

Effective 12 November 2016**1. Definitions**

- 1.1 "Account" means a monthly charge account to purchase Goods from the Seller on credit under these Terms.
- 1.2 "Credit application" means the Customer's application to open an Account with the Seller.
- 1.3 "Customer" means the person/s purchasing the Goods, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.4 "Seller" means AusWest Seeds and Stephen Pasture Seeds trading as divisions of PGG Wrightson Seeds (Australia) Pty Ltd.
- 1.5 "Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other), including the Goods described or referred to (whether by item, product category, brand, kind or otherwise) in the delivery docket, invoice or like equivalent document that the Seller gives the Customer, and solely for the purposes of the application of the **Personal Property Securities Act 2009 (PPSA)**:
- (a) where any Goods purchased from the Seller are the Customer's inventory (as defined in the PPSA), then also inventory for so long as the Customer holds it as such; and
- (b) any objects, products or mass which the Goods subsequently become a part of or an accession or accessory to; and
- (c) in the case of Goods which are used up or consumed, all resulting crops and plant product, whether harvested or not.
- 1.6 "Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 below.

2. Acceptance and Credit Accounts

- 2.1 These Terms of Trade apply to all Customers including if the Customer is a Small Business as defined in the Competition and Consumer Act 2010. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These Terms prevail in the event of any inconsistency with any other document or agreement between the Customer and the Seller.
- 2.3 If the Seller agrees to open an Account for the Customer, the Seller may impose a credit limit on the Account and alter that credit limit without notice to the Customer. If the Customer exceeds its credit limit the Seller may refuse to supply Goods to the Customer. The Seller can require that the Customer:
- (a) provide a personal guarantee, or that the Customer gets another person to act as the Customer's guarantor, in respect of the Customer's obligations to the Seller; and
- (b) get another person to provide a bond or other surety in an amount the Seller specifies to secure the Customer's obligations to the Seller. Any such guarantee, bond or other surety must be on such terms as the Seller considers appropriate.
- 2.4 The Customer or the Seller may close or suspend the Customer's Account at any time. On closure of the Customer's Account:
- (a) all the Customer's rights under these Terms terminate, except for any rights that have accrued to the Customer prior to the closure of their Account; and
- (b) all the Customer's obligations to the Seller continue under these Terms until all of the Customer's obligations to the Seller have been satisfied in full to the Seller's satisfaction.

3. Change in Ownership or Contact Details

- 3.1 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.

4. Price and Payment

- 4.1 The Customer cannot cancel an order for Product after the Seller accepts it.
- 4.2 The Seller will use its reasonable endeavours to source all Goods ordered by the Customer and/or quoted by the Seller. The Customer acknowledges that placing an order with the Seller and the Seller's acceptance of the Customer's order, does not guarantee the Seller's ability to supply the Products. If the Seller cannot provide the agreed quantity of Goods for any reason outside the Seller's reasonable control, the Seller will communicate such to the Customer, and not be liable for that shortfall.
- 4.3 The agreed Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Customer which will be based on the Seller's current price list (available to the Customer at any time) at the date of delivery of the Goods ; or
- (b) where a quote is provided and accepted by the Customer, the Seller's quoted price (subject to clause 4.4) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 4.4 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested.
- 4.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Seller, which may be:
- (a) the end of the month following the month in which a statement is posted to the Customer's address or address for notices;
- (b) the date specified on any invoice or other 'special offer' as being the date for payment; or
- (c) on delivery of the Goods;
- (d) before delivery of the Goods;
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Seller.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Seller.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price. All amounts payable by the Customer to the Seller will be paid in full in cleared funds, without any set-off, counterclaim or deduction.
- 4.8 The Seller may deduct (without prior notice) any money that the Customer owes to the Seller from money that the Seller owes to the Customer or that the Seller holds on the Customer's behalf. The Customer authorises the Seller to apply (without prior notice) any moneys:
- (a) held by the Seller or any subsidiary on the Customer's behalf on any account in or towards payment of any amount owing to the Seller; and
- (b) received by the Seller from the Customer or on the Customer's account in payment of any amount owing to the Seller.

5. Delivery of Goods

- 5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods; or
- (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.

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- 5.2 The cost of delivery is in addition to the Price (ex Warehouse), unless otherwise agreed
- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 6. Risk**
- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6.3 If the Customer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 7. Title**
- 7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 7.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 7.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 that the Customer is only a bailee of the Goods and must return the Goods to the Seller on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value.
 - (d) the Customer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
 - (e) the Seller may recover possession of any Goods in transit whether or not delivery has occurred.
 - (f) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller.
 - (g) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 Upon assenting to these terms and conditions the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 8.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Seller;
 - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The Seller and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by the Seller, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Customer must unconditionally ratify any actions taken by the Seller under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 9. Security and Charge**
- 9.1 In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 9.2 The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 10. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 10.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Seller to inspect the defect.
- 10.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 10.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Customer has paid for the Goods.
- 10.7 If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;
 - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 10.8 Subject to this clause 10, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 10.1; and
 - (b) the Seller has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 10.9 Notwithstanding clauses 10.1 to 10.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Seller;
 - (e) fair wear and tear, any accident, or act of God.
- 10.10 The Seller may in its absolute discretion accept non-defective Goods for return
- 10.11 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
- 10.12 The Customer agrees that taking into account the Price that clause 10 in its entirety provides a fair balance between, causes no detriment to and is necessary to protect, the commercial interests of both the Customer and the Seller.
- 11. Intellectual Property and terms specific to seed, plant, stock and sprays**
- 11.1 Where the Seller has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Seller, unless otherwise agreed.
- 11.2 The Seller retains ownership of its intellectual property including any intellectual property held in any seed or plant varieties. The Seller understands that all seeds, plants, bulbs and tubers have been taken from reliable stocks, and comply with industry-accepted standards on purity, germination and description and where the product complies with industry-accepted standards on purity, germination and description, the Seller accepts no liability in relation to any planting or crop. Any seed sold as a PROTECTED SEED VARIETY (under the Plant Breeder's Rights Act 1994) may not be used for seed production or re-sold to Seed Wholesalers without the Seller's written consent.
- 11.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.
- 12. Default and Consequences of Default**
- 12.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend the supply of Goods to the Customer or close the Account under clause 2.4. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 12.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Cancellation**
- 13.1 The Seller may cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Seller shall repay to the Customer any money already paid by the Customer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14. Privacy Act 1988**
- 14.1 The Customer agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.
- 14.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Seller, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or

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- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Seller is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Customer by the Seller has been paid or otherwise discharged.
- 15. General**
- 15.1 **Waiver:** The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 15.2 **Severability:** If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.3 **Governing Law:** These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Victoria which the Seller has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.4 **Consequential Loss:** Notwithstanding any other provision in these Terms, the Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 15.5 **No set off:** The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6 **Variation:** The Seller may in its absolute discretion change these Terms at any time by publication on its website www.ausweststephenseeds.com.au. The change will take effect from the time specified. If the Customer does not wish to agree to the new Terms, the Customer can request to negotiate the new Terms and/or close its Account under clause 2.4.
- 15.7 **Force majeure:** Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8 **Authority:** The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 15.9 **Entire Agreement:** These Terms constitute the entire agreement between the Seller and the Customer, and supersede all representations, agreements and other communications made by the Seller.
- 15.10 **Confidentiality:** Both the Seller and the Customer must keep completely confidential all information regarding the strategies, business affairs, accounts, finance or contractual arrangements of the other.
- 15.11 **Assignment:** The Customer may transfer any right or benefit under these Terms with the Seller's prior written agreement. The Seller may transfer its rights and obligations under these Terms to a purchaser of the Seller's business or to a related company or for business efficiency by notifying the Customer in writing.
- 15.12 **Disputes:** Any dispute between the Seller and the Customer will be discussed between the parties in the spirit of goodwill.
- 15.13 **Relationship:** The relationship between the Customer and the Seller is as independent purchaser and seller. There is no partnership, joint venture, employment or agency relationship. An agent or representative of the Seller is not authorised to make any representations, warranties or agreements that the Seller has not confirmed in writing. The Seller is not bound by unauthorised statements.