

## TERMS OF TRADE

These Terms of Trade and any additional terms on any applicable docket, sale or delivery note, receipt, invoice or other relevant document prepared by the Company in relation to any Sale apply to the purchases of Goods or Services by or from the Company, whether such Sale is completed by written agreement, electronic record or oral communication unless stated otherwise by the Company.

### Definitions

- 1.1 *Company* means **Germinal New Zealand Limited** and includes any of its subsidiaries.
- 1.2 *Goods* means all goods and services, and is deemed to include all goods and services described or referred in any invoices, statements or other records prepared by the Company (and the description or details set out or referred to in any such records).
- 1.3 *Services* includes all advice provided by the Company.
- 1.4 *Purchaser* means the purchaser of Goods.
- 1.5 *Sale* means any sale of Goods where the Company is either the Purchaser or Vendor or is acting as agent for either or both of the Purchaser or Vendor.
- 1.6 *Vendor* means the seller of the Goods (being the Company's Principal if it is acting as agent).

### Application

- 2.1 *Terms of Sale*: Receipt of these Terms of Sale by the principal Vendor or Purchaser shall be deemed to be acknowledgement of such Terms of Sale.
- 2.3 *Crop Contracts* - These Terms of Trade do not apply to any contract between the Company and a grower for the growing of a crop. Such Crop Contracts will be governed by the Company's "Crop Contract" document and the terms and conditions contained therein.
- 2.4 The Purchaser cannot cancel any purchase order for Goods accepted by the Company and is bound to pay the quoted price.

### Terms of payment

- 3.1 Unless the Company specifies otherwise, the purchase price and any commission and associated charges, plus GST, must be paid by the Purchaser to the Company (subject to clause 10.4) by the 20th of the month following purchase.
- 3.2 Interest on overdue payments will be charged from the time of purchase on a daily basis at the rate of 21.5% per annum calculated on a daily basis.
- 3.3 All amounts payable to the Company shall be paid in full in cleared funds without any set-off or deduction.
- 3.4 Where the Company is the purchaser of goods, the Company reserves the right to deduct, before payment, any sums due and owing to the Company by the seller or its trading entities.
- 3.5 A payment will not be treated as received until the date on which that payment is credited to the account of the Purchaser. We may at any time specify the method of payment that you must use. If we are required by law to repay any amount, that amount will be deemed not to have been received by the Company and the Company will be restored to the position it would have been in had no such payment been made.

### Terms specific to seed and plant stock

- 4.1 The Company understands all seeds, plants, bulbs and tubers have been taken from reliable stocks, but does not guarantee that they are described accurately or uncontaminated and accepts no liability in relation to any planting or crop.
- 4.2 As the composition, use and effect of sprays and hormone chemicals is outside the Company's control, the Purchaser agrees that it will not rely on any representation by the Company, or make or support any claim against the Company, concerning any sprays or hormone chemicals supplied by the Company.
- 4.3 If this invoice/statement or any relevant document refers to Royalty Conditions for seed, that seed is a PROTECTED SEED VARIETY and may not be used for seed production or re-sold without the Plant Breeder's written consent. If this is unacceptable, the seed may be returned unopened within 7 days for a full refund.
- 4.4 The purchaser is prohibited from selling or exporting seed containing a novel endophyte cultivar to any third party who it knows, or ought reasonably to know, intends to sell or export the seed outside the LICENSED SALES TERRITORY (New Zealand).

### Title, risk and delivery

- 5.1 All Goods are at the Purchaser's risk from the point of loading onto the carrier or being made available for lifting by the Purchaser (whether they are uplifted or not).
- 5.2 Ownership of and title to all Goods shall remain with the Vendor and will not pass to the Purchaser until they are paid for in full. The Purchaser acknowledges and agrees that the retention of title is a security interest for the purposes of the PPSA.
- 5.3 Until title passes to the Purchaser:
  - (a) the Purchaser shall hold the Goods as bailee of the Vendor;
  - (b) regardless of s109 of the PPSA, the Vendor may repossess the Goods and dispose of them for its own benefit. For that purpose the Vendor (and its agents) may at any time without notice enter any place where it believes the Goods may be kept to inspect the Goods and/or take

whatever action may be required to repossess the Goods. The Purchaser indemnifies the Vendor and its agents for all costs and liabilities incurred in connection with the repossession, storage and/or resale of the Goods (including any shortfall from resale at a lower price);

- (c) the Purchaser must store the Goods in a manner which will protect them from damage or deterioration and separately from their own goods or otherwise ensure that the Goods are separately identified or identifiable; and
  - (d) must insure the Goods for their full insurable value, and if required have the Company's interest noted on the insurance policy.
- 5.4 The Company shall be in no way liable for any delay in the date of delivery of any Goods. Where the Purchaser does not take delivery of the Goods by the delivery date specified, the Purchaser shall pay reasonable storage costs until such time as the Purchaser accepts the Goods.

### Supply for business purposes

- 6.1 The Purchaser agrees that where the Goods are acquired for the purposes of a business, the Consumer Guarantees Act 1993 will not apply.

### Purchaser's right to compensation

- 7.1 Subject to clause 10, if the Company (and not any vendor, manufacturer or other person) is responsible for any Goods being defective or not materially conforming to the Company's description, the Company will at its option:
  - (a) repair or replace the defective Goods or re-perform the service; or
  - (b) pay compensation not exceeding the purchase price for the Goods. This shall be the Purchaser's sole right for compensation from the Company.

### Warranties and the Company's liability

- 8.1 All statutory and other implied warranties (other than title to the Goods) are negated and excluded to the fullest extent it is lawful to do.
- 8.2 Other than as required by law, the Company gives no representation or warranty concerning any Goods' condition, quality or fitness for any purpose.
- 8.3 The Purchaser must satisfy themselves as to the suitability for their intended purposes of all of the Goods supplied by the Company to them.
- 8.4 Except as set out in clause 7, the Company (and its agents) will not be liable in any way (including negligence, tort and equity) to any Vendor, Purchaser or other person in connection with Goods supplied or not supplied or the purported exercise of the Company's rights under these terms.
- 8.5 Notwithstanding anything in these Terms of Trade, the Company (and its agents) will never be liable in connection with any Goods supplied or not supplied or the purported exercise of the Company's rights under these Terms of Sale for any:
  - (a) loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages;
  - (b) amount exceeding the purchase price paid for those goods; or
  - (c) amount not claimed within 7 days of the liability arising.
- 8.6 If the Vendor cannot provide the agreed quantity of Goods for any reason outside its reasonable control, the Vendor is not liable for that shortfall and the Purchaser must take delivery of and pay for the lesser quantity the Vendor is able to supply.

### Personal Property Securities Act 1999

- 9.1 The Purchaser grants to the Vendor a security interest in all Goods supplied or to be supplied by the Vendor to secure all payments under these Terms of Sale. The Purchaser will do all things necessary for the Company to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the Goods and their proceeds. The Company may at its sole discretion register a security interest on behalf of the Vendor (where it is acting as agent).
- 9.2 The Purchaser waives their rights under section 148 of the Personal Properties Securities Act 1999 to be provided with a copy of any verification statement in relation to any financing statement or financing change statement that the Vendor may register.
- 9.3 The Purchaser agrees that they will not, without the Vendor's prior written consent, grant any lien or security interest over the Goods to any other party whatsoever nor commit any act or omissions that would give any other party a security interest over the Goods until all such Goods are paid for in full.
- 9.4 The Purchaser must give the Vendor not less than 14 days prior written notice of any change or proposed change in the Purchaser's name, or any other details including but not limited to changes in the Purchaser's address, trading name, type of business or contact phone or facsimile numbers.
- 9.5 The Purchaser must pay the Vendor promptly on request the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce security interest.
- 9.4 Nothing in sections 114(1)(a), 117(1)(c), 133 or 134 of the Personal Property Securities Act 1999 (PPSA) applies. The Purchaser's rights in sections 116, 119, 120(2), 121, 125 to 127, 129, 131 and 132 of the PPSA do not apply unless the Company is the Purchaser.

### The Company as agent

- 10.1 *Agent*: The Company may act for either or both of the Vendor or Purchaser in respect of any Sale.

- 10.2 *Company not liable as agent* When acting as an agent for either the Vendor or Purchaser (*the Principal*), the Company is deemed not to be responsible or liable in any way for anything done or not done by or on behalf of the Principal, including non-payment of any amount owed by the Principal. The Company gives no assurance as to the financial or other position of the Principal.
- 10.3 *Claims against Principal only.* Each Principal dealing with the Company acting as agent agrees that it will not make or support any claim or proceeding against the Company.
- 10.4 *Payment* Unless otherwise specified, where the Company acts as agent the Purchaser will pay all amounts owed to the Vendor to the Company which will then promptly account to the Vendor for that amount subject to any right of set-off. The Company may choose in its sole discretion to pay the Vendor before receiving full payment. In such case the Purchaser will not be released from any liability and the Vendor's rights under the contract of sale are deemed to be transferred to the Company.
- 10.5 *Commission:* The Company may deduct commission owed by the Vendor from the proceeds of Sale and by the Purchaser from any account the Purchaser has with the Company. The Company may deduct commission from both the Purchaser and Vendor if acting as agent for both the Vendor and Purchaser in respect of any Sale.
- 10.6 *Purchase Price:* Where the Company acts as agent for both the Vendor and Purchaser in respect of any Sale, the Company may sell the Goods to the Purchaser for a different purchase price than that paid to the Vendor and in such case the Company shall carry the loss or take the profit arising from such difference.
- 10.7 *Vendor information:* Where the Company is acting as agent for a Vendor, the Vendor warrants that it has provided accurate and complete information concerning the Goods. The Company is not required to verify that information.

#### **Default**

- 11.1 If the Purchaser defaults in the due payment of any moneys payable to the Vendor under the contract, or if the Purchaser commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property or breaches the terms of this Agreement, or the information that has been supplied to us is not correct, or the effective control of the Purchaser changes the Company, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the contract, and payment for the Goods delivered and work performed up to the date of such suspension or termination, and any other money payable hereunder will immediately become due and payable.
- 11.2 The Purchaser indemnifies the Company from and against any liabilities, losses, damages, costs (including legal costs) or claims which it may incur or suffer in the course of dealings.
- 11.3 In consideration of the Company agreeing to supply the Goods the Purchaser charges all of its right title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Purchaser either now or in the future to secure the performance by the Purchaser of its obligations under these terms and conditions (including but not limited to payment of any money).
- 11.4 The Purchaser irrevocably appoints the Company and each director of the Company as the Purchasers true and lawful attorney to perform all necessary acts to give effect to the provisions of clause 11.3 and 11.4, including but not limited to signing any document on the Purchasers behalf.

#### **Privacy**

- 12.1 The Vendor will only use the Purchaser's personal information for purposes permitted by law including relating to the Purchaser's dealings with the Vendor. The Purchaser agrees to the Vendor using their personal information to assess the Purchaser's credit worthiness and direct marketing, and the Purchaser agrees to the Vendor disclosing their information to be used by credit reporting agencies. Where the Purchaser is a company or trust the Vendor has the right to undertake credit assessments over the Purchaser's directors, shareholders or trustees. The Purchaser authorises the Vendor to release their personal information to third parties for these purposes. The Purchaser can inspect and collect their personal information held by the Vendor, and may request correction of their personal information held by the Vendor.

#### **Miscellaneous**

- 13.1 *Enforcement.* The Purchaser will pay the Company on demand all costs (including legal costs on a solicitor/client basis) incurred by the Company in connection with any default by the Purchaser.
- 13.2 *Entire agreement.* These Terms of Trade (and any incorporated document including any formal credit arrangements) are the entire agreement between the parties, and replace all representations, agreements and other communications made by the Company.
- 13.3 *Assignment.* The Purchaser may not assign all or any of the Purchaser's rights or obligations under the contract without the prior written consent of the Vendor.
- 13.5 *Governing Law.* The contract in all respects is deemed to be a contract made in New Zealand and is governed by New Zealand law.
- 13.6 *No waiver.* The Company shall be deemed not to have waived any right to do anything unless that waiver is in writing and signed by an authorised manager of the Company.
- 13.7 *Severability.* If any part of these Terms of Trade is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms of Trade are not affected.

- 13.8 *Variation:* The Company may, in its absolute discretion, vary these Terms of Trade by disclosing such varied terms to the principal Vendor or Purchaser at any time. The change will take effect from the time that notice is given. Transactions shall be covered by the then current Terms at the time of the transaction.

#### **Provision of Technical Advice Prior, during, or subsequent to a Sale**

- 14.1 All advice given by the Company to the Purchaser prior to, or after a Sale shall be deemed to be in consideration of the Sale and therefore subject to the limitations of liability described herein; whether those liabilities arise at statute, contract, or tort.