

**Turnbull Grain and Seed Limited**  
**TERMS OF TRADE**

In these Terms of Trade we have used **we, us** and **our** to refer to Turnbull Grain and Seed Limited and **you** to refer to our customer. By agreeing to acquire goods (and any associated services) from us you agree to these Terms to the exclusion of your terms (if any).

**1. DELIVERY**

- 1.1 Unless we agree otherwise, delivery will be completed EXW (Incoterms 2010) when the Goods are made available for collection from our outwards goods loading bay.
- 1.2 We may charge you storage and transportation expenses if you fail or refuse to take or accept delivery or indicate to us that you will fail to do so.
- 1.3 We reserve the right to deliver Goods by instalments.
- 1.4 If we have given you a time for Delivery or installation of the Goods (or any part of them), such time is approximate only and is not deemed to be of the essence.

**2. INSTALLATION**

- 2.1 If we agree to install Goods for you, we do so on the basis that it is your responsibility to:
  - (a) promptly provide all necessary plant, materials, services and other resources necessary to enable us to carry out the installation;
  - (b) promptly obtain any necessary consent, approval, permit, licence or authorisation to enable us to carry out the installation;
  - (c) ensure that the premises and foundations are structurally sound and in a proper condition for the installation to proceed; and
  - (d) to provide safe and secure onsite storage for materials and accessories supplied and used by us, our employees and contractors.
- 2.2 You must advise us promptly of any decision or instruction that needs to be made or given before we are able to proceed with the installation.

**3. TITLE AND RISK**

- 3.1 We will retain title to Goods we supply until they have been paid for in full and you have performed all your other obligations under these Terms.
- 3.2 Risk in all Goods passes to you when the Goods are Delivered. You will insure Goods for their full price, and will not sell, dispose or part with possession of them or do anything else inconsistent with our ownership of the Goods, from Delivery until title in them passes to you.
- 3.3 You will bear the risk of any damage to the Goods during installation carried out at your premises (except to the extent the damage has been caused by or contributed to by our negligence).

**4. PRICE**

- 4.1 All prices are plus GST and other taxes and duties, which will be paid by you.
- 4.2 Our prices are subject to change without notice.
- 4.3 Unless we agree otherwise in writing, the amount you will be charged will be the price as at the date of Delivery.
- 4.4 If we provide a quotation to you, it is based on information available to us at that time and we may charge you more than the amount quoted if our costs (eg the cost of labour, materials, transport, tax, exchange rates or other costs) or the specifications change. Unless otherwise agreed in writing, prices are quoted exclusive of GST.

**5. PAYMENT**

- 5.1 You must pay for Goods on their Delivery, unless we decide otherwise.
- 5.2 We may require you to pay a deposit, being an advanced payment for Goods supplied before those Goods are delivered.
- 5.3 We are under no obligation to supply Goods to you on credit. If we grant you credit, you agree to pay our invoices by the 20th of the month following the date of the invoice.
- 5.4 You agree to give any further securities as we may from time to time require, in the form required by us, and to comply with all of your obligations under those securities.
- 5.5 We may notify you at any time that we are going to stop supplying Goods to you on credit. This will be without prejudice to your obligation to pay amounts owing.
- 5.6 All payments must be made without set-off or deduction. Receipt of a cheque, bill of exchange, or other negotiable instrument will not constitute payment and you remain liable for payment until payment is received by us.

- 5.7 We may apportion payments to outstanding accounts as we see fit.

**6. DEFAULT**

- 6.1 You will be in Default if:
  - (a) you fail to pay an amount due under these Terms by the due date for payment; or
  - (b) you commit a breach of any of your other obligations under these Terms, the Security or the terms of any other contract you have entered into, or enter into in the future, with us or one of our related entities; or
  - (c) you become insolvent, are wound up, have a receiver appointed, enter into any composition or arrangement with your creditors, do any act which would render you liable to be placed in liquidation or have a receiver appointed over your property, commit an act of bankruptcy, cease to be of full legal capacity, or die;
  - (d) Goods that we have retained title to are at risk; or
  - (e) an event or a series of events (whether related or not) occurs which, in our opinion, may cause a material adverse change in your ability to meet your obligations to us.
- 6.2 If you are in Default then we may, at our option, do any one or more of the following:
  - (a) charge you default interest at 15% per annum on any late payments calculated on a daily basis from the due date until the date payment is received;
  - (b) require you to remedy the default in the manner and within the period that we tell you;
  - (c) require you to pay to us all amounts you owe us immediately;
  - (d) suspend or terminate your account with us;
  - (e) enforce security interests created by these Terms;
  - (f) exercise any rights that we have under these Terms or that are available to us at law.

- 6.3 We may suspend or terminate your account with us at any time in our sole discretion. If your account is terminated, you must immediately pay us any amount you owe us. Termination will not affect any of our rights that have arisen before termination.

**7. PERSONAL PROPERTY SECURITIES ACT 1999 (PPSA)**

- 7.1 Clause 3.1 creates a security interest in Goods we supply to you.
- 7.2 You will not grant any other security interest or any lien over Goods that we have a security interest in.
- 7.3 At our request you will promptly sign any documents and do anything else required by us to ensure our security interest constitutes a first ranking perfected security interest in the Goods.
- 7.4 We may at any time enter your premises and properties to uplift Goods that we have a security interest in.
- 7.5 If Goods that we have a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled Goods, our security interest will continue in the whole in which they are included. You will not grant any other security interest or any lien in either the Goods or in the whole.
- 7.6 You waive any rights you may have under sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, and 133 of the PPSA.
- 7.7 You waive your right to receive a copy of any verification statement (as that term is defined in the PPSA).
- 7.8 You will give us prior written notice of any proposed change of your name or address.

**8. WARRANTIES**

- 8.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations on us which cannot by law (or which can only to a limited extent by law) be excluded. Other than as expressly provided for in these Terms, we exclude all such imposed warranties, conditions or obligations to the extent permitted by law and exclude any warranty, condition or obligation imposed or implied under common law, equity or otherwise.
- 8.2 Where you acquire goods and/or services from us for the purposes of a business:
  - (a) the parties acknowledge and agree that:
    - (i) you are acquiring the goods and/or services covered by these Terms for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993;

- (ii) the goods and/or services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (Misleading and deceptive conduct generally), 12A (Unsubstantiated representations), and 13 (False or misleading representations); and
- (b) you agree that all warranties, conditions, and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A, and 13 of the Fair Trading Act 1986 are excluded from these Terms to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause

## 9. LIMITATION OF LIABILITY

- 9.1 Except as expressly otherwise provided by clauses 8.1 or 8.2, we will not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by you or another person and whether in contract, or tort, or otherwise and whether such loss or damage arises directly or indirectly from Goods or services provided by us to you.
- 9.2 To the extent that we are liable for any reason for any loss suffered or liability incurred by you arising from any breach of these Terms or for any other reason, such liability is limited to the amount of the price of the Goods concerned. If Goods are returned by you, or if you make a claim in writing to us in relation to Goods or associated services provided, we may, in our discretion, repair or replace the Goods or re-perform the services, or refund the price of those Goods to you, provided that:
- (a) the Goods must be returned or the claim must be made in writing to us within seven (7) days of Delivery; and
  - (b) you must supply the date and number of any invoice relating to the Goods; and
  - (c) we must be given a reasonable opportunity to inspect the Goods.
  - (d) Goods (other than services) can only be returned to us where i) they are not custom made (including seed that you have ordered to be supplied in a blended, treated or coated form) and form part of our normal stock in trade, ii) are not provided in bulk, iii) have not deteriorated in condition and where supplied in packaging the packaging is unopened, iv) are not a protected seed variety, and v) you pays for the return of the Goods.
  - (e) Goods sold by us as agent for any other party may not under any circumstances be returned.
  - (f) For any returned Goods we reserve the right to charge a restocking fee of up to 10% of the purchase price of the returned Goods plus GST.

## 10. INTELLECTUAL PROPERTY

- 10.1 In respect of Intellectual Property used in or arising from the production of the Goods or the performance of any associated services:
- (a) all pre-existing Intellectual Property the subject of an Intellectual Property right resides with the owner as at the date of these Terms (whether you or us);
  - (b) any new Intellectual Property will be dealt with in accordance with clause 11.
- 10.2 If any Goods are to be supplied to your design, you warrant that the manufacture and supply of such Goods by us will not infringe any third party's Intellectual Property rights and you indemnify us against any loss, liability, costs and expenses in the event of any claim being made that the manufacture or supply of such Goods by us infringes any patent, copyright or other rights of any other person.

## 11. INTELLECTUAL PROPERTY OWNERSHIP

- 11.1 Subject to clauses 10.1(a) and 11.4 we are and will remain the exclusive owner everywhere in the world of all Intellectual Property rights and interests in the Goods, and any other work performed by us for you, as first owner of those Intellectual Property rights and interests.
- 11.2 We will retain exclusive worldwide ownership at all times of our artistic styles, methods of working, techniques, ideas, skills and know-how.
- 11.3 You must not attribute the Goods to anyone other than us or remove any of our trade marks, signatures, logos or similar from the Goods.
- 11.4 On payment of all amounts owing to us in accordance with these Terms, we assign to you the copyright in the final form of any Goods which we have specifically created for you for the countries and for the purposes as specified in the description of the work to be performed, or if not specified, for the countries and

for the purposes which would be reasonably expected in light of the nature of your request for the Goods.

## 12. PRIVACY OF INFORMATION

- 12.1 You authorise us:
- (a) to collect, retain and use information about you from any person for the purpose of assessing your creditworthiness;
  - (b) to disclose information about you:
    - (i) to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to your obligations to us;
    - (ii) to such persons as may be necessary or desirable to enable us to exercise any power or enforce or attempt to enforce any of our rights, remedies and powers under these Terms.

## 13. NOTICES

- 13.1 Any notice may be given by phone, in person, posted, or sent by fax or email to you or where you are a company, to any of your directors.

## 14. CONFIDENTIALITY

- 14.1 You will at all times treat as confidential all non-public information and material received from us and will not publish, release, or disclose the same without our prior written consent. For clarity, confidential information includes any new Intellectual Property and prices.

## 15. COSTS

- 15.1 You must pay our costs (including legal costs, as between solicitor and client) of and incidental to the enforcement or attempted enforcement of our rights, remedies and powers under these Terms.

## 16. CREDIT INFORMATION

- 16.1 You consent to us, or any financier or credit-rating agency, making enquiries of and obtaining any information about your financial standing and credit worthiness.

## 17. JURISDICTION

- 17.1 These Terms are governed by and construed according to the laws of New Zealand. Subject to clause 18, you may take legal action against us only in a New Zealand court.

## 18. DISPUTES

- 18.1 Any claim or dispute arising under these Terms will be determined by arbitration under the Arbitration Act 1996 if the parties are unable to resolve such dispute themselves within one (1) month of the dispute arising. However, nothing in this clause prevents either party from taking immediate steps to seek any equitable relief before the New Zealand Courts.

## 19. FORCE MAJEURE

- 19.1 We will not be liable for any failure or delay in complying with any obligation imposed on us under these Terms if the failure or delay arises directly or indirectly from a cause reasonably beyond our control.

## 20. SURVIVAL

- 20.1 This clause 20 and clauses 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 21, and 25 and any other provision which by its nature is intended to survive the termination or expiration of these Terms will survive the termination or expiration of these Terms or Delivery of the Goods.

## 21. GENERAL

- 21.1 These Terms supersede and cancel any earlier representations, warranties, understandings and agreements (whether oral or written), and together with your Credit Application constitute the entire agreement between us and you relating to their subject.
- 21.2 You may only assign, sell, or otherwise dispose of any right or obligation under these Terms if we consent in writing first.
- 21.3 If you have entered into these Terms as the trustee of a trust and you have no right to or interest in any of the assets of the trust except in your capability as trustee of the trust, your liability will be limited to the value of the assets of the trust which now or in the future are (or, but for your wilful neglect or default, would be) in the hands of the trustees for the time being of the trust. This clause does not limit any liability you have to us as a personal guarantor.
- 21.4 No failure or delay by us to exercise (in whole or in part) any right, power or remedy under these Terms will operate as a waiver of that right, power or remedy.
- 21.5 We may change these Terms at any time. Any change applies from when we notify you of that change.
- 21.6 *Crop Contracts* - These Terms of Trade do not apply to any contract between us and a grower for the growing of a crop. Such Crop

Contracts will be governed by our "Crop Contract" document(s) and the terms and conditions contained therein.

## 22. TERMS SPECIFIC TO SEED AND PLANT STOCK

22.1 We understand that all seeds, plants, bulbs and tubers have been taken from reliable stocks, but we do not guarantee that they are described accurately or uncontaminated and accepts no liability in relation to any planting or crop.

22.2 As the composition, use and effect of sprays and hormone chemicals is outside our control, you agree that you will not rely on any representation by us, or make or support any claim against us, concerning any sprays or hormone chemicals supplied by us.

22.3 If any invoice or statement or any relevant document refers to Royalty Conditions for seed, that seed is a PROTECTED SEED VARIETY and may not be used by you for seed production or re-sold without the Plant Breeder's written consent.

## 23. WE ACTING AS AGENT

23.1 *Agent:* We may act for either or both of the vendor and/or a purchaser in respect of any sale of Goods.

23.2 *We are not liable as agent* When acting as an agent for either the vendor or purchaser (*the Principal*), we are 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. We gives no assurance as to the financial or other position of the Principal.

23.3 *Claims against Principal only.* Every party dealing with us acting as agent agrees that it will not make or support any claim or proceeding against us.

23.4 *Payment* Unless otherwise specified, where we act as agent the purchaser will pay all amounts owed to the vendor to us which we will then promptly account to the vendor for that amount subject to any right of set-off. We 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 us.

23.5 *Commission:* We may deduct commission owed to us from the proceeds of sale or from any monies held by us for the liable party. We may deduct commission from both parties if acting as agent for both parties in respect of any transaction.

23.6 *Purchase Price:* Where We acts as agent for both the vendor and purchaser in respect of any sale, We may sell the Goods to the purchaser for a different purchase price than that paid to the vendor and in such case we shall carry the loss or take the profit arising from such difference.

23.7 *Vendor information:* Where we are acting as agent for a vendor, the vendor warrants that it has provided accurate and complete information concerning the Goods. We are not required to verify that information.

## 24. PROVISION OF TECHNICAL ADVICE PRIOR, DURING, OR SUBSEQUENT TO A SALE

24.1 All advice given by us to you 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.

24.2 Where we provide "off label" crop recommendation advice to you, you accept such crop recommendation advice and Goods on an "all care but no responsibility basis", and you accept all risk arising out of the advice given and application of the Goods supplied.

## 25. DEFINITIONS

25.1 In these Terms unless the context otherwise requires:

**Delivery** means the collection of Goods by you or one of your employees, contractors or agents from our premises, unless we have agreed to dispatch Goods for you, in which case delivery means the despatch of the Goods from our premises. If you indicate to us that you will fail or refuse to take or accept delivery, then the Goods are deemed to have been delivered when we are willing to deliver them.

**Default** has the meaning set out in clause 6.

**Goods** includes any associated services that we supply.

**Intellectual Property** means all intellectual property rights including, without limitation, copyright, patent and design rights, drawings, documents, data, ideas, procedures, calculations and all other statutory and common law rights and interests.

**Security** means all existing and future security held by us that secures your obligations under these Terms.

25.2 The rule of construction known as the contra proferentem rule does not apply to these Terms.

25.3 Words referring to the singular include the plural and vice versa.

25.4 Any reference to a party includes:

25.4.1 that party's executors, administrators, or permitted assigns; or

25.4.2 if a company, limited partnership, or any other body corporate, its successors or permitted assigns or both.

25.5 Clause headings are for reference only.

25.6 References to clauses are references to clauses of these Terms.

25.7 References to money will be New Zealand currency, unless specified otherwise.

25.8 Expressions referring to **writing** will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by fax or email).

25.9 References to statutory provisions will be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time.