

GENERAL TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS AND EXPLANATION.** The term “GRACO’S” or “Seller” as used herein shall mean GRACO FERTILIZER COMPANY. The term “Buyer” as used herein shall mean the buyer identified on the relevant Credit Application, Invoice, Sales Confirmation, Sales Agreement, Supply Agreement, Purchase Order, or similarly titled document with Seller. (Seller and Buyer are collectively sometimes referred to as the “Parties” or singularly referred to individually as a “Party”.)

2. **APPLICATION.** These General Terms and Conditions of Sale (the “Terms and Conditions”) apply to and are incorporated into and made part of any Credit Application, Invoice, Sales Confirmation, Sales Agreement, Supply Agreement, Purchase Order, or similarly titled document (the “Sales Agreement”; such Sales Agreement, including these Terms and Conditions, shall be referred to as the “Agreement”), as the case may be, issued or executed by Seller and relating to the sale of goods (the “Product”). Seller objects to and rejects any provision additional to or different from the terms hereof that may appear in Buyer’s acknowledgement, order, confirmation, writing, or in any other prior or later communication from Buyer to Seller. Buyer’s commencement of performance hereunder (including Buyer’s ordering, purchasing and/or taking delivery of Product hereunder) shall in all cases constitute Buyer’s unqualified and unconditional acceptance of the terms and conditions of the Agreement. In the event of a conflict between these Terms and Conditions and the specific provisions contained in the sales agreement, the specific provisions contained in the sales agreement shall prevail.

3. **TITLE AND RISK OF LOSS.** Title to the Product shall remain with Seller until either such time as the Product reaches Buyer’s specified destination or Buyer or its contractor or agent picks up the Product at Seller’s facility, whichever occurs sooner. Risk of loss of the Product shall pass from Seller to Buyer when the product is loaded on to the truck or railcar at the Seller’s facility (unless another location is expressly identified by Seller).

4. **PAYMENT AND TAXES.** Unless otherwise stated in the Sales Agreement, payment is due 30 days from the invoice date. All payments shall be made in U.S. dollars, unless otherwise agreed to in the Sales Agreement. If the payment due date is a non-business day, Seller must receive such payment on the next business day after such due date. In the event that Buyer fails to specify the type of balance (i.e., currently due amounts, past due amounts, or interest) to which any payment shall be applied, then such payment shall be listed as a credit in Seller’s records until such time as Buyer notifies Seller how Buyer desires the payment to be applied. Interest may be charged on all past due amounts owed by Buyer hereunder at an interest rate equal to the lesser of (i) 18% per annum and (ii) the maximum rate permitted by applicable law, from the payment due date until paid in full. Buyer shall pay all taxes, duties, fees, levies, penalties, licenses, or charges imposed by any government authority, including sales, use, gross receipts, and excise taxes (“Taxes”), on or

with respect to the Product at or after risk of loss passes to Buyer to the extent applicable law does not prohibit Buyer from bearing economic responsibility for such Taxes. Seller shall invoice Buyer accordingly if Seller is required to collect said Taxes in any jurisdiction. Buyer shall provide Seller with an applicable exemption certificate, direct pay permit, or other evidence of exempt status if any purchase is deemed exempt from an applicable Tax. Seller shall be responsible for Taxes which applicable law prohibits Buyer from bearing. Buyer and Seller shall reasonably cooperate to mitigate any assessments of Taxes against either party with respect to the Agreement.

5. RIGHT TO SET-OFF. Seller reserves the right, at any time, to Set-off against any amount that Seller (or any of its affiliates) owes to Buyer (or any of its affiliates) any amount that Buyer (or any of its affiliates) owes to Seller (or any of its affiliates) under the Agreement or any other agreement between or among the Parties. "Set-off" means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar right to which Seller is entitled (whether arising under the Agreement, another agreement, applicable law, or otherwise) that is exercised by Seller.

6. CREDIT TERMS AND GUARANTY. (a) Credit Terms. Notwithstanding any provision to the contrary in the Sales Agreement, in the event that Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may (i) suspend deliveries of Product, (ii) require prepayment by wire transfer at least two business days prior to a scheduled shipment of Product, and/or (iii) require Performance Assurance at least three business days prior to a scheduled shipment of Product. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of, at Seller's option, either cash or letter(s) of credit in a form and from a bank acceptable to Seller in its sole discretion. Seller makes no assurance or guarantee regarding any amount of credit or the continuation of credit that may be granted to Buyer from time to time. (b) Guaranty. Seller, in its sole discretion, may require the execution of personal guaranties (the "Guaranties") by owners, officers, or other representatives of Buyer. Buyer hereby acknowledges and agrees that Seller reserves the right not to deliver any shipment of Product until Buyer has executed and delivered to Seller the Supplemental Agreements and the Guaranties in accordance with the terms of this section.

7. INSPECTION, ACCEPTANCE AND REJECTION. Buyer shall, at its sole cost and expense, inspect the Product furnished hereunder immediately after delivery. Buyer's failure to give written notice to Seller of any claim for Product not conforming to the terms of the Agreement within three business days from the date of delivery and prior to unloading or any use, disposition, mixing, processing, or other change from the original condition of the Product shall constitute an unqualified acceptance of the Product and a waiver by Buyer of all claims with respect thereto. All rejected Product shall be held for inspection. Demurrage shall be for Buyer's account to the extent the Product does conform.

8. WARRANTY; LIMITATIONS ON LIABILITY. (a) As its exclusive warranties, Seller warrants to Buyer only that, at the earlier of the time (i) title to the Product passes to Buyer and (ii) risk of loss of the Product passes to Buyer: (A) the Product shall conform to the specifications specifically set forth or referred to on the label and (B) title to the Product shall be free from any security interest, lien, or encumbrance. (b) BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THE FOREGOING CLAUSE (A) OF THIS SECTION, SELLER HAS NOT MADE, DOES NOT MAKE, AND EXPRESSLY DISCLAIMS ANY WARRANTIES, REPRESENTATIONS, COVENANTS, AND/OR GUARANTEES, EITHER EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, AS TO THE MERCHANTABILITY, QUANTITY, CONDITION OR QUALITY OF THE PRODUCT OR ITS SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE (WHETHER USED ALONE OR IN COMBINATION WITH OTHER SUBSTANCES), OR AS TO THE TITLE, NON-INFRINGEMENT, SCOPE, COVERAGE, VALIDITY OR ENFORCEABILITY OF ANY INTELLECTUAL PROPERTY (AS DEFINED BELOW), AND THE PRODUCT IS SOLD "AS IS". (c) SELLER'S LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, FOR ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE AGREEMENT OR OTHERWISE WITH RESPECT TO ANY PRODUCT OR INTELLECTUAL PROPERTY, INCLUDING BREACH OF SELLER'S WARRANTY, IS LIMITED, AT SELLER'S OPTION, TO (I) REPLACEMENT OF THE PRODUCT TO WHICH SUCH CAUSE OF ACTION RELATES, AT A MUTUALLY AGREEABLE DELIVERY POINT OR (II) A REFUND TO BUYER OF THE PORTION OF THE PURCHASE PRICE ALLOCABLE TO THE PRODUCT TO WHICH SUCH CAUSE OF ACTION RELATES. (d) WITHOUT LIMITATION ON THE FOREGOING, IN NO EVENT WILL SELLER'S CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THE AGREEMENT OR OTHERWISE WITH RESPECT TO THE PRODUCT AND THE INTELLECTUAL PROPERTY EXCEED THE TOTAL PURCHASE PRICE OF THE PRODUCT WITH RESPECT TO WHICH SUCH CLAIM RELATES, WHETHER ARISING UNDER WARRANTY, GUARANTY, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, FAILURE OF ESSENTIAL PURPOSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. (e) WITHOUT LIMITATION ON THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL SELLER OR ANY OF ITS AFFILIATES BE LIABLE OR HAVE ANY RESPONSIBILITY TO BUYER OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING LOST EARNINGS, LOST PROFITS, OR BUSINESS INTERRUPTION. (f) Buyer is not authorized to and shall not make any representations or warranties with respect to the Product or any Intellectual Property on behalf of Seller or Seller's affiliates except as expressly authorized by separate written and signed agreement. To the extent that Buyer makes any representations or warranties with respect to the Product (or any product of which Product is a component) or any Intellectual Property, Buyer shall be solely responsible for such representations and warranties and, to the fullest extent permitted by law, shall defend, protect, indemnify, and save harmless Seller and the other Indemnities from and against all Liabilities/Losses resulting therefrom or arising in connection therewith. (g) "Intellectual Property" means the trademarks, patents, and other intellectual property (including patent applications, copyrights, trade secrets, trade dress

and trade names) that are incorporated, used, practiced, or embodied in the Product or in connection with the manufacture, blending, use, marketing, or sale of the Product.

9. DEFAULT. Upon the occurrence of any of the following events: (a) Seller shall not have received a payment due from Buyer hereunder by the date such payment is due, and such failure remains uncured for a period of two days; (b) Buyer's breach of Section 14 below; (c) the failure of Buyer to perform, or other breach by Buyer of, any other obligation, representation, warranty or term in the Agreement, and such failure or breach is not excused or cured within three business days after receipt of written notice thereof; (d) the occurrence of a Bankruptcy Event; (e) the failure of Buyer to timely provide prepayment or Performance Assurance as set forth in Section 6 above; or (f) the failure by any Performance Assurance provider for Buyer to perform, or other breach by such provider of, any obligation, representation, warranty or other term under any document executed and delivered by such Performance Assurance provider in connection herewith, then Seller, in its sole discretion and without prior notice to Buyer, may do any one or more of the following: (i) suspend performance under the Agreement or any other agreement between Buyer and Seller; (ii) terminate the Agreement or any other agreement between Buyer and Seller, whereby any and all obligations of Buyer, including payments or deliveries due, will, at the option of Seller, become immediately due and payable or deliverable, as applicable; and/or (iii) exercise rights of Set-off. If Seller suspends performance and withholds delivery of Product as permitted above, it may sell the Product to a third party and Buyer shall be responsible for and, promptly following receipt of an invoice from Seller, Buyer shall make payment to Seller for, the price of the Product (as determined in accordance with the sales agreement) and all reasonable costs resulting from Buyer's breach or default as identified above, including all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and sale of the Product, less the proceeds of such sale. The foregoing rights shall be cumulative and alternative and in addition to any other rights or remedies to which Seller may be entitled hereunder or at law or in equity, including specific performance. In addition, Seller shall be entitled to recover from Buyer all court costs, attorneys' fees and expenses incurred by Seller in connection with Buyer's breach or default, and interest on past due amounts as set forth in Section 4 above. "Bankruptcy Event" means the occurrence of any of the following events with respect to Buyer or any Performance Assurance provider for Buyer: (i) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (ii) making of an assignment or any general arrangement for the benefit of creditors; (iii) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within 30 days after such filing; (iv) otherwise becoming bankrupt or insolvent (however evidenced); (v) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (vi) being generally unable to pay its debts as they fall due.

10. **FORCE MAJEURE.** (a) **Force Majeure.** If, because of Force Majeure, Seller is unable to carry out any of its obligations hereunder, then the obligations of Seller shall be suspended to the extent made necessary by and during such Force Majeure's continuance. The term "Force Majeure", as used herein, means any cause not reasonably within the control of Seller, and shall include, without limitation, the following: (i) physical events such as acts of God, pandemic, disease, plague, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of equipment or lines of pipe; (iii) interruption and/or curtailment of transportation, supply, and/or storage; (iv) acts of others such as terrorist attacks, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; (v) interference with or disruption of Seller's intended source of supply of the Product (or any component thereof) to be sold hereunder or interference with or disruption of Seller's intended means of transportation for the delivery of such Product (or any component thereof); (vi) compliance with any law, statute, ordinance, regulation, policy, order or request of any federal, state, provincial or local government unit, or any officer, department, agency, or committee thereof (except to the extent such order or request arises from Seller's failure to comply with applicable law); and (vii) any other event or contingencies of like or different character beyond the reasonable control of Seller, that, in each case, interferes with the ability of Seller to perform its obligations hereunder. (b) **Notice.** If the performance of Seller is prevented by Force Majeure, Seller shall provide notice to Buyer. Initial notice may be given orally; however, written notice with reasonably detailed particulars of the event or occurrence is required as soon as reasonably possible. Delay or failure to give notice herein shall not prevent Seller from claiming its performance is excused by Force Majeure. (c) **Consequences.** Upon providing notice of Force Majeure to Buyer, Seller will be relieved of its obligations (including its obligations to make delivery of Product), from the onset of the Force Majeure event, and shall not be deemed to have failed in such obligations to Buyer during such occurrence or event. Seller may, in its sole discretion, (i) allocate its available supply of Product among the existing contractual obligations of Seller in a fair and reasonable manner and deliver to Buyer only its allocation of such Product or (ii) terminate the Agreement, or any part hereof, if Force Majeure lasts for more than fifteen (15) consecutive days or twenty (20) days in any thirty (30)-day period. Under no circumstance shall Seller be obligated to cure any deficiencies in deliveries of Product caused by Force Majeure, and Seller shall have no liability thereof. If Buyer has already paid for some or all of the Product, then Seller will provide a refund to Buyer or credit Buyer's account for all amounts paid by Buyer to Seller for Product that was not delivered by Seller due to Force Majeure.

11. **INDEMNIFICATION.** To the fullest extent permitted by law, Buyer hereby releases and shall defend, protect, indemnify, and save harmless Seller, its affiliates, and their respective officers, directors, employees and representatives (collectively, "Indemnitees") from and against all claims, demands, lawsuits, causes of action, strict liability claims, penalties, fines,

administrative law actions and orders, losses, damages, expenses (including attorneys' fees and expenses) and costs of every kind and character, on account of any reason whatsoever, including personal injuries, death, damage to property, damage to the environment, or infringement of any patent, trademark, copyright or other property right ("Losses/Liabilities"), regardless of whether such harm is to Buyer, Indemnitees, the employees, directors or officers of either or any other person, arising out of or in any way incident to: (a) any Product, at or after the earlier of the time that title to or risk of loss of such Product passes to Buyer, or any product of which Product is a component, at any time; (b) the possession, use, misuse, storage, transportation, handling, disposal, importation, exportation, manufacture, marketing, sale, re-sale or distribution of any Product or any product of which Product is a component, or the use or misuse of any Intellectual Property or any other intellectual property, in each case by or on behalf of Buyer or Buyer's affiliates, distributors, representatives, agents, contractors or subsequent purchasers or their respective employees, officers and directors; (c) use or misuse of railcars, motor vehicles, inland or ocean- going water craft or pipeline facilities; and/or (d) breach of any of the terms of the Agreement. Buyer's duty of indemnification shall survive any termination of the Agreement or the cessation of business transactions between Buyer and Seller, and Buyer's obligations herein shall remain in full force and effect as necessary for the purposes of compliance with the terms of such indemnity. The indemnity in this Section 11 shall be in addition to any indemnity from Buyer or its affiliates, distributors, representatives, agents, contractors, or subsequent purchasers contained in another agreement between Seller and such party.

12. ACCESS TO SELLER FACILITIES. If and to the extent that Product sold hereunder is to be picked up by Buyer or its contractors or agents from any Seller (or Seller's contractor's) facility, Seller (or Seller's contractor) shall have the right to require the execution of an Access Agreement prior to granting Buyer, its contractors, or its agents access to such facility. Buyer agrees that it, and its contractors and agents, will comply with all of Seller's (or Seller's contractor's) safety rules and regulations when they are at Seller's (or Seller's contractor's) facility in connection with the performance of the Agreement.

13. LABELS. Buyer shall comply with any and all warnings and instructions printed on, attached to, or accompanying Product and shall ensure that such warnings and instructions (a) will remain legible, (b) are not changed, concealed, or removed, in whole or in part, and (c) are provided with the Product in connection with any sale, re-sale or distribution of the Product.

14. COMPLIANCE WITH LAWS. Buyer shall (a) at its sole cost and expense: (i) comply fully with all laws, ordinances and regulations, including those related to product labeling and packaging, occupational safety, hazardous products and hazardous materials, and health and protection of the environment, that are or may in the future be applicable to, and (ii)

obtain and maintain, and provide copies thereof to Seller upon Seller's reasonable request, all registrations, licenses, permits and government approvals (whether federal, state or provincial or local) that are or may in the future be required in connection with, Buyer's performance of the Agreement or its purchase, importation, exportation, manufacture, use, sale, re-sale, distribution, marketing, storage, transportation, handling or disposal of the Product or any product of which Product is a component, (b) neither take nor refrain from taking any action that could result in liability for either Buyer or Seller or their respective affiliates under any applicable laws, ordinances or regulations, and (c) promptly notify Seller of any applicable law, ordinance or regulation that conflicts with the provisions of the Agreement, or Seller's practices, whether in effect on the date of the Agreement or thereafter. Neither Buyer nor Seller shall be required to take or refrain from taking any action impermissible or penalized under any applicable laws, ordinances, or regulations.

15. **CONFIDENTIALITY.** Except as may be agreed to in writing by Seller (or, with respect to the following clause (i), as may be necessary for Buyer to perform its obligations herein), Buyer shall maintain in confidence (i) all information concerning costs and price to be disclosed in connection with the Agreement, (ii) the terms of the Agreement and (iii) all proprietary or confidential information and trade secrets regarding Seller's products, business, customers, processes, marketing plans, strategies, techniques or operations obtained from Seller or learned or discovered by Buyer incident to the Agreement or its performance under the Agreement. Unless disclosure is required by law, in which event Buyer shall give Seller prompt notice of such requirement and cooperate with Seller in obtaining confidential treatment of same, Buyer shall not disclose such information other than to its employees with a need to know such information in connection with performance under the Agreement, and Buyer shall advise such employees of the confidential nature of such information and be responsible for any disclosure of such information by such employees in contravention of the Agreement. Buyer shall take all proper precautions to prevent such information from being acquired by any unauthorized person. All such information obtained, learned, or discovered by Buyer shall remain the sole property of Seller, and nothing contained herein shall be construed as giving Buyer any license or right to such information. Promptly following any request by Seller, Buyer shall deliver to Seller all property or materials within Buyer's possession or control which belong to Seller or which contain or are based upon such information.

16. **REVERSE ENGINEERING.** Buyer shall not, and Buyer shall ensure that anyone acting at Buyer's direction or under its control will not, reverse engineer or otherwise analyze or attempt to analyze the composition of the Product, and Buyer shall not supply any portion of Product (or any product of which Product is a component) to any person for such purpose. In the event Buyer becomes aware of another person conducting reverse engineering or otherwise analyzing or attempting to analyze the composition of the Product, Buyer shall immediately give notice to Seller regarding the details of such to the

extent known by Buyer. Without limiting the foregoing, Buyer may conduct, or engage a third party to conduct, a limited analysis of the Product for the sole purpose of confirming that the Product meets the specifications set forth or referred to in the Sales Agreement or which may be set forth in any certificate of analysis accompanying the Product, if any. Such analysis shall not be binding on Seller.

17. MISCELLANEOUS.

(a) **Governing Law; Venue; and WAIVER OF JURY TRIAL.** This Agreement and its execution, performance, interpretation, construction, and enforcement shall be governed by and in accordance with the laws of the State of Georgia. In the event of a dispute arising out of or relating to the Agreement, all lawsuits will be filed in Grady County, GA. **THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY TRANSACTIONS CONTEMPLATED HEREIN.**

(b) **Assignment and Binding Effect.** Neither the Agreement nor any rights or duties hereunder, are assignable or transferable by Buyer, in whole or in part, by operation of law or otherwise, without the express written consent of Seller, which may be granted or withheld in Seller's sole discretion. Any assignment or transfer, or attempted assignment or transfer, in contravention of the foregoing shall be null and void, shall be considered a breach of the Agreement and shall permit Seller, in addition to any other rights which it may have hereunder or at law or in equity, to terminate the Agreement. This Agreement will inure to the benefit of, and will be binding upon, the parties hereto and their respective successors and permitted assigns.

(c) **Construction of Agreement.** The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall not be considered in construing or interpreting any provision of this Agreement either in favor of or against such party.

(d) **Paragraph Headings.** The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of the Agreement; such paragraph headings shall be ignored in construing and interpreting the Agreement.

(e) **Remedies.** In addition to the rights and remedies provided for herein, Seller and Buyer shall have all rights and remedies provided by law in the event of a default on the part of the other party hereunder.

(f) **Waiver.** The failure of either Party to declare any default immediately upon occurrence thereof, or any delay in taking any action in connection therewith, shall not waive such

default, but the non-defaulting Party shall have the right to declare any such default at any time and take such actions as might be lawful or authorized hereunder, either at law or in equity.

(g) Amendment. No waiver, alteration, release, or modification of any of the provisions of this Agreement shall be binding against Seller unless the same is in writing and such writing (a) specifically refers to the Agreement; (b) specifically identifies the term amended, modified, waived, or released; and (c) is signed by a duly authorized representative of Seller.

(h) Entire Agreement. The Agreement supersedes all prior negotiations, discussions, and dealings concerning the subject matter hereof and constitutes the entire agreement between Seller and Buyer concerning the subject matter hereof.

(i) No Third-Party Beneficiary. The Agreement is solely for the benefit of, and shall inure to the benefit of, Buyer and Seller and shall not be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

(j) Severability. The provisions of the Agreement are severable, and the determination that any provision hereof is void and unenforceable shall not affect the validity or enforceability of any other provision hereof.

(k) Notice:. All notices, consents, communications or transmittals under the Agreement shall be in writing and shall be deemed received on the day of delivery (or, if such day is not a business day, on the next business day) if personally hand delivered or sent by facsimile (with written confirmation of the completed transmittal) or e-mail; or within one (1) business day if sent by reputable overnight courier addressed to the party to whom such notice is given at the address of such party stated in the Sales Agreement or such other address as may be specified by such party in a notice given in accordance with this Section.

(l) Survival. The terms of Sections 3-5, 8, 9, 11, 13-16, and 17(b), (f-k) of these Terms and Conditions shall survive the expiration or any termination of the Agreement and the cessation of business transactions between Buyer and Seller, and Buyer's obligations under the Agreement shall remain in full force and effect as necessary for the purpose of compliance with the terms of such Sections.

(m) Attorneys' Fees. If either Party brings an action or proceeding to enforce the terms hereof or to declare its rights hereunder, the substantially prevailing party in such action or proceeding, on trial and appeal, shall be entitled to its reasonable attorneys' fees and costs