

## TERMS OF TRADE

**Growers Services** may from time to time agree to supply to you goods and services. Irrespective of whether you sign a copy of these Terms, any goods and services Growers Services supplies to you will be supplied on these Terms:

### 1. EXCLUSION OF IMPLIED WARRANTIES

1.1 The only conditions, guarantees or warranties binding on Growers Services in respect of the state, quality, condition, suitability, description or fitness for purpose of the goods or services supplied to you by Growers Services, its servants, agents, employers, or officers are those expressly set out herein and all other implied warranties, conditions or guarantees are expressly excluded to the extent that they are able to be excluded. No terms shall be implied by sections 18-20 of the *Goods Act 1958* (VIC) or ss1820 of the *Sale of Goods Act 1923* (NSW) or any analogous legislation in any other state or by any section to similar effect in legislation which repeals, replaces or modifies any such legislation. Any guarantees implied by the Australian Consumer Law are not excluded by the operation of these terms but Growers Services' liability for a breach of those guarantees may be limited.

### 2. LIMITATION OF LIABILITY

2.1 Growers Services' liability (if any) arising from a breach of this agreement or any guarantee, warranty, condition or representation is limited to:

- (a) in relation to the supply of goods, the supply by Growers Services of equivalent goods, the repair or replacement by Growers Services of the goods supplied or the payment of an amount equivalent to the price paid by you for the goods supplied as elected by Growers Services in its discretion;
- (b) in relation to the provision of services, the amount paid by you for the supply of such services.

2.2 Growers Services is not liable for any loss of profit, special, indirect or consequential loss or damage of any kind arising from the supply of goods services.

### 3. SUPPLY

3.1 You may, from time to time, provide an order to Growers Services for supply of goods or services. Such order may be verbal or in writing. Regardless of how that order is placed these Terms of Trade will apply to that order and in the event of any inconsistency between the terms of the order and these Terms of Trade these Terms of Trade will prevail.

3.2 After an order is accepted by Growers Services it may not be cancelled or fulfillment delayed without Growers Services' agreement. You will be liable to Growers Services for any costs, expenses incurred in fulfilling the order or arising from the cancellation or non-fulfillment as a debt and Growers Services may recover from you any loss or damage which it suffers as a result of the non-fulfillment of the order including its expectation loss.

### 4. DEFINITIONS

4.1 In the Terms:

- (a) A reference to you includes your employees, servants, agents or contractors and includes you in your personal capacity and as trustee of any trust to whom Growers Services supplies goods or services;
- (b) **Business Day** means any day that is not a Saturday, Sunday or public holiday in South Australia;
- (c) **Goods** means all goods provided to you by Growers Services;
- (d) **Order** means a request from you to Growers Services for the supply of goods or services whether in writing or otherwise;
- (e) **Services** means all services provided to you by Growers Services including advice, recommendations or information
- (f) **Growers Services** means Wheat Ridge Pty Ltd (A.B.N. 18 060 670 402) and Ayling Machinery Pty Ltd (A.B.N. 94 095 535 265) trading as Growers Services and the term includes all employees, servants and agents or contractors working for Growers Services.

### 5. EXTENSION OF TIME

5.1 If Growers Services is delayed in the supply of goods or services then Growers Services will use its best endeavours to notify you of the delay.

5.2 Growers Services will give you details of the circumstances giving rise to the delay, the anticipated duration of the delay, and the steps that Growers Services intends to take to minimise the delay.

5.3 On receipt of a notice of delay, you must agree to extend the time for the supply of the goods or services by a reasonable period if the delay is beyond Growers Services' reasonable control and Growers Services has used (or is using) reasonable efforts to minimise the delay.

5.4 If Growers Services is unable to minimize the delay or you will incur a consequential loss as a result of the delay then Growers Services may, in its absolute discretion, agree to compensate you for that loss.

If Growers Services does not agree to compensate you for that loss then notwithstanding term 3.2 you may withdraw the order by giving 5 Business Days' written notice to Growers Services. If Growers Services provides the goods or services within 5 Business Days then that notice will be of no effect. Otherwise, the order will be terminated upon the expiry of that notice and neither you nor Growers Services will be liable to the other in any way whatsoever arising from or incidental to the delay.

### 6. CHARGES, PAYMENTS AND INTEREST

6.1 Growers Services may provide a written quotation in relation to the order. If Growers Services provides a written quotation then that quotation shall be deemed to be conclusive evidence as between you and Growers Services of all of the goods or services which Growers Services has agreed to supply and the price for the supply of those goods and services shall be the price contained in any such quotation.

6.2 If Growers Services does not provide a written quotation then the price for the supply of the goods or services the subject of any order will be:

- (a) The price which Growers Services typically charges to any other customer for goods or services of the same or similar nature; or
- (b) If 6.2(a) is not applicable, the fair and reasonable value of the goods or services

6.3 The price for the supply of any goods or services is due from you to Growers Services immediately upon completion of the services or delivery of the goods unless Growers Services has required any part of the price to be paid earlier in which case that portion of the price was due on the day that it was paid. If not otherwise agreed between you and Growers Services then the price must be paid upon the issue of a tax invoice by Growers Services on the date specified in any such tax invoice or upon demand by Growers Services, whichever is earlier.

6.4 A price charged for goods or services on one occasion will not require Growers Services to provide goods and services of the same or similar nature at the same price on any other occasion.

6.5 If monies due by you to Growers Services for the supply of goods or services are not received by Growers Services on or before the date for payment then you must pay to Growers Services interest on those monies at the amount prescribed from time to time pursuant to s2 of the *Penalty Interest Rates Act 1983* calculated daily from the date on which the monies were payable until the date on which the monies are received by Growers Services in clear funds. Any funds received by Growers Services will first reduce the interest owing and only if not interest is owing will reduce the principal owing

6.6 If monies due by you to Growers Services for the supply of goods or services are not received by Growers Services on or before the date for payment then Growers Services may refuse to provide further goods or services until those monies are received in full clear funds including in relation to orders already placed

- with and accepted by Growers Services. Such refusal will not entitle you to cancel or withdraw those orders and term 3.2 will continue to apply.
- 6.7 You hereby indemnify and keep indemnified Growers Services from and against any cost or expense including legal costs or expenses on an indemnity basis, incurred in connection with the recovery of any monies due and payable by you to Growers Services or arising from any breach of these Terms of Trade by you. You must pay to Growers Services, on demand, an amount equivalent to such cost or expense and that amount shall be due to Growers Services as a debt will remain recoverable even in the event that you subsequently pay the monies to Growers Services or resolve breach of these Terms of Trade in any manner.
- 6.8 Growers Services may, in its absolute discretion, apply any payment received from you to the reduction of any debt or part thereof owed by you to Growers Services and any direction given by you in that regard will not be binding on and may be disregarded by Growers Services. If Growers Services makes no election as to application then payments will be applied: first to the payment of any amounts due under cl 6.7; secondly to satisfy any unsecured obligation; third to the payment of any interest accrued and fourth to the oldest outstanding amount due by you to Growers Services.
- 6.9 Any payment made by electronic funds transfer or other similar method is made at your risk and a payment made using incorrect payment directions or details will not discharge any liability you owe to Growers Services. If Growers Services provides payment instructions to you it is recommended that you confirm those instructions in person or by telephone to a known contact phone number of Growers Services. If payment directions are not confirmed in person or by telephone then Growers Services will not be responsible for payments made using incorrect payment directions even if those payment directions appear to originate from Growers Services.
- 7. DELIVERY, RISK AND LIABILITY**
- 7.1 Unless otherwise agreed in writing by Growers Services or specified in the quotation issued by Growers Services all goods will be collected from the Growers Services location at which the order is placed.
- 7.2 If the goods are to be delivered and no direction is given for delivery in writing then Growers Services may assume that delivery is to be to the delivery address set out in any quotation, order or in any credit application submitted by you to Growers Services.
- 7.3 If goods are delivered in accordance with clause 7.2 then Growers Services will bear no liability for the delivery of the goods to an incorrect address and you must reimburse Growers Services for any costs incurred in attempting delivery to an incorrect address or in connection with the collection and recovering goods delivered to an incorrect address.
- 7.4 Delivery of the goods will be deemed to have occurred even if delivered to an incorrect address if clause 7.2 applies.
- 7.5 Risk in respect of the goods shall pass upon collection of the goods or upon delivery of the goods.
- 7.6 If Growers Services notifies you that goods are available for collection and you do not collect the goods within a reasonable time then Growers Services may, after giving 7 days' notice in writing, sell or dispose of those goods in which circumstance you shall be liable to Growers Services for the costs of storing, selling or disposing of those goods and the difference between any price obtained for the goods and the price which you agreed to pay for the goods.
- 7.7 If goods are not delivered then you must notify Growers Services within 7 days of receiving an invoice for the goods not delivered. If you do not notify Growers Services then the goods will be deemed to have been delivered.
- 7.8 If goods are not delivered then Growers Services' liability is limited to the replacement of the goods within a reasonable time or a refund of any monies paid for the goods.
- 7.9 Property in and title to the goods remains with the Growers Services until all monies due with respect to the order under which those goods were supplied has been received by Growers Services in full clear funds.
- 7.10 You irrevocably authorise Growers Services to enter onto any property or premises owned, leased, or otherwise occupied by you for the purpose of taking possession of the goods and you authorize Growers Services to use reasonable force to obtain such possession.
- 7.11 If any of the goods are commingled with or become accessions to other property then any monies owed by you and the performance of any obligation owed by you to Growers Services are secured against that other personal property in proportion (by value) to the extent that the goods make up the commingled whole or form part of the other property.
- 8. PERSONAL PROPERTY SECURITIES ACT**
- 8.1 Expressions used in these Terms have the same meaning as in the *Personal Property Securities Act 2009* (Cth) (the **PPSA**).
- 8.2 You consent to Growers Services registering its security interest over any goods on the Personal Property Securities Register and agree to provide all assistance reasonably required by Growers Services to facilitate registration;
- 8.3 You waive your right to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded; and
- 8.4 You and Growers Services agree that these Terms and all related information and documentation are confidential and will not be disclosed, except to the extent disclosure is permitted or required by this agreement or by law (other than section 275(1) of the PPSA).
- 9. PRIVACY AUTHORITY**
- 9.1 Where Growers Services provides or agrees to provide goods or services to you on credit, you irrevocably authorise Growers Services to make such enquiries as Growers Services deems necessary or desirable to investigate your credit worthiness from time to time, including the making of enquiries of persons nominated as trade referees, your financiers or any other credit providers (the **Sources**).
- 9.2 You hereby authorise the Sources to disclose to Growers Services such information concerning you which is within their possession and which is requested by Growers Services.
- 10. CAPACITY**
- 10.1 For the purposes of these Terms each party:
- (a) Expressly acts, covenants and binds on behalf of itself and on behalf of its related parties (including heirs, successors, permitted assigns, associated entities and legal personal representatives); and
- (b) Covenants to procure (to the best of its abilities) the performance by each of its related parties of these Terms.
- 10.2 You may not assign your rights under these terms without the written consent of Growers Services.
- 10.3 Growers Services may assign its rights under these terms without your agreement but unless you agree Growers Services will not be relieved of any of its obligations under these terms.
- 11. WAIVER**
- 11.1 Any waiver or forbearance by Growers Services in regard to the performance of these Terms will operate only if in writing and will apply only to the specified instance, and will not affect the existence and continued applicability of these Terms.
- 11.2 No failure or delay on Growers Services' part in exercising any right, power or privilege under these Terms will operate as a waiver of any such right, power or privilege.
- 12. INVALID PROVISIONS**
- If any provision of these Terms are deemed or held to be illegal, invalid or unenforceable, these Terms will be considered divisible and inoperative as to such provision to the extent it is deemed to be illegal, invalid or unenforceable. In all other respects these Terms will remain in full force and effect.

### **13. APPLICABLE LAW AND JURISDICTION**

- 13.1 These Terms will be governed by and construed in accordance with the laws of Victoria and parties irrevocably submit to nonexclusive jurisdiction of the courts of Victoria in respect of any claim or dispute arising out of or in connection with these Terms.

### **14. COMPETITION AND CONSUMER ACT 2010**

- 14.1 These Terms will be read subject to the *Competition and Consumer ACT 2010* (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other Commonwealth, Territory or State legislation insofar as such legislation may be applicable and prevent either expressly or impliedly the exclusion or modification of any such term, condition or warranty, and Growers Services' liability will be limited to the maximum extent permitted by law.

### **15. TRADE-INS AND CUSTOMER WARRANTIES**

- 15.1 If you have requested the supply of goods from Growers Services and Growers Services has agreed to accept from you some other goods ("the Trade-in Goods") as all or part of the price for the supply of goods then this term 15 applies.
- 15.2 Growers Services will, at or before the time of agreeing to supply the goods to you, provide an agreed value for the Trade-in Goods and the transfer of all right title and interest in the Trade-in Goods from you to Growers Services will be deemed to constitute a payment of an amount equivalent to the agreed value towards the price of the order to which the Trade-In relates.
- 15.3 Clause 15.2 is conditional upon:
- (a) You accepting and taking delivery of the goods and otherwise completing the transaction in accordance with these Terms;
  - (b) You delivering the Trade-In Goods to Growers Services, at your cost and expense, in the same condition that the Trade-In Goods were in at the time that Growers Services agreed to supply the goods to you and at the time Growers Services last inspected the Trade-In Goods.
  - (c) There being no undisclosed defect in or damage to the Trade-In Goods.
  - (d) You disclosing all material conditions, deficiencies or defects in the Trade-In Goods;
- 15.4 You warrant that you are the sole and exclusive owner of the Trade-In Goods and that no other person or entity has any interest in or encumbrance over whatsoever the Trade-In Goods.
- 15.5 Risk in the Trade-In Goods passes to Growers Services when Growers Services receives and takes possession of the Trade-In Goods.
- 15.6 If the conditions in clause 15.2 are not met then Growers Services may, without limiting any other rights of Growers Services:
- (a) Reject or return to you the Trade-In Goods by notifying you that the Trade-In Goods are available for collection or by delivering the Trade-In Goods to you and recovering from you as a debt an amount equivalent to the agreed value of the Trade-In Goods as defined in term 15.2 and the costs of delivery or storage of the Trade-In Goods; or
  - (b) Demand that you pay to Growers Services the difference between the agreed value as defined in term 15.2 and the actual value of the Trade-In Goods.
- 15.7 If any other person has an interest or encumbrance in the Trade-In Goods then Growers Services may, without limiting any other rights of Growers Services:
- (a) Pay to that person an amount equivalent to the value of their interest or the amount encumbered and recover an equivalent amount from you as a debt; or
  - (b) Reject or return to you or deliver up to that person the Trade-In Goods and recover from you as a debt the agreed value as defined in term 15.2.
- 15.8 A breach of the conditions contained in clause 15.3 constitutes a breach by you of your obligations under these terms.