

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 "Customer means the Customer (or any person acting on behalf of and with the authority of the Customer) as specified in these Terms and Conditions and/or as described in any account application form or any person purchasing Seed or Services from SPS.
- 1.2 "Customer's Seed" means seed belonging to the Customer which is delivered to SPS for the purpose of the Services or Seed in relation to which the Customer requests that SPS provides Services prior to delivery.
- 1.3 "Guarantor" means any person providing a personal guarantee in respect of the Customer's obligations to SPS as detailed in the account application form.
- 1.4 "Seed" means seeds supplied by SPS to the Customer.
- 1.5 "Services" means seed treatment services provided by SPS to the Customer in respect of the Customer's Seed.
- 1.6 "SPS" means South Pacific Seed Sales (NZ) Limited.
- 1.7 "Terms and Conditions" means these terms and conditions together with any other specific terms and conditions of SPS that may be agreed to in writing by SPS and the Customer.

2. APPLICABILITY

- 2.1 The terms and conditions set out below shall apply to all transactions for the supply of Seed and provision of Services unless otherwise agreed between SPS and the Customer in writing.

3. ACCEPTANCE

- 3.1 Execution of an account application form or placement of an order with SPS for Seed or Services will be deemed to be acceptance by the Customer (and Guarantor if applicable) of these Terms and Conditions. SPS may by written notice to the Customer alter or replace these Terms and Conditions. All orders placed subsequently by the Customer shall be upon the altered Terms and Conditions.
- 3.2 SPS in its absolute discretion accept or refuse any application or any order.

4. INVOICES

- 4.1 An invoice detailing the charges for Seed and/or Services will be forwarded with delivery or as soon as possible thereafter.
- 4.2 A monthly statement will be issued detailing all financial transactions in each month and showing any amount due for payment.
- 4.3 SPS will not issue a statement should the account be at "nil" balance.

5. PRICES

- 5.1 Prices unless otherwise stated, do not include Goods and Services Tax (GST), import duties or any other levies or tariffs.
- 5.2 Subject to clause 5.3 all quotations given by SPS either in writing or verbally are for immediate acceptance and, in the case of supply of Seed, are subject to sufficient stock being available for sale at the time of ordering.
- 5.3 Notwithstanding clause 5.2 or published retail prices, all Seed is sold and all Services are provided at prices ruling at the time of delivery and SPS reserves the right to pass on to the Customer any change of price after acceptance of the Customer's Order.
- 5.4 All Seed is sold and all Services provided on an ex-store basis, freight or postage being the responsibility of the Customer.

6. RISK

- 6.1 The risk in the Seed shall pass to the Customer on delivery. The Seed shall be deemed to be delivered to the Customer at the point of loading onto the carrier or being made available for uplift by the Customer, whether or not the Customer takes delivery of the Seed at that time.
- 6.2 The Customer shall be obliged to insure the Seed from the time of delivery to the Customer and pending payment in full, insure the Seed in the name of SPS and the Customer for their respective interests.

7. ORDERS

- 7.1 All orders for the supply of lines of Seed not within the standard range of SPS, or which SPS needs to order from a supplier to SPS to fulfil that order, must be accompanied by a purchase order and must be accepted by SPS in writing or by SPS signing the purchase order.
- 7.2 If the Customer wishes to cancel an order to which clause 7.1 applies, the Customer will be responsible for the full price of the order if SPS's supplier has shipped the seeds, or the cost to SPS for cancelling the order if SPS's supplier has not yet shipped the seed. Seeds to which clause 7.1 apply cannot be returned for credit after delivery.

8. PAYMENT

- 8.1 Pending acceptance of the Customer's account application, payment inclusive of GST and postage/freight must accompany all orders for Seed or Services.
- 8.2 Following acceptance of the Customer's account application, payment for Seed supplied and/or Services provided is due in full on the 20th of the month following the date of invoice ("the payment date").
- 8.3 In the event that payment is not received by the payment date, default interest will be charged by SPS and the Customer agrees to pay default interest on the amount outstanding at the rate of 1% per month (12% per annum) from the payment date down to the date upon which payment is made in full.
- 8.4 In the event of default, all payments received shall be applied first in payment of default interest.

9. MINIMUM ORDER AND MINIMUM REQUIREMENTS FOR SERVICES

- 9.1 A minimum order for Seed of \$20.00 and a minimum value of \$250 for Services, both exclusive of GST and postage/freight apply for invoicing purposes. SPS may alter such minimums from time to time at its discretion.
- 9.2 SPS reserves the right to refuse to provide Services where the Customer's Seed does not meet SPS' minimum standards which will be advised to the Customer upon request. If Services are provided in this situation then the liability provisions in clause 15.8 apply.

10. RETURN OF SEED

- 10.1 SPS or its agents will not accept the return of Seed supplied by SPS unless authorised by SPS in advance, in SPS's sole discretion.
- 10.2 Any request for the return of Seed must be made within 14 days of delivery of the Seed.
- 10.3 Returned Seed will only be accepted by SPS if:
 - [a] the Seed is unopened and in the same condition as when supplied; and
 - [b] the invoice number and the date of order is supplied.The Customer shall pay all costs in relation to return of the Seed.

11. COSTS

- 11.1 If the Customer defaults in performing its obligations under these Terms and Conditions and SPS incurs costs in enforcing its rights under these Terms and Conditions the Customer agrees to pay upon demand in writing those costs (including all legal costs and disbursements on a solicitor-client basis and/or costs of harvesting) to SPS or its duly authorised agent.

12. SHORTAGES

- 12.1 Any shortages relating to the Seed supplied by SPS must be notified to SPS within three days of receipt of the Seed (time being strictly of the essence).
- 12.2 The Customer acknowledges that there may be some loss in the quantity of the Customer's Seed resulting from the Services. SPS shall not be liable to the Customer for any such loss provided that it is within industry accepted tolerance levels.

13. CREDIT LIMIT

- 13.1 A credit limit will be advised in writing by SPS. No further limit beyond that stated will be granted without prior arrangement. SPS reserves the right to alter the credit limit from time to time by giving the Customer notice in writing.

14. PRIVACY ACT

- 14.1 The Customer authorises any person or company to provide SPS with such information as SPS may require in response to the account application. The Customer hereby authorises SPS to furnish to any third party details of the Customer's application and any subsequent dealings that SPS may have with the Customer as a result of the Customer's application being actioned by SPS. The Customer has a right of access to, and may request correction of, personal information held by SPS about the Customer.

15. WARRANTIES AND LIABILITY

- 15.1 SPS warrants to the extent of the purchase price that Seed supplied is within recognised tolerances to the details described on the accompanying packaging and/or documents.
- 15.2 SPS warrants that the Services will be carried out in accordance with good industry

practice. If the Customer requests SPS to apply any chemical or product to the Customer's Seed which has not been registered by the Environmental Protection Agency for such use, SPS warrants to the extent of the price of the Services that it will apply such chemical in accordance with recognised industry standards.

- 15.3 SPS will take reasonable care of the Customer's Seed while it is on SPS's premises but SPS does not take responsibility for loss or damage which is out of SPS's control or which occurs despite such care being taken. Customers must ensure that they have appropriate insurance in place. Any liability of SPS for failure to take reasonable care will be limited to the replacement value of the Customer's Seeds and will not extend to loss of income or profits. SPS will not be liable in any way for diseases or infections affecting the Customer's Seed which arise or become apparent while on SPS's premises.
- 15.4 The Customer shall ensure that the Seed ordered and/or Services requested are fit and suitable for the purpose for which they are required and SPS shall be under no liability if they are not.
- 15.5 Except as expressly provided for in these Terms and Conditions SPS gives no other express or implied warranties.
- 15.6 The Consumer Guarantees Act 1993 shall not apply if the Customer acquired or held himself or herself out as acquiring the Seed and/or Services for the purposes of a business.
- 15.7 The Customer agrees to include a provision in the Customer's Conditions of Sale to the effect that the Consumer Guarantees Act 1993 shall not apply where a purchaser is acquiring the Seed and/or Services for the purposes of a business. The Customer agrees to indemnify SPS for any liabilities, losses, damages, claims, costs or expenses of whatever kind or nature incurred by SPS if the Customer fails to do so.
- 15.8 Except as expressly provided by clauses 15.1, 15.2 and 15.3 SPS will not be liable in any way (including negligence, tort, equity or otherwise) to the Customer or any other person in connection with these Terms and Conditions, the supply of Seed or provision of Services for any loss or damage of any kind whatsoever including loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages.
- 15.9 The Customer shall indemnify SPS from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims incurred in relation to these terms and conditions, the supply of Seed or provision of Services, except where SPS is fraudulent or negligent.

16. ERRORS OR OMISSIONS

- 16.1 Clerical errors or omissions whether in computation or otherwise in any quotation, acknowledgements or invoice, shall be subject to correction.

17. PROPER LAW

- 17.1 The contract and these Terms and Conditions shall be governed by New Zealand law and the New Zealand courts shall have exclusive jurisdiction in connection herewith. All proceedings within the jurisdiction of the District Court shall be filed in the Ashburton District Court.

18. SEVERANCE

- 18.1 If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason then to the extent not inconsistent with that invalid clause the remaining provisions shall remain in full force and effect.

19. OWNERSHIP

Ownership of the Seed supplied by SPS shall remain with SPS and shall not pass to the Customer until all amounts owing by the Customer to SPS in respect of the Seed have been paid in full and all the Customer's other obligations to SPS in respect of the Seed have been met. If the Seed is sown by the Customer, the resulting plants and crops shall remain the property of SPS pending payment in full of all amounts due to SPS by the Customer. Until ownership of the Seed passes to the Customer, the Customer agrees as follows:

- 19.1 The Customer will hold the Seed or resultant plants or crops on trust for SPS as SPS's bailee.
- 19.2 The Customer will store the Seed or resultant plants or crops at the Customer's cost separately from other seeds, plants and crops in the Customer's possession and clearly distinguish and identify the Seed or resultant plants or crops as SPS's.
- 19.3 The Customer must keep full and complete records of the Seed and resultant plants or crops.
- 19.4 The Customer must not change the Customer's name, address or contact details without providing SPS with at least 30 days prior written notice.
- 19.5 In respect of the Personal Property Securities Act 1999 ["PPSA"] and between SPS and the Customer, the Customer acknowledges and agrees that pending payment in full for the Seed, a Purchase Money Security Instrument is created in favour of SPS and the Customer unconditionally and irrevocably:
 - [a] Waives the Customer's right under the PPSA to receive a copy of any financing statement or financing change statement;
 - [b] Agrees that, to the maximum extent permitted, section 114[1][a], 133 and 134 will not apply;
 - [c] Has none of the rights referred to in sections 107[2][c]-[e] and 107[2][h]-[j], all inclusive; and
 - [d] Agrees that where SPS has rights in addition to, or existing separately from those in Part 9 those rights will continue to apply and, in particular, those rights will not be limited by Section 109;
 - [e] Agrees that where any Seed becomes an accession as defined in the PPSA, the Customer will not apply to the Court for an order concerning the removal of the accession;
 - [f] Agrees that the Customer will not enter into or accept, or allow any other person to enter into or accept, a financing change statement in relation to a financing statement registered by reference to it under the PPSA; and
 - [g] Agrees that the Customer will not consent to or enter into any agreement which permits any supplier or other person to register a security interest in respect of the Seed [whether an accession or otherwise].
- 19.6 If the Seed has not been paid for in full by the payment date or is "at risk" [as defined in PPSA], SPS or SPS's agent[s] may enter the Customer's premises or property [or other premises to which the Customer has access and where the Seed is stored or planted or where SPS reasonably believes the Seed is stored or planted] at any time, without notice, and search for and recover the Seed or resultant plants or crops and may resell the Seed or resultant plants or crops or retain the Seed or resultant plants or crops for SPS's own benefit, without incurring any liability to the Customer or any other person claiming through the Customer. The Customer may not revoke the permission granted in this subclause.
- 19.7 If all or any of the Seed is sowed, planted or intermingled with any other Seed or goods, then SPS may, in its sole discretion, retrieve the Seed or harvest the resultant plants and crops whether ready for harvest or not. SPS shall not be liable for any loss or damage caused to the Customer in exercising its rights under this subclause.
- 19.8 If at the time of any default either in payment or of any term, all or any of the Seed or resultant plants or crops have been sold or otherwise disposed of for valuable consideration or so as to create a debt owed to the Customer, then the Customer hereby assigns all legal and equitable title to that consideration and/or debt to SPS and authorises SPS to act in all respects as the Customer in obtaining and realising that consideration and/or debt and crediting the sum obtained towards the amounts owed.
- 19.9 If at the time of any default either in payment or of any term, all or any of the Seed or resultant plants or crops are lost, damaged or destroyed, then the Customer hereby authorises SPS to act in all respects as the Customer in making or pursuing any insurance or other claim and hereby assigns to SPS all legal and equitable title to the proceeds of the claim, which shall be credited against amounts owed.

20. GENERAL

- 20.1 The Customer shall keep the contents of these Terms and Conditions, and the price of the Seed and Services, strictly confidential.
- 20.2 SPS is given and may exercise all rights referred to herein entirely without prejudice to any other rights that may be available to SPS.
- 20.3 No failure to act or neglect to act shall in any way prejudice or waive any rights of SPS.
- 20.4 No payment shall be deemed to have been received by SPS until such stage as the same has been duly cleared.
- 20.5 The Customer shall not sell or otherwise dispose of the Seed or resultant plants or crops on terms that are inconsistent to rights of SPS granted herein, and shall ensure that any sale or disposition of the Seed or resultant plants and crops is on written terms and conditions that will protect the rights of SPS granted herein.