



## Terms of Trade

These Terms will apply to every sale of Goods. Unless expressly accepted in writing by the Supplier, any qualification of these Terms contained in any document issued by the Customer shall be of no force or effect. These Terms constitute the entire agreement between the Supplier and the Customer, and no variation of or addition to these Terms will be binding unless reduced to writing and signed by the Supplier and the Customer or their duly authorised representatives.

### 1. Definitions

- 1.1 **Australian Consumer Law** means Schedule 2 to the Competition and Consumer Act (as amended or replaced from time to time);
- 1.2 **Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth) (as amended or replaced from time to time);
- 1.3 **Customer** means the party who enters into these Terms with the Supplier, for the supply of Goods from the Supplier to the Customer;
- 1.4 **Goods** means goods supplied by the Supplier to the Customer pursuant to these Terms;
- 1.5 **PPSA** means the *Personal Property Securities Act 2009* (Cth) (as amended or replaced from time to time);
- 1.6 **Supplier** means **WILKEI SEEDS PTY LTD** ACN 75 644 924 112 and/or **BL FARMER & RE FARMER** ABN 97 183 072 529 as applicable; and
- 1.7 **Terms** means these terms of trade.

### 2. Price

Prices quoted in the Supplier's price lists, quotes and advertising literature are for guidance only and they are exclusive of GST unless otherwise indicated (which will be included). The contract price of the Goods sold to the Customer will be as agreed in writing between the Supplier and the Customer from time to time.

### 3. Payment

- 3.1 The contract price of Goods shall be paid without deduction within 7 days of the date of issue of an invoice in relation to the Goods supplied, or on such terms as the Supplier and the Customer may otherwise agree in writing.
- 3.2 The Customer must make payment in such manner as the Supplier directs from time to time by written notice to the Customer, and where the Supplier has extended credit to the Customer, the Supplier reserves the right to revoke the provision of credit at any time.
- 3.3 The Supplier reserves the right to suspend or cancel the supply of further Goods if the terms of payment are not strictly adhered to by the Customer, or if the Customer is in breach of or default under any other subsisting agreement between the Supplier and the Customer.
- 3.4 If the Customer fails to pay any sum to the Supplier by the due date then, although no demand for payment may have been made, the sum in respect of which such default is made or so much thereof as shall from time to time remain unpaid shall bear simple interest at the rate which is 12% p.a., and such interest shall accrue and be recoverable from day to day.

- 3.5 All costs and expenses incurred by the Supplier in recovering any outstanding money (including, without limitation, debt collection agency fees or lawyer's costs on a solicitor-own client basis) shall be paid by the Customer.

### 4. Australian Seed Federation Codes of Practice

The Customer acknowledges the Codes of Practice provided by the Australian Seed Federation (**ASF**) will apply to the sale and purchase of the Goods.

### 5. Delivery and risk

- 5.1 Once an order has been placed by the Customer, and accepted by the Supplier, it cannot be cancelled by the Customer. The supply of Goods is subject to availability, and the Supplier reserves the right to suspend or discontinue the supply of Goods to the Customer.
- 5.2 The Supplier reserves the right to deliver part of an order to the Customer, and the Customer agrees to accept any part order so delivered. Failure by the Supplier to deliver any part of an order shall not entitle the Customer to cancel the balance of the order and in the event of the Customer defaulting on payment of any part of an order, the Supplier shall be entitled to treat the default as a breach of contract relating to the total order or any or all part orders of such order.
- 5.3 Where a time for delivery is agreed, the Supplier will take all reasonable action to deliver the Goods on time, but time shall in no circumstances be deemed of the essence, and the Supplier shall not be liable for any loss or damages suffered by the Customer arising out of, or in relation to, a delay in delivery by the Supplier.
- 5.4 Unless otherwise agreed in writing between the Supplier and the Customer:
  - (a) the Customer will be responsible and liable for the collection and transport of Goods from the Supplier's designated storage premises in Australia (as outlined in the Supplier's acceptance or acknowledgment of the Customer's order) (**Designated Storage Premises**); and
  - (b) risk in the Goods will pass to the Customer upon completion of loading of the Goods for transport from the Designated Storage Premises, whereafter the Customer accepts liability for the safe custody of the Goods and agrees to indemnify the Supplier for any loss or damage thereto until property and title in the Goods passes to the Customer.
- 5.5 If the Supplier and Customer have agreed in writing that the Supplier will deliver the Goods to the Customer's designated premises as provided in the Customer's order (**Customer's Premises**) then unless otherwise agreed in writing between the Supplier and the Customer:
  - (a) the Customer must pay the delivery fees (as outlined in the Customer's order or notified by the Supplier in its acceptance or acknowledgment of the Customer's order or as otherwise agreed between the parties in writing) in accordance with clause 3; and

- (b) risk in those Goods will pass to the Customer upon completion of delivery of the Goods to the Customer's Premises, whereafter the Customer accepts liability for the safe custody of the Goods and agrees to indemnify the Supplier for any loss or damage thereto until property and title in the Goods passes to the Customer.
- 5.6 The Customer must effect and maintain insurance with a recognised and reputable public insurance company for Goods for their full insurable or replacement value (whichever is the higher) from the time they leave the Designated Storage Premises or from delivery of the Goods to the Customer's Premises (as the case may be pursuant to clauses 5.4 and 5.5) until the time title in the Goods passes to the Customer.
- 6. Retention of title and security interest**
- 6.1 Property in and legal and beneficial ownership of the Goods shall remain with the Supplier until the Customer has made payment in full in cleared funds of the contract price of those Goods and any other money owing by the Customer to the Supplier, and pending such payment the Customer:
- (a) shall hold the Goods as fiduciary bailee and agent for the Supplier;
  - (b) shall retain the Goods in a manner such that they are readily identifiable as the Supplier's property;
  - (c) shall not in any way deal with, or part with possession of, the Goods or part thereof or attempt to do so;
  - (d) shall not make any new object from the Goods, or mix or incorporate them into or with other Goods;
  - (e) shall handle and store the Goods with due care; and
  - (f) shall not use the Goods for any purpose whatsoever.
- 6.2 If the Customer defaults in payment of the contract price or any other money owing by the Customer to the Supplier:
- (a) the Supplier and its nominees shall have the right to enter the premises where the Goods are believed to be stored to take possession of all or any of the Goods, and for this purpose the Customer shall grant or cause to be granted reasonable access rights and the Supplier shall be entitled to do all things required to secure possession;
  - (b) upon taking possession of Goods, the Supplier shall thereafter be entitled to sell and dispose of them or any of them, either together or in parcels, at such time or times, and place or places, and either by public auction or private contract or partly by one and partly by the other, to any person or persons, for such price or prices as the Supplier may deem proper or expedient, with power for the Supplier to make any other terms and conditions in regard to such sale or sales as the Supplier may think proper, without being answerable or accountable for any loss, diminution in price, costs or expenses occasioned by any such sale;
  - (c) the Supplier shall be entitled to apply the net proceeds of sale in reduction of the money owing by the Customer to the Supplier (including, without limitation, that referred to in clause 6.2(d)(2)), and shall pay any surplus to the Customer;
- (d) if the Supplier exercises any of the rights set out in this clause 6.2, the Customer:
- (1) will not have any claim whatsoever against the Supplier for breach of contract or otherwise;
  - (2) must indemnify the Supplier from and against any claim against the Supplier arising out of its taking possession of the Goods; and
  - (3) must reimburse the Supplier on demand in respect of the costs and expenses incurred by the Supplier in exercising or attempting to exercise those rights including, without limitation, costs of taking possession, storage and transportation.
- 6.3 Notwithstanding clause 6.1, before the Customer has obtained legal and beneficial ownership in the Goods, it is entitled to sell the Goods (including goods into which the Supplier's Goods have been mixed), in the ordinary course of its business, provided that the Customer:
- (a) shall hold the proceeds of that sale of the Goods on trust for and as agent for the Supplier immediately when they are receivable or are received; and
  - (b) must either pay the amount of the proceeds of sale to the Supplier immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Supplier.
- 6.4 Notwithstanding clause 6.1, if the Customer makes any new object from the Goods, or incorporates or mixes them into or with other goods, before all monies payable by the Customer have been paid to the Supplier:
- (a) those new or other goods or objects will be held on trust for the Supplier; and
  - (b) if those new or other goods or objects are supplied by the Customer to any other person, the Customer shall hold the proceeds of that supply of the goods or objects on trust for and as agent for the Supplier immediately when they are receivable or are received, and the Customer must either pay the amount of the proceeds of supply to the Supplier immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for the Supplier.
- 6.5 Notwithstanding clause 6.1, if the Customer installs, incorporates or affixes the Goods to or in land or fixtures to land, before all monies payable by the Customer have been paid to the Supplier, the Customer shall hold all proceeds of that supply on trust for and as agent for the Supplier immediately when they are receivable or are received, and the Customer must either pay the amount of the proceeds of supply to the Supplier immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit-taking institution as trustee for the Supplier.
- 6.6 The Customer acknowledges and agrees that by assenting to these Terms, which constitute a security agreement for the purposes of the PPSA:
- (a) the Customer grants a security interest to the Supplier in all Goods now or in the future supplied by the Supplier to the Customer (or to its account) during the continuance of the relationship between the Supplier and the Customer, and the proceeds of those Goods;

- (b) any purchase it makes on credit terms or on a retention of title basis pursuant to these Terms, will constitute a purchase money security interest (**PMSI**) for the purposes of the PPSA, and the PMSI will continue to apply to any Goods coming into existence, and the proceeds of the sale of Goods coming into existence, on or after the date of these Terms;
- (c) the Supplier will continue to hold a security interest in the Goods in accordance with, and subject to, the PPSA, notwithstanding that the Goods may be processed, commingled or become an accession with other goods;
- (d) any security interest held by the Supplier will be a continuing and subsisting interest in the Goods, which will have priority to the fullest extent permitted by law over all other registered or unregistered security interests;
- (e) until title in the Goods passes to the Customer, it will keep all Goods supplied by the Supplier free, and will ensure all such Goods are kept free, of any charge, lien or security interest and not otherwise deal with the Goods in a way that will or may prejudice any rights of the Supplier under these Terms or the PPSA; and
- (f) in addition to any other rights under these Terms or otherwise arising, the Supplier may exercise any and all remedies afforded to it as a secured party under the PPSA, including, without limitation, entry into any building or premises owned, occupied or used by the Customer, to search for, seize, dispose of or retain those Goods in respect to which the Customer has granted a security interest to the Supplier.
- 6.7 The Customer will, whether before or after Goods are supplied under these Terms, do such acts and provide such information (which information the Customer warrants to be complete, accurate and up to date in all respects) as in the opinion of the Supplier (acting in its absolute discretion) may be required or desirable to enable the Supplier to perfect under the PPSA the security interest created by these Terms.
- 6.8 In addition to the security interest granted pursuant to clause 6.6 and in consideration for the Customer agreeing to supply Goods to the Customer on credit terms, the Customer grants a security interest over all of its present and after acquired personal property to secure payment and performance of all of its obligations under these Terms.
- 6.9 To the extent permitted by law the Customer waives any right to receive a copy of a verification statement under section 157 (or otherwise) of the PPSA and agrees as to any contract between the Supplier and the Customer for the supply of Goods governed by these Terms, to the extent permitted by law, to contract out of each and every provision permitted by section 115(1) of the PPSA, except section 115(1)(g), to the intent that the Supplier will preserve its right to seize collateral, and the Customer agrees to waive its rights referred to in section 115(1).
- 6.10 The Customer undertakes to:
- (a) not register or permit to be registered a Financing Change Statement (as defined under the PPSA) in any of the Goods in which the Supplier has a security interest pursuant to these Terms; and
- (b) provide the Supplier not less than 7 days' prior written notice of any proposed change in the Customer's name, address, contact numbers, business practice or such other change in the Customer's details which are registered on the Personal Property Securities Register, to enable the Supplier to register a Financing Change Statement (as defined by the PPSA), if the Supplier deems it necessary (in its sole discretion).
- 6.11 The Customer agrees to pay the costs, charges and expenses of and incidental to the need for, or desirability of registration of, a financing statement or financing change statement or any action taken by the Supplier to comply with the PPSA or to protect its position under the PPSA. The Customer agrees to pay any costs incurred by the Supplier, including, but not limited to, legal costs on a solicitor-own client basis, arising from any disputes or negotiations with third parties claiming an interest in any Goods supplied by the Supplier.
- ## 7. Return of Goods
- To the extent permitted by law:
- 7.1 the Supplier will only accept the return of Goods and bear the cost of return freight if the Supplier is legally obliged to repair or replace those Goods or the Goods were delivered to the Customer as a result of the Supplier's error, but not otherwise. If so required by the Supplier, the Customer will return Goods to the Supplier's nominated representative;
- 7.2 the Customer will not return Goods for repair or replacement until, following receipt of the Customer's written notice that Goods require repair or replacement, the Supplier's agent has inspected the Goods and advised the Customer of an authorisation number which the Customer must quote to the Supplier in all subsequent dealings relating to the relevant Goods; and
- 7.3 subject to the foregoing, receipt by the Supplier or by any of its agents or representatives of Goods returned, will not constitute or be deemed to constitute the Supplier's acceptance of the return of those Goods for any purpose, and those Goods will be returned to the Customer at the Customer's expense.
- ## 8. Termination of supply
- The Supplier may at any time by written notice to the Customer terminate its obligation to supply Goods to the Customer upon the happening of any of the following:
- 8.1 any action is taken for, or with a view to, the liquidation (including provisional liquidation), winding up, official management, bankruptcy or insolvency (or equivalent) of the Customer and such action remains pending for a period of 21 days thereafter, unless the Customer satisfies the Supplier (in its absolute discretion) of the Customer's solvency;
- 8.2 the Customer becomes insolvent or is unable or deemed to be unable to pay its debts or ceases or threatens to cease to carry on its business or a major part of its business or the Customer enters into dealings with any of its creditors with a view to avoiding, or in expectation of, insolvency or stops or threatens to stop payments generally or a receiver or receiver and manager is appointed to, or an encumbrancee takes or proposes to take possession of, any material part of the assets of the Customer;
- 8.3 the Customer enters into any arrangement, assignment or composition with or for the benefit of its creditors or any class of them;
- 8.4 any distress, attachment or execution is issued, levied or enforced against the Customer which is not satisfied or challenged in good faith by appropriate means within 14 days;
- 8.5 a person is appointed under any applicable law to investigate any part of the Customer's business or affairs or an application is made for the appointment of

such an inspector, or an administrator (or equivalent) is appointed to the Customer or any steps are taken for such an appointment; or

- 8.6 any other event occurs or circumstance arises, financial or otherwise, which, in the reasonable opinion of the Supplier, is likely materially and adversely to affect the ability of the Customer to observe any of its payment obligations to the Supplier,

and in any such event the Customer shall be deemed to be in breach of its obligation to purchase those Goods.

## 9. **Limitation of liability**

- 9.1 The Customer acknowledges, agrees, represents and warrants that:
- (a) the use of the Goods is outside the control of the Supplier, and the Customer is satisfied that the Goods have (unless the Goods are returned pursuant to clause 7) the condition, characteristics, quality and attributes that will make them suitable or fit for any ordinary or special purpose required for those Goods, even if that purpose was made known to the Supplier;
  - (b) the Customer has or will in a timely manner conduct all mandatory or prudent tests and apply all mandatory or prudent quality control checks and procedures to ensure the Goods and any product that is produced from or incorporates them will be without defect and suitable or fit for any purpose required for them; and
  - (c) it has not relied upon any statement, representation, warranty, guarantee, condition, advice, recommendation, information, assistance or service provided or given by the Supplier or anyone on its behalf, or apparently on its behalf, in respect of the Goods, other than those that are expressly contained in these Terms.
- 9.2 Subject to the remainder of this clause 9, the Supplier offers no guarantee or warranty in respect of the Goods (including as to the description, productiveness and any other qualities) it supplies to the Customer, and all representations, conditions and warranties of any nature made in relation to the Goods are expressly excluded from these Terms and shall not bind the Supplier.
- 9.3 To the extent permitted by law, where the Supplier becomes liable to the Customer in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of Goods to the Customer, the Supplier's liability will be limited, at the Supplier's sole discretion to either:
- (a) in relation to the supply of Goods:
    - (1) the replacement of the Goods or the supply of equivalent goods;
    - (2) the repair of the Goods;
    - (3) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
    - (4) the payment of the cost of having the Goods repaired.
- 9.4 If any action is brought by the Customer against the Supplier, pursuant to Part 5.4 Division 1 of the Australian Consumer Law, the Supplier's liability will be as prescribed in Part 5.4 Division 1 of the Australian Consumer Law.
- 9.5 To the extent permitted by law, the Customer releases and indemnifies the Supplier and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands

(including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Customer and whether at common law, under tort (including (without limitation) negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of or in relation to any breach by the Customer of any warranty provided by it under clause 9.1.

- 9.6 To the extent permitted by law, the Supplier will have no liability to the Customer however arising, including, without limitation, under any cause of action or theory of liability, in respect of special, indirect or consequential damages, loss of profit (whether direct or indirect) or loss of business opportunity, arising out of or in connection with these Terms or any supply made pursuant to them.

## 10. **Indemnity**

The Customer shall keep the Supplier indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without limitation, claims of death, personal injury, damage to property and consequential loss (including loss of profit) which may be made against the Customer or which the Customer may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such costs, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract or guarantee by, or negligence of, the Supplier or its duly authorised employee or agent.

## 11. **Cost recovery**

Any expenses, costs or disbursements incurred by the Supplier in recovering any outstanding monies owing by the Customer, including, without limitation, debt collection fees and solicitors costs (on a full indemnity basis), shall be paid by the Customer.

## 12. **Intellectual property**

- 12.1 The Customer acknowledges that the sale and purchase of the Goods does not confer on the Customer any licence or rights under any patent, trade mark, design or copyright which is the property of the Supplier. The Customer shall not alter, remove or otherwise tamper with any of the trade or other marks or numbers attached to or placed upon the Goods by the Supplier.
- 12.2 The Customer warrants to the Supplier that all documents provided by the Customer are accurate and that the Supplier is entitled to use all such documents for the purposes of these Terms and that such use does not infringe any third party's intellectual property rights. The Customer indemnifies the Supplier against all claims and all losses and damages incurred by the Company as a result of documents provided by the Customer to the Supplier for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- 12.3 If the Customer receives any confidential information from the Supplier the Customer may not use or disclose such information unless it receives the prior written consent of the Supplier, such information enters the public domain (other than as a result of a breach of this clause) or the use or disclosure is required by law.
- ## 13. **Confidentiality**
- 13.1 Neither the Supplier nor the Customer will disclose any information of the kind referred to in section 275(1) of the PPSA.
- 13.2 The Customer will not authorise the disclosure of any information of the kind referred to in section 275(1) of the PPSA at any time.

**14. Severability**

The whole or any part of a clause of these Terms shall be capable of severance without affecting the rest of these Terms.

**15. Governing law**

These Terms shall be governed by the laws of the State of South Australia (excluding its conflict of laws provisions) and the Customer must submit to the non-exclusive jurisdiction of the courts of or exercising jurisdiction of that State and the Customer waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**16. Waiver**

If the Supplier elects not to exercise any of its rights arising as a result of a breach of these Terms, that will not constitute a waiver of any rights of the Supplier relating to any subsequent or other breach.

**17. Force majeure**

The Supplier will not be in breach of any contract with the Customer where it results from any act, matter or thing beyond the reasonable control of the Supplier.