These terms of trade as amended from time to time ("Terms") apply to all Products transactions with us, where you have agreed to be bound by these Terms; and/or where you use your PGG Wrightson Seeds Account.

1. DEFINITIONS

Account means a monthly charge account to buy Products from us with deferred payment.

Application means your application to open an Account.


Customer or you means you as the purchaser of Products from PGGW.

Default Event has the meaning given to it in clause 7.1.

PGGW, we or us means PGG Wrightson Seeds Limited and each of our subsidiaries and trading entities including PGG Wrightson Grain, PGG Wrightson Turf, Agricorn, Corson Maze Seed and Defu.

PPSA means the Personal Property Securities Act 1999.

Products means all products, merchandise, seeds, grains and services (including services and/or other information or other information in respect of which we have a security interest) supplied or sold to or through you by or through us from time to time, including:

a. the products, merchandise, seeds, or grains described or referred to (whether by name or specification) in the delivery docket, invoice or like document that we provide to you;

b. solely for the purposes of the application of clauses 5 and 6:

i. where any products, merchandise, seeds or grain purchased by you from us are your inventory (as defined in the PPSA), then also inventory for so long as you hold it as such;

ii. any objects, products or mass which the products, merchandise, seeds or grain subsequently become a part of an accession or accessory to, and

iii. in the case of products which are used up or consumed

A. all resulting crops and plant product, whether harvested or not, and

B. all livestock, which are grown or improved by the use or consumption of such products.

Protected Cultivar means a cultivar for which plant variety rights have been applied for or granted under the Plant Variety Rights Act 1997 or any other Act which are otherwise the intellectual property rights held by PGGW or a third party.

Warranty/Warranties means warranties, representations, conditions, guarantees, duties or liabilities, or custom.

2. APPLICATION AND ACCOUNT

2.1 You must tell us of any changes to your contact details or to any of the other information given to us on your Application. We will assign a Customer number to your Account. Invoices, statements and other information directly relating to your dealings with us will be sent to you by email unless you request otherwise. We may impose a credit limit on your Account and alter that credit limit without notice to you. If you exceed your credit limit we may refuse to supply Products to you.

2.2 On request by you we will:

a. arrange for a personal guarantee to be provided in respect of your obligations to us by a personal entity satisfactory to us in our sole discretion;

b. provide, or arrange for another person or entity satisfactory to us in our sole discretion to provide, a bond or other surety in an amount we specify to secure your obligations to us.

Any such guarantee, bond or other surety must be on such terms as we consider appropriate.

2.3 We may close or suspend your Account at any time. On closure of your Account:

a. all your rights under these Terms terminate, except for any rights that have accrued to you prior to the close of your Account; and

b. all your obligations to us under these Terms until all of your obligations to us have been satisfied in full to our satisfaction.

3. ORDERS

3.1 A contract will come into existence between us once your Product order has been accepted by us. Acceptance may be by prior sending or giving notice of your order, delivery or invoice, or electronic confirmation for online purchases. Any additional terms we include on a delivery docket, invoice or electronic confirmation will form part of the contract and are the entire contract between us for the relevant Product. You cannot cancel an order for Product after we accept it.

3.2 We will use our reasonable endeavours to source all Products ordered by you and quoted by us. You acknowledge that your placing an order with us and/or our acceptance of your order does not guarantee our supply of the Products. If we cannot provide the agreed quantity of Products for any reason, we will not be liable for that shortfall and you must take delivery of such quantities as are available.

3.3 Products can be purchased from our online websites using the payment mechanisms that we make available. By ordering online you agree to these Terms and that you are 18 or over.

4. TERMS OF PAYMENT

4.1 You will pay the price plus GST for the Products stated in the delivery docket or invoice plus any applicable freight or incidental charges. Unless we specify otherwise, the price must be paid by you to PGGW by the 20th day of the month following delivery. We may charge interest on overdue payments at our discretion. Interest on overdue payments is charged on the full amount owing to us and on any amounts recharged to you in any manner (and in any order and to any amounts owing to PGGW or any vendor). PGGW thinks it fit (despite any direction to the contrary and whether before or after any default by you).

4.2 A payment will not be treated as received until the date on which that payment is credited to the Account in the ordinary course of business. You must pay any costs associated with the method of payment and such costs may be added to (and form part of) the price. We may at any time specify the method of payment you must use. If we are required by law to recover any amount on account of your default, that amount will be deemed not received by us and we will be restored to the position it would have been in had no such payment been made. We are not obliged to deliver any Products if any moneys due and payable by you remain outstanding.

5. DELIVERY, TITLE AND RISK

5.1 We will not be liable for any delay in delivery of any Products to you. If you do not take delivery by the delivery date specified, you will pay reasonable storage costs until you take delivery.

5.2 All Products are at your risk from the point of loading onto the carrier or being made available for uplifting by you, whether or not you take delivery of the Products at that time.

5.3 Ownership of title to all Products remains with us, as well as any proceeds arising from the sale of the Product to you once all money you owe us on any account, is paid for in full, even if you incorporate the Products with other items, including without limitation those items described in the definition of Products in clause 2.1. You agree and acknowledge that the retention of title is a security interest for the purposes of the PPSA.

5.4 Until title in the Products passes to you:

a. you must store the Products in a manner which will protect them from damage or deterioration, and separately from your own goods or otherwise ensure that the Products are separately identified or identifiable. We authorise you in the ordinary course of your business, to use the Products or sell them for full consideration. This authority is revoked immediately and automatically on the occurrence of a Default Event and may also be revoked by notice in writing to you at any time in our sole discretion; and

b. you must insure the Products for their full insurable value and, if we require, have for us or your vendor’s interest in the Products noted on your insurance policy; and

c. if you are a vendor of Products you must require the vendor of Products to indemnify us and agree to repurchase the Products and dispose of them for our own benefit, if a Default Event occurs. For this purpose, we, and/or our agents may at any time without notice to you, enter any place where we or they believe the Products remain or are held, and if reasonable for us to have been satisfied in full to our satisfaction.

5.5 If you sell or use any Products before the transfer of ownership and title and in accordance with clause 5.4, the proceeds of such sale or use (in whatever form) are our property, and you must pay all such proceeds to us or otherwise deal with such proceeds as we direct. Nothing in this clause can be construed as authorising you to deal with the Products, unless we permit you. We may sue you for the purchase price even where ownership of the Products has not passed to you.

6. PERSONAL PROPERTY SECURITIES ACT 1999

6.1 You and any guarantor hereby irrevocably charge in favour of us all your present and after-acquired personal property on the terms contained in the Auckland District Law Society form of General Security Agreement current at the time of signing the Application. You also grant to us a security interest for the purposes of the PPSA in all personal property of you which remains unperformed; and

c. all obligations to us under these Terms until all of your obligations to us have been satisfied in full to our satisfaction.

6.2 If the Products the subject of the security interest subsequently become part of some other personal property, these Terms can be continued applying the sections 82 to 86 of the PPSA. Nothing in section 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply.

6.3 You waive your right under section 148 of the PPSA to be given a copy of any verification statements in relation to the security interest. You acknowledge that we may register the security interests granted by you take effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Products.

6.4 You agree to the security interest, security agreement, encumbrance, charge or mortgage given by you or any guarantor or other grantor of surety to us to secure payment and performance of your obligations under these Terms. You will not without our prior written consent grant any lien or security interest over the Products to any other party whatsoever nor commit any act or omission that would give any other party a security interest over those Products until all such Products are paid for in full.

7. DEFAULT EVENT

7.1 Default Event means any of the following which occurs without our prior written consent:

a. you fail to comply with these Terms, or any other contract with us, including failing to pay us on time or exceeding your approved credit limit; or

b. we reasonably believe that you are unlikely to be able to immediately pay any sums owing to us or a vendor of Products; or

c. information you have given us, or which is given to us on your behalf, is untrue, misleading or deceptive or materially relevant or otherwise in a way that is material in our sole discretion; or

d. you no longer carry on business or threaten to cease carrying on business; or

e. you are a company, trust or other organisation, your organisation or effective control is transferred; or

f. the nature of your business is materially altered; or

g. any guarantor or other grantor of surety of your obligations under these Terms is in default, or in default in its dealings with us; or

h. any other default which we in our sole discretion determine as constituting a Default Event.

7.2 If a Default Event occurs then with prejudice to our other remedies:

a. we will be entitled to suspend or terminate all or any part of any contract that we have with you which remains unperformed; and

b. we may suspend or terminate the supply of Products to you and any of our other obligations to you under these Terms; and

c. all amounts outstanding by you under any contract between us and under your Account, will, whether or not due for payment, immediately become due and payable; and

d. we reserve the right to give notice to third parties whom we require to take whatever action may be required to repossess the Products. You indemnify us and
our agents for all costs and liabilities (including our costs on a solicitor/client basis) in connection with the repossession, storage or resale of those Products.

13. Liability

13.1 We are not responsible or liable in any way for anything done or not done by or on behalf of either party to a contract arranged by us (including by us as agent), including non-performance or breach of any contract by any party. We give no assurance as to the ability of our suppliers to supply any Products or perform any obligations, including the ability to pay the money.

13.2 Each person dealing with PGWS as agent, or in respect of the sale and purchase of Products not supplied by PGWS, agrees that it will not make or support any claim or proceeding against PGWS.

13.3 Unless otherwise specified, where PGWS as agent for the supplier arranges a contract for the supply of Products not supplied by it, it will pay all amounts owed to suppliers with whom PGWS has entered into a contract of purchase. PGWS, which will then promptly account to the supplier for that amount, subject to any right of set-off or right to deduct commission or other amounts.

13.4 Payment may be payable by both parties when PGWS has acted for both parties to a transaction. Where PGWS acts as agent for supplier, PGWS gives no Warranties to the purchaser. Clauses 10 and 11 apply to PGWS’s services as agent. The CCLA (and not clauses 10 and 11) applies directly between the supplier and purchaser unless the supplier’s terms of sale have been incorporated into the sale and state that they prevail over any inconsistent provision of the CCLA.

13.5 Where PGWS is acting as a supplier agent, you acknowledge that PGWS may disclose your name and contact details, and any other details relevant to the transaction to the other party to the transaction.

13.6 PGWS may in its sole discretion register a security interest as agent for a supplier but has no obligation to do so.

13.7 Where PGWS as agent for a supplier pays them for goods or services you have purchased, PGWS may receive a rebate, commission or fee from the supplier for providing marketing and credit services.

14. General

14.1 Assignment: You may not transfer any right, benefit or obligation under these Terms. We may transfer our rights and obligations under these Terms by notifying you in writing.

14.2 Enforcement: You will pay us demand all costs (including legal costs on a solicitor/client basis) incurred by us in connection with any default by you or enforcement action taken by us.

14.3 Entire Agreement: Except as set out in this clause, the Application and these Terms are the entire agreement between us, and you and the guarantor(s), and supersede all representations, agreements and other communications made by us. Certain Terms of Sale in respect of specific products, including those in Part 3 of the CCLA, are not applicable to, and may be excluded from, transactions that are covered by these Terms of Sale entirely or partly.

14.4 Our Decisions and No Waiver:

1. a. any right or discretion conferred on us by these Terms may be exercised by us, or we may refrain from exercising that power or discretion, at our absolute and unfettered discretion.

2. b. if we delay or do not exercise any of our rights under these Terms, that will not be a waiver of those rights or remedies. Any waiver we give will be in writing.

14.5 Severability: If any part of these Terms is illegal, unenforceable or invalid, the remaining parts are not thereby affected.

14.6 Variation: We may in our absolute discretion change these Terms at any time by publication of the changed Terms on our website.

14.7 Typographical Errors: We reserve the right to correct any typographical or clerical errors in any contract or document or in an order or quotation, or in any invoice, statement or other document.

14.8 Inconsistency: If there is any inconsistency between these Terms and the terms of any order that may be lodged by you or on your behalf with the breeder or supplier, you agree by or to us or us, these Terms will prevail subject to clause 14.3 and/or unless we specify otherwise.

14.9 Consumer Guarantees Act: You agree: that the Products are both supplied and acquired in trade; that your Application is made for business/trade purposes; that the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act 1993.

14.10 Disputes: Any dispute between us and you will be discussed between us in the spirit of cooperation and good faith.

14.11 Governing Law: New Zealand law governs this agreement and the parties submits to the exclusive jurisdiction of the New Zealand courts.

14.12 Relationship: The relationship between you and PGWS is as independent vendor and seller, and you have no partnership, joint venture, representation or other relationship with PGWS, except if we are fraudulent or negligent.

15. Protected Cultivars

15.1 Protected Cultivars are marketed or sold by PGWS under conditions stipulated by the breeder as holder of any breeder’s right under the Plant Variety Rights Act (in this clause 15 referred to together as a ‘breeder’). Such conditions may include protection granted under the Plant Variety Rights Act 1987. The Protected Cultivar may also be sold under a special dispensation under the Plant Variety Rights Act 1987, for further multiplication, without the written authority of the breeder or holder. The breeder or its agent may need to be notified by you or on your behalf.

15.2 You must not, grow, trade or transfer any Protected Cultivar or the progeny of any Protected Cultivar, for further multiplication, without the written authority of the relevant breeder or holder.

15.3 You may not make a claim with clause 15.2, then legal action may be taken by PGWS and/or the relevant breeder or its agent to protect their interest in the Protected Cultivar. You acknowledge that this provision is intended to provide the breeder or its agent of any Protected Cultivar and may be enforced by that breeder or its agent.

15.4 Registered trademarks of Protected Cultivar must not be reproduced without PGWS’s prior written authority.