

GROWERS AGRISHOP Terms and Conditions

1. Definitions and Interpretation

In these Conditions, singular words include the plural and vice versa. A mention of anything after “include”, “includes” or “including”, does not limit what else might be included or described.

Agreement means the agreement for the supply of Goods and/or Services comprised of these Conditions.

Business Day means a day other than a Saturday, Sunday or official holiday in Western Australia.

Conditions mean these Terms and Conditions.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Credit Application means the application identified as the Commercial Credit Account Application.

Credit Facility means the credit provided to the Customer by the Supplier for the supply of Goods and/or Services to the Customer subject to these Conditions.

Customer means the party named in the Credit Application or any other party who has ordered Goods or Services from the Supplier or to whom the Supplier has supplied goods and/or Services.

Goods means any goods sold, supplied, bailed or supplied on consignment to the Customer by the Supplier.

Guarantor/s means, if the Customer is a company or a trust with a company as trustee, then all of the directors of that company. If the Customer is a trust with individual/s as trustee/s then that or those individuals.

Insolvency Event means, for the Customer, as applicable, being placed, or applying, or resolving to apply, to be placed in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act 2001 (Cth)*) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Customer becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Loss means any expense, cost or damage of any kind and howsoever arising, and includes Consequential Loss, pure economic loss, and a fine or penalty imposed by a statutory or other authority.

Party or Parties means a party or parties to these Conditions.

PPSA means the *Property Securities Act 2009 (“PPSA”)*.

Real Property means all legal and equitable interest/s (including as trustee or beneficial owner, both present and future) of whatsoever nature in all real property held by the Customer or a Guarantor.

Related Bodies Corporate has the same meaning as given to that term in the *Corporations Act 2001 (Cth)*.

Services mean any services provided by the Supplier to the Customer.

Supplier means in connection with the supply of any Goods or Services, **BBBM Pty Ltd (ACN: 135 200 985) as trustee for The BBBM Unit Trust trading as Growers Agrishop** or any Related Body Corporate making the supply to the Customer.

Supplier Terms and Conditions means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, statement, tender, quote, instruction sheet, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form, entered

into in writing between the Supplier and Customer, and includes the whole of this document.

2. Customer Obligations

(a) These Conditions apply and the Customer is deemed to have accepted the Conditions if the Supplier accepts any order for Goods or Services or both from the Customer, whether for cash or on credit, notwithstanding any conditions to the contrary in any purchase order or otherwise, except as expressly agreed to in writing and acknowledged by the Supplier. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services or both to the Customer on credit terms, or to vary the credit limit that the Supplier has provided to the Customer. If the Supplier does decline to give the Customer further credit or to vary the Customer's credit limit, then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.

(b) The Customer accepts and acknowledges that the Credit Facility shall remain in the name stated by the Customer in its Credit Application until the Supplier is notified otherwise in writing, and consents to any change in writing. The Customer shall notify the Supplier as soon as practicable should there be any change in the legal entity, structure of management control of the Customer or its business.

(c) If the Customer fails to comply with any of the terms and conditions of these Conditions or suffers an Insolvency Event or makes any misrepresentation to the Supplier, the balance of the Customer's account to the Supplier will immediately become due and payable upon demand by the Supplier.

(d) The Customer agrees that it must:

(ii) pay, without any deduction or set-off of any kind, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or if credit terms are offered, within 30 days following the end of the month during which the Goods or Services are supplied or provided.

(ii) pay any stamp or other duty assessed on this document or fee to register or maintain any security interest (as that term is defined in the PPSA) held by the Supplier in respect of Goods or Services supplied to the Customer.

(iii) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control as soon as practicable and not later than within two business days of such event or change occurring. The Customer acknowledges that, despite any such event or change the Customer remains liable to pay the price for all Goods or Services supplied.

3. Overdue Accounts, Interest and Security

(a) Any amount owing by the Customer to the Supplier and not paid by the due date for any reason, may incur interest at a rate of 1.5% per month, or part thereof, on the unpaid amount. Such interest shall be calculated monthly and is payable immediately.

(b) The Customer agrees to pay all costs and expenses (including legal costs on a full indemnity basis, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 3(c).

(c) As security for the due and punctual payment of any amounts due to the Supplier from time to time and the performance of the obligations and liabilities of the Customer hereunder, the Customer and the Guarantors hereby charge all of their legal and equitable interest (including as trustee or beneficial owner, both present and future) of whatsoever nature held in any and all Real Property, in favour of the Supplier.

(d) Without limiting the generality of the charge created by clause 3(c), the Customer and the Guarantors agree, on request by Supplier, to execute any and all documents and do any and all things reasonably required by the Supplier to perfect the charge created by clause 3(c) including registering a mortgage or other security over any Real Property. In the event that the Customer or Guarantor fails to execute and deliver the

requested documents, the Customer and the Guarantors hereby appoint the Supplier to be the Customer's and the Guarantors' lawful attorney for the purposes of executing and registering any documents and taking all such steps in that regard. The Customer and the Guarantors also hereby undertake to indemnify and keep indemnified the Supplier on a full indemnity basis from and against any and all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such mortgage or other security documents.

(e) The Customer and the Guarantors consent unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property, pursuant to the charging provisions of this clause.

(f) A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of that statement, shall be sufficient evidence of the amount so due or owing unless the contrary is proven.

4. Retention of title

(a) The Supplier retains full legal and equitable title in and to any and all Goods supplied to the Customer, until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply:

(b) The Supplier is irrevocably entitled at any time and from time to time, to inspect and/or to recover and retake possession of any or all such Goods as are referred to in paragraph (a) above, and otherwise to exercise in relation to any or all such Goods, any and all of its legal and equitable rights whether those rights are as owner and/or unpaid seller or otherwise, and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such rights and entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter into or upon any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier, and hereby agrees and undertakes to indemnify and keep indemnified the Supplier and its agents from and against any and all claims, costs, damages, losses or liability of whatsoever kind, arising or resulting in any way from any entry into or upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the fullest extent that this liability may be disclaimed by law, are and will not be liable for any damage or injury of any kind, caused to such premises by the removal of the Goods, and the indemnity given above by the Customer shall extend equally to such removal.

(c) This reservation of title and ownership is effective and fully enforceable, regardless of whether or not the Goods have been altered from their supplied form, or commingled with other goods.

5. Personal Property Securities Act

(a) Capitalised terms in this Clause that are not otherwise defined elsewhere in the Conditions, have the same meaning as set out in the PPSA unless the context otherwise requires and references to sections are to sections of the PPSA.

(b) The retention of title arrangement described in clause 4 above, constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.

(c) The Customer must immediately, if so requested by the Supplier, sign any and all documents, provide any and all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.

(d) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods until the Supplier has perfected its purchase money security interest.

(e) The parties agree to contract out of the application of sections 125, 132(3)(d), 132(4), 135, 142, 143, 129(2) and (3), 132, 133(1)(b) (as it relates to the Security Interest of the Secured Party), 134(2), 135, 136(3), (4) and (5).

(f) The Customer hereby waives any rights the Customer may otherwise have to receive any notice under the PPSA (including notice of a verification statement) unless that notice is mandatory.

6. Risk

Subject at all times to the Supplier's reservation of title and ownership, risk in relation to any Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at the Supplier's premises or on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in and to the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.

7. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the *Australian Consumer Law*. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or the Supplier Terms and Conditions or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention, are hereby fully and expressly excluded.

8. Limitation of liability

To the maximum extent permitted by law and subject to clauses 7 and 9, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier Terms and Conditions, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Supplier Terms and Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

(a) the Supplier shall have no liability to the Customer for any Consequential Loss;

(b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question.

9. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the *Australian Consumer Law*, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have the benefit of, under the *Australian Consumer Law* (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities)), is limited, at the option of the Supplier, to one or more of the following:

(a) replacement of the Goods or the supply of equivalent Goods;

(b) the repair of the Goods;

(c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

(d) equivalent Goods; or

(e) the payment of the cost of having the Goods repaired.

To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited, at the option of the Supplier to:

(a) the supply of the Services again; or

(b) the payment of the cost of having the Services supplied again.

10. Privacy disclosure and consent

In carrying out its business the Supplier collects personal information about its customers. This personal information may include a customer's name, street and postal address, telephone and fax numbers, email addresses and bank account details. The Supplier respects the privacy of its customers and is committed to protecting their personal information. The Supplier collects personal information in order to provide and market its services to its customers. The Customer has the right to access personal information collected about it and may request the Supplier to access or change any personal information which the Supplier holds.

The Customer authorises the Supplier to:

(a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by or on behalf of the Customer;

- (b) use, disclose or exchange with other credit providers information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
- (c) disclose the contents of any credit report on the Customer to other Related Bodies Corporate of the Supplier and any of their solicitors, other professional advisors, bankers and/or financiers, and mercantile agents.

If the Customer does not provide the information requested in this document the Supplier may be unable to process or grant the application.

11. Force Majeure

The Supplier is not obliged to perform any obligation pursuant to these Conditions to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond the Supplier's reasonable control, the Supplier is unable to perform, in whole or in part, that obligation.

12. Intellectual Property

All intellectual property rights subsisting in the Goods and/or Services and any document, matter or thing prepared or written for the Supplier Terms and Conditions or developed by the Supplier for the supply of the Goods and/or Services are, as between the Customer and the Supplier, the sole and exclusive property of the Supplier.

13. Governing law

These Conditions are governed by and are to be interpreted according to the laws in force in Western Australia, and the Parties hereby irrevocably submit to the exclusive jurisdiction of those laws and the Courts enforcing them.

14. Joint and several liability

If the Customer comprises 2 or more persons or parties these Conditions bind each of them separately and any 2 or more of them jointly.

15. Variation

The Supplier may vary these Conditions at any time by written notice to the Customer. Notice may be sent by pre-paid post to the address of the addressee as set out in the Credit Application or sent by email to the last known email address of the Customer.

16. Guarantors

The Guarantors hereby agree to guarantee payment to the Supplier of the whole price charged by the Supplier for any and all Goods or Services supplied to the Customer from time to time, without any deduction or set-off whatsoever. The Guarantors also agree to guarantee payment of any and all other monies now or in the future owing by the Customer to the Supplier on any account whatsoever and the performance of any and all of the obligations of the Customer pursuant under this Agreement and/or the Conditions.

17. Termination

- (a) If an Insolvency Event occurs to the Customer the Supplier may, at its discretion, and without prejudice to any other rights it may have consequent upon the happening of any that event, immediately terminate this Agreement.
- (b) This Agreement may be terminated at any time by mutual agreement between the Supplier and the Customer or by either party giving 30 days' notice in writing to the other party. Termination shall be without prejudice to any claim either party may have against the other party arising from any breach of the Agreement or any act, default or omission (including negligence) prior to the date of termination.
- (c) If the Supplier terminates this Agreement for any reason then the Customer shall pay to the Supplier all amounts outstanding for the supply of Goods and/or Services provided up to the date of termination, whether invoiced or not.

18. Return of Goods

- (a) Except for any provisions to the contrary contained in this Agreement, the Supplier is not under any duty to accept Goods returned by the Customer. The Supplier will do so only on terms to be agreed in writing in each individual case.
- (b) If the Supplier agrees to accept returned Goods from the Customer under Clause 18(a) the Customer must return the Goods to the Supplier at the Supplier's place of business.

19. Cancellation

No order may be cancelled by the Customer except with the written consent of the Supplier. If there is a cancellation of an order by the Customer, the Supplier has the right to claim indemnity against all losses suffered by the Supplier as a result of such cancellation.

20. Health, Safety, Environment and Duty of Care

- (a) It the Customer's responsibility to ensure that:
 - i. they read all product labels and instruction manuals before using and Goods and that they follow all applicable directions, including (but not restricted to) withholding periods, re-entry periods, rates, timing and method of application, target crops and pests, spray drift minimisation, mixing with other products and they acknowledge that the label of a registered chemical is a legal document;
 - ii. Goods purchased are appropriate for their individual circumstances and requirements;
 - iii. all applicable health, safety and environmental regulations are observed and other appropriate steps taken in relation to the storage, handling and the use of the Goods;
 - iv. they have all relevant information about any potential hazards relating to the Goods and that they will bring such information to the attention of their employees, agents, sub-contractors, visitors and customers and that they will supply appropriate safety equipment and training so that the Goods can be used appropriately;
 - v. all machinery and equipment associated with the application of any Goods or irrigation, chemicals and fertilisers is appropriately maintained, cleaned, calibrated;
 - vi. safe facilities are provided for the reception of Goods into storage;
 - vii. empty containers and waste are disposed of according to applicable federal, state and local regulations; and
 - viii. records are kept of all spraying, fertilising, watering, weather, equipment calibration, maintenance and other major agronomic activities.

- (b) The Customer acknowledges that:

- i. The Supplier does not provide professional advisory services, including, but not limited to, crop programs, application advice, irrigation scheduling, fertiliser programs, rates and timing of application, seed varieties, crop outcomes, marketability of crops;
- ii. information may be given to you in good faith about Goods, their uses, potential benefits, and fit with your operations, but this is for information purposes only and does not constitute a recommendation or advice and must not be construed as such or relied upon;
- iii. no guarantee is given for the suitability of the Goods for any specific purpose, even if that purpose is known to the Supplier;
- iv. items including (but not restricted to) weather, soils, growth stage, time of day of an application, spray water quality and pH, prior damage and co-application can all affect the results obtained by use of the Goods and the Customer will take all such items into consideration and accept that allowing for these factors is part of their responsibility and not the responsibility of the Supplier;
- v. no guarantees are given for crop yields or results from Goods or Services supplied;
- vi. while the Supplier will endeavour to supply Goods ordered within a reasonable time frame, reasons beyond the control of Supplier, such as, but not limited to, lack of product available from suppliers and machinery breakdown, may cause delays and the Supplier will not be liable under any circumstances.

21. Indemnity

The Customer and any Guarantor shall indemnify the Supplier and its officers, employees and agents against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the Customer, its officers, employees or agents.