

Agreement of Purchase and Sale and exclusive supply

entered into between:

Global Agricultural Product Procurement Ltd.

(“GAPP”)

and

CCP AG

(“CCP”)

1. **BACKGROUND**

- 1.1 GAPP procures, produces, processes and exports agricultural products (“cherry peppers” and “patty pans”) (“the Product”) from South Africa.
- 1.2 GAPP is a company with limited liability duly registered and incorporated in accordance with the laws of the Republic of Mauritius, with registration number: 128105 C1/GBL.
- 1.3 CCP operates as a procurement and purchasing entity of processed agricultural products and sells such products to export markets worldwide.
- 1.4 CCP is a listed public company duly registered and incorporated with the laws of Germany, with registration number HRB 9658
- 1.5 The Parties wish to enter into an Agreement of Purchase and Sale and Exclusive Supply in terms of which exclusive supply rights shall be provided to CCP by GAPP, upon the conditions contained in this Agreement, relating to the Product.
- 1.6 The Parties wish to record the terms and conditions of the Agreement of Purchase and Exclusive Supply in writing.
- 1.7 This Agreement will be interpreted and construed in accordance with the Laws of the Republic of South Africa.

2. **GRANT OF EXCLUSIVE RIGHTS**

- 2.1 GAPP hereby grants to CCP the exclusive right, for all countries within the European Union (EU27), Switzerland and Norway (“*the Territory*”) to purchase and sell the Product, subject to the terms and conditions contained in this Agreement.
- 2.2 CCP and GAPP shall continue to explore business opportunities of mutual interest and to expand upon the product range offered by CCP to

its customers in the Territory. In such instances, CCP shall first offer GAPP the opportunity to source suitable suppliers of any such new products before any third party suppliers will be approached by CCP. GAPP shall advise CCP within 14 (Fourteen) days, and in writing, whether it is able and intends to be the supplier of any new products to CCP, in accordance with the provisions of this agreement.

3. CONTRACT PERIOD

This agreement shall commence upon signature hereof and shall remain in force indefinitely thereafter, subject to the conditions contained herein.

3.1 Contract Period and exclusivity only remain in force if the purchaser performs to the minimum sales performance targets. See 4.7

4. PURCHASE ORDERS AND FORECASTS

4.1 CCP shall, on a bi-monthly basis, furnish GAPP with written planning schedules, which will contain anticipated purchase orders and quantities of Product placed upon CCP by its own customers in the Territory. Such planning schedules are non – binding and for planning purposes only, and may be utilized by GAPP for purposes of its own production forecasts. Final and binding Purchase Orders will be placed by CCP on GAPP by no later than 15 January of every year, for delivery of Product in accordance with the terms contained in this agreement and the individual purchase orders.

4.2 GAPP shall furnish CCP with bi-monthly production forecasts in order to facilitate effective sales by CCP of the Product in the Territory. Such production forecasts will be non-binding and for planning purposes only. GAPP however undertakes to furnish CCP with final and binding prices for the following year by 31st October of every year.

4.3 Where GAPP reasonably foresees and / or anticipates difficulties in fulfilling the production forecasts, such information must be shared with

CCP in writing within 14 (Fourteen) days of GAPP becoming aware thereof. The supply by GAPP shall be subject to the provisions of clause 8 and the *force majeure* clause, as contained in clause 13 hereinafter.

- 4.4 CCP shall provide GAPP with a provisional shipping schedule based on projected orders for at least the following two months.
- 4.5 GAPP shall, participate on major food shows such as ANUGA and SIAL. CCP may be asked to co-fund this participation. CCP will send a representative to the aforesaid shows in order to support the sales team of GAPP, and generally provide such assistance as the Parties may agree from time to time.
- 4.6 CCP has been granted exclusive selling rights of the Product in the Territory in terms of this Agreement, subject to the conditions as contained in this Agreement. Should any client within the Territory request to deal with GAPP directly, GAPP shall notify CCP of such request in writing and within 14 (Fourteen) days of receiving such request. Furthermore, same shall only occur subject to the written consent of CCP and furthermore subject to the terms and conditions contained in such written consent. The commission payable by GAPP to CCP shall be payable on the date upon which GAPP receives payment from the customer. Any documentation related to such transaction shall be made available to CCP on demand.
- 4.7 GAPP shall assess the Purchaser's sales performance on a monthly basis, the agreed sales target being 1/12 of the total expected Order volume from all GAPP Production facilities. So for example on a contracted volumes of 1,200 tons in total, the Purchaser shall have a minimum sales threshold target of 100 tons of the Product per month. The supplier will only have the right to cancel the contract should the Purchaser consistently underperform (<75%) the minimum sales threshold for 6 months in a row without being able to provide a

substantiated report backed up by signed contracts that indicates the reason why sales have been slower than expected.

5. **PLACING OF ORDERS**

Orders for the Product to be supplied by GAPP to CCP shall be placed by E-mail to the following e-mail address: sales@gapp.mu and info@gapp.mu or to such other address as may be subsequently supplied by GAPP to CCP and GAPP shall sell the Product to CCP in accordance with the aforesaid orders and at such prices and upon the terms and conditions, as contained in this Agreement and the annexures hereto.

6. **PAYMENT TERMS**

6.1 CCP shall pay the agreed Purchase Price in respect of the Product, within 45 (forty five) days calculated from invoice date, unless otherwise agreed. All special arrangements, other than the aforesaid, shall be stipulated on the relevant invoice. Absent any special arrangements having been recorded on an invoice, such invoice shall become due and payable by not later than 45 (forty five) days from date of such invoice.

6.2 The documents, to accompany the invoice shall include:

6.2.1 Euro 1 Certificate; (Not necessary if suppliers are Approved Exporters)

6.2.2 Bill of Lading;

6.2.3 Packing List;

6.2.4 Commercial Invoice.

7. **PASSING OF OWNERSHIP AND RISK AND PAYMENT AND OTHER GENERAL TERMS**

The passing of risk and ownership in and to the Product shall be regulated by the terms and conditions of this Agreement and the specific Incoterms agreed, per individual shipment and risk shall pass in accordance with the agreed Incoterms,

ownership in respect of the Product to remain vested in GAPP, despite the passing of risk, if applicable, until such time as the full purchase price has been settled, per individual shipment, in full.

8. NOT TO BE CONCERNED WITH COMPETING PRODUCTS

Subject to the conditions contained herein, and on condition that GAPP has fulfilled all its contractual obligations contained herein, CCP shall not be concerned with or interested in (either directly or indirectly) the purchase and supply or importation or exportation, sale or advertising of other Product, as referred to in clause 1.1 above. In the event of GAPP being in default with any of its obligations in terms of this Agreement, or being unable to guarantee supply of Product timeously, and failing to remedy such default within 30 (Thirty) days from being advised by CCP in writing that a default exists, then CCP shall be entitled to acquire the Product from any other source.

9. NOT TO ASSIGN

Neither Party shall cede or assign or purport to cede or assign this Agreement or any rights or obligation thereunder without the consent in writing of the other Party, which consent shall not be unreasonably withheld.

10. CONDITION OF PURCHASE AND RESALE

10.1 CCP shall, in purchasing the Product, be bound by the conditions of sale and Product specifications of GAPP, as contained in any schedule hereto, from time to time in force and any modification thereto, made by GAPP and shall not make any promises, representations, warranties or guarantees with reference to the Product except such as are consistent with those conditions or as are expressly authorized by GAPP in writing.

10.2 GAPP will provide Product samples and Product specifications. The duty vests upon the Purchaser to acquaint itself with the Product and the Product specification and to ensure that the Product is fully compliant with the End User Country's Legislation and is fit for the purpose that it is purchased for.

11. RESTRICTION ON SALES BY GAPP

GAPP shall not sell any Product to any person within the exclusive territory upon the express condition that CCP has discharged all its obligations in terms of this Agreement. In the event of CCP being in default with any of its obligations in terms of this Agreement and failing to remedy such default within 30 (Thirty) days from being advised by GAPP in writing that a default exists, then GAPP shall be entitled to sell the Product to any other purchaser within the exclusive territory, including current or former customers of CPP.

12. TERMINATION OF AGREEMENT

Either Party shall have the right at any time by giving 30 (Thirty) days notice in writing to the other Party, calculated from date of issuing thereof, to terminate this Agreement in any of the following events:

12.1 On breach:

If either Party commits a breach of any of the material term(s) or conditions of this Agreement.

12.2 On liquidation or insolvency:

If CCP or GAPP is liquidated whether compulsorily or voluntarily or compounds with its creditors or takes or suffers any similar action in consequence of debt, or is placed in business rescue.

12.3 On not achieving minimum threshold targets

If the Purchaser does not sell Product volumes, on par with or exceeding the volume thresholds as set out in 4.7.

12.4 On notice:

Notwithstanding the provisions contained herein, both Parties shall be entitled to terminate this agreement by giving the following written notice:

- 12.4.1 CCP: notice of termination of not less than 12 months, which notice must result in the agreement terminating on 30 April of any year.
- 12.4.2 GAPP: notice of termination of not less than 12 months, which notice must result in the agreement terminating on 30 June of any year.

13. **FORCE MAJEURE**

- 13.1 To the extent that it becomes impossible for either Party to perform any obligation (other than a payment obligation) in terms of this Agreement because of an event or circumstance that was neither foreseen nor reasonably foreseeable when the Agreement was entered into or which, if the event could have been foreseen at that time, cannot be guarded against or avoided by reasonable care or the reasonable acts of that Party, that Party may:
 - 13.1.1 notify the other Parties within five Business Days of the nature, extent, effect and likely duration of the event or circumstance; and keep the other Parties updated as may be reasonably required by the other Parties;
 - 13.1.2 take all commercially reasonable action to remedy or minimise the consequences (and report to the other Parties); and
 - 13.1.3 Immediately resume performance of its obligations under this Agreement and notify the other Parties if performance of the obligation again becomes possible.
- 13.2 Performance of any such obligation is suspended for as long as the event or circumstance continues to make the performance impossible.

- 13.3 If the event or circumstance continues for a period exceeding 30 (Thirty) Calendar Days GAPP or CCP may cancel this Agreement on written notice to the other Party provided that the obligation which the affected Party is unable to perform is a material obligation under this Agreement.

14. **CONFIDENTIALITY**

Both Parties undertake that they will not at any time after entering into this Agreement divulge any information in relation to the affairs of either Party or business or method of carrying on business, or Product or designs, trademarks, patents or any other business rights of either Party, to any third party.

15. **DISPUTE RESOLUTION**

- 15.1 If the Parties are unable to resolve any dispute, resulting from this Agreement by means of joint co-operation or discussion between the individuals directly involved with the execution of this Agreement within one week after a dispute arises or such extended time period as the Parties may in writing allow, then such a dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve this dispute, within ten (10) calendar days after it having been referred to them.

- 15.2 Should the dispute not be resolved in the aforesaid manner, then it shall be resolved by way of arbitration, in accordance with the provisions contained in this Agreement.

16. **ARBITRATION**

- 16.1 A dispute between the Parties relating to any matter arising out of this Agreement or the interpretation thereof shall be referred to arbitration, by either of the Parties, by way of a Notice to the other party, in which Notice particulars of the dispute are set out.

- 16.2 Such arbitration proceedings shall be held in Mauritius and shall be held in a summary manner, which shall mean that it shall not be necessary to observe or carry out:
- 16.2.1 the usual formalities of procedure (e.g. there shall not be any pleadings or discovery);
 - 16.2.2 the strict rules of evidence;
 - 16.2.3 Immediately and with a view to its being completed within 60 (sixty) calendar days after it is demanded.
- 16.3 The arbitrator for such arbitration proceedings shall:
- 16.3.1 if the matter in issue is primarily an accounting matter, be an independent auditor with at least 15 (fifteen) years' experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Mauritius Institute of Professional Accountant; or
 - 16.3.2 any other matter, be a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 15 (fifteen) years' experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Bar Council; or
 - 16.3.3 in the event where the Parties are unable to agree whether the nature of a dispute is primarily of an accounting nature, or any other nature, then the nature of that dispute shall be decided by a practising advocate or attorney, admitted as such in accordance with the legislation of the law governing this Agreement, with at least 15 (fifteen) years' experience, agreed upon by the Parties and, failing agreement, nominated by the chairperson for the time being of the Law Society.

- 16.4 The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 16.5 The “arbitration” clause in this Agreement shall be severable from the rest of this Agreement and therefore shall remain effective between the Parties after this Agreement has been terminated.
- 16.6 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

17. DOMICILIUM

The Parties elect the following addresses as their respective *domicilium citandi et executandi*:

- 17.1 GAPP at: Sally- Lynn Theron, B6 Le Cerisier Royal Rd
Mon Choisy, Mauritius
- 17.2 The Purchaser at: Berliner StraBe17
D-63801 Kleinostheim
Germany
- 17.3 Either of the Parties may change its *domicilium citandi et executandi* to another address within the same country, by way of a notice to the other party to this Agreement, provided that such a notice is received by the addressee, at least 7 (seven) calendar days prior to such a change taking effect.

18. NOTICES

The Parties elect the following addresses at which all notices and other communications must be delivered for the purposes of this Agreement:

18.1 GAPP:

18.1.1 by hand at B6 Le Cerisier Royal Rd Mon Choisy, Mauritius marked for the attention of Sally- Lynn Theron;

18.1.2 by post at B6 Le Cerisier Royal Rd Mon Choisy, Mauritius marked for the attention of Sally- Lynn Theron;

18.1.3 by e-mail, marked for the attention of Sally- Lynn Theron to the following E-mail addresses: info@gapp.mu

18.2 the Purchaser:

18.2.1 by hand at Berlin StraBe17, D-63801, Kleinostheim, Germany marked for the attention of Henry Schipper;

18.2.2 by post at Berlin StraBe17, D-63801, Kleinostheim, Germany marked for the attention of Henry Schipper;

18.2.3 by telefax at +49 6027 4093450 marked for the attention of Henry Schipper;

18.2.4 by e-mail, marked for the attention of Henry Schipper at the following e-mail address: info@ccp.ag

18.3 Any notice or communication required or permitted to be given in terms of this Agreement shall only be valid and effective if it is in writing.

18.4 Any notice addressed to either of the Parties and contained in a correctly addressed envelope and sent by registered post to it at its chosen address or delivered by hand at its chosen address to a responsible person on any day of the week between 09h00 and 16h00 (CET),

excluding Saturdays, Sundays and public holidays in South Africa, shall be deemed to have been received, unless the contrary is proved, if sent by registered post, on the 14th (fourteenth) calendar day after posting and, in the case of hand delivery, on the day of delivery.

18.5 Any notice sent by telefax to either of the Parties at its telefax number shall be deemed, unless the contrary is proved, to have been received:

18.5.1 if it is transmitted on any day of the week between 09h00 and 16h00 (CET), excluding Saturdays, Sundays and public holidays in South Africa, within 2 (two) hours of transmission;

18.5.2 if it is transmitted outside of these times, within 2 (two) hours of the commencement any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and Mauritius public holidays, after it has been transmitted.

19. ENTIRE AGREEMENT AND VARIATIONS

19.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

19.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

19.3 Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.

20. RELAXATION

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party (“the grantor”) may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

21. WAIVER

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

22. SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

23. DRAFTING COSTS

Each of the Parties shall bear its own cost incurred as a result of the negotiation, redrafting and finalization of this Agreement, which shall include but not be limited to all legal fees.

24. RESTRAINT

The Parties shall be restrained and shall be bound by the following restraints:

24.1 Activities

Each of the Parties agrees that it will not, during the validity of this agreement (and thereafter in accordance with clause 24.3), without the prior written consent of the other Party:

- (a) approach any of the suppliers, associates or clients of the other Party with a view to persuading those suppliers or associates to cease doing

business with that Party and to commence doing business with anyone else.

- (b) persuade, induce or encourage any employee of that Party:
 - (i) to take up employment with or be interested in any manner whatsoever in any business directly or indirectly in competition with the business carried on by that Party; or
 - (ii) to terminate his or her employment with that Party.
- (c) take over any work performed by that Party on behalf of suppliers or clients.
- (d) copy or imitate the methodology of that Party insofar as the procurement of its business opportunity and appointments are concerned;
- (e) approach the clients of that Party, its business connections, its statutorily and informally constituted administrative bodies and its regular consultants, with a view to exploiting such business contacts for its own benefit to the exclusion of or at the expense of that Party.
- (f) be concerned in any business which competes with the business of that Party, or perform any of the activities referred to in clause 24 (a) to 24 (e) hereinbefore;
- (g) utilize any information or knowledge accumulated by a Party for the purpose of performing work in terms of which the one Party stands to profit at the expense of other Party.

24.2 Nature of Involvement

The representatives or employee(s) of CCP or GAPP shall be deemed to be concerned in a competitive business if:

- (a) he carries it on as a principal or agent; or

- (b) he is a partner, director, employee, secretary, consultant or agent in, or of any person who carries on the business; or
- (c) he has any direct or indirect financial interest as shareholder or otherwise in any entity which carries on the business.
- (d) any employee of CCP or GAPP conducts any of the activities in relation to paragraphs 24.1 (a), (b) and (c).

24.3 Period of restraint

The restraint shall:

- (a) In the case of a termination on notice (by either Party) in accordance with the provisions of clause 12.3 above commence on the termination date of this Agreement and shall remain in force for a period of three years subsequent to date of termination of this Agreement unless otherwise agreed by the Parties in writing;
- (b) The Parties expressly record that in the event of a cancellation of this agreement in accordance with the provisions of clause 12.1 or 12.2. herein, the Party in default and who receives the termination notice shall be subject to a restraint of trade which shall remain in force for a period of three years subsequent to date of termination of this Agreement unless otherwise agreed by the Parties in writing;

24.4 Acceptance of restraint

Each of the Parties accepts that the restraint is a minimum restraint required to protect their commercial and intellectual interests.

24.5 Fair restraint

Each of the Parties, in the circumstances, accepts that it is fair and reasonable and necessary for the protection of the Parties' interests that they should be restrained in the manner set out above.

This Agreement is drawn up in two (2) originals and in good faith.

On Behalf of GAPP

SIGNED at _____ on this _____ day of _____ 2015

WITNESSES:

1. _____
Signature of _____
on behalf of GAPP

2. _____

On Behalf of the Purchaser

SIGNED at _____ on this _____ day of _____ 2015

WITNESSES:

1. _____
Signature of _____
on behalf of **the Purchaser**

2. _____