

## Standard Terms and Conditions

### 1. Interpretation

- 1.1. These terms and conditions 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 and conditions, 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 the purchase of Goods (including any orders made in accordance with clause 2) and/ or the provision of Services;

**Delivery** means in respect of Goods the delivery of a consignment of Goods by the Supplier to the Buyer, which occurs at the point in time when either the Goods are loaded on board the vessel nominated by the Buyer (when the Goods are being exported as per clause 24.1.2), or the Goods are loaded onto the Buyer's vehicle or the Buyer's agent's vehicle at the Supplier's premises, or the Goods are delivered to and offloaded at the Buyer's premises by the Supplier, when supplied in Australia. In respect of Services, upon 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** is 24% per annum;

**Orders** means, in respect of Goods, an order for the Goods and, in respect of services, an order for Services;

**Person** includes a corporation, association, society, firm, the 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 and conditions.

### 2. Contract

- 2.1. The Contract Price is the price for the supply of Goods and/or Services by the Supplier as accepted in accordance with clause 2.2 below. The Contract Price shall be 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 Contract.
- 2.2. At the Supplier's discretion, it shall be entitled to accept confirmation of its offer from the Buyer by any of the following means:

- 2.2.1. Written confirmation;
- 2.2.2. Verbal confirmation; and
- 2.2.3. Performance pursuant to an offer to purchase.

(each a "Contract Confirmation")

- 2.3. After acceptance by the Supplier, any variation, waiver or cancellation of the Buyer's Order has no effect unless agreed to in writing by the Supplier.
- 2.4. The Buyer acknowledges that by placing an order, and/or receiving a Contract Confirmation from the Supplier, it does not guarantee the supply of the Goods. If the Supplier is unable to provide the agreed quantity of Goods for any reason, the Supplier will not be liable for the shortfall and the Buyer must take delivery of and pay for such lesser quantity as the Supplier is able to supply.

### 3. Taxes and Duties

- 3.1. Unless expressly included in any estimate or quotation given by the Supplier, sales tax, Goods and Services Tax ("GST") 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. Such taxes or duties 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 and conditions).

### 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) (a) the 20<sup>th</sup> of the month following the date of Delivery of the Goods and Services in accordance with clause 6 for Australian Buyers; (b) for New Zealand Grain and Seed Trade Association members only, fourteen (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 seven (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 on 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 or deduction, without the prior written consent of the Supplier.
- 4.5. 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 24% per annum is charged on a daily basis 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 judgment but without prejudice to the Supplier's other rights and remedies in respect of non-payment or late payment.

### 6. Delivery

- 6.1. 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.
- 6.2. Delivery is to be made at the place stated in the Contract or if no place is stated in the Contract, Delivery is to be made to the Buyer's premises in Australia or in accordance with clause 24 for the Delivery for Buyers outside of Australia. If the Buyer fails, 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.
- 6.3. Where the Buyer requests a carrier, other than a contracted carrier to the Supplier, the Supplier must approve the alternate carrier in writing. The Supplier reserves the right, in its sole 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 delivery of one or more instalments and this shall not entitle the Buyer to repudiate the main contract.
- 6.4. 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 make Delivery of the Goods or Services.

### 7. Inspection

- 7.1. Within seven (7) days of the date of Delivery, the Buyer must inspect the Goods and/or Services and inform the Supplier of any shortfall, damage to or defect in them. If the Buyer does not notify the Supplier within the time frame mentioned above the Buyer will be deemed to have accepted the Goods and/or Services as complying with its order and the Supplier will be under no liability whatsoever 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 25.1) the Supplier's liability to the Buyer is limited to making up that shortfall. Nothing in this clause shall limit the effect of clause 25.1.
- 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 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.
- 7.4. If the Buyer notifies the Supplier of any claim under clause 7.1 then the Buyer shall provide all evidence that the Supplier reasonably requires to be able to assess the claim. Such information shall include but not be limited to independent test results from an agency not associated with the Buyer, photographic evidence of the damage to the Goods or Services and access for the Supplier to view the Goods or Services supplied.

### 8. Risk

- 8.1. Risk of any loss, damage or deterioration of or to the Goods is to be borne by the Buyer from the time of Delivery of the Goods.

### 9. Retention of Title

- 9.1. The legal and equitable ownership of the Goods supplied will remain with the Supplier until payment has been made in full of the Contract

- Price for the Goods and of all moneys for the time being due and owing to the Supplier (including storage costs and penalty interest).
- 9.2. If the Goods have been mixed with or incorporated into other goods so that it is impossible or impracticable to remove the Goods supplied then the Supplier will be the 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.
  - 9.3. If the Buyer resells the Goods, 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:
    - 9.3.1. As between the Buyer and its purchaser, the Buyer is a principal and not the agent of the Supplier;
    - 9.3.2. The Buyer will pay all proceeds of sale of the Goods 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;
    - 9.3.3. Until the Buyer accounts to the Supplier, the proceeds of sale are agreed to be held by the Buyer in trust for the Supplier and the Buyer will not deal with them without the Supplier's approval;
    - 9.3.4. 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 have been or will be sold or supplied. However, that will not affect any other rights or remedies of the Supplier as against the Buyer.
  - 9.4. If the Buyer defaults in the payment of the Contract Price of Goods and Services or the other money referred to, the Supplier may repossess the Goods and dispose of them as it sees fit, may stop any further deliveries (including, without limitation, a right to stoppage in transit) and may cancel any Contract with the Buyer. For the purposes of repossession 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 the Goods remain identifiable and can be removed (with or without damage to the Goods or other things) the Supplier's rights of removal shall not be extinguished by them being so incorporated or attached.
  - 9.5. The Buyer will store the Goods until payment or their resale, in such a way as clearly to indicate that they are Supplier's Goods.
  - 9.6. Until payment of the Contract 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.
- 10. Disposal of goods**
- 10.1. Notwithstanding clause 6, the Supplier may, upon three (3) months written notice, or such shorter period of time as the Supplier decides if the Goods are perishable, dispose of:
    - 10.1.1. Any Goods which have not been able to be actually delivered to the Buyer; or
    - 10.1.2. Any property of the Buyer in possession of the Supplier for the purpose of enabling the Supplier to provide Services.
- 11. Delay**
- 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 (including but not limited to storage costs and legal 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 and sell the Goods in accordance with clause 10.
- 12. Buyer's Agreements, Warranties and Undertakings**
- 12.1. The Buyer agrees, warrants and undertakes to the Supplier that the Buyer is the rightful owner or licensee of all copyright and/or trademark pertaining to marks used on the product design and packaging of each of the Goods.
  - 12.2. The Buyer agrees, represents and warrants to the Supplier that:
    - 12.2.1. The Buyer has the corporate power and authority to enter into this Agreement and to carry out its obligations;
    - 12.2.2. The execution, delivery and performance of this Agreement by the Buyer has been duly authorised by the Buyer's authorised personnel;
    - 12.2.3. This Agreement constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance to its terms;
    - 12.2.4. The Buyer will be responsible for complying with all customs and border requirements at the Delivery Destination. The Supplier will provide reasonable support to assist with the importation. However it will not be liable for any costs the Buyer may incur if any Order is delayed or rejected by the customs officials or any other relevant authority;
    - 12.2.5. The Buyer will not hold itself out to be the Supplier's agent or partner and shall not attempt to or agree to bind the Supplier in any way;
    - 12.2.6. The Buyer must comply strictly with all local laws and regulations that cover the sale and supply of the Goods in the Buyer's region or market;
    - 12.2.7. The Buyer shall indemnify and keep indemnified, the Supplier from and against any and all loss or damage or liability suffered by the Supplier resulting from a breach of this Agreement by the Buyer;
    - 12.2.8. The Buyer is not entitled to assign the rights and obligations under this Agreement at any time without the prior written consent of the Supplier (which it may withhold at its sole discretion).
    - 12.2.9. The Buyer will not repackage, relabel or mix the Goods with any other production prior to on-selling the Goods to customers.
- 13. Exclusion of Warranty & Liability, Limitation of Liability**
- 13.1. Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between the Supplier and the Buyer, whether statutory or otherwise, are excluded to the maximum extent permitted by law.
  - 13.2. The entire liability of the Supplier to the Buyer, or any other person, whether statutory, contractual, tortious or otherwise, is limited to the cost of repair or replacement of the Goods or reimbursement of the appropriate proportion of the Contract Price at the rate applying thereunder, whichever is the lesser, and in the case of Services, to the Contract Price.
  - 13.3. 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.
  - 13.4. Where grain, seeds or pulses are the subject of the Contract, the Supplier believes them to have been taken from 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.
  - 13.5. Notwithstanding this clause, the liability of the Supplier in any case, whether in contract, tort or otherwise, shall be limited to the invoice value of the consignment.
- 14. Default**
- 14.1. If the Buyer defaults in the due payment of the Contract Price or any moneys payable to the Supplier under the Contract, or fails to accept Delivery of the Goods or Services, or, if the Buyer breaches any term of the Contract or these Terms and Conditions, 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 of the Contract Price will immediately become due and payable. Any costs involved in recovering the debt or Goods (including legal fees) will be payable by the Buyer.
- 15. Contract**
- 15.1. 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 and conditions are the terms and conditions of the Contract.
  - 15.2. 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 and conditions, the Supplier's Contract Confirmation and these terms and conditions prevail.
  - 15.3. 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 two (2) working days of the date of the contract confirmation being emailed to the Buyer.
  - 15.4. 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 seven (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.
  - 15.5. 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.

## 16. Waiver

- 16.1. All the original rights, powers, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 16.2. The Supplier is not deemed to have waived any condition unless such waiver is in writing under signature of the Supplier or its authorised office and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

## 17. No Assignment

- 17.1. 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.

## 18. Law and Jurisdiction

- 18.1. The Contract in all respects is deemed to be a contract made in Australia and is governed exclusively by Australia law.
- 18.2. Any dispute arising out of any issue relating to contamination of Goods will be determined by a sole arbitrator in accordance with the Australia Arbitration Act 1996 and its amendments and the AMINZ Arbitration Rules current at the time arbitration is commenced. The place of arbitration will be Christchurch, Australia and the law applicable to the arbitral proceedings and the matters in dispute will be Australia. Either party may apply to AMINZ for appointment of the arbitrator.
- 18.3. Subject to clause 18.2, the Courts of Australia shall have the non-exclusive jurisdiction in connection with this contract except to the extent that a Court other than a Court of Australia is required by the Supplier to exercise jurisdiction for the purpose of either enforcing a judgment obtained from a Court in Australia, 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 the Contract.

## 19. Competition and Consumer Act 2010 (Cth) and National Consumer Credit Protection Act 2009 (Cth)

- 19.1. 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 Competition and Consumer Act 2010 (Cth) and the National Consumer Credit Protection Act 2009 (Cth) do not apply.

## 20. Privacy Act 1988 (Cth)

- 20.1. 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.
- 20.2. The Supplier will only use the Buyer's personal information for purposes permitted by law including relating to the Buyer's dealings with the Supplier.
- 20.3. Where the Buyer is a Company or trust, the Supplier has the right to undertake a credit assessment of the directors, shareholders or trustees.
- 20.4. The Buyer has the right to inspect and correct the personal information held by the Supplier.

## 21. Personal Property Securities Act 2009 (Cth) ("PPSA")

- 21.1. The Buyer acknowledges that clause 9 creates a security interest ("Security Interest") (as that term is defined in the PPSA) in the Goods. 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.
- 21.2. 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.
- 21.3. The Buyer:
  - 21.3.1. 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;
  - 21.3.2. Agrees to the Supplier registering a financing statement to protect its security interest under these terms and conditions;
  - 21.3.3. 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);
  - 21.3.4. 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;
  - 21.3.5. 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.
  - 21.3.6. 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;
  - 21.3.7. Waives its right to receive a verification statement under Section 148 of the PPSA.

## 22. Application and Amendment of Terms

- 22.1. Unless the context otherwise requires, and subject to clause 21.2 these terms and conditions 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).
- 22.2. The Supplier may from time to time amend its terms and conditions by publication on its website ([www.midlandsnz.com](http://www.midlandsnz.com)) whereupon the Buyer shall be deemed to have agreed to the amended terms and conditions, which shall prevail over any previous terms and conditions, to the maximum extent permitted by law consistent with the existence of a contract.

## 23. Export

- 23.1. Where the Contract relates to the export of Goods outside of Australia, then unless otherwise expressly specified by the Supplier and agreed to by the Buyer in writing, the following shall apply:
  - 23.1.1. The goods are supplied on a Freight on Board Origin basis (as defined in the International Chamber of Commerce Terms 2020 "Incoterms 2020");
  - 23.1.2. The Delivery date is the date on which the goods are loaded on board the Suppliers nominated vessel;
  - 23.1.3. If the Goods are not placed on the nominated vessel, through no fault of the Supplier, then the Supplier shall hold the Goods in storage and charge the Buyer a storage fee as set by the Supplier. Such storage fee shall be paid by the Buyer to the Supplier prior to the Supplier releasing the Goods from storage. The Supplier shall not be liable for any damage to or deterioration in the Goods whilst they are held in storage;
  - 23.1.4. 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).
  - 23.1.5. The Buyer shall be responsible for all shipping costs, insurance costs and costs of landing the Goods at their ultimate destination. The Supplier will have no responsibility whatsoever for any costs once the Goods have been loaded onto the vessel.

## 24. Plant Variety Rights and Patent

- 24.1. 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 the 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 the Contract as if clause 24.2 applied.
- 24.2. Without prejudice to clause 24.1 where the Goods are subject to protection under the Plant Breeder's Rights Act 1994 (Cth) the Buyer shall not contravene that Act.
- 24.3. The Buyer shall upon demand indemnify and hold harmless the Supplier for any damage, harm, injury, loss (including without limitation, consequential loss), expense (including legal expenses), cost, or any other thing, arising directly or indirectly from failure of the Buyer to comply with clauses 24.1 or 24.2 of these terms and conditions.
- 24.4. Where the subject of the Contract 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 production, resell or trade it in any way, with written permission from the plant breeder.
- 24.5. 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 24.2 will apply. The Buyer furthermore acknowledges that a failure to comply with this clause could render the Buyer liable under the Plant Breeder's Rights Act 1994 (Cth).

## **25. General**

25.1. Without prejudice to clause 13 of these terms and conditions, 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, pandemic, epidemic, adverse weather, electrical failure, armed conflict, labour dispute, civil commotion, Government intervention, inability to obtain labour or materials, accidents and transportation delays.

25.2. If any one or more provisions of the Contract are or become illegal, void, or invalid, that shall not affect the legality and validity of the other provisions unless severing those illegal, void or invalid provisions:

25.2.1. Significantly alters the commercial result of performance or non-performance or default by the parties of their obligations under the document; and

25.2.2. Results in either:

- (a) A substantially unequal exchange of values; or
- (b) 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 the 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).

25.3. 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 scanned copy exists shall be deemed to be an original signature or seal.

## **26. International Seed Federation – Rules and Usages for the Trade in Seeds for Sowing Purposes ("ISF Rules")**

26.1. 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 these Terms and Conditions. In the event that there is a conflict, these Terms and Conditions will be paramount.

## **27. Ownership of Intellectual Property**

27.1. 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 the agreement shall remain with the Supplier, unless the contrary is expressly agreed to in writing at the time of contracting.

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

## **28. Costs of Research**

28.1. 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).