

GENERAL TERMS AND CONDITIONS OF DOMESTIC SALE AND SUPPLY

INTERPRETATION

1. In these Terms and Conditions:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Claim means any action, suit, claim, demand, cost, notice, proceeding, litigation, investigation, judgment, damage, loss (including consequential loss), liability or expense (including, without limitation, damage to property, plant or equipment).

Customer means the person named as the buyer of the Goods on the Purchase Confirmation to which these terms relate.

Delivery Premises means the delivery premises (if any) described in the Purchase Confirmation.

Force Majeure Event means a strike, lock out or other industrial dispute, shortage of labourers or materials, breakdown of systems or network access, unavailability of freight or shipping space, prohibition, riot, embargo, war, hostilities between any powers, civil commotion, breakdown of machinery, misconduct, failure or delay by suppliers, manufacturers, producers or merchants, or by carriers and/or other logistics services providers involved in the carriage, warehousing and delivery of the Goods, confiscation, flood, fire, pandemic, epidemic, earthquake, act of God, explosion or accident and any other matter, occurrence or event beyond the control of the relevant party (whether or not similar in nature to those specified) and the effect of which could not have been prevented or mitigated by reasonable steps available to the relevant party.

Goods means the goods supplied or to be supplied by Select to the Customer, as identified in the Purchase Confirmation.

Indemnified Losses means all civil or criminal liabilities, losses, damages, actions, claims, judgments, costs and expenses (including solicitors' fees on an indemnity basis).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- (a) patents, copyrights, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names and any rights to have confidential information kept confidential;
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) that may subsist anywhere in the world (including Australia),

whether or not such rights are registered or capable of being registered.

PPS Act means the *Personal Property Securities Act 2009* (Cth).

Purchase Confirmation means a document prepared by Select that expressly confirms that Select accepts a specific order for Goods submitted by the Customer.

Related Body Corporate has the meaning in Section 50 of the *Corporations Act 2001* (Cth).

Select means Select Harvests Limited ACN 000 721 380 or a Related Body Corporate of Select named in the Purchase Confirmation.

Supply means all of the services to be provided by Select under the Purchase Confirmation including the supply of the Goods.

Terms and Conditions means the terms and conditions set out in this document and includes any additional terms and conditions agreed in writing between the Customer and Select.

2. A reference to "including" (or similar terms) means "including without limitation".

APPLICATION

3. Every sale of Goods and Supply is made solely in accordance with these Terms and Conditions.

4. The Customer acknowledges that it has read and understands these Terms and Conditions and is bound by these Terms and Conditions.

PURCHASE CONFIRMATION

5. Any request for Goods submitted by the Customer is not accepted by Select until a Purchase Confirmation is provided to the Customer. The Purchase Confirmation will confirm:

- (a) the type and quantity of product comprising the Goods;
- (b) the price payable for the Goods;
- (c) the price payable for the Supply;
- (d) any special handling instructions from the Customer regarding the Goods including the use of refrigerated containers;
- (e) the estimated date of delivery; and
- (f) the applicable Incoterm.

6. It is the responsibility of the Customer to verify the accuracy of the information in the Purchase Confirmation. Subject to these Terms and Conditions, Select will not accept any liability for loss arising out of inaccurate information contained in the Purchase Confirmation.

7. A Purchase Confirmation will amount to an offer by Select and will remain open for acceptance for 7 days only. Select reserves the right to amend or withdraw the offer in any Purchase Confirmation unless it receives written confirmation from the Customer that the Purchase Confirmation is accepted within the time permitted for acceptance.

8. To the extent that there is any inconsistency or conflict between the Purchase Confirmation and these Terms and Conditions, the terms and conditions in the Purchase Confirmation will prevail.

PAYMENT

9. The Customer is required to pay for the Goods within 21 days from the end of the month during which the Customer receives a Tax Invoice for the sale of the Goods and Supply, unless other payment terms are specified in the Purchase Confirmation.

10. Should the Customer default in payment of any amount due to Select, then, without limiting any other rights or remedies of Select:

- (a) Select may suspend delivery of Goods without notice to the Customer;
- (b) all amounts due to Select on any account become immediately due and payable and must be paid within 7 days from the date of a written demand;
- (c) if all amounts due have not been paid in full within 7 days from the date of a written demand, the Customer consents to Select or its representatives entering the Customer's premises to effect recovery of any Goods in the possession of the Customer and to use reasonable force to effect recovery without liability for trespass or damage.

11. Select reserves the right to charge interest at its banker's current bank overdraft rate on all overdue amounts from the date of the relevant invoice to the date of payment.

RECOVERY OF DEBT

12. The Customer must pay all expenses, costs and disbursements incurred by Select in recovering any outstanding amounts, including debt collection agency fees and solicitors' costs.

USE OF GOODS AND PACKAGING

13. The Customer must ensure that:

- (a) the Goods are not sold or offered for sale outside Australia;
- (b) the Goods are not repackaged or otherwise removed from the packaging in which they are supplied by Select, at any stage prior to sale to consumers;
- (c) Select is immediately notified in instances where spoilage or damage to packaging of any Goods has been detected, in which case the Customer must not sell or supply the relevant Goods to consumers or any other party, without the express written authorisation of Select.

TRANSIT AND DELIVERY

14. Select will use its reasonable endeavours to deliver the Goods to the Customer at the Delivery Premises by the estimated date of delivery stated in the Purchase Confirmation. If no Delivery Premises is specified, Select will use its reasonable endeavours to deliver the Goods by making them available for collection at such premises owned or used by Select as notified to the Customer.

15. Select is not liable to the Customer for any delay or failure to deliver the Goods by the Delivery Time other than for a breach of clause 14.

16. Any pallet or container that is utilised or made available to others by Select to effect delivery of the Goods to the Customer or its employees, agents or contractors must be returned upon request to Select at the expense of the Customer.

EXCUSABLE DELAYS

17. If Select is unable, wholly or in part, by reason of a Force Majeure Event, to carry out any obligation under these Terms and Conditions then that obligation is suspended to the extent and for so long as it is affected by the Force Majeure Event, on the proviso that Select:

- (a) gives the Customer written notice of the nature and expected duration of, and the obligation affected by, the Force Majeure Event; and
- (b) uses all reasonable endeavours to:
 - (i) mitigate the effects of the Force Majeure Event on its obligations under these Terms and Conditions; and
 - (ii) perform its obligations under these Terms and Conditions despite the Force Majeure Event.

18. In the event of delay in production, shipment or delivery of Goods caused by any Force Majeure Event, the time for production, shipment or delivery will be extended for such reasonable period after such causes have ceased to operate as will enable Select to produce, ship and/or deliver the Goods. Notwithstanding the delay, the Customer will be bound to accept the Goods and pay all amounts owing for the Goods and the Supply.

INDEMNITY

19. The Customer must indemnify Select, its Related Bodies Corporate and each of their respective directors, employees, representatives, successors and assigns (**Indemnified Persons**), from and against all Indemnified Losses, resulting from or arising in connection with:

- (a) any personal injury, disease or illness suffered by, or the death of, any person, to the extent caused or contributed to by the act or omission of the Customer or its employees, agents or contractors;
- (b) physical loss of or damage to property of Select or any third party caused or contributed to by the act or omission of the Customer or its employees, agents or contractors;
- (c) the Customer's or its employees', agents' or contractors' negligence or wilful misconduct;
- (d) inaccurate information in the Purchase Confirmation or a Document, based on instructions received from the Customer or its employees, agents or contractors; or
- (e) any failure by the Customer to perform any of its obligations under these Terms and Conditions.

RECALLS

20. If either party becomes aware of any fact or circumstance that may require the withdrawal or recall of any Goods for reasons of safety or compliance with law, that party must immediately notify the other party of that fact or circumstance.

21. Select will be solely responsible for carrying out any withdrawal or recall of Goods.

22. The Customer must act in accordance with the reasonable instructions of Select in relation to the withdrawal or recall of Goods which may include, but is not limited to:

- (a) complying with all legal requirements in relation to the recall; and
- (b) taking corrective action where appropriate, which may include disseminating relevant information to other parties or government authorities.

23. Select will be responsible for all costs incurred in relation to any withdrawal or recall of Goods, including the Customer's costs of complying with clause 22, except to the extent that the withdrawal or recall was caused by conduct (whether by act or omission and whether by the Customer or otherwise) affecting the Goods after delivery of the Goods to the Customer or its employees, agents or contractors, in which case the Customer must bear its own costs of complying with clause 22 and the Customer must indemnify and keep indemnified Select and each of the other

Indemnified Persons from and against all Indemnified Losses incurred by any of them relating to that recall.

TITLE OF GOODS

24. Until Select has received full payment of all amounts owing by the Customer to Select in cleared funds:
- (a) title to all Goods remains with the Select;
 - (b) the Customer holds the Goods as bailee and fiduciary for Select; and
 - (c) if the Customer sells or otherwise disposes of the Goods, the proceeds of sale shall be held in trust by the Customer for Select.
25. The Customer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods until title to all Goods has passed to the Customer.

GUARANTEES

26. The Customer acknowledges that Select does not provide any Express Warranties (as defined in the Australian Consumer Law) other than those expressly confirmed by Select in writing (including those on any packaging of the Goods as supplied by Select). Subject to any law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, other than those in these Terms and Conditions, are excluded and Select disclaims all liability in relation to these to the maximum extent permitted by law.
27. If the Customer supplies the Goods to any other person in the course of trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without Select's written authorisation.
28. The Customer must indemnify Select and each of the other Indemnified Persons against any Indemnified Losses incurred by any of them under the Australian Consumer Law as a result of any breach by the Customer of the obligations contained in these Terms and Conditions.

INTELLECTUAL PROPERTY

29. All Intellectual Property Rights in or in connection with the Goods is and remains the property of Select or, if applicable, immediately vests in Select upon creation (if it is created by Select in the course of performing the Supply).

LIMITATION OF LIABILITY

30. The liability of Select for any and all costs, expenses, loss or damage resulting from any cause whatsoever (including negligence), is limited (at Select's election) to:
- (a) the replacement of Goods or the supply of equivalent Goods;
 - (b) the repair of the Goods; or
 - (c) refunding the purchase price of the Goods.
31. Other than as described in clauses 30 and 32, none of Select or any of the other Indemnified Persons is liable to the Customer or the Customer's employees, directors, contractors or agents for any loss, harm, damage, cost or expense (including, without limitation, consequential loss, economic loss, loss of contract, loss of profit or revenue, loss of opportunity, loss of production, production stoppage or loss of data) of any nature however caused (whether based in tort, bailment, contract, statute or otherwise) arising directly or indirectly in relation to the Goods or the Supply.
32. Nothing in these Terms and Conditions operates to exclude, restrict or modify any rights, entitlements, remedies and liabilities that may be implied by or imposed under the Australian Consumer Law or any other statute, the exclusion, restriction or contravention of which would contravene that statute or cause any of these terms and conditions to be void.

PPS ACT

33. This document constitutes a security agreement for the purposes of the PPS Act. The Customer grants to Select a security interest in all Goods and their proceeds as security for full payment of the purchase price of all Goods and all other amounts payable by the Customer to Select (whether under these Terms and Conditions or under the terms of any specific contract relating to the supply of Goods by Select to the Customer) and for the Customer's performance of all of its other obligations to Select. In clauses 34 to 37 the following terms have the meaning given to them in the PPS Act: *financing change statement*, *financing statement*, *purchase money security interest*, *security interest* and *verification statement*.
34. The Customer agrees:
- (a) at Select's request, to promptly do all things (including signing any documents) and provide all assistance and information necessary to ensure that Select has a perfected first ranking security interest in all Goods (and the proceeds of those Goods);
 - (b) do all things (including signing any documents) to ensure that the security interest is enforceable, perfected and otherwise effective and to enable Select to exercise any powers in connection with the security interest; and
 - (c) that Select may register a financing statement or financing change statement and do anything else required to perfect its security interest created by this document.
35. Select may allocate all amounts received from the Customer in any manner it determines including any manner required to preserve any purchase money security interest in the Goods.
36. To the extent permitted by law, the Customer waives its right to receive any verification statement (or notice of any verification statement) in respect of any financing statement or financing change statement relating to a security interest created by this document. The following provisions of the PPS Act do not apply: section 95 (notice of removal of accession); subsection 121(4) (enforcement of liquid assets); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal); paragraph 132(3)(d) (contents of statement of account); subsection 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
37. The Customer and Select each agree that it will not disclose any of the information set out in section 275(1) of the PPS Act in relation to any security interest created under this document to any person (except that Select may do so where required due to the operation of section 275(7) of the PPS Act). Nothing in this clause will prevent any disclosure by Select that it believes is necessary to comply with its other obligations under the PPS Act or under any other applicable law.

38. The Customer must indemnify Select for any costs incurred by Select under this clause.

NOTIFICATION OF CLAIM

39. To the extent permitted by the law, no Claim in respect of the Goods or the Supply may be pursued by the Customer against Select, and Select shall be discharged of all liability to the Customer in respect of the Goods and the Supply unless:
- (a) Select has been notified of the facts, matters and circumstances giving rise to the Claim in writing within 14 days of their occurrence; and
 - (b) proceedings are commenced and notice of same provided to Select within 5 months of when the Goods were delivered, or should have been delivered, to the Customer or the Supply occurred (or did not occur), whichever is applicable.

TERMINATION

40. Select may terminate the contract with immediate effect if:
- (a) the Customer commits a material breach of these Terms and Conditions;
 - (b) the Customer commits any other breach of these Terms and Conditions and:
 - (i) the breach is not rectified within 10 days of notification of the breach; or
 - (ii) the breach is not capable of remedy; or
 - (c) the Customer ceases to carry on a business, is unable to pay its debts as they become due, is presented with a winding up petition or if any step is taken to appoint a receiver, receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, or an administrator to its assets, operations or business.
41. Select may terminate the contract for any reason by providing 21 days' written notice.
42. Termination does not affect any accrued rights or remedies of the parties under the contract or any other contract.

GOVERNING LAW AND JURISDICTION

43. These Terms and Conditions are governed by the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

GENERAL

44. A term or part of a term in these Terms and Conditions that is illegal, invalid or unenforceable may be severed from these Terms and Conditions and the remaining terms or parts of the terms of these Terms and Conditions continue in force.
45. Every notice, consent, approval or other communication given under these Terms and Conditions must be in writing and addressed to the relevant party and delivered, by prepaid registered mail or sent by facsimile or email, to the relevant party.
46. These Terms and Conditions and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.