



## Terms and Conditions of Sale and Delivery - Bejo Seeds Pty Ltd ACN 063 449 561 (Seller)

### Article 1. Application of Terms and Conditions of Sale

1. These Terms and Conditions of Sale and Delivery (Terms), in their present form or as varied in accordance with Article 21, together with any accepted Credit Application, all accepted orders placed by a buyer (Buyer) and the 'International Seed Trade Federation Rules and Usage for the Trade in Seeds for Sowing Purposes' (for supplies of the Seller's product to Buyer's located outside Australia) for the Seller's products constitute the agreement (Agreement) between the Seller and the Buyer pursuant to which the Seller makes all supplies of the Seller's products to the Buyer. The application of these Terms to any order or other arrangement by the Seller to supply products to the Buyer may only be varied by agreement in writing between the Buyer and the Seller.
2. Any terms and conditions of the Buyer will not form part of the Agreement.

### Article 2. Prices

1. Any price quoted by the Seller is the goods and services tax (**GST**) exclusive amount, unless the price is specifically described as 'GST inclusive'.
2. The Buyer acknowledges and agrees that the Seller increases its prices (as set out in its price list) on 1 September each year. Each new price listing will invalidate the preceding one with regard to all orders placed after the issue of the new price list. The Seller will provide the Buyer with a copy of the updated price list / notify the Buyer about the updated price list before any order is placed that will be subject to the updated price list.

### Article 3. Harvesting and Processing Reserve

1. The Buyer acknowledges and agrees that all deliveries are subject to the customary seed trade harvesting and processing reserve (**Reserve**). If the Seller invokes the Reserve, the Seller is not obliged to supply, but will use its reasonable endeavours to supply, pro rata to the quantity or type of products ordered or equivalent alternatives.
2. The Seller will use all reasonable endeavours to keep the Buyer informed if it is unable to supply the quantity or type of products ordered.

### Article 4. Ordering and Delivery

1. An order placed by the Buyer will only form part of the Agreement when it has been received and accepted by the Seller. Acceptance by the Seller of any order issued by the Buyer may be in writing or by the Seller delivering the products to the Buyer which are the subject of an order.
2. If the quantity ordered in any order differs from the standard quantity applied by the Seller or a multiple thereof, the Seller may deliver the next highest quantity of product ordered by the Buyer.
3. The Seller will always act to the best of its ability in fulfilling its obligation to deliver product to the Buyer.
4. Due to the nature of the product supplied by the Seller, the product delivered by the Seller to the Buyer may have minor differences in size, packaging, number or weight to that ordered by the Buyer.
5. The Seller may deliver the products to the Buyer in installments. If the products are delivered to the Buyer in installments, the Seller may invoice each delivery installment separately.
6. Delivery will be ex works of the Seller.
7. The Seller undertakes to deliver the products to the Buyer within a reasonable period, in accordance with the sowing or planting season, and will use its reasonable endeavours to keep the Buyer informed of its anticipated delivery date and any expected delays.



8. For orders with a value of less than AUD\$250, the Seller may charge the Buyer a reasonable administrative and order handling fee, which fee will be notified to the Buyer at the time the order is placed.
9. Subject to Article 11, the Seller is not obliged to accept returns of seed but may do so at its sole discretion.

#### **Article 5. Suspension**

1. If the Buyer fails to pay any amount owing to the Seller by the due date for payment:
  - (a) the Seller's obligations under this Agreement will automatically and immediately be suspended until the Buyer has paid all amounts due and payable by it; and
  - (b) the Seller may demand full payment and/or sufficient security from the Buyer, for instance in the form of a bank guarantee to be issued by a reputable Australian banking institution, with regard to the performance of the Buyer's obligations under this Agreement.
2. The Seller may demand full payment and/or sufficient security for the performance of the Buyer's obligations under this Agreement by the Buyer before performing the Seller's obligations, if the Seller reasonably believes that the Buyer will not or cannot meet an obligation to pay any amount owing or which will be owed to the Seller by the due date for payment.

#### **Article 6. Use of Trademarks and Signs**

The Buyer may not use the Seller's trademarks, logos and/or signs or use trademarks, logos and/or signs that are similar to those of the Seller, except where the Buyer trades in the Seller's products (in their original packaging) in the ordinary course of the Buyer's business.

#### **Article 7. Retention of Title**

1. The risk in the products passes to the Buyer when the products are loaded at the Seller's warehouse for delivery to the Buyer.
2. The Seller's rights under this Article 7 secure:
  - (a) the Seller's right to receive the price of all the products sold under this Agreement; and
  - (b) all other amounts owing to the Seller under this Agreement or any other agreement between the Buyer and the Seller.
3. Until full payment in cleared funds is received by the Seller for all products supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer under this Agreement or any other contract:
  - (a) legal title and property in all products supplied under this Agreement remains vested in the Seller and does not pass to the Buyer;
  - (b) subject to (c), the Buyer must store the products separately and in such a manner and maintain any labeling and packaging of the Seller, so that the products are clearly and readily identifiable as the property of the Seller;
  - (c) the Buyer must not sell the products except in the ordinary course of the Buyer's business;
  - (d) the Buyer holds and agrees to hold the proceeds of any sale, lease or other dealing with the products for the Seller in a separate bank account with a bank which does not (and will not in the future) provide finance to the Buyer;
  - (e) in addition to any rights the Seller may have under Chapter 4 of the PPSA, the Seller may, at any time it reasonably believes that the Buyer will not or cannot meet an obligation to pay any amount owing or which will be owed to the Seller by the due date for payment, demand the return of the products and shall be entitled without notice to the Buyer and without liability to the Buyer, to enter any premises where it suspects the products may be located in order to search for and remove the products without committing a trespass, even though they may be attached or annexed to



- other goods or land not the property of the Seller, and for this purpose the Buyer irrevocably licenses the Seller to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Seller from and against all loss suffered or incurred by the Seller as a result of exercising its rights under this Article 7. If there is any inconsistency between the Seller's rights under this Article 7(3)(e) and its rights under Chapter 4 of the PPSA, this Article 7(3)(e) prevails;
- (f) the Buyer acknowledges and warrants that the Seller has a security interest (for the purposes of the PPSA) in the products and any proceeds and the Buyer must do anything reasonably required by the Seller to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Seller which, unless the Seller agrees in writing otherwise, is first priority; and
  - (g) the security interest arising under this Article 7 attaches to the products when the Buyer obtains possession of the products and the parties confirm that they have not agreed that any security interest arising under this Agreement attaches at any later time.
4. The Buyer warrants that it does not intend to use the products predominantly for personal, domestic or household purposes.
  5. The Buyer must, at its own cost, insure and keep insured the products against such risks as a prudent owner of the products would insure at their full cost price, with a reputable insurance company and note the Seller as a person to whom the benefit of such insurance policies extends for its respective rights and interests and include an acknowledgement from the insurer that it will notify the Seller not less than 30 days before cancelling any such insurance policies.
  6. The Buyer and the Seller agree that they will not disclose any of the information set out in section 275(1) of the PPSA in relation to any security interest created under this Agreement to any person (except that the Seller may do so where required due to the operation of section 275(7) of the PPSA).

#### **Article 8. Payment**

1. Payment for each supply of products made to the Buyer must be received by the Seller within 30 days of the invoice date unless otherwise agreed in writing. If the Buyer fails to make a payment by the due date, the Seller may:
  - (a) charge the Buyer interest at a rate at 1% per month on the outstanding amount as from the date of default;
  - (b) refuse to make any further deliveries under this Agreement until the amount due has been paid; and/or
  - (c) if the amount due remains unpaid after providing 7 days' written notice to the Buyer of such breach and an opportunity to rectify the breach, treat the failure of the Buyer to make payments as a repudiation of this Agreement by the Buyer. Such repudiation shall entitle the Seller to elect, without prejudice to any other rights of the Seller, to terminate this Agreement in whole or in part (including any order or part of an order) and, in either case, to recover damages for the breach of this Agreement.
2. The Seller may allocate all amounts received by the Buyer in any manner it determines including any manner required to preserve any personal property security interest in the products.
3. If the Buyer is liquidated, declared bankrupt, granted a suspension of payments or an administrator, receiver, receiver and manager or controller is appointed in respect of the Buyer, the Buyer's payment obligations will fall due immediately and the Seller will be entitled to immediately suspend the further performance of this Agreement or to immediately terminate this Agreement, all without prejudice to the Seller's right to claim damages.
4. If payment in installments has been agreed, the entire remaining amount (representing all amounts owing in respect of products already delivered) will fall due immediately without notice of default being required if the Buyer is late with payment of an installment.



## Article 9. Collection Costs

If the Buyer fails to perform one or more payment obligations under this Agreement, the actual costs incurred by the Seller of obtaining payment in and out of court will be for the Buyer's account, including all costs, charges and expenses incurred by the Seller, its legal advisers, mercantile agents and others in connection with the failure of the Buyer to comply with these Terms, the recovery of monies owed, re-possession of any products, enforcing the Seller's security interest in the products pursuant to the PPSA or otherwise.

## Article 10. Nature of Product and liability

1. The Buyer acknowledges, and the Buyer must ensure that all customers of the Buyer are made aware before they purchase the products, that:
  - (a) the product is a natural commodity and can therefore vary in variations, colour and harvesting performance and results. It is for this reason that the Seller does not guarantee that the variations, colour, and harvesting performance of the product delivered will be an exact match to any specification offered;
  - (b) all information on quality provided by the Seller will exclusively be based on reproducible tests. No direct relationship may be assumed between the information provided and the results achieved by the Buyer from the product;
  - (c) whilst the Seller tests its product in accordance with the minimum sample size requirements set out in the *International Seed Federation's International Seed Health Initiative for Vegetables Crops* and the Seller uses various disease risk management strategies to prevent and control seed transmitted diseases (including but are not limited to seed health testing programs, protected seed production, field inspections, seed treatments and other effective seed disinfection methods), due to the nature of the product sold by the Seller it does not and can not guarantee that its product will be disease free;
  - (d) the supplied information or indicated quality merely indicates the result as achieved at the time when the test was performed, with regard to the seed sample used in such test and the conditions under which it was performed. The result achieved by the Buyer will depend, among other factors, on the location and the conditions (climate, soil, nutrition, etc.) chosen by the Buyer when using the product and the measures taken during cultivation by the Buyer. The Seller is not liable or responsible for anything done to the product including any measures taken during cultivation of the product by the Buyer; and
  - (e) whilst the Seller may provide the Buyer with information and recommendations regarding the storage and seeding of its products in order to achieve optimal germination and seedling establishment, such information is given only on the basis of the Seller's experience. Germination and seedling establishment may be influenced by a number of circumstances during storage and cultivation which are outside of the Seller's control.
2. For the reasons listed in Article 10(1):
  - (a) the Seller is not liable for any loss or damage suffered by the Buyer resulting from a shortcoming in the performance of the product, except in the case of willful misconduct and/or gross negligence on the part of the Seller and/or its employees;
  - (b) the Buyer must limit, as much as possible, its loss and damage with regard to the performance of the product about which a complaint is filed with the Seller;
  - (c) if it is found that the Seller is liable to the Buyer for any loss or damage suffered by the Buyer under this Agreement, such liability will be limited to the invoice value of the delivery in question;
  - (d) the Seller excludes any liability to the Buyer for legal costs and disbursements on a solicitor and own client basis and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Buyer under or in connection with this Agreement, except in the case of willful misconduct and/or gross negligence on the part of the Seller and/or its employees;



- (e) the Seller does not guarantee that the performances rendered by the product will comply with the relevant product specifications. However the Seller will notify the Buyer if the products delivered to the Buyer do not comply with the product specifications. The Seller does not guarantee that the performances rendered by the product will comply with the purpose to which the products are put by the Buyer; and
  - (f) the Seller is not liable or responsible for any product if the Buyer processes the product or has it processed, repackages the product or has it repackaged, or uses the product incorrectly.
3. The Buyer must, and must procure that all customers of the Buyer, handle the products in accordance with any handling instructions supplied with the product.

#### **Article 11. Notification of Defects and Deficiencies**

1. The Buyer must inspect the products upon delivery, or as soon as possible after delivery (but in any event, within 14 days after delivery). In doing so the Buyer must check whether the products delivered comply with this Agreement and the order placed by the Buyer, i.e.:
  - (a) whether the correct products have been delivered;
  - (b) whether the quantity of products delivered corresponds with the order; and
  - (c) whether the products delivered meet the agreed quality requirements and specifications or - if none were agreed - the requirements and specifications that may be stipulated for normal use and/or trading purposes.
2. If visible defects or deficiencies are present in the product, the Buyer must inform the Seller in writing within 14 days after delivery, specifying the order number, packing list and/or invoice details of the defective products.
3. The Buyer must report any defects not immediately visible to the Seller in writing within 3 working days after discovery, specifying the order number, delivery note and/or invoice details, including test-results when relevant.
4. Complaints regarding any delivered product must be described by the Buyer to the Seller in such a manner that the Seller or a third party can verify them. For that purpose the Buyer must also keep records regarding its use of the product and, in the event of resale of the product, with regard to the buyers of the product. If the Buyer does not file a complaint within the aforesaid period, the complaint will not be dealt with and the Buyer's rights will expire, unless otherwise agreed by the Seller.
5. If a dispute between the parties arises concerning the germination capacity, varietal trueness, varietal purity or technical purity and health of a product, either party may request that an inspection of the product be performed by Naktuinbouw (Netherlands Inspection Service for Horticulture), whose registered office is in Roelofarendsveen, the Netherlands; and the cost of such inspection will be for the account of the unsuccessful party. The inspection will be carried out on the basis of a sample taken by the Seller for Naktuinbouw and retained by them. The result of the inspection will be binding on both parties. The parties agree that Naktuinbouw will act as an expert and not as an arbitrator.

#### **Article 12. Suitability of Product**

Information provided by the Seller in any form whatsoever is without commitment. Descriptions, recommendations and illustrations in brochures and leaflets are based as closely as possible on experiences in tests and in practice. The Seller in no event accepts any liability, however, on the basis of such information for different results obtained in the cultivated product. It is the Buyer's responsibility to determine whether the products are suitable for the intended horticultural crop and/or can be used under local conditions prior to ordering the product. The Seller accepts no liability for the Buyer failing to make its own assessment of the suitability of the product for the Buyer's intended purpose.



### **Article 13. Force Majeure**

1. The Seller will not be, or deemed to be, in default or breach of this Agreement as a result of the effects of force majeure. Force majeure includes any cause beyond the reasonable control of the Seller (such as, without limitation, an act of God, war, revolution or any other unlawful act against public order or authority, an industrial dispute including strike or other labour disturbances at either the Seller's company or at companies other than the Seller's, a governmental restraint, a shortage or unavailability of raw materials and/or other goods or services required to render the agreed performance, a shortage in production capacity or transportation, natural disaster and unforeseeable delays at sub-suppliers or other third parties on which the Seller is dependent). The Seller will not be liable for any loss incurred by the Buyer as a result of delay or failure to meet an order or to observe these Terms due to the effects of force majeure or termination of this Agreement pursuant to Article 13.3.
2. The Seller will inform the Buyer as soon as possible if it is unable to deliver the product or to deliver the product in time due to an event of force majeure.
3. If the event of force majeure lasts longer than 60 days, either party may terminate this Agreement. In that case the Seller will not be required to pay any damages to the Buyer.

### **Article 14. Seed coating & treatment**

1. The Seller may, on request, agree to arrange to have the product coated or treated on behalf of the Buyer.
2. The Buyer acknowledges and agrees that:
  - (a) the Seller is under no obligation to arrange to have the product coated or treated and may refuse to do so in its absolute discretion;
  - (b) if the Seller does arrange to have the product coated or treated on behalf of the Buyer, the Seller does so only as agent for the Buyer and the Buyer remains fully responsible and liable to the third party for the cost of such services;
  - (c) under no circumstances will the Seller be liable or responsible for the coating or treatment services provided by the third party or any damage or defect caused to the product as a result of such services being provided by that third party. All such services will be provided on the basis of the third party's own terms and conditions; and
  - (d) the Seller does not and cannot guarantee the standard or performance (including harvesting results) of any product that has been coated or treated by a third party.

### **Article 15. Conversion**

1. If a provision in this Agreement is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this Agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of this Agreement.
2. Article 15.1 does not apply and has no effect if severance of the provision of this Agreement in accordance with Article 15.1 materially affects or alters the nature or effect of the parties' obligations under this Agreement.

### **Article 16. Applicable Law**

1. This Agreement is governed by the laws of the State of Victoria, Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
2. If the Seller and the Buyer do not have their registered offices in the same country, the 'United Nations Convention on the International Sales of Goods' (the Vienna Sales Convention) will also apply, in so far as it does not differ from these Terms and in so far as it does not conflict with the laws of Australia.





### Article 17. Reproduction and/or Multiplication Reservation

1. The Buyer is not entitled to use the products and/or derived components and/or derived plant material from the products for further multiplication and/or reproduction of parent material.
2. The Buyer is also not entitled with respect to the products and/or derived components and/or derived plant material of the products to:
  - (a) use them for multiplication;
  - (b) offer them for sale;
  - (c) sell them;
  - (d) import and export them; and/or
  - (e) keep them in stock, for any of these or any similar purposes.This prohibition includes all varieties derived from a product delivered by the Seller.
3. In the case of the resale of the products by the Buyer, the Buyer must ensure that its buyer complies with the obligations imposed on the Buyer under this Article 17. The Buyer must grant the holder of plant breeders' rights, or a party acting on its behalf, direct access to its business and premises, including in particular its greenhouses, to enable the Seller to carry out an inspection of the Buyer's premises if the Seller, in its absolute discretion, suspects that the parent material is being multiplied and/or reproduced by the Buyer. Business in this sense also includes all activities performed by representatives of the Buyer and third parties acting on behalf of the Buyer. The Buyer must, at the Seller's request, grant immediate access to all administrative records of the Buyer with regard to the relevant plant material.

### Article 18. GST

1. Words or expressions used in this Article 18 which are defined in the A New Tax System, (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this Article.
2. Despite any other Article in these Terms, if a party makes a supply (Supplier) under or in connection with the Agreement on which GST is payable (not being a supply the consideration for which is specifically described as 'GST inclusive'):
  - (a) the consideration payable or to be provided for that supply but for the application of this Article (GST exclusive consideration) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST exclusive consideration multiplied by the prevailing rate of GST (**GST Amount**); and
  - (b) subject to Article 18.3, the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
3. The Recipient need not pay the GST Amount in respect of a taxable supply made under or in connection with the Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

### Article 19. Confidentiality of Seller's Information

1. The Buyer agrees to keep confidential the Seller's financial, technological (including specifications and varieties) and business information, disclosed in the course of, or arising from, this Agreement (Information).
2. All Information remains the property of the Seller and may only be used by the Buyer in fulfilling its rights and obligations under this Agreement. Otherwise, no Information may be disclosed to any third party without the Seller's prior written consent.
3. The Buyer agrees to effect and maintain adequate security measures to safeguard the Information from access or use by any unauthorised person and not to disclose any terms of this Agreement or



Information except where disclosure is necessary to comply with this Agreement or any other agreement between the parties, if the disclosure is required by law, if the Information is in the public domain as at the date of this Agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the Buyer) or the Seller consents in writing to the disclosure of the Information before the disclosure is made by the Buyer.

4. The Buyer must, on becoming aware of any breach of confidentiality, immediately inform the Seller, investigate the breach and report to the Seller as to the outcome of the investigation.

#### **Article 20. Enforcement of Security Interest**

1. If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under this Agreement, the Buyer agrees that the following provisions of the PPSA will not apply:
  - (a) section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Buyer;
  - (b) section 121(4) (enforcement of liquid assets – notice to grantor);
  - (c) section 125 (obligation to dispose of or retain collateral);
  - (d) section 130 (notice of disposal), to the extent that it requires the Seller to give a notice to the Buyer;
  - (e) paragraph 132(3)(d) (contents of statement of account after disposal);
  - (f) subsection 132(4) (statement of account if no disposal);
  - (g) section 142 (redemption of collateral); and
  - (h) section 143 (reinstatement of security agreement).
2. The Seller does not need to give the Buyer any notice under the PPSA (including, without limitation, a notice of a verification statement under section 157 of the PPSA) unless the notice is required by the PPSA and that requirement cannot be excluded.

#### **Article 21. General**

1. Except as otherwise agreed in writing, the Seller may amend these Terms at any time with notice in relation to future orders placed by the Buyer or with notice prior to acceptance of orders which have already been placed on the Seller, in which latter case the Buyer may decide to withdraw its order if it considers such variation would cause detriment to it.
2. The Buyer must not assign or subcontract all or any of its rights or obligations under this Agreement without the prior written consent of the Seller.
3. No waiver by the Seller of any one breach of these Terms by the Buyer shall operate as a waiver of another breach of the same or of any other term by the Buyer.