

Wholesale Seeds Limited

Terms and Conditions of Trade



1. Definitions

"**Agreement**" means the Account Application Form and these Terms.

"**Account**" means the Wholesale Seeds trade credit account established in the name of the Customer by Wholesale Seeds.

"**Credit Agency**" means Baycorp (NZ) Limited or any third party credit agency notified by Wholesale Seeds to the Customer.

"**Credit Limit**" means the dollar amount of credit to be made available to the Customer by Wholesale Seeds under the Account.

"**Credit Term**" means the term over which the Account will remain open.

"**Customer**" means the customer named in the Account Application Form and where the Customer comprises two or more persons, means those persons jointly and severally.

"**Goods**" means all goods supplied by Wholesale Seeds to the Customer from time to time.

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

"**Person**" includes a body corporate and vice versa.

"**PPSA**" means the Personal Property Securities Act 1999.

"**Terms**" means these Terms and Conditions as replaced or amended from time to time as advised by Wholesale Seeds.

"**Wholesale Seeds**" means Wholesale Seeds Limited and its successors and assigns.

2. Application of Terms

2.1 Upon signing the Account Application Form the Customer is deemed to have acknowledged and agreed to these Terms. The Terms apply to the use of the Account and to each contract for the supply of Goods and services to the Customer by Wholesale Seeds unless otherwise agreed in writing by Wholesale Seeds.

3. Wholesale Seeds Account

3.1 The Customer must notify Wholesale Seeds of any changes to its contact details or to any other information given to us on the Account Application Form.

3.2 Goods may be charged to the Account by the Customer in person or by telephone. Wholesale Seeds may require the person charging Goods to the Account to provide their name.

3.3 The Customer authorises Wholesale Seeds to debit to the Account all such money as is now owing or remains unpaid or shall become owing or remain unpaid to Wholesale Seeds (including any interest or fees incurred or payable under these Terms).

3.4 The Customer authorises Wholesale Seeds to credit to the Account money advanced or paid to the Customer.

3.5 Wholesale Seeds reserves the right to refuse to debit or credit the Account at its sole discretion.

4. Credit Term and Credit Limit

4.1 Wholesale Seeds may at its discretion impose a Credit Limit and Credit Term in respect of the Account by notifying the Customer in writing.

4.2 Wholesale Seeds may at its sole discretion alter or cancel the Credit Limit at any time upon giving written notice to the Customer.

4.3 The balance of the Account, including all accrued interest, fees and charges may not exceed the Credit Limit at any time unless Wholesale Seeds agrees in writing. Notwithstanding this, Wholesale Seeds may at its discretion choose to honour a transaction in excess of the Credit Limit.

4.4 Any balance outstanding in excess of the Credit Limit shall be immediately due and payable. Wholesale Seeds may at its discretion charge interest on balances in excess of the Credit Limit.

5. Fees and charges

5.1 Wholesale Seeds may charge the following fees:

- (a) interest on overdue balances at the rate of 18% per annum;
- (b) all costs incurred by Wholesale Seeds in recovering overdue monies and enforcing the Agreement (including court, solicitor and debt collection costs).

6. Payments

6.1 The Customer will pay Wholesale Seeds the price plus GST for Goods.

6.2 Wholesale Seeds will send the Customer a statement or statements setting out the transactions of the Account over the period the statement covers and the outstanding balance at the end of the period, together with an invoice for that amount.

6.3 The outstanding balance of Account including any interest is due to be paid on the 20th of the month following the date of the relevant invoice.

6.4 Payment must be made to Wholesale Seeds in accordance with the payment instructions set out in the invoice and will not be credited to the Account until received by Wholesale Seeds in cleared funds.

6.5 In the event that payment is not received when due and without prejudice to any other remedies available to Wholesale Seeds, Wholesale Seeds may charge default interest on monies overdue at the rate specified in clause 5.1(a) which will accrue

on a daily basis and compound monthly from the due date for payment until all amounts due, including default interest, have been paid in full. All amounts received by Wholesale Seeds will be applied first in payment of default interest.

7. Default

7.1 If the Customer breaches any of these Terms and fails to remedy that breach within 7 days of receiving notice to remedy by Wholesale Seeds (and without prejudice to any other remedies available to Wholesale Seeds), Wholesale Seeds may at its discretion suspend or cancel the Account.

7.2 Upon cancellation the outstanding balance of the Account will be immediately due and payable by the Customer. Any interest payable under these Terms will continue to accrue after the date of cancellation until payment of all outstanding amounts is made.

8. Account Closure

8.1 Either party may close the Account at any time by giving written notice to the other party. The closure shall be effective on the later of:

- (a) receipt of the notice by the other party; and
- (b) payment to Wholesale Seeds of all outstanding amounts owing.

8.2 The outstanding balance of the Account will be payable by the Customer by the 20th of the month following the date on which notice to close the Account is given.

9. Title

9.1 Ownership of the Goods remains with Wholesale Seeds and does not pass to the Customer until Wholesale Seeds receives full payment of all amounts due and payable from the Customer and the Customer has satisfied all of its obligations to Wholesale Seeds. Until all amounts owing to Wholesale Seeds have been paid, the following shall apply:

- (a) the Customer will hold or deal with the Goods and any crops resulting from the Goods as a fiduciary of Wholesale Seeds and deal with it as agent and on behalf of Wholesale Seeds (but the Customer will not hold itself out to be Wholesale Seeds' agent to any third parties);
- (b) the Customer will keep the Goods separate from other goods or otherwise ensure that the Goods and any crops resulting from the Goods are separately identified or identifiable; and
- (c) the Customer must not grant any interest or charge over the Goods to any person.

9.2 The Customer will not assign or purport to assign to any other person the right to receive any such proceeds held or owing to the Customer by a third party in respect of the Goods.

9.3 The Customer grants Wholesale Seeds (and its agents) 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 Customer or (to the extent permitted by law) any other person. To the extent permitted by law, Wholesale Seeds will not be liable to the Customer or any third party for any loss or damage caused by its actions under this clause and the Customer indemnifies Wholesale Seeds, its servants and agents, for any alleged liability resulting from the repossession, and the Customer will pay all costs incurred by Wholesale Seeds in respect of the repossession.

10. Delivery and Risk

10.1 Unless otherwise agreed, the Customer shall be responsible for the cost of and arranging transportation of the Goods.

10.2 Where Wholesale Seeds has agreed to deliver the Goods to the Customer, the delivery costs will be payable by the Customer at the prevailing rate on the date the Goods are ordered. Wholesale Seeds 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 Wholesale Seeds' control.

10.3 Risk in respect of the Goods shall pass to the Customer when the Goods are delivered to the Customer or its carrier, or at the time the Customer pays for the Goods, whichever is the earlier.

10.4 It is the Customer's responsibility to insure the Goods while in transit, even if Wholesale Seeds has arranged transportation of the Goods.

11. PPSA

11.1 Without limiting anything else in these Terms, the Customer grants Wholesale Seeds a security interest in all Goods supplied to the Customer by Wholesale Seeds including all proceeds of such Goods so as to secure all monies owing by the Customer to Wholesale Seeds. The Customer agrees to do all things necessary to enable Wholesale Seeds 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.

11.2 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.

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11.3 The Customer 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.

11.4 The Customer agrees that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Customer 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.

12. Liability

12.1 Unless otherwise agreed in writing, to the extent permitted by law, Wholesale Seeds excludes all liability to the Customer and any third party, whether in tort (including negligence), contract, equity or otherwise, for any loss or liability of any kind, whether direct, indirect, special or consequential.

12.2 Without limiting any other provision of these Terms, the maximum aggregate amount of Wholesale Seeds' liability to the Customer (or any third party) arising out of any claim for loss of damages is limited to 25 percent of the purchase price of the goods or services to which the claim relates. In the event of any claim, both parties must, in good faith, make all reasonable efforts to minimise the amount of any loss.

13. Guarantee

13.1 Wholesale Seeds may require the Customer to provide another Person to act as guarantor in respect of the Customer's obligations to Wholesale Seeds.

13.2 Where there is a guarantor specified on the Account Application Form or under any written sale contract for the sale of Goods to the Customer, the guarantor guarantees the performance of the Customer's obligations under this Agreement and it is acknowledged and agreed that as between the Customer and the guarantor, the guarantor may for all purposes be treated as being primarily liable and Wholesale Seeds shall be under no obligation to take proceedings against the Customer before taking any proceedings against the guarantor.

14. Consumer Guarantees Act and Fair Trading Act

14.1 Where any goods and/or services are supplied by Wholesale Seeds and acquired by the Customer for business purposes, the Customer and Wholesale Seeds each agree that those goods and/or are supplied and acquired in trade and therefore the Consumer Guarantees Act 1993 does not apply.

14.2 The parties agree that section 9, 12A, 13 and 14(1) of the Fair Trading Act do not apply to this Agreement. The Customer acknowledges that it has not relied on any representations made by Wholesale Seeds in entering into the Agreement and that this clause is fair and reasonable.

15. Information

15.1 The Customer (and any guarantor) authorise Wholesale Seeds to collect, retain and use information about the Customer for the purpose of carrying out credit checks, deciding whether to continue to make any goods or services available to the Customer, debt collection or marketing.

15.2 The Customer authorises Wholesale Seeds to obtain credit reports and other information about the Customer from any third party (including the Credit Agency) for this purpose.

15.3 The Customer may also authorise Wholesale Seeds to provide information about the Customer (including information relating to any default in its payment obligations) to any third party (including the Credit Agency) 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. The Credit Agency may also share the Customer's information to other customers using its services.

15.4 The Customer may ask to see any personal information Wholesale Seeds holds about the Customer and ask for any details that are wrong to be corrected.

16. General

16.1 Wholesale Seeds may assign its rights and obligations under the Agreement without the Customer's consent. The Customer may not assign any of its rights and obligations under the Agreement without Wholesale Seeds' agreement in writing.

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

16.3 This Agreement is subject to, governed by and interpreted in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to this Agreement.

16.4 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.

16.5 Where the Customer comprises more than one person or entity then the obligations between those persons under this Agreement is joint and several.

16.6 This Agreement may be entered into in counterparts (including electronic copies) which when taken together will constitute one agreement.