

## TERMS AND CONDITIONS OF SUPPLY (“Terms”)

### 1. Interpretation

In these Terms:

- 1.1 **“Business Day”** means a day that is not a Saturday, Sunday or public holiday in Adelaide, South Australia;
- 1.2 **“Customer”** means the purchaser of Goods to be supplied by the Supplier as detailed in the Invoice;
- 1.3 **“Goods”** means the goods to be supplied by the Supplier to the Customer as detailed in the Invoice and includes any part or parts thereof;
- 1.4 **“Invoice”** means the invoice issued by the Supplier to the Customer which details the:
  - 1.4.1 Goods ordered by a Customer by placing an Order; and
  - 1.4.2 the applicable Price for the Goods ordered,notified to the Customer at the time of placing the Order in accordance with clause 3 of these Terms;
- 1.5 **“Order”** means an offer to purchase Goods placed by the Customer to the Supplier in response to an invitation to treat made by the Supplier or by other means;
- 1.6 **“PPSA”** means the Personal Property Securities Act 2009 (Cth) (together with any applicable rules and regulations) as amended or replaced from time to time;
- 1.7 **“Supplier”** means S&W Seed Company;
- 1.8 **“Price”** means the total amount payable for the Goods (including applicable delivery and handling charges); and

### 2. General

These Terms will apply to the supply of Goods by any means by the Supplier and despite any conflicting terms proposed by the Customer, unless waived in writing by the Supplier. These Terms will take precedence in the event of any inconsistency between the Terms and an Order.

### 3. Order, Payment and Supply

The Supplier agrees to supply the Goods and the Customer agrees to purchase the Goods on these Terms.

- 3.1 Representations of Goods for sale made by the Supplier do not constitute an offer to sell but an invitation to treat.
- 3.2 The Customer and the Supplier may enter into a contract for the sale and supply of Goods by the Customer making an Order to purchase Goods at the Price indicated by:
  - 3.2.1 placing an electronic Order for the Goods and accepting these Terms;
  - 3.2.2 the Customer confirming the Order details in accordance with the procedure;
  - 3.2.3 the Customer making payment in full (plus any applicable delivery charges); and
  - 3.2.4 the acceptance of that Order by the Supplier.
- 3.3 When entering into a sale contract, the Customer will be taken to have communicated an offer to purchase the Goods only when:
  - 3.3.1 any requirements set out in these Terms have been met;
  - 3.3.2 the electronic instruction containing the offer from the Customer enters and is recorded in the Supplier’s database;
  - 3.3.3 a record is created and stored in the Supplier’s database; and
  - 3.3.4 the Supplier receives in its account full payment from the Customer for the Goods (including any applicable delivery and handling charges) and confirmation of that payment is received by the Supplier’s database.
- 3.4 Allowance to the Customer of additional time to pay the Price or an alternate method of placing an Order will not constitute a waiver by the Supplier of any of these Terms nor will it be construed as the Supplier granting a credit facility to the Customer.
- 3.5 The Supplier may charge and the Customer will pay interest on all amounts not paid by the Customer at the time of placing an Order at the current NAB Overdraft rate plus 2% per annum. Interest will be calculated daily and may be capitalised monthly until full payment has been made by the Customer.
- 3.6 In the event of non-payment of the Price in accordance with these Terms, the Customer will pay all reasonable collection expenses, legal costs and any other expenses incurred by the Supplier in connection with the non-payment.
- 3.7 If payment of the Price is not made by the Customer in accordance with these Terms, the Customer acknowledges and agrees that the Supplier has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Goods. For that purpose, the Supplier’s employees, agents or workers may without notice enter any place the Supplier believes the Goods to be without committing a trespass.
- 3.8 The Supplier will have no obligation to make good any damage caused by such recovery or removal (provided the Supplier has not acted wilfully or negligently) and the Supplier will not be liable for and the Customer will indemnify the Supplier against any costs, claims, damages or losses suffered by the Customer as a result of such removal.
- 3.9 It is the Customer’s responsibility to ensure that the type of Goods and the quantity of the Goods ordered by the Customer are correct before placing the Order. The Supplier recommends that any proposed Order is carefully reviewed before a Customer proceeds to place the Order.
- 3.10 Once the Customer has placed an Order, that Order can only be cancelled or amended by the Customer in accordance with clause 13.2.
- 3.11 The Customer acknowledges that:
  - 3.11.1 the transmission of an offer or the confirmation of any payment, made through an electronic instruction may not be received by the Supplier for reasons beyond either parties’ reasonable control including but not limited to, electronic failure, mechanical, software, computer, or telecommunications, or the omission or failure of third party website providers or systems;
  - 3.11.2 to the maximum extent permitted by law, the Supplier is not liable to the Customer in any way for any loss or damage at all and however caused, arising directly or indirectly in connection with the transmission of an electronic instruction through the website, or any failure to receive an electronic instruction for whatever reason;

- 3.11.3 the Supplier may act on and process all completed electronic instructions transmitted or issued through a website without further consent from or reference to the Customer; and
- 3.11.4 the Supplier may treat an electronic instruction as authentic and is under no obligation to investigate the authenticity or authority of persons issuing or transmitting such electronic instructions, or to verify the accuracy and completeness of such electronic instructions.
- 3.12 The Customer will receive a confirmation email and an Invoice from the Supplier as soon as practicable after the Customer has placed an Order and made full payment in accordance with these Terms.
- 3.13 If an Order is not accepted by the Supplier, the Supplier will notify the Customer by telephone or email and arrange for a full refund of any payment made by the Customer to be processed.
- 3.14 The Supplier may, in its sole and absolute discretion, accept or reject any Order made by the Customer for any reason, including an error in the advertised price for, or description of, the Goods, or an error in the Customer's Order.
- 3.15 Any representations made about availability of the Goods are accurate to the last known quantity and are subject to change. If the Supplier cannot supply particular Goods, the Supplier will notify the Customer by telephone or email as soon as possible.
- 3.16 The Supplier is deemed to have accepted an Order when an Order is delivered to a Customer's specified delivery address.

#### 4. Minimum Order

- 4.1 The Supplier reserves the right to specify the minimum Order value ("**Minimum Amount**") which it will accept from time to time and to impose a surcharge should the Customer require delivery of the Goods having a value less than the Minimum Amount.

#### 5. Withholding Supply

- 5.1 The Supplier reserves the right, irrespective of whether or not an Order has been accepted to withhold supply to the Customer and the Supplier will not be liable for any loss or damage (including consequential loss) resulting directly or indirectly from any such action where:
  - 5.1.1 the Supplier has insufficient Goods to fulfil the Order;
  - 5.1.2 the Goods ordered by the Customer have been discontinued.
- 5.2 The Supplier may (in its sole discretion) withhold supply of the Goods to a Customer who is in breach of these Terms.

#### 6. Delivery

- 6.1 The Supplier will coordinate the delivery of Goods through its chosen freight operator. However, if negotiated between the Supplier and Customer, the Customer may coordinate their own delivery of the Goods. In each instance, the Supplier will not be liable for any damaged Goods, delay in delivery or non-delivery of Goods that have been carried by a third party.
- 6.2 Any delivery times proposed by the Supplier are estimates only and the Supplier will not be liable for any claim or cost resulting from late or non-delivery of Goods.
- 6.3 The Customer waives any claim for shortage of Goods delivered or damaged prior to or during the course of delivery, if the Supplier is not notified in writing of the shortage within 5 Business Days from the date of receipt of Goods by the Customer.
- 6.4 The Supplier shall make every effort to ensure timely availability and delivery of Goods. However, in the event that a delay occurs, the Supplier does not accept responsibility for any loss of income or damage suffered by the Customer.
- 6.5 If for any reason the Customer fails to take delivery of the Goods by the agreed collection date, the Supplier reserves the right to charge the Customer reasonable storage fees associated with the Order of the Goods by the Customer.

#### 7. Title and risk

- 7.1 In relation to all Goods:
  - 7.1.1 title in the Goods will not pass to the Customer until the Supplier has received full payment of the Price (in cleared funds) and the Order is deemed to be accepted by the Supplier under clause 6 of these Terms;
  - 7.1.2 where the Customer engages the Supplier to coordinate delivery of the Goods, risk in the Goods will pass to the Customer immediately upon delivery of the Goods;
  - 7.1.3 where the Customer coordinates their own delivery of the Goods, all risk in the Goods will pass to the Customer upon collection of the Goods from the Supplier; and
  - 7.1.4 until the Supplier receives full payment of the Price, the provisions of clause 8 apply and the Supplier has the right (without prejudice to any other rights and remedies it may have) to recover, remove and/or resell the Goods free from any claims by the Customer.
- 7.2 The Customer will indemnify the Supplier against any costs, claims, damages or losses suffered by the Supplier or a third party as a result of the Customer's inability to pay the Price.
- 7.3 In relation to all Goods, if the Customer has not paid the Price but sells or otherwise disposes of the Goods in any way or any part of them, the monies received in respect of the disposal of the Goods will be held on trust by the Customer for the Supplier.

#### 8. PPSA

Where the Supplier has supplied Goods to the Customer but where title in the Goods has not yet passed to the Customer:

- 8.1 The Customer acknowledges and agrees that:
  - 8.1.1 the Goods constitute Personal Property for the purposes of the PPSA;
  - 8.1.2 these Terms constitute a Security Agreement for the purposes of the PPSA;
  - 8.1.3 the Customer will grant the Supplier a purchase money security interest ("**PMSI**") under the PPSA in the Goods and their proceeds to secure all amounts owed to the Supplier by the Customer;
  - 8.1.4 the Supplier may register the PMSI on the Personal Property Securities Register ("**PPSR**");

- 8.1.5 it will undertake to do all things necessary and provide the Supplier on request all information the Supplier requires to register a financing statement or financing change statement on the PPSR;
- 8.1.6 it undertakes not to change its name in any form or other details on the PPSR without first notifying the Supplier; and
- 8.1.7 it will, if requested by the Supplier, pay to the Supplier the cost of registering and maintaining registration of the Customer's PMSI on the PPSR within 14 days of the request.
- 8.2 The Supplier need not give any notice under the PPSA (including a verification statement or a financing change statement) unless the notice is required by the PPSA and cannot be excluded.
- 8.3 No party may disclose information of the kind referred to in section 275(1) of the PPSA (except where the parties may do so and where required due to the operation of section 275(7)) of the PPSA and the Customer must not authorise the disclosure of such information.
- 8.4 The Customer appoints the Supplier as its attorney to sign in the Customer's name all documents which the Supplier considers necessary to enforce and to protect its rights under these Terms.
- 8.5 The Customer agrees that to the maximum extent permitted by law, it waives any rights it may have pursuant to, and the parties' contract out of, sections 95, 118, 123, 125, 128, 129, 130, 132(1), 132(4), 135, 142 and 143 of the PPSA as applicable and as amended from time to time.
- 8.6 The Customer acknowledges that unless otherwise defined in these Terms, the terms and expressions used in this clause 8 have the meanings given to them, or by virtue of, the PPSA.

## 9. Goods and services tax

- 9.1 Unless specifically described in an order as 'GST inclusive', the price for the Goods does not include any amount on account of GST.
- 9.2 Where any supply to be made by the Supplier under these Terms is subject to GST:
  - 9.2.1 the consideration payable for that supply but for the application of this clause 9 (**GST Exclusive Consideration**) shall be increased by, and the Customer shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply (**GST Amount**); and
  - 9.2.2 the Customer must pay the GST Amount to the Supplier at the same time and in the same manner as the GST Exclusive Consideration is payable or to be provided for that supply.
- 9.3 Notwithstanding any other provision of these Terms, the Customer need not make any payment for a taxable supply made by the Supplier under or in accordance with these Terms until the Supplier has given the Customer a tax invoice in respect of that taxable supply.
- 9.4 Unless the contrary intention appears, a word or expression used in this clause 9 which is defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this clause 9.

## 10. Liability and Indemnity

- 10.1 Nothing in these Terms operates to exclude, restrict or modify the application of any implied condition or warranty, provision, the exercise of any right or remedy, or the imposition of any liability, implied or conferred under the Australian Consumer Law or any other statute, the exclusion, restriction or modification of which would contravene that statute; or cause any term within these Terms to be void (**Non-excludable Obligation**).
- 10.2 Except in relation to Non-excludable Obligations, all conditions, warranties, guarantees, rights, remedies, liabilities or other terms implied or conferred by statute, custom, or the general law that impose any liability or obligation on the Supplier are expressly excluded under these Terms.
- 10.3 To the extent permitted by law the Supplier's liability to the Customer for a failure to comply with any Non-excludable Obligation is limited to resupplying equivalent Goods or payment of the cost of replacing the Goods.
- 10.4 Without limiting clauses 10.1 to 10.3:
  - 10.4.1 the Supplier will have no liability whatsoever to the Customer for any special, indirect or consequential loss (including, without limitation, economic loss, loss of contract, loss of profit or revenue, loss of opportunity or loss of production); and
  - 10.4.2 the Supplier's aggregate liability to the Customer in connection with these Terms howsoever arising is limited to an amount not exceeding the amount actually paid by the Customer in respect of the Goods the subject of the claim.
- 10.5 The Customer will indemnify and will continue to indemnify the Supplier against any liability, loss, damage, claim, action, demand, costs, or expenses incurred or suffered by the Supplier (directly or indirectly) as a result of:
  - 10.5.1 any breach of these Terms;
  - 10.5.2 any breach of any laws by the Customer;
  - 10.5.3 any act or omission (negligent or otherwise) by the Customer; or
  - 10.5.4 any action or trespass resulting from the Supplier entering the location in accordance with clause 3.7 or as otherwise provided under these Terms.
- 10.6 The Customer will indemnify the Supplier against all claims, losses, liability and expenses on account of any injury or death of persons or damage to property arising out of the Customer's unloading, storage or handling of the Goods.
- 10.7 These limitations and indemnities continue after the expiration or termination of these Terms.

## 11. Acknowledgements

The Customer acknowledges the following:

- 11.1 The Supplier uses its best endeavours to ensure that Goods are labelled as clearly and accurately as possible. The Supplier conducts strict purity and germination testing in accordance with any laws prior to Goods being packaged for sale, however the Supplier cannot guarantee that the Goods will conform to these results once dispatched, delivered and received by the Customer.
- 11.2 Purity and Germination values:
  - 11.2.1 are stated as averages;

- 11.2.2 are to be used as a guide only; and
- 11.2.3 are subject to seasonal variation.
- 11.3 The Supplier sources Goods from suppliers who clean and process all goods on reliable equipment. Whilst cross contamination is unlikely, in the instance that it does occur the Supplier cannot ensure that Goods are 100% weed seed free.

## 12. Termination

- 12.1 These Terms may be immediately terminated by the Supplier if:
  - 12.1.1 the Customer is in breach of these Terms and fails to remedy that breach within 5 Business Days of receiving notice from the Supplier to do so;
  - 12.1.2 the Customer fails to pay any amount outstanding to the Supplier after receiving 5 Business Days prior notice that the amount is outstanding; or
  - 12.1.3 the Customer becomes bankrupt or otherwise suffers an insolvency-related event.

## 13. Returned goods

- 13.1 Subject to these Terms, once the Supplier accepts the Customer's Order, the Customer is obliged to take the Goods at the Price notified to the Customer at the time of the Order although title is yet to pass.
- 13.2 No Order may be cancelled except with the prior consent of the Supplier in writing and subject to any conditions that the Supplier may reasonably impose. This clause applies to incorrect Orders placed by the Customer.
- 13.3 The Supplier takes no responsibility for any cancelled or incorrect Order placed by a Customer and the Supplier does not accept responsibility for any loss of income or damage suffered by the Customer as a result.
- 13.4 Once the Customer has notified the Supplier of a cancelled Order in accordance with these Terms, the Supplier will notify the Customer by telephone or email of its acceptance of the cancelled Order, and arrange for a full refund of any payment made by the Customer to be processed (subject to any conditions stipulated by the Supplier under clause 13.2).
- 13.5 Goods may not be returned for the Customer's change of mind. The Customer must inspect the Goods immediately upon delivery and inform the Supplier if it identifies any defects or faults within 5 Business Days of the Goods being delivered. Defective Goods may only be returned by the Customer to the Supplier with the Supplier's prior consent, and if requested, the Customer must return a sample of the allegedly defective Goods. All returned Goods must be transported by a carrier approved by the Supplier at the Customer's cost. The Supplier will provide a refund to the Customer, or replace the defective Good(s) with Goods that comply with these Terms, (at the Supplier's option) as soon as reasonably practicable following receipt of the Goods. No refund will be given by the Supplier to the Customer for incorrect Order freight costs.

## 14. Recalls

The Customer must cooperate with the Supplier and comply with the reasonable directions of the Supplier in respect of any recall regarding the Goods.

## 15. Confidentiality

Any formal offer, terms of an Order or terms of the supply of Goods communicated between the Supplier and the Customer is to remain confidential. The Customer shall not share, publicise or distribute any pricing or terms offered by the Supplier, and must immediately notify the Supplier of any suspected or actual unauthorised use, copying or disclosure of this information.

## 16. Governing law

These Terms are to be governed and interpreted in accordance with the laws of the State of South Australia. The parties agree to submit themselves to the exclusive jurisdiction of the courts of South Australia and any competent appellate courts.

## 17. Notices

- 17.1 Any notice to be given by one party to the other must be in writing and signed by a person duly authorized by the sender and hand delivered or sent by prepaid post, facsimile or email to the recipient's address for notices specified in the Order. The notice will be deemed to have been received by the intended recipient upon delivery (if hand delivered), on the sixth Business Day after posting (by pre-paid post) or on the day of transmission provided that the sender is able to give evidence of transmission and the intended recipient does not give evidence of non-receipt (by facsimile or email).
- 17.2 In the event of a Goods recall, the Supplier will endeavour to notify as many Customers as possible as well as making the notification visible through its regulatory means.

## 18. Force Majeure Event

- 18.1 If a Force Majeure Event prevents the Supplier from performing its obligations under these Terms:
  - 18.1.1 those obligations of the Supplier will be suspended for as long as the Force Majeure Event continues;
  - 18.1.2 the Supplier will not be liable to the Customer for any liabilities, losses, damages, costs or expenses the Customer suffers or incurs as a result of that Force Majeure Event.
- 18.2 If the Supplier is unable to fulfil an order due to a Force Majeure Event it may extend the date for delivery or amend the characteristics or specifications of any Goods (including any Goods forming part of an order) entirely in its discretion.
- 18.3 If the Supplier is prevented from performing its obligations for more than 10 business days as a result of a Force Majeure Event, the Supplier may terminate these Terms (or the relevant Order) with immediate effect by giving written notice to the Customer.
- 18.4 In this clause, **Force Majeure Event** means anything outside the reasonable control of the Supplier, including any act or omission of a third party or failure of a supplier that is beyond the Supplier's reasonable control, fire, flood, earthquake, acts of God, riot, civil disorder or failure of any machinery used by the Supplier.

## 19. General

- 19.1 These terms can be amended by the Supplier at any time and the Customer acknowledges and agrees that for the purpose of an amendment the Supplier may display the new Terms on its website. Once an Order is accepted, these Terms can only be varied in respect of that Order by agreement of the parties in writing.
- 19.2 Each party must do or cause to be done all things necessary or desirable to give effect to, and must refrain from doing anything that would hinder performance of this Agreement.
- 19.3 The relationship between the parties is as independent contractors, and does not involve any relationship of agency, fiduciary, employment, partnership, joint venture or association.
- 19.4 A term or part of a term of this Agreement that is illegal or unenforceable may be severed from the Agreement and the remaining terms or parts of the terms of the Agreement continue in force.
- 19.5 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 19.6 This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all other representations and agreements in connection with the subject matter of this Agreement.

The Customer acknowledges and agrees with the terms and conditions of supply of the Goods as set out in these Terms.