

## Standard Terms of Sale

*These Standard Terms of Sale are incorporated into, and must be read in conjunction with the **Sales Distribution Agreement (Non-Australian Distributor)** (together, the **Agreement**). Unless expressly defined in these Terms, all capitalised terms used have the meaning given to them in the Sales Distribution Agreement.*

*To the extent of any inconsistency between these Terms and the Sales Distribution Agreement, the provisions of the Sales Distribution Agreement will prevail. The Agreement is governed by the laws of South Australia and each party irrevocably and unconditionally submits to the non exclusive jurisdiction of the courts of South Australia.*

### 1. Seller Warranties

1.1 Seller warrants that at the time of delivery:

- (a) the Products will comply in all material respects with the specifications stipulated on the Product labels or in documents provided with such Product or otherwise issued by Seller from time to time (collectively, the **Specifications**); and
- (b) it has title to the Products and that the Products are not subject to any security interests, liens or other encumbrances.

1.2 Except as expressly provided in clause 1.1, Seller does not make:

- (a) any warranties, conditions, claims or representations, express, implied, or statutory, with respect to seed, including, without limitation, implied conditions or warranties of quality, performance, non-infringement, merchantability, or fitness for a particular purpose;
- (b) any warranties created by course of dealing, course of performance, or trade usage; and
- (c) any warranties as to yield, quality, tolerance, growing conditions of the products or the crop produced therefrom, or freedom from genetically modified organisms.

### 2. Confidentiality

- 2.1 From time to time, Seller may disclose to Distributor confidential and proprietary information relating to the Products or its business (**Confidential Information**). Without limitation, Distributor acknowledges and agrees that Seller's pricing for the Products is Confidential Information of Seller.
- 2.2 Distributor agrees not to disclose any Confidential Information to any third party unless such disclosure

is approved in writing by Seller prior to such disclosure, and Distributor shall not use any such Confidential Information except as is reasonably necessary to carry out its responsibilities under the Agreement.

2.3 Distributor may disclose Confidential Information to those of its employees and consultants who have a need to know such information to carry out duties under the Agreement, provided that each such employee is subject to confidentiality obligations no less restrictive than those set out in the Agreement.

2.4 Distributor may disclose Confidential Information where it is required by law to do so, provided that prior to such disclosure Distributor gives Seller prompt written notice of such requirement and a reasonable opportunity to take any steps that Seller considers necessary to protect the confidentiality of that information.

2.5 The parties recognise that any breach of this clause 2 may not be adequately compensable by monetary damages, and Seller shall be entitled to seek an injunction or other appropriate order to enforce Distributor's obligations under this clause 2.

### 3. Product Safety Recall

3.1 Distributor must report to Seller any action or requirement of any regulatory authority within the Territory in relation to the Products or any of them.

3.2 If there is a product safety recall undertaken in respect of Products in the Territory, Distributor must:

- (a) provide reasonable assistance to Seller in relation to the recall;
- (b) give Seller copies of any recall notice or adverse report data; and
- (c) comply with Seller's reasonable directions to minimise damage to the goodwill in the

Products and Seller's name and reputation generally.

#### 4. Term and Termination

- 4.1 The Agreement will commence on the Commencement Date and will continue for the Initial Term, unless terminated earlier or extended in accordance with this clause 4.
- 4.2 The Agreement will be automatically renewed according to the Renewal period unless written notification of termination is given by either party at least ninety (90) days prior to the expiration of the Initial Term or any extension thereof.
- 4.3 A party may terminate the Agreement immediately by written notice to the other party, if the other party:
  - (a) commits a breach of the Agreement that is not capable of being remedied;
  - (b) commits a breach of the Agreement that is capable of being remedied, and fails to remedy the breach within thirty (30) days after receiving notice requiring it to do so; or
  - (c) in the case of Seller, if the Licensee has failed to pay any amount within 30 days after the due date for such payment.
- 4.4 If the Agreement specifies any Performance Targets, then the Seller may terminate the Agreement by written notice to the Distributor if the Performance Targets are not met in any sales year.
- 4.5 Upon termination or expiry of the Agreement for any reason:
  - (a) the full purchase price for any Product delivered prior to the termination or expiration of the Agreement will be payable in full by the effective date of termination or expiration;
  - (b) each party must stop using Confidential Information of the other party and return or destroy, at the other party's election, all of the other party's Confidential Information in that party's possession or control.
- 4.6 Clauses 2 (Confidentiality), 3 (Product Safety Recall), 4 (Term and Termination), 5 (Intellectual Property) and 9 (Liability) of these Standard Terms of Sale will survive termination or expiry of the Agreement and continue in force according to their provisions.
- 4.7 Termination or expiry of the Agreement does not affect any accrued rights or remedies of a party.

#### 5. Intellectual Property

- 5.1 Distributor must fully cooperate in efforts to control grower-saved seed and protect intellectual property rights for the Products, including by:
  - (a) providing information regarding whether a suspected infringer is a customer of Distributor;
  - (b) providing copies of original sales documentation reflecting any Product and transactions;
  - (c) joining Seller in a suit against a grower believed to be using infringing seed; and
  - (d) asserting in such suit any additional intellectual property that they can assert to abate such infringing seed.
- 5.2 Seller authorises Distributor to use Seller's trade marks, trade names and logos (collectively, **Seller Trade Marks**) to the extent necessary for Distributor to sell, advertise and promote the Products in the Territory during the Initial Term, provided Seller's prior written approval is obtained for each such use (including any use via the Internet).
- 5.3 Distributor acknowledges and agrees that Seller is the owner of Seller Trade Marks and nothing in the Agreement transfers any right, title or interest in Seller Trade Marks to Distributor.
- 5.4 Distributor must not represent that it has any rights (other than its rights under this clause 5) in Seller Trade Marks.
- 5.5 Distributor agrees that it will not (and will not encourage or assist any person to) oppose, challenge contest or deny the validity of any rights Seller or its licensors has or have in relation to Seller Trade Marks or any Intellectual Property Rights held by Seller.
- 5.6 Distributor must not (either during the Term or after its termination) apply for registration as a trade mark, domain name, business or company name anywhere in the world, of any word or logo that is the same as, substantially identical with or deceptively similar to any of the Product IP.
- 5.7 Distributor assigns to Seller all goodwill arising out of Distributor's use of Seller Trade Marks.
6. Notices
  - 6.1 A notice, consent, approval or communication under the Agreement (**Notice**) must be in writing, in English and signed by a person duly authorised by the sender and hand delivered or sent by prepaid post or email to the recipient's address for notices specified in Contract Details, as varied by any Notice given by the recipient to the sender.

6.2 A Notice given in accordance with clause 6.1 above takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the seventh (7<sup>th</sup>) Business Day after the date of posting (or on the fourteenth (14<sup>th</sup>) Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email, when sent by the sender unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 7. Applicable laws

7.1 Distributor agrees to comply with all applicable export laws and regulations, including any future changes. Distributor will maintain records of exports, re-exports, and transfers of the Products according to local laws and will take necessary actions to obtain any required export licenses and exemptions.

7.2 Distributor represents and warrants that it and its personnel will at all times comply with all applicable anti-corruption, financial crime, anti-money laundering, modern slavery, health and safety laws and analogous laws.

## 8. Force Majeure

8.1 Where events or circumstances beyond a party's reasonable control (**Force Majeure Event**) prevents or delays that party from performing any obligation under the Agreement (other than an obligation to pay), the non-performing party's obligation is suspended as long as the Force Majeure Event continues.

8.2 The non-performing party must promptly notify the other party of the Force Majeure Event and make reasonable efforts to resolve the issue and resume performance as soon as possible.

8.3 If the Force Majeure Event continues for more than ninety (90) days, either party may terminate the Agreement upon written notice to the other party. All further obligations or liability owed by the parties shall cease, except as specified under clause 4.5.

## 9. Liability

9.1 Distributor will indemnify Seller, its affiliates and their officers, against all losses, liabilities, claims, damages, costs, expenses, fines, penalties or charges (including reasonable legal and professional fees and expenses) (**Damages**), whether direct or indirect, actual or contingent, any misrepresentation, negligence, or other act or omission under or in

connection with any breach of the Agreement that Seller may sustain or incur (including but not limited to those sustained or incurred in connection with a claim by a third party against Seller) as a result of:

- (a) any breach of the Agreement by Distributor (including, but not limited to a breach in respect of which Seller exercises a right to terminate the Agreement); and
- (b) any wilful, unlawful, dishonest or negligent act or omission of Distributor, its authorised resellers, or its other personnel, in respect of their obligations under the Agreement.

9.2 Seller's liability under the Agreement is limited to actual direct Damages.

9.3 Seller will not be liable for any special, incidental, indirect, or consequential Damages (including loss of profits) arising from or in relation to the Agreement, regardless of the cause of liability, even if Seller has been advised of the possibility of such Damages.

9.4 Seller will not be liable for any Damages resulting from any claims, demands, or actions related to the Agreement or under any contract, negligence, strict liability, or other legal or equitable theory, for any amount exceeding the total amount paid to Seller under the Agreement during the (12) twelve-month period preceding the date the claim, demand, or action arises.

## 10. Dispute Resolution

10.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of the Agreement (**Dispute**) unless it has complied with this clause 10.

10.2 A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

10.3 During the thirty (30) days after a notice is given under clause 10.2 (or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, the parties must refer the dispute to binding arbitration if the Seller requests.

10.4 If the Seller decides to institute arbitration proceedings, it shall give written notice to that effect to the Distributor.

10.5 Any arbitration proceedings under this clause 10 shall be conducted under the Arbitration Procedure Rules of the International Seed Federation by one arbitrator appointed in accordance with said Rules.

10.6 The seat of the arbitration will be in Australia.

10.7 The arbitration shall be conducted in English and all opinions and awards will be issued in English.

- 10.8 The award shall be final and binding for the parties to the proceedings and will not be subject to any appeal or review. The parties expressly waive their right to appeal the arbitral award before any tribunal.
- 10.9 The parties may request any competent tribunal to enforce and ensure compliance with the award.
- 10.10 The parties agree that the prevailing party in any suit, action or proceeding arising out of or relating to the Agreement shall be entitled to reimbursement for reasonable legal fees from the non-prevailing party.

## **11. Miscellaneous**

- 11.1 Distributor must not assign, transfer or otherwise dispose of or deal with its rights or obligations under the Agreement, or attempt or purport to do so, without the prior written consent of Seller. Seller may assign its rights and/or delegate its obligations under the Agreement.
- 11.2 The Agreement is governed by the law applicable in South Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of South Australia.
- 11.3 The parties agree that they are independent contractors and nothing contained in the Agreement shall be construed as establishing or creating an agency relationship, express or implied between Seller and Distributor.
- 11.4 A term or part of a term of the 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.
- 11.5 The Agreement represents the entire agreement between the parties for the subject matter of the Agreement and replaces all previous agreements.
- 11.6 The Agreement may only be amended in writing and signed by both parties.