

Chem Nutri Analytical (PTY) LTD

(Company Registration Number: 2012 / 205773 / 07)

GENERAL TERMS AND CONDITIONS APPLICABLE TO SERVICES RENDERED

WHEREAS Chem Nutri Analytical is a company duly incorporated and registered under the Companies Act, No. 71 of 2008 of the Republic of South Africa and which operates a laboratory that services the food and agricultural sectors value chain, with its core business being the chemical analyses and / or testing of samples and providing the analysis results of such Services to its clients, in the form of Reports.

AND WHEREAS Chem Nutri Analytical operates a quality management system and periodically participates in inter-laboratory proficiency testing schemes, which serve to monitor the performance of analytical methods, on a peer-reviewed basis, which is a forum to promote analytical accuracy. In so doing, Chem Nutri Analytical maintains standard methods of analysis within the disciplines, to promote reliability with the analytical and / or testing Services it offers.

AND WHEREAS the Client is desirous of utilising the Services of Chem Nutri Analytical, to analyse and / or test samples, which the Client or its agent will supply to Chem Nutri Analytical for analysis and / or testing and preparation of the requisite Reports.

AND WHEREAS the Entire Agreement shall govern the contractual relationship between Chem Nutri Analytical and the Client (hereinafter referred to as “the Parties”) for the rendering of the contemplated Services and discharging of all other obligations, by each of the Parties.

NOW THEREFORE the following Terms and Conditions shall govern this Agreement:

1. INTERPRETATION:

- a. Words used in the singular shall, where applicable, include the plural and vice versa;
- b. The headings in these Terms and Conditions do not affect their interpretation and are merely organisational tools to facilitate the navigation of this Agreement; and

- c. The following words and phrases shall have the following meanings, unless the context otherwise dictates:
- i. **Charges** shall be the fees and disbursements payable by the Client to Chem Nutri Analytical for Services rendered and which are set out in any Proposal, Estimate, Fee Quotation, Price List and / or Invoice.
 - ii. **Confidential Information** means all information in whatever form or manner presented, which:
 - aa. is disclosed in the course of the provision of Services pursuant to this Agreement;
 - bb. is disclosed in writing, electronically, visually, orally or otherwise and is marked, stamped or identified by any means as confidential, by the disclosing Party, at the time of such disclosure; or
 - cc. is information, howsoever disclosed, which would reasonably be considered to be confidential by the receiving Party.
 - iii. **Entire Agreement** means this Agreement incorporating these Terms and Conditions, supplemented by any duly completed and signed Sample Submission Form, Client Purchase Order, Proposal, Estimate, Fee Quotation, Price List and / or Written Instructions or Communications received before the commencement of the contemplated Services.
 - iv. **Intellectual Property Rights** means copyright, trademark (registered or unregistered), patent, patent applications (including the right to apply for a patent), service mark, design right (registered or unregistered), trade secret and other like rights, howsoever existing.
 - v. **Proposal** means any Proposal prepared by Chem Nutri Analytical and includes any Estimate, Fee Quotation or Price List provided to the Client, relating to contemplated Services.
 - vi. **Reports** shall include:
 - aa. **Preliminary Reports** may include, but are not limited to any documents, graphs, charts, photographs, memoranda, laboratory data, calculations,

measurements, estimates, certifications, status summaries and any other communications in any form, describing the results of Services performed by Chem Nutri Analytical for its Clients. Preliminary Reports are unsigned and subject to change, necessitating interpretation with caution;

bb. Spreadsheets are not reports per se, but contain data upon which Final Laboratory Test Reports and Supplementary Reports are based and are therefore supplementary to such reports. Spreadsheets may be provided to Clients upon request, solely as a matter of convenience, to accommodate the Client's data handling preferences, in order to facilitate rapid access to statistical data, which may be imported into their systems for processing and interpretation of Final Laboratory Test Reports and Supplementary Reports. The spreadsheets are provided in an unprotected format and may only be used within the ambit of Chem Nutri Analytical's General Terms and Conditions and in strict compliance with all legal requirements. The data in spreadsheets may not be reproduced, reformatted, or integrated into third-party reports, save in instances where the Client utilises the services of a suitably qualified expert, inter alia, a nutritionist, professional natural scientist and / or veterinarian, to interpret the information contained in the said Reports and thereafter prepare an analysis results interpretation report. In instances where the Client is a suitably qualified expert and has been engaged by a third party to prepare an analysis results interpretation report and in so doing acts as an intermediary between Chem Nutri Analytical and the said third party, copies of Chem Nutri Analytical's Reports shall be made available to third parties in their entirety without any amendment, alteration or deletion.

cc. Final Laboratory Test Reports are in PDF format and are electronic copies of the signed original Final Laboratory Test Reports, which shall take precedence over Preliminary Reports in any dispute, unless superseded by Supplementary Reports; and

dd. Supplementary Reports are in PDF format and signed and amend Final Laboratory Test Reports, thereby

rendering Final Laboratory Test Reports obsolete and shall take precedence, in any dispute, over all previously produced reports.

vii. Services means the services set out in any duly completed and signed Chem Nutri Analytical Sample Submission Form and may include the provisions of any Chem Nutri Analytical Proposal, Estimate, Fee Quotation, Price List, Client Purchase Order and / or Written Instructions or Communications received before the commencement of the contemplated Services and includes the provision of a Report by Chem Nutri Analytical.

2. THE SERVICES:

- a.** Chem Nutri Analytical shall provide Services to the Client in accordance with the Terms and Conditions of the Entire Agreement. Such Services may be more fully described in any Proposal Chem Nutri Analytical may prepare and submit to the Client.
- b.** In the event of any inconsistency between these Terms and Conditions and those of the Proposal, the Terms and Conditions of the Proposal shall take precedence.
- c.** Chem Nutri Analytical shall be entitled to use methods of analysis and / or testing which it regards as being the most appropriate, to render the Services contemplated in the Entire Agreement.
- d. In the event that the Client rejects Chem Nutri Analytical's preferred method of analysis and / or testing and instructs Chem Nutri Analytical to use a different method, then in such instance:**
 - i.** the Client shall clearly stipulate the method in writing;
 - ii.** Chem Nutri Analytical shall bear no liability to the Client or any other party; and
 - iii.** the Client indemnifies Chem Nutri Analytical from liability.
- e. Reports shall be for the exclusive use and benefit of the Client and no third party shall acquire any rights pursuant thereto.**

- f. The Client acknowledges and agrees that in circumstances where Chem Nutri Analytical is obliged to deliver a Report to a third party, Chem Nutri Analytical shall be irrevocably authorised to deliver such Report to the third party and similarly where, in the reasonable opinion of Chem Nutri Analytical, it is implicit from the circumstances, trade, custom, usage or practice, Chem Nutri Analytical shall be deemed authorised to deliver such Report to a third party.**
- g. The Client acknowledges and agrees that any Services provided and / or Reports prepared by Chem Nutri Analytical are done within the limits of the scope of work agreed to with the Client, in relation to the Proposal and pursuant to the Client's specific instructions or in the absence of such instructions, in accordance with any relevant trade custom, usage or practise.**
- h. The Client further agrees and acknowledges that the Services are not necessarily designed to address each and every matter of quality, safety, performance or condition of any product, material, services, systems or processes analysed, tested, inspected, or certified and the scope of work does not necessarily reflect all standards which may apply to any product, material, services, systems or process tested, inspected or certified.**
- i. The Client understands that reliance on any Reports issued by Chem Nutri Analytical, is limited to the facts and representations set out in the Reports, which represents Chem Nutri Analytical's analysis of facts, information, samples and / or other materials in existence, only as at the time of rendering the Services and also only in relation to the particular samples, which are the subject matter of the Services provided.**
- j. The Client understands that Chem Nutri Analytical operates a chemical analysis and / or testing laboratory. In providing a Report, Chem Nutri Analytical only discloses the chemical composition and chemical concentrations contained in the samples submitted and does so in accordance with the Analysis Required, as is stipulated in the Sample Submission Form by the Client. Chem Nutri Analytical does not provide any analysis and / or testing results interpretation service, advice and / or opinions. The Client is required to interpret the information contained in the Report with the assistance and guidance of a suitably qualified expert, inter alia, a nutritionist, professional natural scientist and / or veterinarian.**

- k. The Client takes responsibility for all actions taken, pursuant to receiving any Reports. Chem Nutri Analytical shall not be liable to the Client or any third party for any actions taken or not taken, pursuant to any Reports.**
- l. In agreeing to provide the Services pursuant to this Agreement, Chem Nutri Analytical does not abridge, abrogate or undertake to discharge any duty or obligation of the Client to any other person.**

3. CHEM NUTRI ANALYTICAL'S WARRANTIES:

- a. Chem Nutri Analytical represents and warrants exclusively to the Client:**
 - i. that it has the power and is duly authorised to enter into this Agreement;**
 - ii. that it will comply with all relevant legislation and regulations in force, in relation to the provision of the Services;**
 - iii. that it will take due care to operate a quality management system and have the technical competency to ensure that the Services will be performed in a manner consistent with the customary level of proficiency, care and skill ordinarily exercised by laboratories providing like services, under similar circumstances;**
 - iv. that it will periodically participate in inter-laboratory proficiency testing schemes, which serve to monitor the performance of analytical methods, on a peer-reviewed basis, which is a forum to promote analytical accuracy. In so doing, Chem Nutri Analytical maintains standard methods of analysis within the disciplines, to promote reliability with the analytical and / or testing Services it provides;**
 - v. that it will take reasonable steps to ensure that whilst on the Client's premises its personnel shall comply with any health and safety rules and regulations and other reasonable security requirements, made known to Chem Nutri Analytical by the Client in accordance with clause 4(c)(v); and**
 - vi. that the Reports produced in relation to the Services will not infringe any legal rights, including intellectual property rights, of any third party. This warranty shall not apply where the infringement is directly or indirectly caused by Chem Nutri**

Analytical's reliance on any information or samples provided to Chem Nutri Analytical by the Client.

- b. The Client agrees not to raise any complaint or dispute liability with Chem Nutri Analytical, in the event of a breach of the warranty set out in paragraph 3(a)(iii), unless it has notified Chem Nutri Analytical of its complaint in writing within Ten (10) business days of receipt of the Report, pertaining to the Services in question. Chem Nutri Analytical shall in its sole discretion and at its own expense, without admitting liability by so doing, remedy any alleged failure by either:
 - i. reperforming the Services originally performed; or**
 - ii. refunding or waiving the whole or part of the Charges paid or payable, respectively, by the Client in respect of the relevant Services.****
- c. Chem Nutri Analytical reserves the right to delegate the performance of its obligations hereunder, to one or more of its subcontractors, with prior notice to the Client.**
- d. Where Services are rendered by Chem Nutri Analytical for the Client in terms of an agreement falling outside the ambit of the Consumer Protection Act, No. 68 of 2008 (hereinafter referred to as "the CPA"), no representations or warranties as to quality or freedom from latent defects or fitness for any particular purpose or otherwise shall be binding upon Chem Nutri Analytical, unless made in writing.**
- e. No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in the Entire Agreement.**

4. THE CLIENT'S WARRANTIES:

- a. The Client represents and warrants to Chem Nutri Analytical:
 - i. that it has the power and is duly authorised to enter into this Agreement for the provision of Services;**
 - ii. that it is securing the provision of Services hereunder for its own account and not as an agent or broker or in any other****

representative capacity, for and on behalf of any other party or entity, unless it at the outset discloses to Chem Nutri Analytical that it is acting as an intermediary, agent, broker or representative of a third party;

- iii. that any information and / or samples it supplies to Chem Nutri Analytical are true, accurate, representative and complete and is not misleading in any respect. The Client further acknowledges that Chem Nutri Analytical will rely on such information, samples and / or Written Instructions or Communications received before the commencement of the Services, without any duty to confirm or verify the accuracy or completeness thereof, in order to provide the Services;**
 - iv. that any samples provided by the Client to Chem Nutri Analytical will be shipped prepaid and will after analysis and / or testing be collected or disposed of by the Client, at the Client's expense, within Ninety (90) calendar days after analysis, unless alternative arrangements are made by the Client. In the event that such samples are not collected or disposed of by the Client within the required Ninety (90) calendar days period, Chem Nutri Analytical reserves the right to destroy the samples and to recover the cost of destruction from the Client; and**
 - v. that any information, samples or other related documents, including but not limited to certificates and reports provided by the Client to Chem Nutri Analytical, will not, in any circumstances infringe upon any legal rights, including Intellectual Property Rights, of any third party.**
- b. In the event that the Client acts as an intermediary, agent, broker or representative and the Services provided are for the benefit of a third party, the Client shall:**
- i. cause any such third party to acknowledge and agree to the Terms and Conditions of the Entire Agreement, prior to and as a condition precedent to such third party receiving any Reports or the benefit of any Services rendered by Chem Nutri Analytical;**
 - ii. fully comply with the disclosure requirements set out in section 27(1)(a)(ii)(aa) and read with Regulation 9 of the CPA;**
 - iii. fully comply with the record keeping requirements set out in section 27(1)(b), read with Regulation and 10 of the CPA; and**

iv. fully comply with the provisions of section 42(1) of the CPA.

c. The Client further undertakes:

- i. to fully co-operate, collaborate and liaise with Chem Nutri Analytical in all matters relating to the Services and to appoint a manager in relation to the Services, who shall be duly authorised to provide instructions to Chem Nutri Analytical on behalf of the Client and to bind the Client contractually, as required;**
- ii. to provide Chem Nutri Analytical with all samples, instructions, information, material or other documentation, necessary for the execution of the Services, in a timely manner, sufficient to enable Chem Nutri Analytical to provide the Services in accordance with the Entire Agreement. The Client understands and appreciates that the sampling date, sampling technique and temperature, among a myriad of other factors, can have a material bearing on the outcome of the analysis and / or testing results;**
- iii. to hold Chem Nutri Analytical blameless for any samples provided, that may inevitably become altered, damaged or be destroyed during the course of the ordinary analysis and / or testing process;**
- iv. to provide Chem Nutri Analytical with access to its premises, as may be reasonably required for the provision of the Service and to any other relevant premises at which Services are to be rendered;**
- v. that prior to Chem Nutri Analytical entering any premises for the rendering of Services, to inform Chem Nutri Analytical of all applicable health and safety rules and regulations and other reasonable security requirements, which may apply at any premises at which Services are to be rendered;**
- vi. to notify Chem Nutri Analytical of any sample that is potentially hazardous, before it is presented to Chem Nutri Analytical. In addition, the Client shall promptly notify Chem Nutri Analytical of any risk, safety issues or incidents in respect of any process or systems used at its premises or otherwise, relevant to the provision of the Services;**

- vii. to inform Chem Nutri Analytical in advance of any applicable import / export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported / imported to or from a country that is restricted or banned from such transactions;
 - viii. to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulations in relation to the Services;
 - ix. that it will not use any Reports issued by Chem Nutri Analytical pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;
 - x. that in no event will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of Chem Nutri Analytical. Such consent shall not to be unreasonably withheld; and
 - xi. that all advertising and promotional materials or any statements made by the Client, will not give a false or misleading impression to any third party, concerning the Services rendered by Chem Nutri Analytical.
- d. Chem Nutri Analytical shall be neither in breach of this Agreement nor liable to the Client for any breach of the Entire Agreement, if its breach is a direct result of a failure by the Client to comply with its obligations as set out in this clause. The Client further acknowledges that the impact of any failure on its part, to perform its obligations set out herein, will not affect the Client's obligation to pay the Charges, in accordance with the provisions of clause 5.**

5. CHARGES AND PAYMENT:

- a. **If costing factors affecting the provision of Services to the Client are subject to an increase, due to factors beyond the control of Chem Nutri Analytical, the Charges agreed upon in the Entire Agreement may be increased accordingly, upon Chem Nutri Analytical giving the Client Thirty (30) calendar days' notice of such increase. The Client shall have the right to accept such increase in Charges or cancel the Entire Agreement, in conformity with the provisions of clause 8.**

- b. The Charges are expressed exclusive of any applicable taxes. The Client shall pay all applicable taxes on the Charges, at the rate and in the manner prescribed by law, on the issue by Chem Nutri Analytical of an electronic invoice.
- c. The Client agrees that it will reimburse Chem Nutri Analytical for any disbursements made by Chem Nutri Analytical, relating to the provision of Services and is wholly responsible for any freight or customs clearance fees relating to any samples.
- d. The Charges represent the total fees to be paid by the Client for the Services, pursuant to the Entire Agreement. Any additional work performed by Chem Nutri Analytical will be charged for, on a time and materials basis.
- e. **Chem Nutri Analytical shall invoice the Client for the Charges and disbursements, if any. Where Services are provided over the course of a period of greater than Thirty (30) calendar days, the Client agrees that at the end of each calendar month Chem Nutri Analytical will issue an electronic invoice for the Services rendered during the month. A final electronic invoice will be issued on completion of the Services.**
- f. The Client is required to pay all invoiced amounts, no later than Thirty (30) calendar days after receipt of such invoice, without any deduction, discount or set-off, unless such set-off has been acknowledged by Chem Nutri Analytical in writing. No deduction for bank charges incurred, shall be made.
- g. Payments must be denominated in the currency indicated in the electronic invoice and must be made by means of an electronic funds transfer (EFT), **ONLY to the bank account designated by Chem Nutri Analytical in its electronic invoice.**
- h. Where the Client fails to make payments by electronic funds transfers, it hereby authorises Chem Nutri Analytical to debit the Client's account held with Chem Nutri Analytical for the bank charges pertaining to cash deposits, at the prevailing rates charged by Chem Nutri Analytical's designated bank.
- i. For the moment, Chem Nutri Analytical has no intention to change its bankers. However Chem Nutri Analytical is concerned about fraudulent schemes involving identity theft. In the event that the Client receives an electronic or other communication, purporting to be from Chem Nutri

Analytical, advising of a change in banking details, the Client as a matter of prudence, undertakes to contact the Finance Manager or any Director of Chem Nutri Analytical, either in person or by dialling their landline telephone numbers, to verify the correctness of such communication, before acting upon it.

- j. Chem Nutri Analytical will issue an electronic invoice, which may be sent by e-mail and will be deemed to have been delivered to the Client upon receipt of such e-mail. Chem Nutri Analytical is under no obligation to fulfil any request by the Client for a paper copy of the invoice, which is to be sent by post. Any invoice sent by post will attract an administration fee which shall be paid by the Client, within the credit terms referred to in subclause 5(f).
- k. **In the event that Chem Nutri Analytical believes that the Client's financial position and / or payment performance justifies such action, Chem Nutri Analytical has the right to demand that the Client immediately furnish additional security in a form to be determined by Chem Nutri Analytical and / or make an advance payment. If the Client fails to furnish the desired security and / or make the required advance payment, Chem Nutri Analytical has the right, without prejudice to its other rights, to immediately suspend the further execution of all or any part of the Services, and any Charges for the Services already performed, shall become immediately due and payable.**
- l. **If the Client fails to pay within the period referred to in subclause 5(f), it is in default of its payment obligations and is liable to pay interest on the balance owing, with effect from the date on which the payment becomes due, until the date of payment. The interest rate applicable shall be the ruling South African Reserve Bank Repurchase Rate multiplied by 2.2 plus 10% [(Repo Rate x 2.2) + 10%] per year, debited to the Client's account, monthly in arrears. In addition, all collection costs incurred after the Client's default, both judicial and extrajudicial, are for the Client's account. The extrajudicial costs are set at an amount equal 10% of the balance owing plus interest, without prejudice to Chem Nutri Analytical's right to collect the actual extrajudicial costs, in excess of this amount.**
- m. **The Client agrees that a certificate signed by a director or manager of Chem Nutri Analytical, whose appointment and position need not be proved, shall be prima facie proof of the Client's (and hence the Surety's or Credit Guarantor's) indebtedness to Chem Nutri**

Analytical, in any legal or extrajudicial proceedings and it shall further be sufficient to enable Chem Nutri Analytical to obtain provisional sentence thereon.

- n. Any queries or disputes regarding an electronic invoice must be raised in writing with Chem Nutri Analytical within Ten (10) business days of receipt, otherwise the invoice will be deemed to have been accepted. Any such objection does not exempt the Client from its obligation to pay within the period referred to in subclause 5(f).**
- o. Any request by the Client for certain information to be included in or appended to the electronic invoice must be made at the time of setting out the Proposal. A later request by the Client for changes to the agreed format of the electronic invoice or supplementary information will not discharge the Client from its obligation to pay within the period referred to in subclause 5(f). Chem Nutri Analytical reserves the right to charge an administration fee per invoice, for issuing additional copies of invoices or amending invoice detail, format or structure from that agreed to in the Proposal. Chem Nutri Analytical maintains the right to reject such an invoice amendment request and such a rejection by Chem Nutri Analytical will not exempt the Client from its obligation to pay within the period referred to in subclause 5(f).**

6. INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION:

- a. All intellectual property rights belonging to a Party prior to entering into this Agreement shall remain vested in that Party. Nothing in this Agreement is intended to transfer any intellectual property rights from one Party to the other.**
- b. Any use by the Client of the name “Chem Nutri Analytical” or any of Chem Nutri Analytical’s trademarks or brand names, shall only be used with the prior written consent of Chem Nutri Analytical.**
- c. Any other use of Chem Nutri Analytical’s trademarks or brand names is strictly prohibited and Chem Nutri Analytical reserves the right to terminate the Entire Agreement forthwith, as a result of any such unauthorised use.**

- d. The Client acknowledges that the use of certification and / or accreditation marks, may be subject to national and international laws and regulations.**
- e. All Intellectual Property Rights in Reports prepared by Chem Nutri Analytical pursuant to the Entire Agreement, shall vest in Chem Nutri Analytical until payment in full has been made by the Client. The Client shall have the right to use any such Reports, for the purpose of the Entire Agreement, once full payment has been made.**
- f. The Client agrees and acknowledges that Chem Nutri Analytical retains all proprietary rights in concepts, ideas and inventions that may arise during the preparation of any Reports and the provision of Services to the Client.**
- g. The parties shall observe all statutory provisions with regard to data protection including, but not limited to the provisions of the Protection of Personal Information Act, No. 4 of 2013 (hereinafter referred to as “the POPI Act”) and shall comply with all applicable requirements of the POPI Act. To the extent that Chem Nutri Analytical processes personal data in connection with Services rendered under the Entire Agreement, it shall take all necessary technical and organisational measures to ensure the security of such data and guard against unauthorised processing, accidental loss, destruction or damage to such data, in accordance with the provisions of the POPI Act.**

7. CONFIDENTIALITY:

- a. Where a Party (hereinafter referred to as “the Receiving Party”) obtains Confidential Information of the other Party (hereinafter referred to as “the Disclosing Party”) in connection with Services to be rendered under this Agreement, it shall be subject to the provisions of this clause.**
- b. The receiving Party undertakes to:**
 - i. keep Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information;**
 - ii. use Confidential Information only for the purpose of performing obligations under this Agreement; and**

the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

- f. Each Party shall ensure compliance by its directors, officers, employees, subsidiaries, affiliated companies, agents and representatives, which in the case of Chem Nutri Analytical, includes procuring the same from any subcontractors, with its obligations under this clause.
- g. With respect to archival storage, the Client acknowledges that Chem Nutri Analytical shall retain in its archive for the period required by legislation, its quality and assurance processes, by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.**

8. AMENDMENT or AGREED CANCELLATION:

- a. No amendment, alteration, addition, deletion, variation or cancellation of this Agreement, whether consensual, unilateral or bilateral shall be of any force or effect, unless it is in writing, expressly stated to amend or cancel this Agreement and signed in handwriting by a duly authorised signatory of each Party.

9. FORCE MAJEURE:

- a. Neither Party shall be liable to the other for any delay in performing or failure to perform any obligation under the Entire Agreement, to the extent that such delay or failure to perform is as a result of a Force Majeure event, which may inter alia include:
 - i. war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and / or piracy;
 - ii. natural disasters such as, but not limited to, violent storms, tidal waves, tsunamis, floods, hurricanes, tornadoes, blizzards, cyclones, earthquakes, landslides, volcanic eruptions, wildfires, lighting; explosions, epidemics and / or pandemics;
 - iii. strikes and labour disputes, other than by any one or more employees of the affected Party or of any supplier or agent of the affected Party; and / or

- iv. failure of utilities companies such as, but not limited to, providers of telecommunication, internet, gas and / or electricity services.
- b. Any failure or delay on the part of a subcontractor, shall only be a Force Majeure event where the subcontractor is affected by, inter alia, one or more of the events described in subclause 9(a).
- c. A Party whose performance is affected by a Force Majeure event shall:
 - i. promptly notify the other Party in writing of the Force Majeure event and the cause and likely duration of any consequential delay or nonperformance of its obligations;
 - ii. use all reasonable endeavours to avoid or mitigate the effect of the Force Majeure event and continue to perform or resume performance of its affected obligations, as soon as is reasonably possible; and
 - iii. continue to provide Services that remain unaffected by the Force Majeure event.
- d. If the Force Majeure event continues for more than Sixty (60) calendar days after the day on which it started, each Party may terminate the Entire Agreement by giving at least Ten (10) business days written notice to the other Party.

10. LIMITATIONS AND EXCLUSIONS OF LIABILITY:

- a. **Where the Entire Agreement between the Parties falls within the ambit of the CPA, Chem Nutri Analytical shall not be liable for any injury, death, damage or loss, arising from any source whatsoever, whether direct or indirect, general or special, sustained by the Client or any third party, including any injury, death, damage or loss suffered pursuant to the Client's or the third party's reliance on any Reports or Services rendered by Chem Nutri Analytical, unless such injury, death, damage or loss is occasioned by the Chem Nutri Analytical's gross negligence, recklessness or wilful unlawful conduct.**
- b. **Where the Entire Agreement between the Parties does not fall within the ambit of the CPA, Chem Nutri Analytical shall not be liable for any injury, death, damage or loss, arising from any source whatsoever, whether direct or indirect, general or special, sustained by the Client or any third party, including any injury,**

death, damage or loss suffered pursuant to the Client's or the third party's reliance on any Reports or Services rendered by Chem Nutri Analytical.

- c. Neither Party excludes or limits liability to the other Party for fraudulent misrepresentations, including fraudulent nondisclosures.**
- d. Chem Nutri Analytical shall not be liable to the Client or any third party for any breach of the Entire Agreement, if its breach is a direct result of any failure by the Client to comply with its obligations set out in clause 4.**
- e. Subject to subclauses 10(a) and 10(b), the maximum quantum of compensation or damages for liability on the part of Chem Nutri Analytical in contract, delict or otherwise, for any breach of the Entire Agreement or in any matter arising out of or in connection with Services provided, shall be an amount equal to the Charges due by the Client to Chem Nutri Analytical, for the provision of such Services.**
- f. Subject to clause 10(a) and 10(b), neither Party shall be liable to the other in contract, delict or otherwise, for any:**
 - i. Loss of profits;**
 - ii. Loss of sales or business;**
 - iii. Loss of business opportunity (including, without limitation, third party Agreements);**
 - iv. Loss of or damage to goodwill or reputation;**
 - v. Loss of anticipated savings;**
 - vi. Cost of or expenses incurred in relation to undertaking a product recall;**
 - vii. Loss of use or corruption of software; data or information; or**
 - viii. Any indirect, consequential loss, punitive or special loss.**
- g. Any claim by the Client against Chem Nutri Analytical shall always be subject to the provisions of this clause and shall be made within Ninety (90) days after the client becomes aware of any circumstance giving rise to any such claim. Failure to give such notice within Ninety (90) days shall constitute a bar and irrevocable waiver to any claim, either directly or indirectly in connection with the provision of Services under the Entire Agreement.**

11. INDEMNITY:

- a. The Client indemnifies and holds harmless Chem Nutri Analytical from and against all claims, suits, liabilities, including costs of litigation and legal fees, arising, directly or indirectly, out of or in connection with:**
 - i. any claims, law enforcement action or legal action by any governmental authority or the like, for any actual or alleged failure of the Client to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority;**
 - ii. any claims or legal action for personal injuries, damage to property, economic loss and loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the Services provided hereunder by Chem Nutri Analytical;**
 - iii. any breach or alleged breach by the Client of any of its obligations set out in clause 4;**
 - iv. any claims made by any third party for loss, damage or expense of whatsoever nature and however arising, relating to the performance or nonperformance by Chem Nutri Analytical of any Services, to the extent that the aggregate of such claims relating to any one Service exceeds the limit of liability set out in subclause 10(e);**
 - v. any claims suits arising as a result of any misuse or unauthorised use of any Reports issued by Chem Nutri Analytical or any Intellectual Property Rights belonging to Chem Nutri Analytical, pursuant to the Entire Agreement; and**
 - vi. any claims arising out of or relating to any third party's use of or reliance on any Reports, analyses, conclusions of the Client, based in whole or in part on the Reports of Chem Nutri Analytical.**
- b. The obligations set out in this clause, shall survive termination of the Entire Agreement.**

12. INSURANCE POLICIES:

- a. Each Party shall be responsible for the procurement and costs of its own insurance, to limit the financial harm that may be caused by perils peculiar to its business and industry materialising, which includes but is not limited to, professional indemnity, employer's liability, motor vehicle insurance and property insurance.
- b. **Chem Nutri Analytical expressly disclaims any liability to the Client, as an insurer or guarantor.**
- c. **The Client acknowledges that although Chem Nutri Analytical maintains employer's liability insurance, such insurance does not cover any employees of the Client or of any third parties who may be involved in the provision of the Services. In the event that Services are to be performed at premises belonging to the Client or third parties, it is recorded that Chem Nutri Analytical's employer's liability insurance only covers its own employees and not those of the Client or third parties.**

13. DOMICILIUM CITANDI ET EXECUTANDI AND NOTICES:

- a. The parties choose as their respective domicilia citandi et executandi, for all purposes under the Entire Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses mentioned in subclauses 13(e) and 13(f), provided that the domicilium of either Party may be changed by written notice from such Party to the other Party, with effect from the date of receipt or deemed receipt by the latter Party, of such notice.
- b. The domicilium of each Party shall be any address within the Republic of South Africa, which is not a post office box or poste restante.
- c. Any notice required or permitted to be given in terms of this Agreement shall be valid and effective, only if in writing.
- d. Any notice given by one Party to the other which:
 - i. is delivered by hand during the normal business hours of the addressee, at the addressee's domicilium for the time being, shall be deemed until the contrary is proved, to have been received by the addressee at the time of delivery;

- ii. is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile for the time being, shall be deemed, until the contrary is proved, to have been received by the addressee on the Fourth (4th) day after the date of posting; and
 - iii. is sent by e-mail, shall be deemed, until the contrary is proved, to have been received on the day of transmission, where it is transmitted during normal business hours of the receiving Party and the next business day, where it is transmitted outside those business hours.
- e. Chem Nutri Analytical chooses its domicile as follows:

Cedar Lake Industrial Estate
1 Harvest Place, Clayville
Olifantsfontein
Gauteng Province
1666

- f. The Client chooses its domicile as follows:

- g. Any written notice to Chem Nutri Analytical, shall be addressed to the Managing Director.

14. BREACH:

- a. In the event of either Party being in breach of any of its obligations under this Agreement, the innocent Party shall be entitled to give the defaulting Party written notice, calling on the defaulting Party to remedy the breach within Seven (7) business days of the date of receipt or deemed receipt of such notice, which shall be delivered by hand, prepaid registered post, e-mail or other recorded delivery.

15. TERMINATION:

- a. This Agreement shall commence upon signature hereof by the duly authorised signatories of the parties and shall continue, unless terminated earlier in accordance with this clause, until the contemplated Services have been provided.

- b. This Agreement may be terminated by:

 - i. either Party, if the other Party commits a material breach of any provision of these Terms and Conditions and fails to remedy such breach within Seven (7) business days after receiving written notice from the aggrieved Party, requesting the defaulting Party to remedy such breach, then the aggrieved Party shall be entitled, without prejudice to its other rights in law and as set out in this Agreement, to cancel the Entire Agreement or to claim specific performance of any obligation, whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages;
 - ii. Chem Nutri Analytical on written notice to the Client, in the event that the Client fails to settle any invoice by its due date and fails to make payment after a further request for payment; or
 - iii. either Party, on written notice to the other Party, in the event that the other Party performs any act of insolvency, as provided for in section 8 of the Insolvency Act, No. 24 of 1936 or becomes subject to an administration order or being a natural person, sole proprietor or partnership becomes insolvent or being a company or close corporation goes into liquidation, otherwise than for the purpose of a solvent amalgamation or reconstruction or suffering any civil judgment taken or entered against it or the other Party, ceases or threatens to cease carrying on business.

- c. In the event of the Entire Agreement being terminated for any reason and without prejudice to any other rights or remedies Chem Nutri Analytical may have, the Client shall pay Chem Nutri Analytical for all

Services performed up to the date of termination. This obligation shall survive termination of the Entire Agreement.

- d. The Client shall pay all legal and other costs, including attorney's fees, counsel's fees, tracing agent's fees, incurred by Chem Nutri Analytical in taking steps pursuant to any breach by the Client, of these Terms and Conditions or any failure by it to pay any amount for which the Client is liable, on the scale as between attorney and own client, whether or not action is instituted, and such costs shall include any collection commission which Chem Nutri Analytical is required to pay to its attorneys.
- e. Any termination of the Entire Agreement shall be done in writing and shall not affect the accrued rights and obligations of the Parties nor shall it affect any provisions which are expressly or by implication intended to come into force on or after such termination.

16. ASSIGNMENT AND SUBCONTRACTING:

- a. Chem Nutri Analytical reserves the right to delegate the performance of its obligations hereunder, to one or more of its subcontractors, with notice to the Client.

17. CANCELLATION OF ORDERS:

- a. **Where the CPA applies to the transaction:**
 - i. **orders for Services that Chem Nutri Analytical expressly or implicitly is required or expected to procure, create or alter specifically to satisfy the Client's requirements ("special-order Services") may not be cancelled except with the written consent of the Chem Nutri Analytical; and**
 - ii. **the cancellation of any other order must be made in writing and will be subject to a reasonable cancellation penalty, calculated by Chem Nutri Analytical and payable on demand.**

- b. Where the CPA is not applicable to the transaction, the transaction may only be cancelled with the prior written consent of Chem Nutri Analytical.**

18. GOVERNING LAW AND JURISDICTION:

- a. The Entire Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa, even if the Client should be domiciled outside the Republic of South Africa.**
- b. The parties agree to submit to the exclusive jurisdiction of the South African Courts, in respect of any dispute or claim arising out of or in connection with the Entire Agreement, including any noncontractual claim relating to the provision of Services in accordance, with the Entire Agreement.**
- c. The Parties further agree that Chem Nutri Analytical shall be entitled, but not obliged, at its sole discretion, to institute proceedings in any magistrate's court which otherwise has jurisdiction, notwithstanding that the amount in issue may exceed the limit of such jurisdiction and the Client hereby consents to the jurisdiction of such court.**

19. DISPUTE RESOLUTION:

- a. The Parties shall first endeavour to amicably settle any dispute between themselves and may, if necessary, resort to alternative dispute resolution processes, such as mediation and / or arbitration.**
- b. If no amicable settlement is reached within Sixty (60) calendar days from a notice of dispute sent by one Party to the other, the parties shall refer the matter to arbitration, according to the following provisions:**
 - i. The matter shall be referred to the Arbitration Foundation of South Africa and the arbitration shall be held in Gauteng. The Rules of the Arbitration Foundation of Southern Africa shall apply; and**
 - ii. Each Party irrevocably agrees that the decision of the arbitrator in the arbitration proceedings, shall be final and binding and shall be carried into effect.**

- c. The arbitrator shall be a person of appropriate knowledge, ability, skill and experience. If the question in issue is:
 - i. primarily an accounting matter, an independent chartered accountant of at least Ten (10) years standing;
 - ii. primarily a legal matter, a practicing Senior Counsel of not less than Five (5) years standing as such; and
 - iii. any other matter, an independent person agreed upon between the parties to the dispute and failing such agreement, a person appointed by the Director of the Legal Practice Council for Gauteng.
- d. This clause shall not preclude the Parties from seeking urgent relief in a court of appropriate jurisdiction.

20. MISCELLANEOUS:

a. Severability:

- i. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect, as if this Agreement had been executed without the invalid, illegal or unenforceable provision. If the invalidity, illegality or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, Chem Nutri Analytical and the Client shall immediately commence good faith negotiations to conclude an alternative Agreement.

b. No Partnership or Agency:

- i. Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture or other co-operative entity between the parties or constitute any Party, the partner, agent or representative of the other.

c. Waivers:

- i. The failure of any Party to insist upon strict performance of any provision of the Entire Agreement or exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by the Entire Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach.
- ii. No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

d. Entire Agreement and Amendment:

- i. **The Entire Agreement between the Parties relating to the Services contemplated by the Parties, supersedes all previous agreements, arrangements and understandings between the Parties relating to similar transactions.**
- ii. **Each Party acknowledges that in entering into the Entire Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in the Entire Agreement) made before the signature of this Agreement. Each Party waives all rights and remedies that, but for this clause, might otherwise be available to it in respect of any such representation, warranty, collateral or other assurance.**

e. Transferring of Rights:

- i. Neither Party shall be entitled to assign, cede, delegate or transfer any rights or obligations acquired in terms of the Entire Agreement, in

whole or in part, to any other Party or person without the prior written consent of the other Party.

f. Third Party Right:

- i. A person who is not party to this Agreement has no right to enforce any of its terms.

g. Further Assurance:

- i. Each Party shall, at the cost and request of the other Party, execute and deliver such instruments and documents and take such other actions as may be reasonably requested from time to time, in order to give full effect to its obligations under this Agreement.