

GENERAL TERMS AND CONDITIONS OF EXPORT 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.

Documents means invoice for the Goods, sea-carriage document (whether negotiable or non-negotiable), air carriage document, Export Receival Advice, Pre-Receive Advice and delivery order.

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 or 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 of a similar nature or not and the effect of which could not have been prevented or mitigated by reasonable steps available to the relevant party.

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

Indemnified Losses means 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.

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 of supply set out in this document and includes any additional terms and conditions agreed in writing between the Customer and Select.

2. 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 instructions regarding the use of refrigerated containers and LCL containers;
 - (e) shipping details including estimated date of departure from an Australian port or airport; 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 will be promptly invoiced for the supply of the Goods. All invoices issued to the Customer must be paid within 14 days of the receipt of the invoice, unless other payment terms are specified in the Purchase Confirmation.
10. Should the Customer default in payment of any amount due to Select, then all costs, including but not limited to transportation costs, storage costs and costs of resale

incurred by Select as a result of it exercising any of its rights under these Terms and Conditions, must be paid by the Customer.

11. Select reserves the right to charge interest at its banker's current bank overdraft rate on all overdue amounts from the date of invoice to the date of payment.
12. The Customer must pay or reimburse Select for all amounts which Select may be required to pay directly or indirectly in respect of the Goods, the Supply or these Terms and Conditions, by reason of the operation of any State or Commonwealth legislation or foreign law, as a result of performing its obligations under these Terms and Conditions but on the proviso that the said amounts were not reasonably foreseeable at the time the Purchase Confirmation was provided to the Customer. This includes any increased amount of duty claimed or collected by customs with regard to the Goods due to:
 - (a) any increase in the value of the Goods;
 - (b) by reason of the value for duty being higher at the time of shipment and/or tender of Documents and/or delivery of Goods; or
 - (c) change in the method of valuing Goods for assessment purposes.
13. The Customer must pay or reimburse Select for any extra amounts which Select may be required to pay upon or after import of Goods or in respect of the collection, disposal and dumping of any Goods.

RECOVERY OF DEBTS

14. 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

15. The Customer must ensure that:
 - (a) the Goods are not sold or offered for sale outside the country into which the Goods are imported by the Customer;
 - (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 written authorisation of Select.

TRANSIT

16. If the Incoterm nominated in the Purchase Confirmation requires Select to ship the Goods out of Australia, Select:
 - (a) may arrange carriage of the Goods by whatever mode(s) of transport it considers appropriate;
 - (b) may prepare, or agree to accept from a carrier, whatever Documents it considers appropriate to facilitate the Supply;
 - (c) need not name the Customer as a consignee, receiver or notify party in any Documents;
 - (d) reserves the right to ship the Goods on a LCL basis; and
 - (e) need not arrange direct shipment.

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

INDEMNITY

19. The Customer must indemnify Select, Related Bodies Corporate of Select and 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.
26. Select may give the Customer written notice requiring payment within 7 days of any amount that has not been paid in accordance with these Terms and Conditions. In the event that the Customer fails to make such payment, Select will be entitled to take immediate possession of the Goods and/or Documents.

FITNESS FOR PURPOSE

27. On receipt of the Goods, the Customer must satisfy itself that the Goods supplied are of the description, quality and character ordered and fit for the purpose (if any has been specified by Select) for which it requires them. Select will not be responsible for any damage arising directly or indirectly through failure of the Customer to promptly determine that the Goods are not of the description, quality or character ordered or fit for the purpose for which it requires them.

GUARANTEES

28. 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.
29. 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.
30. 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

31. 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

32. 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.
33. Other than as described in clauses 32 and 34, 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.
34. 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.

NOTIFICATION OF CLAIMS

35. To the extent permitted by the law, no Claim in respect of the Goods 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) arbitral proceedings are properly commenced in accordance with clause 40 of these Terms and Conditions 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

36. 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.

37. Select may terminate the contract for any reason by providing 21 days' written notice.
38. Termination does not affect any accrued rights or remedies of the parties under the contract or any other contract.

GOVERNING LAW AND ARBITRATION

39. This agreement is governed by the laws of Victoria.
40. Any dispute arising out of or in connection with this agreement or its subject matter shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre in accordance with the SIAC Rules for the time being in force, which are deemed to be incorporated by reference in this clause. The seat of the arbitration shall be Victoria. The Tribunal shall consist of one arbitrator and the language of the arbitration shall be English.

GENERAL

41. 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.
42. 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.
43. These Terms and Conditions and the other documents referred to in them constitute the entire agreement between the parties as to their subject matter.
44. The United Nations Convention on Contracts for the International Sale of Goods is excluded in its entirety.