



## **General Terms and Conditions of Sale**

IN CONSIDERATION OF Select Harvests Limited (ABN 87 000 721 380), and its associated and related entities, (“the Company”) supplying Goods and/or Services and/or commercial credit facilities to the party wishing to acquire the Goods and/or Services (“the Customer”):

(i) the Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by the Company and that these General Terms and Conditions form the entire contract between the parties and take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these General Terms and Conditions.

(ii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

These General Terms and Conditions, including any credit limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the Company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

“Goods” shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document which the Company may intend to register a Security Interest.

“Price” shall mean the cost of the Goods as referred to in the Company’s price lists, prepared quotes, purchase order confirmation, invoice and/or specific arrangements and shall be subject to change from time to time without notice.

“Security Interest” means as defined by the Personal Properties Securities Act 2009 (Cth).

“Services” means the provision of services associated with the sale of the Goods.

### **1. Personal Property Securities Act 2009 (Cth)**

- a. The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any Security Interest in the Goods and the proceeds of those Goods arising under or in connection with or contemplated by these Terms.
- b. The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register and any other notice required under the PPSA.
- c. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company, and do any other act or thing that the Company requires to ensure that any Security Interest created under these terms is perfected and remains continuously perfected, has priority over any other security interests in the Goods or otherwise and any defect in the security interest, including its registration, is overcome.
- d. The Customer must not, without providing prior written notice to the Company, change its name, address, contact details or any other details that would cause any details in a financing statement to be different if the Security Interest was re-registered.
- e. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Goods.
- f. The Customer will not register a financing change statement in respect of the Security Interest without the Company’s prior written consent.



- g. The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to the Company in such order as the Company may determine.
- h. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); section 117 (security interests in personal property and land); section 118 (enforcement in accordance with land law); section 120 (enforcement of liquid assets - general); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession of collateral); section 127 (seizure by higher priority parties); section 128 (disposing of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134 (retention of collateral); section 135 (notice of retention); subsections 136(3) – 136(5) (retaining collateral free of interests); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- i. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- j. The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- k. The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest, and for the enforcement of any rights arising out of the Company's Security Interest.
- l. In these terms the following words have the respective meanings given to them in the PPSA: accession, commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

## **2. Retention of Title**

- a. Property in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- b. The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of the Company until title has passed to the Customer.
- c. The Company may demand at any time until title has been passed to the Customer that the Customer returns the Goods or any part of them.
- d. In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

## **3. Payment Terms**

- a. At the Company's sole discretion, a deposit may be required prior to any supply.



- b. Customers are required to pay (by cash, bank cheque or EFT) all invoiced amounts for purchases, in full and with no deduction or set-off, in line with Payment Terms or on or before the last business day (in Melbourne) of the month following the month of invoice.
- c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses.
- e. Amounts received by the Company may be applied first against interest, charges, and expenses.
- f. Interest on overdue amounts may be charged at a rate of an additional 2% per annum over the published commercial overdraft rate by the Commonwealth Bank, calculated per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision (such as a claw back) shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an administration fee in an amount to be set from time to time by the Company) for all costs incurred because of any payment being dishonored for whatever reason.

#### **4. Freight Surcharges**

The Company shall pass on to the Customer in full any applicable fuel surcharge, war or disruption surcharge or any other form of rate or allowance for fuel or transport costs imposed by a transport carrier (shipper, land transport, broker, or freight forwarder) when such a surcharge or rate or allowance is imposed pursuant by any law and/or any agreement between the transport carrier and the Customer and/or the Company.

#### **5. Delivery**

- a. The Customer acknowledges that given the inherent nature of a horticultural crop that is subject to weather and other variabilities, that the issuance of a purchase confirmation is not a guarantee of delivery of the Goods to the requested specification, or quantity of Goods or meeting the delivery time for the Goods. Should the Company not have the Goods available for any reason, including not being able to meet the specification and/or quantity and/or delivery date, it shall advise the Customer as to alternative supply conditions or cancellation of the contract.
- b. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from the delay in delivery or failure to deliver the Goods, either whole or in part, due to circumstances beyond its control.

#### **6. Defects**

- a. In relation to defects the Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries, or any failure to fulfill any quotation or order.
- b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods to inspect for any alleged defects.
- c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be compliant with the order and free from any defect whatsoever.
- d. The Customer



acknowledges that it is within the usual nature and characteristics of the Goods, being a natural product, that it may comprise of irregular and/or aggregated matter and/or blemishes or imperfections, and the Goods are liable to blemishes, separation and deterioration in whole or part during processing, loading, transportation and/or storage.

#### **7. Warranty & Returns**

- a. Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.
- b. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

#### **8. Risk**

- a. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
- b. If any of the Goods are damaged or destroyed prior to the title being passed to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

#### **9. Cancellation**

- a. The Company may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means.
- b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- c. The Customer may cancel the delivery of the Goods at any time before delivery by giving notice to the Company by any means.
- d. If the Customer cancels the delivery of the Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

#### **10. Indemnity**

- a. The Customer indemnifies the Company against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by the Company arising from or in connection with any breach or default of the Customer of these Terms, any related order or contract or the Competition and Consumer Act 2010 (Cth). However, the Customer's liability under this clause will be reduced proportionately to the extent the Company causes or contributes to any such claim, loss, damage, liability, cost or expense.

#### **11. Recalls**

- a. 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.
- b. The Company will be solely responsible for carrying out any withdrawal or recall of Goods.
- c. The Customer must act in accordance with the reasonable instructions of the Company in relation to the withdrawal or recall of Goods which may include, but is not limited to:
  - (i) complying with all legal requirements in relation to the recall; and



- (ii) taking corrective action where appropriate, which may include disseminating relevant information to other parties or government authorities; and
- (iii) the Company 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 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 and the Customer must indemnify and keep indemnified the Company and each of the other Indemnified Persons from and against all Indemnified Losses incurred by any of them relating to that recall.

## **12. General**

- a. The Company accepts no responsibility for changes in any law which may affect the supply of the Goods or Services.
- b. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- c. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.
- d. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the National Consumer Credit Act 2009 (Cth) will not apply.

## **13. Termination**

The Company may terminate this contract with immediate effect if:

- a. The Customer does not pay in accordance with the agreed terms.
- b. The Customer commits a material breach of these General Terms and Conditions.
- c. The Customer commits any other breach of these General 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
  - (iii) 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.
- d. The Company may terminate the contract by providing 21 days' written notice in the event that it cannot source the required Products due to events beyond its control.
- e. Termination by the Customer does not affect any accrued rights or remedies of the Company under the contract or any other contract.

## **14. Notification of Claim**

- a. To the extent permitted by the law, no claim in respect of the Goods or the supply may be pursued by the Customer against the Company, and the Company shall be discharged of all liability to the Customer in respect of the Goods and the Supply unless:



- (i) the Company has been notified of the facts, matters and circumstances giving rise to the Claim in writing within 14 days of their occurrence; and
- (ii) proceedings are commenced and notice of same provided to the Company 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.

## **15. Guarantees**

a. If a supply to the Customer is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law (contained in Schedule 2 to the Competition and Consumer Act 2010 (Cth) and any equivalent law), nothing contained in these Terms excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law (or any other law), the exclusion, restriction or modification of which would contravene that law or cause any of these Terms and /or any term of any related order or contract to be void ('Non-Excludable Obligations'). Subject to the Non-Excludable Obligations, to the maximum extent permitted by law, the Company's liability for breach of any of these Terms and/or any related order or contract or in tort (including for negligence) is limited, at the Company's option, to: i) the replacement or repair of the goods; ii) the supply of equivalent goods or services; or ii) the cost of replacing or repairing the goods or of acquiring equivalent goods or services. Subject to the Non-Excludable Obligations, to the maximum extent permitted by law, neither party will be liable for any loss of profit, loss of goodwill, loss of opportunity or any, special, exemplary, punitive, indirect or consequential loss or damage incurred by the other party either directly or indirectly in connection with these Terms and/or any related order or contract.

b. If the Customer supplies the Goods to any other person while trading, the Customer must not give or make any undertaking, assertion or representation in relation to the Goods without the Company's written authorisation.

## **16. Intellectual Property**

a. All intellectual property rights in or in connection with the Goods is and remains the property of the Company or, if applicable, immediately vests in the Company upon creation (if it is created by the Company while performing its obligations under these General Terms and Conditions).

## **17. Force Majeure**

A party will not be in default or breach of these Terms or any related order or contract, or will not otherwise be liable to the other party, for any delay or failure to perform arising from an event of Force Majeure. An event of Force Majeure means an event or cause beyond the reasonable control of the affected party and includes any strike, lock out or industrial action; acts of God, lightning, storm, explosion, flood, pandemic, epidemic, fire, landslide, bush fire or earthquake; act of public enemy, war, terrorism or sabotage; the effect of any applicable laws, orders, rules or regulations of any government or other competent authority; and embargo, inability to obtain any essential equipment or materials, power or water shortage or lack of transportation.

## **18. Jurisdiction**

a. This agreement shall be construed in accordance with laws of the State of Victoria and, where applicable the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of Victoria.

b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.