

1. Definitions

“**Agreement**” means these Terms and, where applicable, any written sale contract and/or agreement between the Buyer and the Seller. “**Buyer**” and/or “**you**” means the purchaser of Goods from the Seller.

“**Goods**” means all goods supplied by the Seller to the Buyer from time to time.

“**GST**” means goods and services tax pursuant to the Goods and Services Tax Act 1985 (as amended or replaced).

“**Intellectual Property Rights**” means all rights to, and any interests in, any patents, designs, trademarks, copyright, know-how, trade secrets, plant variety rights and any other proprietary rights or forms of intellectual property (able to be protected by registration or not).

“**Person**” includes a body corporate and vice versa.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Seller**” means Winseed International Limited and its successors and assigns.

“**Terms**” means these Terms and Conditions as replaced or amended from time to time as advised by the Seller.

“**Website**” means www.winseed.co.nz

2. Terms of contract

- 2.1 By requesting the Seller to supply Goods to the Buyer, the Buyer acknowledges and agrees (or is deemed to have acknowledged or agreed) that:
- it has assented or agreed to these Terms which will form part of each contract notwithstanding anything that may be stated to the contrary; and
 - this Agreement creates in favour of the Seller a security interest in the Goods which are the subject of the contract and any crops resulting from the Goods (“**Resultant Crops**”).

3. Price

- 3.1 The price for the Goods will be either as quoted to the Buyer in writing or, if no written quote is provided, at the Seller’s standard charges applying at the time. Unless otherwise agreed in writing any quoted price may be altered prior to delivery of the Goods if the Seller’s costs fluctuate materially. The Seller may withdraw any quotation before it is accepted, and in any event any quotation will lapse without notice 30 days after it is given.
- 3.2 Unless otherwise agreed in writing prices are given in US dollars and do not include GST.

4. Payment

- 4.1 Unless otherwise agreed in writing, payment for the Goods is due by the terms as declared on the Commercial Invoice (“**Due Date**”).
- 4.2 In the event that payment is not received by the Due Date and without prejudice to any other remedies available to the Seller, the Seller may:
- cancel or withhold the supply of further Goods; and
 - charge default interest on monies overdue at a rate of the overdraft rate payable by us to our bankers at the time of default and during such default plus 5% which will accrue on a daily basis and compound monthly from the Due Date until all amounts due, including default interest, have been paid in full. All amounts received by the Seller will be applied first in payment of default interest.
- 4.3 All costs incurred by the Seller in recovering overdue monies (including court, solicitor and debt collection costs) are payable by the Buyer.

5. Title

- 5.1 Ownership of the Goods remains with the Seller and does not pass to the Buyer until the Seller receives full payment of all amounts due and payable from the Buyer and the Buyer has satisfied all of its obligations to the Seller. Until all amounts owing to the Seller have been paid, the following shall apply:
- the Buyer will hold or deal with the Goods and any Resultant Crop as a fiduciary of the Seller and deal with it as agent and on behalf of the Seller (but the Buyer will not hold itself out to be the Seller’s agent to any third parties);

- the Buyer will keep the Goods separate from other goods or otherwise ensure that the Goods and any Resultant Crop are separately identified or identifiable; and
- the Buyer must not grant any interest or charge over the Goods to any person.

- 5.2 The Buyer will not assign or purport to assign to any other person the right to receive any such proceeds held or owing to the Buyer by a third party in respect of the Goods.
- 5.3 The Buyer grants the Seller an irrevocable licence to take any action it considers necessary at any time to protect the Goods or its security interest in the Goods (including, without limitation, taking possession of the Goods at any time without notice and entering onto the land and premises where any Goods are, regardless of whether or not an occupier is present, and repossessing the Goods) without incurring any liability to the Buyer or (to the extent permitted by law) any other person. To the extent permitted by law, the Seller will not be liable to the Buyer or any third party for any loss or damage caused by its actions under this clause and the Buyer indemnifies the Seller, its servants and agents, for any alleged liability resulting from the repossession, and the Buyer will pay all costs incurred by the Seller in respect of the repossession.

6. Delivery and Risk

- 6.1 Unless otherwise agreed, the Buyer shall be responsible for the cost of and arranging transportation of the Goods.
- 6.2 Where the Seller has agreed to deliver the Goods to the Buyer, the delivery costs will be payable by the Buyer at the prevailing rate on the date the Goods are ordered. The Seller shall use reasonable endeavours to ensure that delivery of the Goods is made according to schedule, but shall not be responsible for delivery delays due to causes beyond the Seller’s control.
- 6.3 Risk in respect of the Goods shall pass to the Buyer when the Goods are delivered to the Buyer or its carrier, or at the time the Buyer pays for the Goods, whichever is the earlier.
- 6.4 It is the Buyer’s responsibility to insure the Goods while in transit, even if the Seller has arranged transportation of the Goods.

7. PPSA (Personal Property Securities Act)

- 7.1 Without limiting anything else in these Terms, the Buyer grants to the Seller a security interest in the Goods (and all proceeds) so as to secure all payments under the Agreement and all monies owing by the Buyer to the Seller. The Buyer agrees to do all things necessary to enable the Seller to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure that the security interest is a first ranking perfected security interest over all the Goods and proceeds.
- 7.2 If the Goods subsequently becomes part of some other product or mass, then nothing in these Terms shall limit the application of sections 82 to 86 of the PPSA.
- 7.3 The Buyer waives its right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 7.4 The Buyer agrees that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Buyer agrees to waive its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.

8. Plant Variety Rights

- 8.1 Where the Goods are subject to protection under the Plant Variety Rights Act 1987, the Buyer will comply with the provisions of that Act. The Buyer agrees to indemnify and hold harmless the Seller for any damage, harm, injury, loss (including, without limitation, consequential loss), expense, cost or any other thing arising directly or indirectly from the Buyer’s failure to comply with this clause 8.1.
- 8.2 Where Goods comprise a protected seed variety, the Seller puts you on notice, and you acknowledge that the Seller is only permitted to market and sell the Goods on the condition that the Goods are not multiplied further for seed production, resold or traded in any way, or anything else the Seller may specify, without the permission of the plant breeder. The Buyer agrees not to do, or omit to do, anything

which would cause, either directly or indirectly, the Seller to breach its obligations to the plant breeder.

9. Intellectual Property

9.1 The Buyer acknowledges that all Intellectual Property Rights in the Goods are owned by the Seller and except as expressly set out in this Agreement, no right or licence in the Intellectual Property Rights is transferred or granted to the Buyer.

9.2 Without limiting clause 8, the Buyer acknowledges and agrees:

- (a) the Buyer shall not infringe any of the Seller's Intellectual Property Rights;
- (b) the Buyer shall protect the Seller's Intellectual Property Rights against infringement by others;
- (c) the Buyer shall inform the Seller immediately of any potential infringement of the Seller's Intellectual Property Rights or other claims/proceedings in respect of the Intellectual Property Rights and provide such reasonable assistance to the Seller to protect the Intellectual Property Rights; and
- (d) the Seller shall have the sole right to take enforcement action in respect of infringement of the Seller's Intellectual Property Rights.

10. Seller's Liability

10.1 Except to the extent of any written warranties given by the Seller to the Buyer, all warranties and representations, including those expressed or implied by law, are excluded to the extent permitted by law.

10.2 The Seller shall not be liable:

- (a) for loss caused by any factors beyond the Seller's reasonable control, including any act of God;
- (b) where the Buyer has altered or modified the Goods, misapplied the Goods, or have subjected them to any unusual or non-recommended use, storage, servicing or handling;
- (c) for any delay in delivery of the Goods or replacement Goods;
- (d) where the Buyer does not comply with the terms of any written warranty;
- (e) for any indirect or consequential loss of any kind including, without limitation, loss of profits.

10.3 Without limiting clause 10.2, the Seller's total liability for defective or damaged Goods supplied by the Seller or otherwise arising under this Agreement is limited at the Seller's option to either:

- (a) replacing the Goods; or
- (b) refunding the price of the Goods.

10.4 The Buyer must notify the Seller within 30 days of delivery or collection of the Goods of any complaint the Buyer may have in respect of the Goods. The Seller will not be liable for any defective or damaged Goods unless notification is given within this time period.

10.5 The buyer has the responsibility of testing the Goods for germination at an ISTA accredited laboratory within 30 days of arrival date and will provide the Seller with evidence of that action. Failure to do so, within that time, means the buyer has sole responsibility and risk for the germination performance of the seed after that date.

10.6 Without limiting any other provision of these Terms, the Buyer acknowledges and agrees that the description under which the Goods are sold represents no more than what the Seller reasonably believes the Goods to be and does not constitute a guarantee or warranty that any crop resulting from the Goods will grow true to that description. The Seller gives no warranties in respect to the description, growth, quality, palatability, toxicity or purity of the Goods and will not be responsible for any unexpected or adverse results.

11. Guarantee

11.1 Where there is a guarantor specified under any written sale contract, the guarantor guarantees the performance by Buyer of its obligations under this Agreement and it is acknowledged and agreed that as between the Buyer and the guarantor, the guarantor may for all purposes be treated as being primarily liable and the Seller shall be under no obligation to take proceedings against the Buyer before taking any proceedings against the guarantor.

12. Consumer Guarantees Act and Fair Trading Act

12.1 The Buyer and the Seller each agree that the Goods are both supplied and acquired in trade and therefore the Consumer Guarantees Act 1993 does not apply.

12.2 The parties agree that section 9, 12A, 13 and 14(1) of the Fair Trading Act do not apply to this Agreement.

13. Sale of Goods

13.1 To the extent permitted by law, none of Part 3 of the Contract and Commercial Law Act 2017, the United Nations Convention on Contracts for the International Sale of Goods (1980) or the Sale of Goods (United Nations Convention) Act 1994 apply to this Agreement.

14. Information

14.1 You (and any guarantor) authorise the Seller to collect, retain and use information about you for the purpose of carrying out credit checks, deciding whether to continue to make any goods or services available to you, debt collection or marketing.

14.2 You authorise the Seller to obtain credit reports and other information about you from any third party for this purpose.

14.3 You also authorise the Seller to provide information about you (including information relating to any default in your payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that information in their systems and use it now and in the future.

14.4 You may ask to see any personal information the Seller holds about you and ask for any details that are wrong to be corrected.

15. Cancellation

15.1 The Buyer may not cancel any order for Goods or part of it without the Seller's written consent. If the Buyer does cancel any order, in addition to any other rights the Seller may have, the Seller may retain any deposit paid.

15.2 The Seller may cancel an order or delivery of an order by giving written notice to the Buyer if the Buyer:

- (a) commits a breach of the Agreement that is incapable of remedy;
- (b) has failed to comply with a written notice given by the Seller specifying a breach of the Agreement and requiring the Buyer to remedy the breach within 14 days;
- (c) being an individual, is made bankrupt; or
- (d) being a company, is wound up or placed in liquidation or receivership, or where the Seller has reasonable grounds to believe the Buyer is insolvent or in financial difficulty.

15.3 On termination the Seller shall have the right to deal with the Goods as the Seller wishes at its absolute discretion.

16. General

16.1 Any dispute between the Buyer and the Seller in respect to the interpretation and/or performance of these Terms shall be determined in accordance with International Seed Federation Rules ("ISF Rules"), to the extent that ISF Rules do not conflict with these Terms.

16.2 In the event that the Buyer and the Seller have entered into a written sale contract, to the extent that there is any conflict between the provision of such sale contract and these Terms, the provisions of the sale contract will prevail.

16.3 A reference to any legislation in these Terms includes a reference to any amended or substitute legislation and any regulations enacted under that legislation.

16.4 These Terms are subject to, governed by and interpreted in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to this Agreement.

16.5 Each clause of these Terms is separately binding. If any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses will continue to be valid and enforceable.

16.6 Where the Buyer comprises more than one person or entity then the obligations between those persons under these Terms is joint and several.