

Standard Terms and Conditions (MSL V.02/2013)

1. Interpretation

1.1 These terms of trade are entered into on behalf of and are intended to bind and be for the benefit of the Supplier and the Supplier's successors and assigns.

1.2 In these terms of trade, unless the context otherwise requires:

"**buyer**" means the person, firm, company, or other entity, buying the goods or services from the Supplier or the credit account applicant;

"**contract**" means the contract between the Supplier and the buyer for either or both of the purchase of the goods (including any orders made in accordance with clauses 2 or 14) and the provision of services;

"**contract price**" means the price of the goods and services as agreed between the Supplier and the buyer;

"**delivery**" means, in respect of services (where appropriate), performance of the services.

"**default currency**" means:

- (i) for New Zealand buyers, New Zealand Dollars;
- (ii) for Australian buyers, Australian Dollars;
- (iii) for European Economic Community buyers, Euro.
- (iv) for all other jurisdictions, US Dollars.

"**goods**" means the goods being purchased by the buyer from the Supplier which are the subject of the contract and "personal property" has the same meaning;

"**interest rate**" 24% per annum;

"**orders**" means, in respect of goods, an order for goods and, in respect of services, a request for services;

"**person**" includes a corporation, association, society, firm, Supplier, partnership or individual;

"**services**" means the services to be performed by the Supplier for the buyer under the contract;

"**Supplier**" means Midlands Seed Limited.

1.3 Headings are used as a matter of convenience only and shall not affect the interpretation of these terms of trade.

2. Contract Price

2.1 The price is the price for the supply of goods / services by the Supplier as accepted by the Supplier according to 2.2 below. The price shall be denominated in the currency as agreed between the parties. Should, for whatever reason, the denomination of the currency not have been determined, or be in dispute, then the default currency shall be applied to the Agreement.

2.2 At the Supplier's discretion, it shall be entitled to accept or make offers to purchase goods and / or services by any of the following means: a) written Contract Confirmation, b) verbally, c) performance pursuant to an offer to purchase.

2.3 After acceptance by the Supplier, variation, waiver or cancellation of the buyer's order has no effect unless agreed to in writing by the Supplier.

3. Taxes and Duties

3.1 Unless expressly included in any estimate or quotation given by the Supplier, sales tax, goods and services and other taxes, and duties assessed or levied in connection with the supply of the goods to the buyer, are not included in the price and are the responsibility of the buyer, whether or not the Supplier or buyer is liable at law, and the price will be increased by the amount of such taxes or duties payable or paid by the Supplier, and shall be payable at the earlier of (a) the delivery date; or (b) such other date for payments as applies under the terms of the contract (including, without limitation, under these terms of trade).

4. Payment

4.1 Subject to any provision to the contrary in the contract, all payments for goods and services are due (time being of the essence) on the earlier of (a) the 20th of the month following the date of delivery of the goods and services in accordance with clause 6; (b) for NZGSTA members only, 14 days after the date the Supplier invoices the buyer for the goods or services; and (c) for all other buyers, the date the Supplier invoices the buyer for the goods or services.

4.2 Any additional payments due by the buyer pursuant to any of the provisions of the contract must be paid at the time provided in the contract or, if no time is provided, within 7 days of

payment being demanded in writing by the Supplier, (time being of the essence).

4.3 If the Supplier in the Supplier's sole discretion at any time deems the credit of the buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the contract until the provision of sufficient security. All costs and expenses of or incurred by the Supplier as a result of such suspension and any re-commencement are payable by the buyer upon demand.

4.4 The buyer is not entitled to withhold payment or to make any deductions from the contract price including, without limitation, by way of set-off, without the prior written consent of the Supplier.

4.5 Receipt of a cheque, bill of exchange, or other negotiable instrument by the Supplier whether before or after judgement will not constitute payment and the buyer remains liable for the full contract price until such cheque, bill of exchange, or negotiable instrument is irrevocably paid in full.

4.6 The Supplier may appropriate payments from the buyer against monies owed by the buyer, in the Supplier's sole and absolute discretion, and the effectiveness of such appropriation shall not be contingent upon the Supplier notifying the buyer of the appropriation nor shall any absence of notification impair the effectiveness of the appropriation.

5. Interest For Late Payment

5.1 Interest at the interest rate of 2% per month is payable on any moneys outstanding under the contract from the date payment was due until the date payment is received by the Supplier whether before or after judgement but without prejudice to the Supplier's other rights and remedies in respect of non-payment or late payment.

6. Delivery

6.1 Delivery is to be made at the place indicated in the contract or, if no place is indicated in the contract, delivery is to be made at the buyer's premises in New Zealand. (See clause 22 for further terms relating to delivery to buyers outside New Zealand). If the buyer fails or refuses or indicates to the Supplier that it will fail or refuse to take or accept delivery, then the goods or services are deemed to have been delivered when the Supplier was willing to deliver them.

6.2 Where the buyer requests a carrier, other than a contracted carrier to the Supplier, the Supplier must approve the alternate carrier. The Supplier reserves the right, in its reasonable discretion, to withhold such approval. Where such approval is not withheld delivery shall be deemed to have been made upon the goods being placed in the custody of the buyer's requested carrier. The Supplier reserves the right to deliver the goods or services by instalments and each instalment is deemed to be a separate contract under the same provisions as the main contract. Should the Supplier fail to deliver or make defective delivery of one or more instalments this shall not entitle the buyer to repudiate the main contract.

6.3 Without prejudice to any other rights and remedies which it may have, the Supplier may charge storage and transportation expenses if the buyer fails or refuses to take or accept delivery at the time specified in the contract or at any other times as the Supplier is able to deliver the goods or services.

6.4 The Supplier will use its reasonable endeavours to deliver the goods or services on or before the estimated delivery date but time of delivery shall not be of the essence and the Supplier will have no liability to the buyer if there is a delay whatsoever.

7. Inspection

7.1 Within 7 days of the date of delivery, the buyer must inspect the goods or services and inform the Supplier of any shortfall or damage to them or defect in them. If the buyer does not inform the Supplier the buyer will be deemed to have accepted the goods or services as complying with its order and the Supplier will be under no liability to the buyer.

7.2 In respect of any shortfall, where that shortfall is not as a result of something beyond the Supplier's reasonable control (see clause 24.1), the Supplier's liability to the buyer is limited to making up that shortfall. Nothing in this clause shall limit the effect of clause 24.1.

7.3 In respect of any damage to the goods (except damage caused by the buyer, including marked or shop soiled goods), the Supplier's liability to the buyer is limited to any one or more or all of replacing the goods or repairing them (if the goods are capable of repair), or compensating the buyer at the rate applying under the contract for the damaged goods, as and in the proportions which the Supplier elects.

8.	Risk		
8.1	Risk of any loss, damage or deterioration of or to the goods or services is to be borne by the buyer from the time of delivery of the goods or services.		
9.	Retention of Title		
9.1	The legal and equitable ownership of the goods or services supplied will remain with the Supplier until payment has been made in full of the purchase price for the goods or services and of all moneys for the time being due and owing to the Supplier.		
9.2	If the goods or services have been mixed with or incorporated into other goods or services so that it is impossible or impracticable to remove the goods or services supplied then the Supplier will be co-owner of the mixed goods or new products in proportion to the contribution made by the Supplier's goods to the mixed goods or new products.	12.3	In the event that the goods or services or any of their components are not manufactured or grown by the Supplier, then the foregoing warranties (if any) do not apply to such goods, services, or components as are not manufactured or grown by the Supplier and no warranties are given by the Supplier in respect of such goods, services, or components. In the case where the manufacturer or supplier of any such goods, services, or components provides any warranty, then the Supplier (to the extent that it is able to do so) will make such warranty available to the buyer.
9.3	If the buyer resells the goods or services, regardless of any period of credit, before payment is made of all sums owing (or payment simply incorporating those goods or services) to the Supplier, then:		
	a. As between the buyer and its purchaser, the buyer is a principal and not the agent of the Supplier;	12.4	Where grain, seeds, or pulses are the subject of this agreement, the Supplier believes them to have been taken by reliable stock. The Supplier accepts no liability for the resultant crop and warranties and conditions which might otherwise be implied in the sale by statute or otherwise.
	b. The buyer will pay all proceeds of sale of the goods or services to its account with the Supplier, and the buyer will pay or deal with the proceeds in accordance with any directions given by the Supplier. This will occur whether the account is in credit or debit at the relevant time;	12.5	If, notwithstanding this clause, liability is established against the Supplier whether in contract, tort or otherwise, damages payable by the Supplier in respect of the grain, seed or pulses are limited to the invoice value of the consignment.
	c. Until the buyer accounts to the Supplier, the proceeds of sale are agreed to be held by the buyer in trust for the Supplier;	12.6	Where the agreement relates to the supply of services or any other goods or products, the liability of the Supplier in any case, whether in contract tort or otherwise, shall be limited to the invoice value of the consignment.
	d. The Supplier is entitled to demand that the buyer exercise all of its available rights and remedies to enforce payment by the person or persons to whom the goods or services have been or will be sold or supplied. However, that will not affect any other rights and remedies of the Supplier as against the buyer.	13.	Default
9.4	If default is made in the payment of the purchase price of the goods or services or of the other money referred to, the Supplier may repossess the goods or services and dispose of them as it sees fit, may stop any further deliveries (including, without limitation, a right of stoppage in transit) and may cancel any contract with the buyer. For the purposes of repossession the Supplier and its agents are irrevocably authorised to enter any premises of the buyer or any third party and the buyer agrees to indemnify the Supplier and its agents for any liability arising from any act or trespass committed by such entry. If before or after default the goods are incorporated in other goods or services, but in either case remain identifiable and can be removed (with or without damage to the goods, services, or other things) the Supplier's right of removal shall not be extinguished by their being so incorporated or attached.	13.1	If the Buyer defaults in the due payment of any moneys payable to the Supplier under the contract or if the buyer commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property, the Supplier, without prejudice to any other right it has at law or in equity, may, at its option, repossess the goods, and may also suspend or terminate the contract, and payment for the goods or services delivered and work performed up to the date of such suspension or termination and any other moneys payable hereunder will immediately become due and payable. Any costs involved in recovering this debt or goods will be passed onto the buyer.
9.5	The buyer will store the goods or services, until payment or their resale, in such a way as clearly to indicate that they are the Supplier's goods or services.	14.	Contract
9.6	Until payment of the purchase price of the goods or services or of the other money referred to, the buyer will not resell the goods other than in the ordinary course of the buyer's ordinary business.	14.1	The items contained in the Supplier's contract confirmation (if any) (where the contract arises from an order by the buyer including, without limitation, telephone orders) together with these terms of trade are the terms and conditions of the contract.
10.	Disposal of goods	14.2	The buyer acknowledges and agrees that in the case of any conflict between an order submitted by the buyer and the Supplier's contract confirmation and these terms of trade, the Supplier's contract confirmation and these terms of trade prevail.
10.1	Despite clause 6 the Supplier may, upon three months written notice, dispose of:	14.3	The buyer acknowledges and agrees that in the case of any telephone order by the buyer, a written contract confirmation by the Supplier shall be determinative of the existence of the contract, on the terms specified therein subject only to subsequent correction by the Supplier (at its option) of any mistake in the contract confirmation, unless disputed by the buyer in writing within 2 (two) working days of the date of contract confirmation being faxed to the buyer.
	a. Any goods which have not been able to be actually delivered to the buyer; and	14.4	The Supplier may at any time, and from time to time, send an amended or corrected contract confirmation which shall override the previous confirmation of order, to the necessary extent, unless disputed by the buyer in writing within 7 days of the date of the amended or corrected confirmation of order. This is entirely without prejudice to the Supplier's legal and equitable rights and remedies in the case of legal or factual mistake.
	b. Any property of the buyer in possession of the Supplier for the purpose of enabling the Supplier to provide services.	14.5	The buyer acknowledges and agrees that in the absence of a written confirmation of order the buyer, but not the Supplier, shall be barred absolutely from alleging the existence of a contract.
11.	Delay	15.	Waiver
11.1	If the supply or delivery of the goods or services is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the buyer, the Supplier may, without prejudice to its other right and remedies, require payment by the buyer of such portion of the contract price as represents the extent to which the Supplier has performed the contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may, without prejudice to its other remedies, terminate the contract.	15.1	All the original rights, powers, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
12.	Exclusion Of Warranty & Liability, Limitation of Liability	15.2	The Supplier is not deemed to have waived any condition unless such waiver is in writing under signature of the Supplier
12.1	Except as expressly set out in this document, all representations, conditions and warranties (express or implied)		

- or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.
16. **No Assignment**
- 16.1 The buyer may not assign all or any of the buyer's rights or obligations under the contract without the prior written consent of the Supplier.
17. **Law And Jurisdiction**
- 17.1 The contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.
- 17.2 The Courts of New Zealand shall have exclusive jurisdiction in connection with this contract except to the extent that a Court other than a Court of New Zealand is required by the Supplier to exercise jurisdiction for the purpose of either enforcing a judgment obtained in New Zealand from a Court of New Zealand, or for the prosecution by or for the benefit of the Supplier of any rights, remedies, or claims, (including, without limitation, of or to money, property, title, or ownership), or the defending by the Supplier of any action by or for the benefit of the Buyer, arising in connection with this contract.
18. **Consumer Guarantees Act 1993 & Credit (Repossession) Act 1997**
- 18.1 The buyer acknowledges and agrees that unless the buyer has indicated to the contrary in writing at the time of the formation of the contract, the contract is entered into by the buyer for the purposes of a business and the provisions of the Consumer Guarantees Act 1993 and the Credit (Repossession) Act 1997 will not apply.
19. **Privacy Act 1993**
- 19.1 The buyer and guarantor (if any) authorise any person or company to provide the Supplier with information in response to its credit enquiries. The buyer and guarantor (if any) further authorise the Supplier to furnish to any third party details of the application of which these conditions of sale form part and any subsequent dealings that the buyer and/or guarantor may have with the Supplier.
20. **Personal Property Securities Act 1999 ("PPSA")**
- 20.1 The buyer acknowledges that clauses 9 and 12 create a security interest ("Security Interest") (as that term is defined in the PPSA) in the goods or services. The buyer agrees that the Security Interest is in all personal property supplied by the Supplier to the buyer from time to time and the proceeds thereof for all amounts payable by the buyer to the Supplier, including but not limited to amounts owed in respect of personal property supplied and credit facilities provided by the Supplier to the buyer from time to time.
- 20.2 The buyer acknowledges and agrees (or is deemed to acknowledge and agree) that where title in goods or services passes to the buyer, for any reason whatsoever, these terms and conditions constitute a security agreement providing for both future advances and a security in favour of the Supplier in all the buyer's present and after acquired property and the proceeds thereof, but excluding property (other than the said proceeds) not supplied by the Supplier.
- 20.3 The buyer:
- Must, upon request, promptly give the Supplier all assistance and information (which the buyer warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA in respect of the personal property to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these terms and conditions of sale reasonably requested by the Supplier;
 - Agrees to the Supplier registering a financing statement to protect its security interest under these terms and conditions;
 - Must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
 - Must give the Supplier not less than 14 days prior written notice of any change or proposed change in the buyer's name, or any other details including but not limited to changes in the buyer's address, trading name, type of business or contact phone or facsimile numbers;
 - Must pay to the Supplier promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the contract evidenced by these terms and conditions;
- f. Agrees that Sections 114(1)(a), 133, and 134 of the PPSA will not apply to the Security Interests created by these terms and conditions, and agrees to contract out of the buyer's rights referred to in sections 116, 120(2), 121, 125, 126, 127, 129, 131, of the PPSA;
- g. Waives its right to receive a verification statement under Section 148 of the PPSA.
21. **Application and Amendment of Terms**
- 21.1 Unless the context otherwise requires, and subject to clause 21.2, these terms of trade shall apply to all contracts between the Supplier and the buyer, except as the Supplier may otherwise direct (to the maximum extent permitted by law, consistent with the existence of a contract).
- 21.2 The Supplier may from time to time amend its terms of trade whereupon the buyer shall be deemed to have agreed to the amended terms of trade, which shall prevail over any previous Terms of Trade, to the maximum extent permitted by law, consistent with the existence of a contract.
22. **Export**
- 22.1 Where this contract relates to the export of goods outside of New Zealand then unless otherwise expressly specified by the Supplier, or agreed by the Supplier and the buyer, in writing:
- The goods are supplied on a CFR (Cost and Freight) basis (as that is defined in the International Chamber of Commerce Terms 2000 "Incoterms 2000") unless an alternative basis of supply is agreed upon in writing.;
 - The delivery date is the date on which the goods pass the ship's rail in the port of shipment and delivery occurs when the goods pass the ship's rail (despite clause 6);
 - Where the buyer fails to specify a port of destination then the Supplier may specify the port of destination, acting reasonably and having regard to the size of the port, the location of the port in relation to the buyer, and the frequency of shipping to the port in light of the buyer's desired date of receipt of the goods (if any has been indicated);
 - The words "Within 7 days of the date of delivery" in clause 7 are replaced with "Within 7 days of the date of receipt" (this amendment is without limitation to clause 8);
 - The ship and the port of shipment shall be at the sole discretion of the Supplier; and
 - The costs of CFR supply including, without limitation, freight and shipping costs, duties and levies, and the Supplier's reasonable margin thereon, are additional to the price and clause 3.1 applies accordingly as if those costs (and margin) were listed therein.
23. **Plant Variety Rights and Patent**
- 23.1 The Supplier shall not be liable to the buyer for any infringement or unauthorised use of any patent, trademark, design, copyright, or any other intellectual property right, arising out of this contract. Upon the buyer becoming aware that there is such infringement or unauthorised use it shall immediately notify the Supplier and comply with all reasonable directions of the Supplier in relation thereto and, without limitation to the Supplier's rights and remedies the Supplier may terminate this contract as if clause 24.2 applied.
- 23.2 Without prejudice to clause 23.1, where the goods are subject to protection under the Plant Variety Rights Act 1987 the buyer shall not contravene that Act.
- 23.3 The Buyer shall upon demand indemnify and hold harmless the Supplier for any damage, harm, injury, loss (including, without limitation, consequential loss), expense, cost, or any other thing, arising directly or indirectly from failure of the buyer to comply with clauses 23.1 or 23.2 of this contract.
- 23.4 Where the subject of the agreement is a PROTECTED SEED VARIETY on which a royalty is payable to a plant breeder, the Supplier puts the Buyer on notice that the Supplier is only permitted to market this seed on condition that the seed is not multiplied further for seed production, resold or traded in any way, without written permission from the plant breeder.
- 23.5 Where the Buyer has been put on notice by the Supplier that the supply has been of a Protected Seed Variety, the Buyer agrees not to do anything that would render the Supplier in breach of its agreement with the plant breeder, and the indemnities at 23.2 will apply. The Buyer furthermore

acknowledges that a failure to comply with this clause could render the Buyer liable under the Plant Variety Rights Act 1987.

24. **General**

24.1 Without prejudice to clause 12 of these terms of trade, the Supplier shall not be liable to the buyer for any damage, harm, injury, loss (including, without limitation, consequential loss), expenses, cost, or any other thing, directly or indirectly arising from any delay or failure of the Supplier in the fulfilment of its obligations under the contract where such delay or failure is the result, directly or indirectly, of anything beyond the reasonable control of the Supplier. By way of example only, and not by way of limitation things "beyond the reasonable control of the Supplier" includes; Act of God, adverse weather, electrical failure, armed conflict, labour dispute, civil commotion, Government intervention, inability to obtain labour or materials, accidents, and transportation delays.

24.2 If any one or more provisions of the contract are or become illegal, void, or invalid, that shall not effect the legality and validity of the other provisions unless severing those illegal, void, or invalid provisions:

- a. Significantly alters the commercial result of performance, or non-performance or default, by the parties of their obligations under the document; and
- b. Results in either:
 - (i) A substantially unequal exchange of values; or
 - (ii) The conferment of a benefit or imposition of an obligation which is, in all the circumstances substantially disproportionate to the consideration therefore, or materially and substantially different from that provided for under the contract;

in which case the Supplier may terminate this contract by giving written notice to the buyer at any time, with effect from such date as the Supplier specifies including, without limitation, terminating the contract so as to render it void ab initio.

24.3 The written contract (if any) may be executed in two or more counterparts, each of which shall be deemed to be an original upon signing of all necessary counterpart copies, and in any event any signature or seal of which a facsimile copy exists shall be deemed to be an original signature or seal.

25. **INTERNATIONAL SEED FEDERATION – RULES AND USAGES FOR THE TRADE IN SEEDS FOR SOWING PURPOSES ("ISF Rules")**

25.1 The Supplier agrees to recognize that the ISF Rules have value in promoting the trade in seed and therefore agrees to respect the spirit of the ISF Rules in so far as they do not conflict with the Terms and Conditions of this Agreement. In the event there is a conflict, these Terms and Conditions will be paramount.

26. **OWNERSHIP OF INTELLECTUAL PROPERTY**

26.1 Where the Supplier contracts to provide services to a Buyer, it is agreed that all intellectual property created by the Supplier as a consequence of the supply of services (the "IP") under any agreement shall remain with the Supplier, unless the contrary is expressly agreed to in writing at the time of contracting.

26.2 The Buyer agrees to retain control of all IP, and, without limitation to the above, agrees not to disclose the IP to any 3rd party without the express written consent of the Supplier.

27. **COSTS OF RESEARCH**

27.1 Where the Supplier provides services to the Buyer, all costs and disbursements incurred by the Supplier in undertaking the services will be for the account of the Supplier and the price to be paid by the Buyer for those services will be the contract price (plus any taxes which may be applicable).