



Terms and conditions of the sale of goods for Selected Seeds Pty Ltd ACN 009 827 016 (Selected Seeds)

1. Binding terms and conditions

The only terms which are binding upon Selected Seeds are those set out in these terms and conditions or otherwise agreed to in writing by Selected Seeds and those, if any, which are imposed by law and which cannot be excluded.

2. Quotes, orders and prices

2.1 Any quote or price list of Selected Seeds is not an offer to sell but is an invitation to treat only and Selected Seeds reserves the right to accept or reject in its absolute discretion any orders which may be received by it.

2.2 Orders once accepted by Selected Seeds cannot be cancelled without Selected Seeds' written consent and then under terms that will indemnify Selected Seeds against any losses.

3. Goods and services tax

Unless GST is expressly included, the purchase price for any supply made under or in connection with these terms and conditions does not include GST in which case, the purchase price is increased by the GST payable and must be paid at the same time as payment is made for the goods sold under this contract.

4. Packing & delivery at store

4.1 Any special packing costs shall be borne by the Purchaser, even if not included on the quote or order.

4.2 Unless otherwise specified in writing, delivery is at Selected Seeds' premises.

4.3 Where a place of delivery other than at Selected Seeds' premises is specified in writing, the Purchaser must pay the costs of transportation of the goods to the place of delivery at the same time as, and in addition to, the price.

4.4 Any specified delivery date is an estimate only. Selected Seeds is not liable for any delay in delivery.

5. Loss or Damage in Transit, insurance

Selected Seeds is not responsible for any loss or damage to goods in transit. Selected Seeds shall render the Purchaser such assistance as may be necessary to press claims on carriers provided the Purchaser shall have notified Selected Seeds and the carriers in writing immediately loss or damage is discovered on receipt of goods and shall lodge a claim with the carrier within 3 days of the date of receipt of the goods. The Purchaser is responsible for obtaining freight insurance as appropriate.

6. Storage

Should storage by Selected Seeds of goods be necessary due to the Purchaser being unable to accept delivery on the agreed delivery date, payment of such goods stored will remain payable by the Purchaser on the original agreed date. The Purchaser will pay all reasonable storage and insurance charges in relation to goods/materials which are stored by Selected Seeds on the Purchaser's behalf.

7. Variations

7.1 If the Purchaser requires any variation to an order after acceptance it must notify Selected Seeds of the variation required but such variation will not be effective unless and until Selected Seeds and the Purchaser agree in writing as to the amount by which or manner in which the price is to be varied as a consequence.

7.2 Selected Seeds may notify the Purchaser of a change to the purchase price at any time before delivery. If the price is higher than the quoted price, then the Purchaser may elect not to proceed with the purchase.

7.3 Selected Seeds may make changes to its products, their delivery or packaging:

- (1) without notifying the Purchaser if the changes improved the products or do not substantially deviate from the original specifications for the products; or

(2) in any other case, with the Purchaser's approval.

7.4 Any attempt by the Purchaser to unilaterally vary the content of an order or these terms and conditions is void.

8. Payment terms & interest

8.1 The purchase price will be as specified in the quotation unless varied in accordance with these terms.

8.2 If the purchase price exceeds AUD 100,000, then the Purchaser must pay a deposit of 30% of the price of the goods within 14 days of the date of the order, a further 70% of the price on delivery. Otherwise, the purchase price is payable on or before the last of the month following the delivery of the goods, unless other terms of payment are agreed in writing.

8.3 Payment must be made on or before delivery unless the Purchaser has applied for and been approved by credit by Selected Seeds.

8.4 Interest on overdue account shall be chargeable at the rate of 12% per annum (compounded monthly) from the date of each Invoice payment. Any failure on the part of Selected Seeds to insist or require payment of interest on any outstanding account shall not constitute a waiver of its right to subsequently require payment of interest on that, or another account. If Selected Seeds' bank charges interest (**Bank Rate**) to Selected Seeds above 10%, then the interest rate under this contract will be the Bank Rate plus 2% per annum on any unpaid amount payable under these terms and conditions on and from the date on which it was due to be paid.

8.5 The provision of credit to the Purchaser will be subject to the prior approval of, and on terms specified by, Selected Seeds in its absolute discretion.

8.6 Payment terms are an essential term of this contract.

9. Allocation of payments

Where the Purchaser does not make payment in respect of specific goods, payment must be treated as having been made first for goods which have passed out of the Purchaser's possession and then for whatever goods are still in the possession of the Purchaser as Selected Seeds elects.

10. Acceptance by Purchaser

The Purchaser must inspect the goods immediately upon delivery and must within 7 days give written notice to Selected Seeds of any claim that the goods are not in accordance with the contract. Otherwise, to the extent permitted by law, the goods will be treated as accepted by the Purchaser and the Purchaser must pay for the goods in accordance with these terms.

11. Terms applying to all returns

The Purchaser must not return any goods which the Purchaser claims are not in accordance with the contract (whether or not the goods are treated as accepted by the Purchaser) unless Selected Seeds has first given its written approval. Their return must then be with freight and cartage prepaid by the Purchaser.

12. Returns where goods accepted

Unless the Purchaser is a "consumer" for the purposes of the *Competition and Consumer Act 2010*, if Selected Seeds has given its written approval to the return of goods treated as accepted under clause 9:

- (1) credit will only be given for goods returned in a saleable condition; and
- (2) a handling charge equivalent to 25% of the price of the goods returned may be charged.

13. Returns where goods not accepted

If Selected Seeds has given its written approval to the return of goods which are not treated as accepted by the Purchaser under clause 9 Selected Seeds must refund the freight and cartage to the Purchaser if the Purchaser's claim is found to be valid.

14. Specifications etc

Any specifications, drawings and particulars of weights and dimensions submitted by Selected Seeds are approximate only and any deviation shall not be taken to vitiate any contract with Selected Seeds or form grounds for any claim against Selected Seeds. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of the contract of sale of the goods. Where specifications, drawings or other particulars are supplied by the Purchaser. Price is made on estimate of quantities required. Should there be any adjustments in quantities above or below the quantities estimated by Selected Seeds and set out in a quotation, then any such increase or decrease shall be adjusted on a unit rate basis according to unit prices set out therein.

15. Performance

Any performance figures given by Selected Seeds are estimates only. Selected Seeds shall be under no liability for damages or failure to attain such figures unless specifically

guaranteed in writing any such written guarantee shall be subject to the recognised tolerance applicable to such figures.

16.Risk and insurance

Goods supplied are at the Purchaser's risk immediately on delivery to the Purchaser, into the Purchaser's custody or to a storage location because the Purchaser is unable to take custody of the goods (whichever is the sooner). The Purchaser must insure the goods at its cost from delivery of the goods and when the goods are in storage, until they are paid for in full against such risks as it thinks appropriate (noting Selected Seeds' interest on the policy) and produce a certificate to this effect to Selected Seeds on request.

17.Retention of title

Regardless of delivery or possession, property in goods supplied does not pass to the Purchaser until the money owing for those goods, and any other money owing by the Purchaser to Selected Seeds, has been fully paid. The Purchaser in the meantime takes custody of the goods and retains them as Selected Seeds' fiduciary agent and bailee. The Purchaser and Selected Seeds agree that this retention of title clause constitutes a Security Interest and a Purchase Money Security Interest pursuant to the *Personal Properties Securities Act 2009(PPSA)* and that the Security Interest applies in respect of the goods and also the proceeds from sale of the goods pursuant to other clauses of these terms and conditions.

18.Purchaser's obligations until paid for

Until the goods have been paid for in full the Purchaser:

- (1) must properly store, protect and insure the goods, including storing them in a manner that shows clearly that they are the property of Selected Seeds;
- (2) may sell the goods, in the ordinary course of its business, but only as fiduciary agent of Selected Seeds. The Purchaser has no authority to bind Selected Seeds to any liability by contract or otherwise and must not purport to do so. The Purchaser receives all proceeds, whether tangible or intangible, direct or indirect, of any dealing with the goods (including any proceeds from insurance claims) in trust for Selected Seeds and must keep the proceeds in a separate bank account until the liability to Selected Seeds is discharged; and
- (3) agrees not to sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Purchaser as a result of the use, manufacture or resale of the goods.

19.Repossession of unpaid goods

19.1 If the Purchaser does not pay for any goods on the due date then Selected Seeds is hereby irrevocably authorised by the Purchaser to enter the Purchaser's premises (or any premises under the control of the Purchaser or as agent of the Purchaser in which the goods are stored) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the Purchaser.

19.2 On retaking possession of the goods Selected Seeds may elect to refund to the Purchaser any part payment that may have been made and to credit the Purchaser's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

20.Purchaser's property

Any property of the Purchaser under Selected Seeds custody or control shall be entirely at the Purchasers' risk as regards loss or damage caused to the property or by it.

21.Goods Sold

All goods to be supplied by Selected Seeds shall be described on a purchase order agreed by Selected Seeds and the Purchaser and the description on such purchase order modified as so agreed shall prevail over all other descriptions including any Purchaser's specification or inquiry.

22.Intellectual Property

The Purchaser acknowledges that the goods supplied may be protected by the Plant Breeder's Rights Act 1994 or other intellectual property legislation and agrees not to deal with the said goods, or the seeds or produce arising therefrom in any manner inconsistent with the intellectual property rights of the owners, their assigners, licensees, or any other persons whatsoever. The Purchaser agrees to keep Selected Seeds indemnified against all actions, claims and proceedings, costs (including solicitor and own client costs) and damages incurred or awarded in favour of the owner, assignee, licensee or any other person whatsoever arising out of the breach or interference with such persons' intellectual property rights by the Purchaser, its servant and/or agents, or any other person to whom the 'Purchaser has supplied the goods, or the produce therefrom.

23.Reclaim possession if Insolvency Event occurs

Selected Seeds is entitled to reclaim possession of the goods, even if they have been paid for in full, in satisfaction of all debts owing to Selected Seeds, if any of the following events occurs (**Insolvency Event**):

- (1) the Purchaser defaults under these terms or conditions;

- (2) the Purchaser commits an act of bankruptcy;
- (3) a receiver is appointed to the Purchaser;
- (4) the Purchaser goes into liquidation, administration, or some other form of insolvency administration whether formal or informal or is deregistered;
- (5) the Purchaser ceases to carry on business; or
- (6) the Purchaser enters into a scheme or compromises with its creditors; without prejudice to any other rights of Selected Seeds.

24. Selected Seeds' authority to inspect and reclaim

The Purchaser irrevocably authorises Selected Seeds at any time, to enter any premises:

24.1 upon which Selected Seeds' s goods are stored to enable Selected Seeds:

- (1) to inspect the goods; and/or
- (2) if the Purchaser has breached the contract, or has committed an Insolvency Event, to reclaim possession of the goods; and

24.2 to inspect and copy the Purchaser's records pertaining to the goods.

25. Action before property passes

Selected Seeds may commence legal action against the Purchaser if the goods are not paid for within Selected Seeds' usual credit terms or any separate arrangement for credit made by Selected Seeds with the Purchaser although property in the goods has not passed to the Purchaser.

26. Insolvency of Purchaser - when breach occurs

A breach of contract must be treated as having occurred if:

- (1) an application or order is made to or by a court or a resolution is passed for the winding up of the Purchaser or notice of intention to propose such a resolution is given; or
- (2) a controller (as defined in section 9 of the Corporations Act 2001) or an administrator under Part 5.3A of the Corporations Act 2001 is appointed in respect of the Purchaser, or the whole or any part of its undertaking or property.

27. Conditions and warranties

The only conditions and warranties which are binding on Selected Seeds in respect of:

- (1) the state, quality or condition of the goods supplied by it to the Purchaser; or
 - (2) advice, recommendations, information or services supplied by it, its employees, servants or agents to the Purchaser regarding the goods, their use and application;
- are as set out in any written warranty provided by Selected Seeds to the Purchaser or those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010*). Except as provided in these terms all conditions and warranties implied by law in respect of the state, quality or condition of the goods which may otherwise be binding on Selected Seeds are excluded.

28. Limitation on liability

To the extent permitted by law, Selected Seeds' liability (if any) arising from the breach of the conditions or warranties referred to in clause 27 is, at Selected Seeds' option, limited to and completely discharged:

- (1) in the case of the goods, by either the supply by Selected Seeds of equivalent goods or the replacement of the goods supplied; and
- (2) in the case of advice, recommendations, information or services, by supplying the advice, recommendations, information or services again.

29. Exclusion of consequential loss

Except to the extent provided in these terms, Selected Seeds has no liability (including liability in negligence) to any person for:

- (1) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the goods or advice, recommendations, information or services; and
- (2) without limiting clause 29(1), any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the goods or advice, recommendations, information or services.

30. Indemnity

The Purchaser indemnifies Selected Seeds, regardless of any negligence of Selected Seeds, against:

- (1) all losses incurred by Selected Seeds;
- (2) all liabilities incurred by Selected Seeds; and
- (3) all costs actually payable by Selected Seeds to its own legal representatives (whether or not under a costs agreement) and other expenses incurred by Selected Seeds in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal);

arising directly or indirectly as a result of or in connection with the supply of goods by Selected Seeds to the Purchaser unless caused by wilful misconduct on the part of Selected Seeds or any of its employees or agents acting within the scope of their employment.

30.2 The Purchaser must pay to Selected Seeds all liabilities, costs and other expenses referred to in this clause, whether or not Selected Seeds has paid or satisfied them.

31.PPSA

31.1 Words in this clause 31 have the meaning given to them by the PPSA.

31.2 The Purchaser agrees to, upon request by Selected Seeds, cooperate in good faith and provide all assistance necessary including signing documentation, to enable the registration, maintenance and amendment if necessary of any Security Interest arising because of this contract in the Goods or the Proceeds of any dealing with the Goods including Goods purchased after the date of this contract.

31.3 The Purchaser hereby waives the right to receive notice of a Verification Statement in relation to any registration of a Security Interest in respect of the Goods or the Proceeds.

31.4 The Purchaser must not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party.

31.5 For the purposes of section 20(2) of the PPSA, the collateral is:

- (1) the Goods described in the tax invoice from Selected Seeds to the Purchaser at the time of the sale (or delivery) of the Goods and includes any Goods specified in each and every subsequent or updated tax invoice pursuant to this contract from time to time and includes Goods which are inventory;
- (2) an interest in commingled Goods to the maximum extent allowed by the PPSA; and
- (3) the Proceeds of any dealing with the Goods.

31.6 The Purchaser must pay to Selected Seeds on demand all of Selected Seeds' costs associated with enforcement of any Security Interest arising under this contract.

31.7 The Purchaser acknowledges that this document constitutes a security agreement, and security interests arising from the provision of credit or a retention of title clause (if applicable) will be purchase money security interests.

32.Selected Seeds terms and conditions prevail

32.1 The Purchaser agrees that these terms and conditions prevail over any purported terms and conditions of the Purchaser which may be found on a purchase order form, sales order form or on the website of the Purchaser (Purchaser's terms) notwithstanding:

- (1) these terms and conditions may be entered into prior to the execution of an order form of the Purchaser; and
- (2) anything to the contrary in the Purchaser's terms.

33.Force majeure

If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

34.Entire understanding

34.1 These terms and conditions, and the application for credit and quotations as applicable:

- (1) are the entire agreement and understanding between Selected Seeds and the Purchaser on everything connected with the subject matter of these terms and conditions; and
- (2) supersede any prior agreement or understanding connected with that subject matter.

34.2 Selected Seeds and the Purchaser have entered into these terms and conditions without relying on any representation by the other or any person purporting to represent the other.

35.Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

36.Severability

If any provision of this contract is unenforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

37.Privacy

Selected Seeds will handle the Purchaser's private information in accordance with its Privacy Policy. Please contact us for a copy of the Privacy Policy.

38.Governing law and jurisdiction

The law of Queensland governs these terms and conditions. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.