

**CANTERBURY SEED COMPANY LIMITED trading as CARRFIELDS GRAIN AND SEED**  
**SEED PRODUCTION TERMS AND CONDITIONS**

**1. Definitions**

“**Agreement**” means the Seed Production Contract (including any addendum to that contract) and these Terms.

“**Carrfields Group**” means Carrfields Limited and any other companies in the Carrfields group of companies from time to time as notified on the Website.

“**Company**” means Canterbury Seed Company Limited and its successors and assigns, trading as Carrfields Grain and Seed.

“**Due Date**” means the due date for payment of the Purchase Price under the Sale Contract.

“**Grower**” means the person or entity who will produce the Product under the Seed Production Contract.

“**GST**” means goods and services tax pursuant to the Goods and Services Tax Act 1985 (as amended or replaced).

“**Paddock(s)**” means the paddock(s) identified in the Seed Production Contract on which the Parent Seed will be grown.

“**Parent Seed**” means the parent seed supplied by the Buyer to the Seller as specified in the Seed Production Contract (if any).

“**Parent Seed Price**” means the price to be paid by the Company to the Grower for the Parent Seed as specified in the Seed Production Contract.

“**PPSA**” means the Personal Property Securities Act 1999.

“**Product**” means the goods to be produced by the Grower as set out in the Seed Production Contract.

“**Product Price**” means the price to be paid by the Company to the Grower for the Product as specified in the Seed Production Contract.

“**Quality Assurance Guide**” means the quality assurance guide provided by the Company to the Grower and includes any amendments and variations to that guide that may be advised by the Company from time to time.

“**Seed Production Contract**” means the agreement for the sale and purchase of the Parent Seed and the Product (including the addendum to that agreement) between the Grower and the Company in respect of which these Terms form part.

“**Terms**” means these Terms and Conditions as replaced or amended from time to time as advised by the Company.

“**Website**” means [www.carrfields.co.nz](http://www.carrfields.co.nz).

**2. Carrfields Group**

2.1 The Company is a member of the Carrfields Group. The Company appoints Carrfields Limited as its agent for the purposes of administering and enforcing, and for invoicing and collecting payment under, the terms of this Agreement. All rights, powers and entitlements granted to or conferred on the Company under this Agreement may be exercised by Carrfields Limited and/or the Company.

2.2 Carrfields Limited will issue to the Buyer a monthly transaction statement showing all amounts owing by them to members of the Carrfields Group. Carrfields Limited may at any time in its sole discretion apply any credit balance owing by any member of the Carrfields Group to a customer in satisfaction of any amounts owing by that customer to any other member of the Carrfields Group, whether or not such amount has fallen due for payment.

**3. Term**

3.1 This Agreement shall commence on the date of signing and shall terminate on the date of the final payment of the Product Price to the Grower or in accordance with clause 17.

3.2 Termination shall be without prejudice to the rights of either party against the other.

**4. Supply of Parent Seed by the Company**

4.1 The Company agrees to sell and the Grower agrees to purchase the Parent Seed for the Parent Seed Price.

4.2 The Parent Seed Price shall be paid by the Grower to the Company at the point of delivery.

4.3 The Company shall give a credit for any unopened bags of surplus Parent Seed returned by the Grower within one month of the delivery date provided that the quality of the surplus is acceptable to the Company in all respects.

4.4 Without limiting the Company's right to enforce payment under clause 4.2, in the event of non-payment by the Grower for the Parent Seed, the Company shall have the right to (but shall not be obliged to) set-off the Parent Seed Price against the Product Price.

**5. Supply of Product by Grower**

5.1 The Grower agrees to sell and the Company agrees to purchase the Product for the Product Price.

5.2 Notwithstanding clause 5.1 above, the Company's obligation to purchase the Product shall be subject to the Grower complying with all its obligations under this Agreement.

5.3 The Product Price shall be paid by the Company in accordance with the terms of payment set out in the Seed Production Contract.

**6. Price**

6.1 Unless otherwise agreed in writing prices are given in New Zealand dollars and do not include GST.

**7. Title**

7.1 Ownership of the Parent Seed remains with the Company and does not pass to the Grower until the Company receives full payment of the Parent Seed Price.

7.2 Until the Parent Seed Price has been paid by the Grower, the following shall apply:

- (a) the Grower will hold or deal with the Parent Seed and the Product as a fiduciary of the Company, and deal with it as agent and on behalf of the Company (but the Grower will not hold itself out to be the Company's agent to any third parties); and
- (b) the Grower will keep the Parent Seed and the Product separate from other goods or otherwise ensure that the Parent Seed and the Product are separately identified or identifiable.

7.3 Subject to clause 7.1 above, ownership of the Product shall remain with the Grower until such time as:

- (a) the Company has paid the Product Price;
- (b) the Product has been delivered to the Company;
- (c) the Product is sold by the Company to a third party in the ordinary course of business,

whichever is the earlier.

7.4 The Grower agrees not to register a security interest in the Product on the Personal Property Securities Register.

7.5 The Grower shall not trade or otherwise deal with the Parent Seed, Product, or any rejected Product without the Company's prior written consent.

**8. Grower's Obligations**

8.1 The Grower shall at the Grower's expense:

- (a) comply with the Quality Assurance Guide;
- (b) grow the Product with due care and skill in accordance with good industry practices in properly prepared soil;
- (c) harvest the Product in good order and condition free from contaminants;
- (d) have the Product processed at the Seed Cleaning Plant nominated in the addendum to the Seed Production Contract or as otherwise nominated by the Company. For the avoidance of doubt, the parties acknowledge and agree that all seconds, fines and offal arising from the seed cleaning process shall be the property of the Company;
- (e) comply with the seed testing and sampling requirements as set out in the Seed Production Contract;
- (f) deliver the Product to the Company at the place and time and in the manner set out in the Seed Production Contract or as otherwise directed by the Company;
- (g) register the Product(s) with the Seed Certification Agency;
- (h) advise the Company if the Product(s) are rejected for certification and not harvest the Product without the Company's prior written consent;
- (i) not harvest further product from the Paddock(s) after the Termination Date without the Company's prior written consent;

- (j) allow the Company to inspect seed certification and seed cleaning records relating to the Product;
  - (k) do such other things as the Company may reasonably require to ensure the quality of the Product and compliance with this Agreement;
  - (l) comply with all Acts, Regulations, local authority or governmental by-laws including (but not limited to) the Plant Variety Rights Act 1987;
  - (m) not dispose of its interest in the Paddock(s) without first notifying the Company and ensuring that the purchaser or assignee of the Paddock(s) has agreed to comply with this Agreement in the form required by the Company;
  - (n) allow the Company's representatives to inspect the Paddock(s) and/or the Product at all times;
  - (o) not abandon the growing of the Product without first consulting with the Company.
- 8.2 If the Product does not comply with the Quality Assurance Guide or meet the specifications set out in the Seed Production Contract, the Company may at its option:
- (a) accept the non-complying Product on such terms and on payment on such adjusted Product price as the Company may at its sole discretion determine; or
  - (b) reject the non-complying Product in which case the Company shall have no liability to pay the Product Price in respect of the rejected Product and the rejected Product shall be dealt with by the Grower at the Grower's cost as the Company may direct.
- 9. Delivery and Risk**
- 9.1 Unless otherwise specified in the Seed Production Contract, the Grower shall be responsible for the cost of and arranging transportation of the Product.
- 9.2 Risk in respect of the Product shall pass to the Company when the Product is delivered to the Company.
- 10. Grower's Warranties**
- 10.1 The Grower warrants that:
- (a) it has authority to enter into the Sale Contract;
  - (b) it has the necessary resources to fulfil its obligations under this Agreement;
  - (c) where the Parent Seed and Product are subject to protection under the Plant Variety Rights Act 1987, the Buyer will comply with the provisions of that Act;
  - (d) the Grower is an independent contractor; and
  - (e) all information in the Seed Production Contract is true and correct in all aspects.
- 10.2 The Grower indemnifies the Company against any loss or liability that may be suffered or incurred by the Seller arising directly or indirectly from the Grower's failure to comply with clause 10.1.
- 11. PPSA**
- 11.1 Without limiting anything else in these Terms, the Grower grants to the Company a security interest in the Product and the Parent Seed (and all proceeds) so as to secure the performance of its obligations under this Agreement. The Grower agrees to do all things necessary to enable the Seller to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure that the security interest is a first ranking perfected security interest over all the Product, the Parent Seed and all proceeds.
- 11.2 If the Product and/or the Parent Seed subsequently become part of some other product or mass, then nothing in these Terms shall limit the application of sections 82 to 86 of the PPSA.
- 11.3 The Grower waives its right to receive a copy of any verification statement in respect of any financing statement or financing change statement relating to the security interest.
- 11.4 The Grower agrees that nothing in sections 114(1)(a), 120(1), 122, 133 or 134 of the PPSA will apply. The Grower agrees to waive its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA to the extent that these rights may be waived under section 107(2) of the PPSA.
- 12. The Company's Liability**
- 12.1 Except to the extent of any written warranties given by the Company to the Grower, all warranties and representations, including those expressed or implied by law, in respect of the obligations of the Company under this Agreement are excluded to the extent permitted by law.
- 12.2 The Company shall not be liable:
- (a) for loss caused by any factors beyond the Company's reasonable control, including any act of God;
  - (b) for any shortfall in the volume of the Company produced from the Parent Seed;
  - (c) for any indirect or consequential loss of any kind including, without limitation, loss of profits.
- 12.3 Without limiting clause 12.2, the Company's total liability under this Agreement is limited at the Company's option to either:
- (a) replacing the Parent Seed; or
  - (b) refunding the Parent Seed Price.
- 13. Guarantee**
- 13.1 Where there is a guarantor specified under the Seed Production Contract, the guarantor guarantees the performance by Grower of its obligations under this Agreement and it is acknowledged and agreed that as between the Grower and the guarantor, the guarantor may for all purposes be treated as being primarily liable and the Company shall be under no obligation to take proceedings against the Grower before taking any proceedings against the guarantor.
- 14. Consumer Guarantees Act and Fair Trading Act**
- 14.1 the parties each agree that the Goods are both supplied and acquired in trade and therefore the Consumer Guarantees Act 1993 does not apply.
- 14.2 The parties agree that section 9, 12A, 13 and 14(1) of the Fair Trading Act do not apply to this Agreement.
- 15. Sale of Goods**
- 15.1 To the extent permitted by law, none of the Sale of Goods Act 1908, the United Nations Convention on Contracts for the International Sale of Goods (1980) or the Sale of Goods (United Nations Convention) Act 1994 apply to any Seed Production Contract.
- 16. Information**
- 16.1 You (and any guarantor) authorise the Company to collect, retain and use information about you for the purpose of carrying out credit checks, deciding whether to continue to make any goods or services available to you, debt collection or marketing.
- 16.2 You authorise the Company to obtain credit reports and other information about you from any third party for this purpose.
- 16.3 You also authorise the Company to provide information about you (including information relating to any default in your payment obligations) to any third party for the purpose of that party carrying out credit checks, obtaining credit reports or debt collection. To the extent permitted by law those third parties may hold that information in their systems and use it now and in the future.
- 16.4 You may ask to see any personal information the Company holds about you and ask for any details that are wrong to be corrected.
- 17. Termination**
- 17.1 The Company may terminate this Agreement with immediate effect by giving written notice to the Grower if the Grower:
- (a) commits a breach of the Agreement that is incapable of remedy;
  - (b) has failed to comply with a written notice given by the Company specifying a breach of the Agreement and requiring the Grower to remedy the breach within 14 days;
  - (c) being an individual, is made bankrupt; or
  - (d) being a company, is wound up or placed in liquidation or receivership, or where the Company has reasonable grounds to believe the Grower is insolvent or in financial difficulty.
- 17.2 On termination the Company shall have the right to deal with the Product and/or the Parent Seed as it wishes at its absolute discretion. The Grower grants the Company an irrevocable licence to enter the Paddock(s) for the purpose of removing the Product and/or Parent Seed and the Grower shall not be entitled to payment of the Product Price.
- 17.3 The Grower shall pay all cost and expenses incurred by the Company as a consequence of the Grower's default.
- 18. General**
- 18.1 Any dispute between the Grower and the Company in respect of the interpretation and/or performance of this Agreement shall be determined in accordance with International Seed Federation Rules

("ISF Rules"), to the extent that ISF Rules do not conflict with the terms of the Seed Production Contract.

- 18.2 A reference to any legislation in these Terms includes a reference to any amended or substitute legislation and any regulations enacted under that legislation.
- 18.3 This Agreement is subject to, governed by and interpreted in accordance with New Zealand law and the parties submit to the exclusive jurisdiction of the courts of New Zealand in respect of any dispute in relation to this Agreement.
- 18.4 Each clause of these Terms is separately binding. If any clause is void, unenforceable or otherwise ineffective by operation of New Zealand law the remaining clauses will continue to be valid and enforceable.
- 18.5 Where the Grower comprises more than one person or entity then the obligations between those persons under this Agreement is joint and several.
- 18.6 The Seed Production Contract may be entered into in counterparts (including electronic copies) which when taken together will constitute one agreement.