

## TERMS AND CONDITIONS

These terms and conditions apply to the Agreement set forth on the reverse side of this document (the "Agreement"). As used herein, "Seller" means the seller indicated on the Agreement, "Buyer" means the buyer indicated on the Agreement, and "Agreement" means these terms and conditions and the Agreement. To the extent of any inconsistency between the Agreement and the terms and conditions, the Agreement shall control.

**1. Sale; Payment.** The Agreement governs the purchase of corn as specified on the Agreement (the "Corn"). Seller shall deliver the Corn to Buyer, and Buyer shall pay for such Corn, as set forth in the Agreement. Unless otherwise provided, payment shall be net ten (10) days. Any shipment of Corn shall be deemed received by Buyer when delivered to Buyer at the F.O.B. location set forth on the Agreement. In the event a party has not executed the Agreement, such party shall be deemed to have executed the Agreement upon delivery of the Corn at such location.

**2. Warranties; Exclusive Remedies; Disclaimers of Warranties.** Buyer warrants that it is not insolvent as such term is defined under the UCC or unable to pay its debts when due. Seller warrants that the Corn shall (i) be consistent with the quality specifications set forth in the Agreement, (ii) be graded in accordance with State and Federal laws and in accordance with any standards set by Buyer, including but not limited to those related to moisture, test weight, damage, foreign material, mycotoxin and other toxin levels, and (iii) is merchantable and not "adulterated" or "misbranded" as such terms are defined under the Federal Food, Drug, and Cosmetic Act. If Seller's Corn does not meet these requirements, Buyer may, at Buyer's option: (i) reject any Corn delivered that does not meet these specifications, with any cost of redelivery incurred by Buyer to be paid by Seller or (ii) accept corn delivered by Seller that does not meet these specifications on such discounted pricing terms that are in effect at the time of delivery. Seller warrants that Corn, at the time of delivery to Buyer, shall be free and clear of all liens and encumbrances other than liens in favor of Seller. If a breach of the foregoing warranty is not cured within thirty (30) days notice to Seller of such breach, Seller shall provide either a refund of amounts paid for such non-conforming Corn or replacement Corn that conform to such warranty. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 2, EACH OF BUYER AND SELLER MAKES NO WARRANTIES AND

HEREBY DISCLAIMS, TO THE FULL EXTENT PERMITTED BY LAW, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

**3. Right to Cover.** If Seller fails to deliver any or all of the Corn set forth on the Agreement, Buyer shall be entitled to all remedies for breach including damages and right to cover.

**4. Risk of Loss.** Title to and risk of loss of Corn shall pass to Buyer at the F.O.B. location set forth on the Agreement.

**5. Term and Termination.** The term of this Agreement is as set forth on the Agreement or upon delivery and acceptance of the quantity of Corn set forth on the Agreement, whichever is later. The following provisions of this Agreement shall survive its termination: Sections 1 (to the extent of outstanding payment obligations), 4, 6, 7, 8, 10, and 11.

**6. Indemnification.** Each party shall indemnify, defend and hold harmless the other, its members, directors, officers, employees, agents and representatives, from and against any and all losses, costs, damages, expenses, obligations, injuries, liabilities, insurance deductibles and excesses, claims, proceedings, actions, causes of action, demands, deficiencies, lawsuits, judgments or awards, fines, penalties and interest, including reasonable attorneys' fees, to the extent caused by the indemnifying party's breach of any term of this Agreement or the indemnifying party's negligence or willful misconduct.

**7. Limitation on Liability.** EXCEPT FOR PERFORMANCE OF AN INDEMNIFICATION OBLIGATION HEREUNDER, IN NO EVENT SHALL (i) EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE OR EXEMPLARY DAMAGES OR FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, PROVIDED THAT DAMAGES SUFFERED BY BUYER RELATED TO THE FAILURE OF SELLER TO DELIVER CORN SHALL BE CONSIDERED DIRECT DAMAGES AND BUYER SHALL BE ENTITLED TO RECOVER ITS COSTS RELATED TO COVER TAKEN UNDER SECTION 3 ABOVE OR (ii) EITHER PARTY BE LIABLE TO THE OTHER FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNTS PAID OR PAYABLE TO SELLER HEREUNDER. NOTHING HEREIN SHALL LIMIT A PARTIES RIGHT TO

RECOVER COSTS OR ATTORNEY'S FEES UNDER SECTION 11 OF THIS AGREEMENT.

**8. Confidentiality.** The terms of the Agreement are confidential, and neither party shall disclose such terms to any third party, except those third parties with a need to know and that are bound by an obligation of confidentiality no less stringent than set forth herein.

**9. Force Majeure.** A party's failure to perform, or delay in performing, any obligation hereunder, other than a payment obligation, shall be excused to the extent caused by any event beyond the reasonable control or anticipation of such party, provided such party promptly notifies the other of such cause and takes the appropriate reasonable measures to mitigate the effects of such cause on the performance of the affected obligations.

**10. Miscellaneous.** The terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective successors and permitted assigns. No provision of this Agreement is intended, or shall be construed, to be for the benefit of any third party. Neither party may assign or otherwise transfer its rights, duties or obligations under this Agreement to any other person or entity without the prior written consent of the other party. Any attempted assignment made in violation of this Agreement shall be void. Notices or other communications required hereunder shall be in writing and shall be considered delivered when delivered by hand, delivered by UPS, FedEx, or DHL, or sent by facsimile or email with delivery confirmed, addressed to such party to the address, fax number or email address set forth in the Agreement. Either party may furnish, in writing, to the other party, notice of a change in the address, fax number and/or email address to which notices are to be given. If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal, unenforceable or void, either in whole or in part, this Agreement shall continue in full force and effect without said provision. This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes all prior written or oral understandings, representations, and agreements. No amendment or modification to this Agreement shall be binding unless in writing and signed by a duly authorized officer of both parties. The failure of either party at any time to require performance of any provision of the Agreement or to exercise any right provided for in the Agreement shall not be deemed a waiver of such provision or right unless made in writing and executed by the party waiving such performance or right. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint

venture, employment, franchise, or agency between the parties, and no party shall make any representation to the contrary. This Agreement and its interpretation shall be governed by the laws of the State of Minnesota, except with respect to its choice of law provisions. This contract shall also be governed by the Feed Trade Rules of the National Grain and Feed Association, to the extent such rules do not otherwise conflict with the terms of this Agreement. The Agreement may be executed in counterparts, including counterparts provided by facsimile or e-mail attachment or executed by electronic or digital signature, each of which shall be deemed an original but together shall constitute but one and the same instrument. These terms and conditions may be posted at Buyer's website [www.guardianlima.com](http://www.guardianlima.com) and shall along with contract terms include in a purchase order or exchanged via email constitute the Agreement with respect to the purchase of Corn described above.

**11. Dispute Resolution.** Any dispute or controversy between the parties arising out of or relating to this Agreement will be arbitrated in accordance with proceedings under the National Grain and Feed Association Arbitration Rules. The arbitration will be the exclusive dispute resolution method under this Agreement. The decision determined by arbitration shall be final and binding upon both parties but shall not preclude the Buyer's election of remedies. All costs and expenses, including reasonable attorney's and expert's fees of the Buyer and Seller incurred in any dispute under this Agreement which is settled by arbitration will be borne by the party determined by the arbitration to be liable; provided, however, that if the arbitration has allocated liability between the parties, the parties will share the total costs in proportion to their respective amounts of liability so determined. Except where clearly prevented by the issued in dispute, both parties agree to continue to perform their respective obligations under this Agreement until the dispute is resolved.