

## TERMS OF TRADE

### 1. INTERPRETATION

Unless the contrary intention appears:

“Goods” means seed potatoes and, if any, services by the Seller to the Buyer.

“Buyer” means the Buyer of the Goods

“Seller” means the Seller of the Goods

Nothing in these terms shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

### 2. GENERAL

Unless otherwise agreed in writing, these terms apply to any contact for the supply of Goods between the Seller and the Buyer.

### 3. TERMS OF SALE

In consideration of payment for the Goods the Seller sells and the Buyer buys the Goods on the terms and conditions set out in this agreement.

### 4. THE SELLER'S QUOTATIONS

Unless previously withdrawn, the Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after its date, the Seller reserves the right to refuse any order based on this quotation within 14 days after the receipt of the order.

### 5. PACKING

The Seller must ensure each order is safely and securely packed for collection or transportation to the Buyer having regard to (a) the fragility and perish ability of the Goods (b) the distance the Goods are likely to travel and (c) the method of transportation used to transport the Goods. The cost of any special packing and packing materials used in relation to the Goods shall be at the Buyer's expense notwithstanding that such costs may have been omitted from any quotation.

### 6. ORDERS

The Buyer must order Goods from the Seller orally or in writing and each order must specify (a) the date of the placement of the order (b) the quantity and description of the Goods (c) the preferred delivery date for the Goods and (d) the place of delivery or collection of the Goods. Orders shall be regarded as provisionally accepted to the extent noted by the Seller. The Seller will give the Buyer an estimated delivery time for the delivery of the Goods. The Seller may decline any order received from the Buyer by giving notice to the Buyer within 14 days of the receipt of the order by the Seller.

### 7. SHORTAGE

The Buyer waives any claim for shortage of any Goods delivered if a claim has not been lodged with the Seller within 14 days from the date of receipt of the Goods by the Buyer.

### 8. DELIVERY

If the Goods are to be delivered by the Seller, then the Seller must deliver the order to the location nominated by the Buyer.

If the Goods are to be collected, then the Seller must prepare each order for collection at the Seller's premises by the Buyer or by an agent or courier of the Buyer prior to the delivery date and as soon as each order is ready for collection, the Seller must notify the Buyer. Within 5 days of receiving notification the order is ready for collection the Buyer must remove the order from the Seller's premises.

### 9. LOSS OR DAMAGE IN TRANSIT

The Seller is not responsible for any loss or damage to Goods in transit. The Seller shall render the Buyer such assistance as may be necessary to press claims on carriers provided the Buyer shall have notified the Seller and the carriers in writing immediately loss or damage is discovered on receipt of Goods and shall lodge notice with the carrier within 3 days of the date of receipt of the Goods.

### 10. WARRANTY AND LIABILITY

#### 10.1 Exclusion of Liability

Except as provided herein, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or otherwise are hereby expressly excluded and the Seller shall not be liable for physical or financial injury, loss of damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Seller's negligence or in any way whatsoever.

#### 10.2 Indemnity

The Buyer acknowledges to the Seller (except for the specific warranties and representations made by the Seller in this Agreement):

- a) he has entered in this Agreement entirely upon his own independent appraisal and assessment of the Goods
- b) he does not rely upon any warranty, statement or representation made or given by or on behalf of the Seller.
- c) he is fully aware of the contents of this Agreement
- d) to the fullest extent possible he waives any possible cause of action or rights it may have under or in respect to Part V of the Trade Practices Act 1974 or Part 5 of the Fair Trading Act 1987 or any other legislation which is to any extent to such Part V of Part 5 or any portion of such legislation touching or concerning anything the subject of or incidental to this Agreement and releases and indemnifies to the fullest extent possible the Seller and all persons or entities associated with the Seller from and against (as the case may be) any claim or liability (if any) arising out of or incidental to any such cause of action or right or any like cause of action or right of any other person or entity whatsoever

### 11. TRADE PRACTICES ACT

The Seller's liability for a breach of a condition or warranty implied by Div 2 or Pt V of the Trade Practices Act 1974 (other than s69) is hereby limited to:

#### 11.1. Goods

In the case of Goods, any one or more of the following:

- a) the replacement of the Goods or the supply of equivalent Goods
- b) the repair of Goods;
- c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods;
- d) the payment of the cost of having the Goods repaired; or

- 11.2. Services  
In the case of services:  
a) the cost of replacing the Goods  
b) the cost of obtaining equivalent Goods; or  
c) the cost of having the Goods repaired, whichever is the lowest amount.

12. **PRICES**

Unless otherwise stated all prices quoted by the Seller are net, exclusive of Goods and Services Tax any other tax, discounts and all delivery charges. Prices of Goods may vary without notice and will be the standard current recommended price for the Goods at the date of delivery, except where prices are those advertised or quoted. If discounted prices are not paid by the due date for payment as shown on the invoice then the standard current recommended price applies.

13. **PAYMENT**

13.1.1 When to be Made

Buyer must pay without demand deduction of set off all sums due to the Seller in respect of the supply by the Seller to the Buyer on or before the payment due date listed on the invoice.

13.2 Consequences of Non – Payment

If payment is not made by its due date as printed on the invoice then:

- a) The supply of further Goods by the Seller to the Buyers may be suspended; and  
b) The sum due shall bear interest commencing on the date when the sum first became due from day to day at an annual rate equal to the Reserve Bank of Australia cash rate plus 5%.

14. **RIGHTS IN RELATION TO GOODS.**

14.1 Rights Reserved Until Payment

The Seller reserves the following rights in relation to the Goods until all accounts by the Buyer to the Seller are fully paid:

- i) legal ownership for the Goods;  
ii) to enter onto Buyer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and  
iii) to keep or resell any Goods repossessed pursuant to (ii) above.

14.2 Resold Goods

If the Goods are resold, or products manufactured using the Goods are sold, by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in separate identifiable account as the beneficial property of the Seller and shall pay such amount to the Seller upon request. Notwithstanding the provision above the Seller shall be entitled to maintain an action against the Buyer for the purchase price and the risk in the Goods shall pass to the Buyer upon delivery.

15. **BUYER'S PROPERTY**

Any property of the Buyer under the Seller's custody or control shall be entirely at the Buyer's risk as regards loss or damage caused to the property or by the Seller.

16. **STORAGE**

16.1 Description

The Seller reserves the right to make a reasonable charge for storage if the Goods are not collected by the Buyer within 30 days after a request by the Seller for such collection.

16.2 Certified Seed

Seed potatoes are a perishable biological material and must be handled with due care. The Seller warrants that the certified seed potatoes supplied to the Buyer were of merchantable quality and conformed to the crop and tuber inspection standards of the NSW Seed Potato Certification Scheme when despatched. The Buyer is strongly advised to inspect the seed potatoes on receipt and notify the Seller within 14 days of the date of consignment, of any claim for breach of this warranty; otherwise the warranty will no longer apply.

17 **RETURNED GOODS**

After the Goods have been delivered or collected the Seller shall not be liable to accept the return of any Goods if it would involve a breach of any act, regulation or proclamation.

18. **GOODS SOLD**

All Goods to be supplied by the Seller shall be as described on the quotation agreed between the Seller and the Buyer and the description on such quotation order modified as so agreed shall prevail over all other description including any Buyer's specification or enquiry.

19. **CANCELLATION**

No order may be cancelled within 21 days prior to despatch date except with consent in writing and on terms which will indemnify the Seller's against all losses.

20. **PASSING OF RISK**

Risk in each order passes to the Buyer upon delivery of that order to the Buyer or collection of that order by the Buyer or the Buyers agent or courier as the case may be. Unless otherwise agreed, the Buyer must arrange any freight insurance.

21. **RELEASE**

The Buyer releases the Seller from any claim whatsoever howsoever arising against the Seller unless caused by the wilful default of the Seller.

22. **INDEMNITY**

The Buyer indemnifies the Seller in respect of any claim or demand made or action commenced by any person against the Seller or for which the Buyer is liable in connection with any loss or damage suffered in connection with the sale, collection or delivery of the Goods including but not limited to any legal costs as between solicitor and client incurred by Seller or for which Buyer is liable.

23. **AMENDMENT**

These terms of trade are not to be amended except in writing signed by each of the parties

24. **APPLICABLE LAW AND JURISDICTION**

This Agreement is governed by the laws of New South Wales.