address documentation to us. For practical reasons, MSM can only undertake to register one Power of Attorney for you. If the User at any time wished to revoke or amend a Power of Attorney or grant Power of Attorney to a different person in place of the existing Power of Attorney, the User shall update their User portal with the amended Power of Attorney documentation. MSM will be entitled to rely on the User's updated portal without further enquiry as to whether the Power of Attorney has been granted, revoked or amended lawfully.

- 7.10 The User authorises MSM to rely and act on any order, instruction or communication we receive from the User or an Authorised Person without further enquiry as to the authenticity, genuineness, authority or identity of the person giving or claiming to give such instructions. The User will be responsible for and bound by all obligations MSM enters into or assumes on your behalf and will be accountable to MSM for all losses, expenses, costs and liabilities MSM may suffer as a result of or in connection with such orders, instructions or communications.
- 7.11 The risk and benefit for transactions conducted in any foreign currency shall be entirely for the contracting parties and not MSM
- 7.12 The following further terms apply to Contracts executed on the internet:
- 7.12.1 MSM shall not be liable for any loss, expense, cost or liability suffered or incurred by you due to failure of the system, transmission failure or delays or similar technical errors unless we have acted with wilful default in connection herewith;
- 7.12.2 The User shall be responsible for all offers and orders, and for the accuracy of all information, sent via the internet using the User's name, password or any other personal identification means implemented to identify the User;
- 7.12.3 It is the User's responsibility to keep their password(s) secure and confidential. The User may under no circumstances share the password details with any other party unless the User has successfully uploaded the prescribed Power of Attorney Information and Documentation onto the User's portal. If the User has divulged the password or log-in details, or suspect that someone may know the password or log-in details, it is the User's obligation to change their password on the User portal.
- 7.12.4 Any instruction sent via the Trading Platform by the User shall only be deemed to have been received and shall only then constitute a valid instruction and/or binding Contract when such instruction has been recorded as executed by MSM and confirmed by MSM to the User through the Trading Platform or via official email, and the mere transmission of an instruction by the User shall not constitute a binding Contract between Seller and Buyer; and
- 7.12.5 The User shall promptly give any instructions to MSM, which MSM may reasonably require. If the User does not give such instructions promptly, MSM may, at its reasonable discretion, take such steps at the cost of the User, which we consider necessary or desirable for MSM's or the User's protection. This provision shall also apply where we have tried but are unable to contact the User and it is necessary for us to receive your instructions as urgently as possible.
- 7.13. MSM may, at its reasonable discretion, require confirmation from the User in such form as MSM may reasonably request in the following circumstances:
- 7.13.1. MSM has received an instruction to close an Account;
- 7.13.2. MSM has received an instruction from the User in relation to a Transaction that MSM would reasonably consider to be unclear, ambiguous or unusual.
- 7.14. Pursuant to general rules regarding Power of Attorney, the User is accountable to MSM for losses which MSM may suffer or incur as a result of delivery of instructions from a person who has explicit or tacit Power of Attorney, acting and providing MSM with instructions on behalf of the User.
- 7.15. From time-to-time possible errors may occur in the pricing of Transactions. Notwithstanding the rights that the User has under the Applicable Law and Market Rules, MSM reserves the right to void, or to amend the terms of, any Transaction that MSM reasonably believes, under its sole discretion, to contain or be based on an obvious or blatant error (a "Manifest Error"). In deciding whether an error is a Manifest Error we may take into account any relevant information including, the state of the underlying market at the time of the error and any error within, or lack of clarity of, any information source or pronouncement. In adjudicating whether or not there has been a Manifest Error, MSM will make reasonable efforts to take into account any financial commitments that the User has made or refrained from making in reliance on a Transaction.

- 7.16. In the absence of our fraud, wilful default or negligence, MSM will not be liable to the User for any losses following a Manifest Error. In the circumstance where a Manifest Error is made by any information source, commentator or official on whom MSM reasonably relies, MSM will not be liable to the User for any losses.
- 7.17. The User is solely responsible for ensuring that their IT equipment, operating system, Internet connection, and related technical setup meet the minimum system requirements necessary for using the platform. The User should ensure that their technical setup is in accordance with industry standards and practices to ensure optimal platform performance.
- 7.18. The User must enter their user ID and password when logging on to the Trading Platform. Entering an incorrect password three times in a row will automatically terminate the session and block the user ID. MSM will notify the User in writing of any termination/blocking on the Trading Platform with accompanying reasons for it, where possible. Should the circumstances allow, MSM will notify the User before such termination/blocking occurs and if this is not possible, immediately thereafter, subject to the delivery of such information not being unlawful (contrary to any applicable laws within the Republic of South Africa) or confidential.
- 7.19. The right to use the Trading Platform is personal, and the User shall not allow other persons to use the user ID and/or password. If the User wants to admit/ allow an authorised third party to trade on its account, the User shall authorise the relevant third party by way of a Power of Attorney in a format acceptable to us. The authority provided in terms of the Power of Attorney shall remain in force and effect until revoked in writing by the User.
- 7.20. The termination of the Power of Attorney shall take effect on the day on which User revokes the Power of Attorney by removing such Power of Attorney from the User's portal. The User acknowledges and agrees that any instruction received prior to the Termination Date shall not be affected by any such termination and that MSM shall process any such instruction, notwithstanding that any such Transactions related to such instructions shall not be completed until after the Termination Date. The user is responsible for ensuring that the terminated representative, who no longer holds power of attorney, cannot access the platform. This includes implementing any necessary changes to passwords and/or terminal access.
- 7.21. The User shall notify MSM by email to support@macsm.org immediately on becoming aware of unauthorised access to the user Account and the unauthorised use of the Trading Platform, or if the User suspects that its password security has been compromised.
- 7.22. The User may terminate its own access to the Trading Platform at any time by contacting MSM by email to support@macsm.org. Open orders placed on the Trading Platform before blocking will not be affected by the blocking, unless the User specifically requests so.
- 7.23. Where the User has placed an offer/order on the Trading Platform in error, the User shall remove the offer/order before the time of execution. The User acknowledges that MSM is under no obligation to cancel the order. An offer/order shall not be considered to be cancelled until the User has removed the offer/order from the Trading Platform.
- 7.24. MSM shall not be responsible for losses resulting from the User's installation and use of the Trading Platform or any related computer programs used on the Trading Platform.
- 7.25. MSM may modify, suspend or discontinue the Trading Platform, whether temporarily or permanently, without notice.
- 7.26. The User undertakes to only use any market data or other information that MSM, or any third party service provider provides to the User in connection with the use of the Trading Platform solely for the purposes set out in these Terms and Conditions. The User agrees not to provide access, redistribute or display the market data to any third party without MSM's prior written consent.
- 7.27. The User shall be obliged to promptly deliver any money or Product deliverable by the User under a Contract in accordance with the terms of that Contract.
- 7.28. When carrying out Transactions, MSM will only act as Facilitator and therefore transactions are concluded in the names of the contracting Parties.
- 7.29. MSM may from time to time provide information or disseminate research to you as the User. You acknowledge and

accept that MSM shall not be responsible or liable in any way for the outcome of any Transaction or Contract entered into by you as the User in reliance on any information or research provided by us except in the case of our fraud, gross negligence or willful default.

The User further acknowledges, and accepts that:

- 7.30. MSM shall not be held liable for any loss suffered as a result of the acts and/or omissions of any exchange, clearing house or other organisation or market or any action reasonably taken by MSM as a result of such acts and/or omissions except in the case of our fraud, gross negligence or willful default in connection therewith;
- 7.31. Delivery or payment (as appropriate) by Users shall be at their own risk;
- 7.32. The decision about whether to proceed with an individual Transaction, and the details of that Transaction, lies solely with the User. The User should familiarise themselves with the specific features of the Transaction and consider the advantages and disadvantages before deciding to proceed with a Transaction.
- 7.33. MSM will not provide any advice to the User on or in relation to any tax issues related to any Services or Products. The User should obtain independent advice with respect to the tax implications thereof.
- 7.34. In certain circumstances, MSM may terminate a listing of Product made by a Seller. In such cases, MSM will endeavour to notify the User as soon as possible and inform them of the reason, unless MSM is prevented from doing so by law.
- 7.35. Upon acceptance by the Seller of the purchase price offered by the Buyer, the transaction shall be deemed as concluded on The Platform, at which point MSM shall generate and send a template agreement to the parties for signature;
 - 7.35.1. The parties shall be entitled to use the template agreement, alternatively they may make use of an agreement of their choosing;
 - 7.35.2. In either event, the selected agreement shall be signed by the contracting parties or their duly authorized representatives and uploaded by both parties on The Platform by no later than 72 (seventy-two) hours after acceptance of the purchase price as described in 7.35.
 - 7.35.3. Upon the parties reaching agreement on the terms of a transaction, they shall have 72 hours to upload a written agreement setting out the terms of their agreement, alternatively the contract generated on the MSM platform shall become final and binding on the parties.
- 7.36. Should either party, or the parties jointly elect not to proceed with the agreement as described in 7.35, such notification must be given to MSM within the 72-hour period calculated from time of conclusion of the agreement.
- 7.37. In the event of the parties not proceeding with the transaction as described in 7.35 the cancelling party/parties shall be obliged to provide written reasons for such failure, with the following explanations constituting adequate reason for cancellation:
 - 7.37.1. Previous proven legal dispute;
 - 7.37.2. Proven history of sub-standard Product acquired from the Seller;
 - 7.37.3. Proven history of breach of previous agreement (s) concluded between the parties;
 - 7.37.4. Any other reason deemed acceptable in the sole opinion of MSM.
- 7.38. In the event of the parties failing to provide the written reasons for such failure or if MSM, in its sole discretion, deems the written reasons to be untrue, inadequate or false, then the conduct of the parties shall be deemed as Abnormal Trading and the provisions of clause 10 shall apply.
- 7.39. It is expressly required from the Seller of the Products, that 2 (Two) Retention samples (Referee samples) must be delivered to MSM no later than 14 (Fourteen) days prior to dispatch of an Order contracted for, failing which MSM shall inform the Buyer accordingly and in the event of the Buyer electing to proceed with the transaction, MSM shall be relieved from the obligation of providing and analyzing the referee sample in the event of dispute between the parties.

- 7.40. The sampling protocol imposed by MSM as set out in the Specification sheet on the MSM website will be strictly adhered to. Ref www.macsm.org.
- 7.41. ISO 3951-4:2011 SAMPLING GUIDELINES TO APPLY PER CONSIGNMENT.
- 7.42. The referee samples per consignment shall be sent to MSM in the following format:
- 7.43. One x quality sample 1 kilogram in weight for immediate inspection and quality and/or organoleptic verification by MSM;
- 7.44. One x food safety sample 500 grams in weight to be retained by MSM in unopened and sealed condition to be used for analysis in the event of food safety disputes.
- 7.45. The parties to a transaction concluded pursuant to the use of the MSM platform shall immediately upon receipt of the following documents, upload same to the MSM platform, to enable confirmation of compliance with obligations:
- 7.45.1. Inland Transport:
- 7.45.1.1 Delivery note;
 - 7.45.1.2 Packing list;
 - 7.45.1.3 Ex works commercial invoice;
 - 7.45.1.4 Insurance confirmation;
 - 7.45.1.5 Transport Bill;
 - 7.45.1.6 Container and seal details;
 - 7.45.1.7 Photos of loaded products and sealed container (s).
- 7.45.2. Maritime Transport:
- 7.45.2.1 Commercial invoice;
 - 7.45.2.2 Packing list;
 - 7.45.2.3 Bill of lading;
 - 7.45.2.4 Certificate of origin;
 - 7.45.2.5 Phyto certificate;
 - 7.45.2.6 Certificate of Insurance;
 - 7.45.2.7 FDA or other origin required documents.

8. Ownership of Products

- 8.1 Unless otherwise agreed between the Parties, the Seller shall retain ownership of the Products until such time as payment in full is received.
- 8.2 The terms for payment shall be as agreed between the Buyer and Seller and MSM shall under no circumstances be liable for any damages resulting from a breach of the agreement between these parties.
- 8.3 MSM shall at no time during the transaction between the Buyer and Seller, become the owner or obtain any right in and to the Products.

9. Fees and charges:

- 9.1 MSM shall charge a sales commission fee to the seller equal to 2% (Two percent) of the Ex Works USD value of each concluded Transaction excl. VAT.
- 9.2 The exchange rate applicable at time of conclusion of the agreement between the contracting parties (acceptance

of terms by the parties), shall be used to calculate the MSM fee.

9.3 Invoicing and payment:

9.3.1 MSM shall render an invoice upon conclusion of the agreement;

9.3.2 MSM shall render a statement at the end of every month, which will be sent to the Seller;

9.3.3 The amount payable as reflected on the Statement shall be payable 30 (Thirty) days after Statement date.

9.4 For avoidance of doubt, MSM's fee shall be calculated by using the Spot conversion rate as applied by the South African Reserve Bank as applied to the relevant currency, on the transaction date as reflected on the MSM invoice.

9.5 All payments due from the Seller under these Terms and Conditions shall be made in freely transferable and unencumbered funds in the currency and to the bank account(s) that MSM may from time to time specify.

9.6 All costs associated with payment of MSM's fee, including but not limited to banking costs, bank fees or intermediary bank charges shall be for the account of the Seller, so that MSM shall receive an amount equal to the full 2% excl. VAT, of the value of the transaction between the Seller and Buyer.

9.7 If the User fails to make any payment to MSM when it becomes due and payable, the User shall pay interest (from the due date and until payment takes place) on the outstanding amount at the prime rate as applied by the South African Reserve Bank, plus 2% (two) percent, capitalized monthly.

9.8 The User hereby indemnifies and holds MSM harmless in respect of any income tax or other tax or levy of whatsoever nature in respect of which the User may become liable or which may become payable pursuant to anything done by MSM on the User's behalf in terms of these Terms and Conditions.

9.9 MSM shall refund the sales commission referred to in this clause under the following circumstances:

9.9.1 The Seller delivered Product pursuant to an agreement concluded through the use of the MSM platform;

9.9.2 The Product delivered complied strictly with all MSM quality-and other specifications as set out herein and in the Specification sheet on the MSM website.

9.9.3 The Purchaser defaulted its payment obligation.

9.10 No refund shall be payable in the event of a dispute regarding quality of Product sold pursuant to use of the MSM platform.

9.11 The User of the MSM platform acknowledges that no obligation for a refund shall arise in the event of any other dispute arising or breach of contract between the users of the MSM platform, in which event the parties shall make use of the provisions of clause 15 hereof.

10. Default and default remedies

10.1. The provisions contained in this clause supplement any other rights that MSM has according to these Terms and Conditions, and furthermore any other rights MSM has according to Applicable Laws in the Republic of South Africa.

10.2. Default events shall include but will not be limited to the following:

10.2.1. The User's failure to make any payment to MSM in accordance with these Terms and Conditions;

10.2.2. In the case of a Seller, the failure to maintain availability of Product contracted for by a Buyer, pursuant to the use of the Trading Platform and;

10.2.3 In the case of a Seller, misrepresentation (whether made intentional or not) is made in respect of the quality or Product characteristics, for Product offered for sale on the Trading Platform;

10.2.4. In the case of a Buyer, the failure to make payment for Product ordered, pursuant to the use of the Trading Platform;

10.2.5. Any breach of the Terms and Conditions which, if capable of remedy, has not been remedied within 5 (five) Business Days after MSM has given notice of the breach to the defaulting party and requesting

that the breach be remedied;

- 10.2.6. If MSM, in its reasonable discretion, determines that the User is showing abnormal trading activity, or the User is behaving in a manner which might reasonably be considered to be abusive or is generally deemed to be acting in bad faith or attempting to abuse the information or facilities available on the Trading Platform,
 - 10.2.7. The initiation by a third party of proceedings for the User's insolvency, dissolution or bankruptcy (if the User is an individual) or for the User's winding-up or for the appointment of an administrator or receiver in respect of the User or any of its assets (if the User is a company) or (in both cases) if the User makes an arrangement or composition with its creditors or any other similar or analogous procedure is commenced in respect of the User (an "Act of Insolvency");
 - 10.2.8. The User becomes unable to pay its debts as and when they fall due and payable; or
 - 10.2.9. If any of the representations or warranties given by the User or any Authorised Person are, or become, untrue; or
 - 10.2.10. Any other circumstance where MSM reasonably believes that it is necessary or desirable to declare an Event of Default to protect itself or all or any of its other Users.
- 10.3. Upon a continuing Event of Default, MSM shall be entitled to:
- 10.3.1. Suspend the User's account and revoke all trading privileges that the User holds with MSM.
 - 10.3.2. Require the User to immediately close and settle a Contract in such manner as MSM may reasonably request;
- 10.4. The User shall promptly execute all such documents and take all such action as MSM may request in order to protect MSM's rights under these Terms and Conditions or under any agreement you may have entered into with MSM.
- 10.5. MSM reserves the right and the User consents thereto, that in the event of termination of access to the Trading Platform resulting from activities as described in clause 10.2.6, MSM may publish a list, making public said User's termination of access to the Trading Platform and the reason for the termination.
- 10.6. In the event of payment default by a Seller of the Products towards MSM, pursuant to a sale of the Products on the Trading Platform, MSM shall be entitled, in its sole discretion, to institute legal action in the Mpumalanga Division of the High Court of South Africa and the User consents to its non-exclusive jurisdiction for any such legal processes.

11. User warranties and representations

- 11.1. The User warrants and represents that:
- 11.1.1. It will have all necessary authority, powers, consents, licenses and authorisations and have taken all necessary action to enable the User to lawfully enter into and perform its obligations under these Terms and Conditions and such Transactions;
 - 11.1.2. It is in compliance with all laws to which the User are subject including, without limitation, all tax laws and regulations, exchange control requirements and registration requirements;
 - 11.1.3. No Event of Default or any event which may become an Event of Default (a "Potential Event of Default") has occurred and is continuing with respect to the User or any Authorised Person;
 - 11.1.4. The information provided by the User to MSM is complete, accurate and not misleading in any material respect;
 - 11.1.5. The persons entering into these Terms and Conditions and each Transaction made on the User's behalf have been duly authorised to do so; and
 - 11.1.6. In the case of the Seller, the Product offered by the Seller for sale on the Platform, subject to the Terms and Conditions, at all times be free from any charge, lien, pledge or encumbrance and shall be beneficially owned by the Seller and capable of transfer to Buyer(s) thereof.

11.1.7 In the case of the Seller, it has followed the prescribed protocol for handling and pasteurization (if applicable) of the Products, as prescribed by the World Macadamia Organisation.

11.2. The above warranties and representations shall be deemed to be applicable for the duration of the User and MSM's relationship, ancillary contracts or instructions provided to MSM.

11.3. The User undertakes that:

- 11.3.1. It will at all times obtain and comply, and do all that is necessary to maintain in full force and effect, all authority, powers, consents, licenses and authorisations referred to in this clause and throughout this General Terms and Conditions;
- 11.3.2. It will promptly notify MSM of the occurrence of any Event of Default or Potential Event of Default with respect to the User or any Authorised Person;
- 11.3.3. It will take all reasonable steps to comply with all Market Rules in relation to these Terms and Conditions and any Transaction;
- 11.3.4. It will not send orders or take any action that could create a false impression of the demand for the Products, or send orders which the User has reason to believe are in breach of Market Rules or in conflict with the handling protocols agreed between the Parties. The User shall observe the standard of behaviour reasonably required by the relevant legislation and rules relating to Market Abuse and not take any step which would cause us to fail to observe the standard of behaviour reasonably expected of persons in our position; and
- 11.3.5. Upon demand, the User will provide MSM with any information that we may reasonably require as evidence of your compliance with the matters referred to in this clause or any Market Rules.

12. MSM warranties

MSM provides the following warranties to the User of The Platform:

- 12.1 The legal status of all Users will be verified.
- 12.2 The food safety compliance of all Sellers of the Product will be verified.
- 12.3 Anonymity of all Users to be maintained until time of conclusion of the agreement, and then only to be disclosed between contracting parties.
- 12.4 All retention samples (Sample 2) to be stored under the correct conditions, for a period not shorter than 90 (Ninety) days from receipt of any specific consignment f by a buyer
- 12.5 Sample 1 provided by all Sellers will be opened for visual QC inspection and organoleptic testing.
- 12.6 Products not meeting MSM standards will not be offered for sale on The Platform.

13. Indemnity and limitations of liability

13.1. The User shall compensate MSM for all losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) which may be suffered or incurred by MSM as a result of or in connection with:

13.1.1. Its breach of these Terms and Conditions;

13.1.2. The Parties entering into any Transaction or Contract; or

13.1.3. The Parties taking any of the steps which MSM are entitled to claim an Event of Default, unless and to the extent only that such losses, taxes, expenses, costs and liabilities are suffered or incurred as a result of MSM's gross negligence or willful default.

13.2. MSM's right to compensation shall survive any termination of the Terms and Conditions and any ancillary agreement between the Parties.

13.3. The User acknowledges that MSM's obligations in respect of the Services, include the availability, proper operation,

security and proper performance and accuracy of the Services and are limited to an undertaking, on a best reasonable endeavours as can be expected from a professional provider of an electronic Trading Platform.

- 13.4. Other than as a consequence of a breach/breaches of the warranties provided above, MSM and our officers, affiliates, employees and agents shall not be liable in delict, contract, warranty or otherwise for any direct, indirect or consequential costs, damages, losses or liability, contingent or otherwise, suffered by the User or any third party, which arises out of or is pursuant to:
 - 13.4.1. The correctness, quality, accuracy, security, completeness, reliability, performance and timeliness provided under the Services;
 - 13.4.2. Any loss (including consequential and other indirect losses), expense, cost or liability (together referred to as "Loss") suffered or incurred by the User as a result of or in connection with the provision of the Services unless and to the extent that such Loss is suffered or incurred as a result of our wilful default or breach of the warranties provided above;
 - 13.4.3. Any Loss due to actions taken by MSM in accordance with its rights under the Terms and Conditions;
 - 13.4.4. Operational failures preventing the use of the Trading Platform;
 - 13.4.5. Interruptions preventing the User from accessing the Trading Platform;
 - 13.4.6. Any failure to provide continuous access to the Services or for any interruption or disruption of your access or delays or omissions of the Services, including delays in processing any instruction which result in such instruction not being executed, arising from, a force majeure or other situations which are beyond MSM's control, interruption of the Service by MSM in the case of a risk of abuse of, or unauthorised access to, the Service by third parties or any other situation that constitutes, in our opinion, a risk to the security or the accuracy of the Service, volatile market conditions, market disruption, unavailability of pricing or funds for a transaction, overload or shutting down of markets or stock exchanges;
 - 13.4.7. The failure of any internet connection or communication service to provide or maintain the User's access to
 - 13.4.8. the Services;
 - 13.4.9. Any erroneous communications between MSM and the User;
 - 13.4.10. Use of the internet and e-mail as means of communication; or
 - 13.4.11. Loss or damage caused by matters relating to the User's own computer systems.
- 13.5. MSM will not be liable in delict, contract, warranty or otherwise for any loss of profits (in either case, whether direct or indirect) or any direct, indirect or consequential damages which the User may incur or experience because the User has entered into this agreement or relied on the Services, even if MSM is aware of the possibility of such losses or damages, unless MSM are in breach of the warranties set out above.
- 13.6. MSM shall have no responsibility to inform you of any difficulties MSM or other third parties experience regarding the use of the Services or to take any action in connection with those difficulties.
- 13.7. MSM may provide certain information relating, but not limited to, markets or trading on our Website (which in some cases may be accessed via hypertext links to other locations/websites on the internet ("Third Party Link")). MSM hereby confirms that any link to a Third Party Link does not and should not be interpreted to mean the Third Party Link is under the control or belongs to MSM. Any Third Party Link may not be construed as an endorsement by MSM of the Third Party Link's content or as an association with the operators of the Third Party Link. Use of any Third Party Link by a User is entirely at the User's risk and discretion, as such, it is the prerogative of the User to familiarize himself or herself with and approve of the terms of the Third Party Link. MSM will not be responsible or liable for any loss or damages in connection with the content of any Third Party Link which may appear or be linked to or from our Website, including any advice or market recommendation communicated by MSM from a Third Party Link/ source.
- 13.8. You understand that neither MSM nor any provider of data on the Trading Platform guarantees or makes any warranty of any kind, express or implied, regarding timelines, sequence, accuracy or completeness of any data on the Trading Platform. The User agrees that we and any provider of data are not liable for any losses (including

lost opportunity or profits) arising out of or relating to (i) any inaccuracy, defect or omission in the data, (ii) any error or delay in the transmission of the data, or (iii) interruption in any such data and accordingly, you indemnify and hold MSM and any provider of data harmless against any loss, damage or cost.

- 13.9. The User indemnifies, protects, and holds MSM and its related officers, affiliates, employees and agents harmless against any losses, liabilities, judgments, actions, proceedings, claims, damages, costs (including attorney's fees) resulting from or arising out of the use of the Services by the User or its Authorised Persons, including any breaches of the security of the Services (including any access or entry onto the Trading Platform or into any of its other systems not covered by these Terms and Conditions), caused directly or indirectly by the User or its Authorised Persons.

14. Confidentiality and disclosure of information

- 14.1. MSM will strive to uphold and process the User's personal information as private and confidential and in accordance with the provisions of the Protection of Personal Information Act, 2013 (POPI Act).
- 14.2. Information about the User may include information about the User's Authorised Representatives, Authorised Persons, agents, or other relevant parties whose details the User has provided freely and voluntarily in the intention of engaging with MSM. By agreeing to these Terms and Conditions, the User confirms that the foregoing relevant parties have been informed and consent to such use.
- 14.3. MSM may store and process personal information on the MSM computers, and in any other way. By "personal information" MSM means personal and financial information they obtain from the User, or from third parties, such as joint account holders, fraud prevention agencies, or other organisations or means in terms of law.
- 14.4. MSM will use such information to manage the Services (including, without limit, issuing statements, call center facilities and meeting statutory requirements), for assessment and analysis (including credit and/or behaviour scoring, market and product analysis), and to develop and improve services of MSM and to protect the interests of MSM.
- 14.5. MSM will use the information to inform you by e-mail about, bids and counter-bids in relation to an intended transaction between Users. By agreeing to these Terms and Conditions, you confirm your acceptance and "Opt – In" to receiving this information.
- 14.6. The User agrees that MSM may, without notice, record or monitor all telephone conversations, internet conversations (chat), and meetings between the Parties to ensure that instructions can be checked/ verified and that MSM is meeting our service standards. The User agrees that MSM may use such recordings, or transcripts from such recordings, as evidence towards any party (including, but not limited to, any regulatory authority and/or court of law) to whom we, at our reasonable discretion see it to be desirable or necessary to disclose such information, in any dispute or anticipated dispute between the Parties.

15. Complaints and dispute resolution between a User and MSM

- 15.1. If you wish to lodge a complaint, you may contact MSM in writing at the contact details contained in paragraph 1 above.
- 15.2. On receipt of the User's written complaint, MSM will acknowledge the complaint and a reference number will be issued to the User.
- 15.3. MSM will investigate any complaints received.
- 15.4. If the complaint is resolved and the User is so satisfied with the outcome, the procedure is concluded and the reference number/ file will be closed.
- 15.5. If the complaint remains unresolved for a period equalling or exceeding (6) six weeks after receipt, or the dispute is not resolved to your satisfaction, MSM will provide the User with an explanation and reasoning for the decision / outcome taken, in writing.
- 15.6. In the event of a dispute that cannot be resolved between us, then you have the right to resolve your dispute as specified below:

15.7 ARBITRATION

- 15.7.1 Other than in respect of those provisions of this Agreement which provide for their own remedies which would be incompatible with arbitration, a dispute which arises in regard to:
- 15.7.1.1 the interpretation of;
 - 15.7.1.2 the carrying into effect of;
 - 15.7.1.3 any of the Parties' rights and obligations arising from;
 - 15.7.1.4 the termination or purported termination of or arising from the termination of; or
 - 15.7.1.5 the rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction) shall be submitted to and decided by arbitration.
- 15.7.2 That arbitration shall be held:
- 15.7.2.1 with only the Parties and their representatives present;
 - 15.7.2.2 at Nelspruit.
- 15.7.3 It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.
- 15.7.4 The arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa and shall be run in accordance with the Commercial Rules for Arbitration as stipulated by the Arbitration Foundation of South Africa ("AFSA"). The Parties may agree, in writing, to have another set of rules apply to the arbitration if they so choose.
- 15.7.5 The arbitrator shall be an impartial admitted attorney, advocate, or retired judge, whether practising or non-practising, of not less than 10 (ten) years standing appointed jointly by the Parties. Failing agreement on the appointment of an arbitrator by the Parties within 10 (ten) Business Days, as contemplated in clause 15.7.4 any Party shall be entitled to request that the Secretariat of AFSA nominates an arbitrator to arbitrate the dispute. Any Party must then appoint such a nominee of the Secretariat of AFSA as the arbitrator of the dispute. If the Secretariat of AFSA fails or refuses to make the nomination within 20 (twenty) Business Days of having been requested to do so, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 15.7.6 The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 15.7.7 The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 15.7.8 The provisions of this clause 15.7 are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 15.7.9 The arbitrator shall have the power to give default judgment if any Party fails to make submissions on the due date and/or fails to appear at the arbitration.
- 15.7.10 The arbitrator's award shall be final and binding on the Parties.
- 15.7.11 The costs of any venue, arbitrator's remuneration, recording, transcription and other costs and expenses ancillary to the hearing shall be borne by the Parties in equal shares and shall be recoverable, as costs in the cause under the provisions of any award. The Parties, together with the arbitrator will agree from time to time on the arbitrator's remuneration, which will be paid by the Parties in equal shares, upon receipt of invoices.

16. Dispute Resolution between Users of The Platform

Unless expressly decided otherwise by both Buyer and Seller in an agreement, emanating from the use of The Platform, the Parties (Users) irrevocably consent to the following dispute resolution steps and processes, in the event of a dispute arising between them:

16.1 Mediation:

Upon a dispute arising from the agreement entered into pursuant to the use of The Platform, the aggrieved party (Plaintiff) shall take the following steps:

- 16.1.1 Within 45 (Forty-five) days from receipt of the Products sold in terms of the agreement, or within 45 (Forty five) days from any other breach of the terms of the agreement concluded between the Parties, the Plaintiff shall initiate mediation by providing its counter-party (Defendant) and MSM with a written statement of facts.
- 16.1.2 The Defendant shall within 7 (Seven) days from receipt of the Plaintiff's statement of fact, deliver a written reply to the Plaintiff and MSM.
- 16.1.3 The Plaintiff may within 7 (Seven) days from receipt of the Defendant's reply, deliver a further written reply to the Plaintiff and MSM.
- 16.1.4 MSM shall within 7 (Seven) days after receipt of the Plaintiff's reply as described in clause 16.1.3, or his waiver thereof, take the following steps:
 - 16.1.4.1 Convene a mediation panel, consisting of a legal expert and depending on the subject of the dispute, such further experts as may be required;
 - 16.1.4.2 Arrange for formal mediation proceedings, which may happen in person at a venue selected by MSM, or via virtual means, at the election of the disputing parties;
 - 16.1.4.3 Make available the Referee sample, for analysis by a suitably qualified institution/ person, who will make available a report to the disputing parties and MSM, with reference to the nature of the dispute;
 - 16.1.4.4 Within 14 (Fourteen) days from receipt of the report referred to in clause 16.1.4.3, MSM shall conduct mediation proceedings under guidance of a legal expert, seeking mediation of the dispute between the parties and at the conclusion of that proceedings, generate a mediation report for the benefit of the disputing parties.

16.2 Arbitration

In the event that the parties fail to resolve the dispute as declared by the Plaintiff through the process of mediation described above, the Plaintiff may initiate arbitration on the following terms:

- 16.2.1 The Plaintiff shall within 7 (Seven) days from receipt of the mediation report, initiate formal arbitration through the delivery of a written statement of claim;
- 16.2.2 The arbitration shall be conducted under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
- 16.2.3 The parties shall within 7 (seven) days from receipt of the Plaintiff's statement of claim, agree on the nomination of an arbitrator;
- 16.2.4 In the event that the parties fail to reach consensus on the appointment of an arbitrator, each party to the arbitration shall be entitled to nominate 1 (one arbitrator), subject thereto that the nominees shall be qualified legal practitioners, with no less than 10 (ten) years legal experience;
- 16.2.5 The 2 (Two) nominated arbitrators shall jointly appoint a third arbitrator, who shall be a practicing advocate from the Pretoria Bar (Gauteng, South Africa), with no less than 10 (ten) years legal experience;
- 16.2.6 In the event of the nominated arbitrators failing to reach consensus on the nomination of the third arbitrator, the Chairperson of the Pretoria Bar Association or its follower in title, shall make such

nomination;

16.2.7 At the election of the parties, the arbitration may be held in person, at a mutually agreed venue, failing agreement by way of virtual means;

16.2.8 The arbitration tribunal is empowered to appoint experts to report to it on specific issues determined by it.

16.2.9 Before proceeding to its final award, the tribunal is also empowered to order interim measures, for the protection of the subject-matter of the dispute.

16.2.10 In the event of a single arbitrator, the final award shall be made in writing, be final and binding upon the parties and in the event of a tribunal consisting of 3 (Three) arbitrators, the final award is to be made by a majority of the arbitrators, is to be made in writing, and is final and binding on the parties to the dispute.

16.2.11. Either party may apply to the tribunal for an interpretation of the award within a period of 30 days, but no appeals against the award are allowed.

17. Termination

17.1. On the termination of the Terms and Conditions, all amounts payable by the User will become immediately due and payable, including (but without limitation) all outstanding fees, charges and commissions.

17.2. Upon termination of these Terms and Conditions MSM will be entitled, without first giving notice, to stop providing the User with access to the Trading Platform.

17.3. The termination of these Terms and Conditions will not affect any rights which may already have arisen or obligations which may already have been incurred by either party under these Terms and Conditions.

18. Governing Law & Jurisdiction

18.1. These Terms and Conditions will be governed by and construed in accordance with the laws in force in the Republic of South Africa.

18.2. The Parties hereto agree to the Dispute Resolution mechanisms and processes as set out in these Terms and Conditions.

19. International Use

Our Trading Platform and its Services may have functionality worldwide, notwithstanding the aforementioned, MSM at no time makes any representation, whether directly or indirectly, expressly or tacitly that any services offered by MSM are appropriate for use outside of the Republic of South Africa. Any access to materials, in any international regions where said access is illegal, is strictly prohibited. Those who choose to access our products and/ or services from other locations do so on their own initiative and at their own risk and are responsible for compliance with the relevant local laws.

20. Legal Cost

MSM will not be liable for costs incurred by User's to obtain professional advice relating to these Terms and Conditions.

21. Force majeure

MSM will not be in breach of these General Terms and Conditions if there is, and shall not be liable or have responsibility of any kind for any loss or damage incurred by the User as a result of any total or partial failure, interruption or delay in performance of its duties and obligations occasioned by any act of God, fire, act of government, state, regulatory authority, investment exchange, clearing system, war, civil commotion, terrorism, failure of any computer system, interruptions of power supply, labour disputes of whatever nature or any other reason beyond our control.

22. Entire Agreement

These Terms and Conditions constitute the entire agreement between MSM and User in relation to its use of the Trading Platform and/ or services and supersede all prior agreements and understandings.

23. Miscellaneous

23.1. If at any time any provision of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any respect

under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms and Conditions under the law of that jurisdiction nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected.

23.2. The User may not assign its rights or delegate any of your obligations under these Terms and Conditions or according to any Contract to others whereas MSM may assign its rights or delegate obligations to any regulated financial institution without the User's consent.

25.3 The rights and remedies contained in these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by law, provided elsewhere on the Trading Platform or Website, or provided via email or other formal written communications.

24.4. No delay or omission on our part in exercising any right, power or remedy provided by law or under the Terms and Conditions, or partial or defective exercise thereof, shall:

24.4.1. Impair or prevent any further or other exercise of such right, power or remedy; or

24.4.2. Operate as a waiver of such right, power or remedy.

24.5. No waiver of a default in these Terms and Conditions shall (unless expressly agreed in writing by the waiving party) be construed as a waiver of a future breach of the same clause or as authorising a continuation of the particular breach.