

TRUST AGREEMENT FOR USE WITH ONE OR MORE LETTERS OF CREDIT, IN LIEU OF BOND REQUIRED OF DEALERS IN AGRICULTURAL PRODUCTS, UNDER PROVISIONS OF O.G.G.A. CHAPTER 2~9, ARTICLE 1, ENTITLED: DEALERS IN AGRICULTURAL PRODUCTS

Whereas the provisions of O.C.G.A. Chapter 2-9, Article 1, require a good and sufficient surety bond or its equivalent of Dealers in Agricultural Products as defined in said Act to cover their obligations as such; and

Whereas \_\_\_\_\_, hereinafter known as the principal, is engaged in business as a Dealer in Agricultural Products, as defined in that Act and Gary W Black, Commissioner, Georgia Department of Agriculture hereinafter known as the trustee accepts the obligation of the trustee hereunder;

Now, therefore, the principal has obtained or will obtain, from one or more banks, one or more irrevocable letters of credit, under which the trustee may draw funds from such banks, for the account of the principal, for the following purposes and subject to the following conditions:

If the above named principal shall faithfully and truly account for and make payment to producers, their agents or representatives, for all agricultural products bought from, handled by, or sold by such producers, their agents, or representatives, as required by O.C.G.A. Sections 2-9-1, et seq. as amended, then this obligation to be void, otherwise to remain in full force and effect.

If such condition or conditions are met, then funds drawn by the trustee hereunder shall not be liable, but if there shall be any defaults, failures, or neglects under anyone or more of said conditions, then such funds shall be liable, subject to the following terms, conditions and limitations:

(a) Any person damaged by failure of the principal to comply with any condition of this agreement, in a transaction occurring on or after the effective date of this agreement in accord with its provisions, may recover under this agreement in accord with and subject to its provisions. Acts, omissions or failures of authorized agents or representatives of the principal or persons whom the principal shall knowingly permit to represent themselves as acting for the principal shall be taken and construed to be acts, omissions or failures of the principal and to be within the protection of this agreement to the same extent and in the same manner as if they were the personal acts of the principal.

(b) The trustee shall not be liable to pay any claim for recovery under this agreement if: it does not meet applicable statutory requirements or absent any statutory requirements; it is not in writing and received by the trustee within 120 days from the date of initial public notification of a breach of this agreement. The trustee shall after receiving such a claim notify the principal at the earliest practicable date.

(c) The trustee, upon determination that funds are due to a claimant, shall draw funds pursuant to a letter of credit obtained by the principal under this agreement, as necessary to pay what *is* due

to claimant, up to the amount of such letter, and pay such funds to the claimant, except as otherwise provided hereinafter. The trustee, prior to paying any funds to the claimant, shall determine the total amount due to all claimants under this agreement. If such total exceeds the total of funds which can be drawn by the trustee under letter(s) of credit obtained by the principal under this agreement, the trustee shall distribute such funds pro rata among the claimants to which funds are due. Payment by the trustee to any such claimant and acceptance by any such claimant of such payment from the trustee shall discharge the trustee; and reduce the amount of funds subject to this agreement, as to such claimant and in the amount of such payment.

(d) If the principal seeks an order of a court to enjoin the honoring of a draft drawn by the trustee, or an order of a court to enjoin payment by the trustee of a claim, or both, the trustee shall notify the claimant. In any such action the trustee shall not be obligated to defend; the claimant at his own expense may defend in the name of the trustee.

(e) If any draft of the trustee under a letter of credit obtained by the principal under this agreement is not honored by the bank on which it is drawn, the trustee shall notify the claimant. The claimant may at his own expense bring legal action in the name of the trustee to compel payment under the letter of credit to the trustee for disposition under this agreement. The trustee shall not be obligated to prosecute in any such action.

(f) If one irrevocable letter of credit obtained by the principal under this agreement is replaced by another in the 'same form issued by the same bank or another under which the trustee can draw the same or a greater amount at the same' or a later time than under the former such letter of credit, the trustee may surrender the former in exchange for the latter. In exchange for the entire amount which can be drawn by the trustee under any such letter of credit, the trustee may surrender such letter; the trustee may dispose of any such letter which has expired. The trustee shall not otherwise surrender or dispose of any letter of credit obtained by the principal under this agreement.

(g) If any letter of credit obtained by the principal under this agreement is about to expire and has not been replaced by another in the same form issued by the same bank or another under which the trustee can draw the same or a greater amount at a later time than under the expiring, letter of credit, the trustee, in his discretion, shall obtain the full amount of such expiring letter of credit before it expires.

(h) This agreement may be terminated by either the trustee or the principal, by delivering, to the other such person, Mitten notice of termination stating or describing a termination date. The termination date shall not be less than 30 days after the date such notice of termination is received by the trustee unless the trustee in writing approves an earlier termination date. Transactions occurring after the termination date may not be the basis of claims under this agreement. The trustee shall deliver such notice upon receipt of any claim for recovery under this agreement unless the principal informs the trustee that action will be taken to contest the claim. The trustee, in his discretion, shall, before the termination date, draw the full amount which can be drawn under every letter of credit obtained by the principal hereunder.

(i) During times when the trustee holds funds which have been obtained under this agreement, the trustee shall invest such funds in the name of the trustee in fully negotiable obligations of or guaranteed by the United States, or in deposits in national banks or other banks insured by the Federal Deposit Insurance Corporation. The trustee shall not be obligated to maximize interest received on such funds; Interest received by the trustee on such funds shall be disposed of by the trustee in the same manner as such funds. The trustee shall not expend such funds except as follows:

- (1) Such funds may be used to pay taxes due on account of interest received by the trustee on such funds;
- (2) Such funds may be used to pay reasonable expenses and compensation of the trustee;
- (3) Such funds may be paid to claimants to whom such funds are due under this agreement;
- (4) Such funds determined net to be needed to pay claimants under this agreement may be returned to the bank from which such funds are obtained for credit to the account of the principal.

(j) No amendment, endorsement, rider, or modification of this agreement shall be effective unless it is in writing and executed by the trustee and principal.

(k) The term "person" as used in this, agreement shall be construed to mean and include both singular and plural, corporations, partnerships, associations, individuals and the heirs, executors, administrators, successors, or assigns thereof.

(l) Any reference herein to one letter of credit shall be deemed to apply to multiple letters of credit if obtained by the principal under this agreement.

(m) Any notice or document required to be given to or filed with the trustee under this agreement may be given to the Commissioner, Georgia Department of Agriculture, 19 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334.

This agreement shall become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signature of Trustee

Signature of Principal

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