

# Customer Monthly Account Terms of Trade

**These terms of trade (Terms) apply to all Products that you purchase from or through us and any credit facilities we provide to you.**

## 1. DEFINITIONS

**Account** means a monthly charge account to buy Products from us on credit under these Terms.

**Credit Application** means your application to open an Account.

**Customer or you** means you as the purchaser of Products from PGW Seeds.

**Group** means PGG Wrightson Limited and includes each of its subsidiaries and trading entities.

**PGW Seeds, we or us** means PGG Wrightson Seeds Limited and each of our subsidiaries and trading entities.

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

**Products** means all products, merchandise, livestock and services supplied or to be supplied by us to you from time to time, including:

- a. the products, merchandise, seeds, grains or services described or referred to (whether by item, product category, brand, kind or otherwise) in the delivery docket, invoice or like equivalent document that we give you; and
- b. solely for the purposes of the application of the PPSA:
  - i. where any products, merchandise or services 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; and
  - ii. any objects, products or mass which the products or merchandise subsequently become a part of or an accession or accessory to; and
  - iii. in the case of products, seeds and grain 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 1987, or which are otherwise the subject of intellectual property rights held by the Company, or a third party.

## 2. CREDIT 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 Credit Application.
- 2.2. 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. We may apply an account opening fee and a monthly account fee at the rate determined by us from time to time.
- 2.3. We can require that you:
  - a. provide a personal guarantee or that you get another person to act as your guarantor in respect of your obligations to us; and
  - b. Get another person 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.
- 2.4. 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 closure of your Account; and
  - b. all your obligations to us continue 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. We will accept your offer by giving you a delivery docket or invoice. Any additional terms we include on a delivery docket or invoice will form part of the contract between us for that Product.
- 3.2. You cannot cancel an order for Product after we accept it.
- 3.3. 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 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 outside our reasonable control, we will not be liable for that shortfall and you must take delivery of and pay for such lesser quantity as we are able to supply.

## 4. TERMS OF PAYMENT

- 4.1. You will pay us the price plus GST for the Products stated in the delivery docket or invoice. Unless we specify otherwise, the price must be paid by you to us for all other Products and services, by the 20th day of the month following purchase.
- 4.2. Interest on overdue payments (that is, payments that you fail to make within the period set out in clause 4.1) will be charged on a daily basis at our current default rate as published on our Group website, [www.pggwrightson.co.nz](http://www.pggwrightson.co.nz).
- 4.3. All amounts payable by you to us will be paid in full in cleared funds, without any set-off, counterclaim or deduction.
- 4.4. PGW Seeds may deduct (without prior notice) any money that you owe to PGW Seeds from money that we owe to you or that PGW Seeds holds on your behalf. You authorise PGW Seeds to apply (without prior notice) any moneys:
  - a. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to PGW Seeds; and
  - b. received by PGW Seeds from you or on your account in payment of any amount owing to PGW Seeds.
- 4.5. PGW Seeds may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from you in any manner (and in any order and to any amounts owing to PGW Seeds or any vendor) PGW Seeds thinks fit (despite any direction to the contrary and whether before or after any default by you).
- 4.6. 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 repay any amount on account of the price, that amount will be deemed not to have been received by us and we will be restored to the position it would have been in had no such payment been made.

- 4.7. Unless we otherwise agree, if at any time the amounts owing (in aggregate) exceed the maximum credit limit specified by us under clause 2.2, then the due date for payment of the excess amount shall be the relevant date of purchase. If full payment of the excess amount is not made on its due date under this clause 4.7, then clause 4.2 will apply in respect of that excess amount.
  - 4.8. We are not obliged to deliver any Products if any moneys due and payable by the Applicant 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 lifting by you, whether or not you take delivery of the Products at that time.
  - 5.3. Ownership of and title to all Products remains with us and only passes 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 1).
  - 5.4. Until title in the Products passes to you:
    - a. you hold the Products as our bailee; and
    - b. 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 if a Default Event occurs or we revoke that authority by notice to you; and
    - c. you must insure the Products for their full insurable value and if we require have our interest in the Products noted on your insurance policy; and
    - d. regardless of section 109 of the PPSA, we may repossess 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 prior notice to you, enter any place where we believe the Products may be kept and remain there to take whatever action may be required to repossess the Products. You indemnify us and our agents for all costs and liabilities (including our legal costs on a solicitor/client basis) in connection with the repossession, storage or resale of the Products (including any shortfall arising from resale at a lower price).
  - 5.5. If you sell or use any Products before the transfer of ownership and title in accordance with clause 5.3, 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 any dealing by you with the Products, unless we permit. 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 grant to us a security interest in all Products (and all proceeds) supplied or to be supplied by us, so as to secure all payments under these Terms and all moneys owing by you to us from time to time. You will do all things necessary so as to enable us to register a financing statement on the Personal Property Securities Register (PPSR) and to ensure the security interest is a first ranking perfected security interest over the Products and any proceeds. We may register a security interest on the PPSR in our name as secured party even where we are acting as an agent for a vendor.
- 6.2. If the Products subsequently become part of some other product or mass, then nothing in these Terms can be construed as limiting the application of sections 82 to 86 of the PPSA.
- 6.3. Nothing in section 114(1)(a), 120(1), 122, 133 or 134 of the PPSA applies. Your rights in sections 116, 120(2), 121, 125 to 127, 129 and 131 of the PPSA do not apply.
- 6.4. You waive your right under section 148 of the PPSA to be given a copy of any verification statement in relation to any financing statement or financing change statement that we may register.
- 6.5. The security interests granted by you to us take effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Products.
- 6.6. We may use the benefit of any 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. With the exception of security granted in favour of us, 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, 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
  - c. Anything you have told or tell us or any information you have given or give us, or which is given to us on your behalf, is untrue, misleading or deceptive in a material respect; or
  - d. You no longer carry on business or threaten to cease carrying on business; or
  - e. Where you are a company, trust or other organisation, your ownership 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 with us, or the events in this clause apply to them.
- 7.2. If a default event occurs then without prejudice to our other remedies:
  - a. we will be entitled to suspend or cancel 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 will, whether or not due for

- payment, immediately become due and payable; and
- d. you irrevocably give us and our agents licence to enter any place where we believe the Products may be kept and remain there 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 the Products (including any shortfall arising from resale at a lower price); and
  - e. we may enforce any security interest or other security granted to us which secures your obligations to us; and
  - f. we may (without your consent) appoint a receiver in respect of any Products and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.

We will not be liable to you for any loss or damage you suffer because of our exercise of any rights, powers or remedies that are available to us after the occurrence of a Default Event, including under this clause.

- 7.3. You agree that, at any time after a Default Event has occurred or if at any time any Products are at risk, we may:
  - a. take possession of any Products; and/or
  - b. sell or dispose of any Products in such a manner and generally on such terms and 7 conditions as we think fit and apply the proceeds derived in or towards payment of the moneys owed to us by you, and in each case, otherwise do anything you could do in relation to those Products. We (and our employees and agents) may, without prior notice, enter any land or premises where we believe the Products are kept in order to take possession of and/or remove them and you agree to procure all other rights (including consents) necessary to enable, and to indemnify us (and our employees and agents) against any liability incurred in connection with, such entry, taking the possession and removal; and/or
  - c. charge interest on any amount outstanding, whether or not such amount is overdue, on a daily basis at our current default rate as published on our website [www.pggwrightson.co.nz](http://www.pggwrightson.co.nz)
- 7.4. The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to us by law.

## 8. PRIVACY/CONFIDENTIALITY

- 8.1. We will only use your personal information for purposes relating to your dealings with us, including your credit assessment and direct marketing. You authorise us to release your personal information to third parties for these purposes, including disclosing your personal and credit information as we consider appropriate for credit reporting purposes to credit reference agencies, which may be listed on the credit agency's bureau and provided to the credit agency's other subscribers. You can inspect and correct your personal information held by us.
- 8.2. Both you and we must keep completely confidential all information regarding the strategies, business affairs, accounts, finance or contractual arrangements of the other.
- 8.3. If you are or have been or become a customer of PGG Wrightson Finance Ltd (previously a subsidiary of PGG Wrightson Ltd), you authorise us to exchange with PGG Wrightson Finance Ltd your business information (with either entity) as is necessary for the proper operation of your accounts with either entity. You can revoke this authorisation at any time by advising us in writing.

## 9. RETURNS

- 9.1. Subject to clauses 9.2 and 9.3, if you are not satisfied with the Products provided by us for any reason, you can return the Products (other than services) to us within 30 days of your taking delivery of the Products.
- 9.2. Products (other than services) can only be returned to us if:
  - a. they are not custom-made (seed that you have ordered to be supplied in a blended, coated or treated form will be deemed to be custom-made unless we agree otherwise) and form part of PGW Seeds' usual stock-in-trade; and
  - b. they are supplied in packaged and sealed form and not in bulk; and
  - c. we are satisfied that the condition of the Products has not deteriorated; and
  - d. where supplied in packaged form the Products are returned in that original packaging and unopened; and
  - e. you pay for the return of the Products; and
  - f. you provide evidence of purchase of the Products from us, to our satisfaction.
- 9.3. Products sold by PGW Seeds as agent for any other party may not under any circumstances be returned.

## 10. YOUR RIGHT TO COMPENSATION

- 10.1. If due solely to the act, omission or negligence of PGW Seeds, any Product is defective or does not materially conform to our description, we will at our option:
  - a. repair or replace the defective Product; or
  - b. pay compensation to a maximum amount that does not exceed the purchase price for the defective Products.

This is your sole right to compensation from us.

## 11. WARRANTIES AND PGW SEEDS' LIABILITY

- 11.1. All statutory and other implied warranties (other than title to the Products) are excluded to the fullest extent that it is lawful for us to do so. Other than as required by law, we give no representation or warranty concerning any Product's condition, quality or fitness for any purpose. It is your responsibility to satisfy yourself as to the condition and quality and fitness for purpose of the Products and you accept the Products on this basis.
- 11.2. Except as set out in clause 10, neither we nor our agents will be liable in any way (including negligence, tort and equity) to you or to any other person in connection with this or any other contract or the supply or failure to supply any Products or the purported exercise of our rights under these Terms for any:
  - a. loss whatsoever, including loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages; or
  - b. amount exceeding the purchase price of the defective Products; or
  - c. amount not claimed within 7 days of the liability arising.
- 11.3. You must use all Products strictly in accordance with any directions, instructions and terms contained on Product labels, packaging and any other product information supplied with the Products.
- 11.4. If we cannot provide the agreed quantity of Products for any reason outside our reasonable control, we are not liable for that shortfall and you must take delivery of and pay for such lesser quantity as we are able to supply.

## 12. CUSTOMER'S LIABILITY

- 12.1. You are deemed to be bound by all transactions undertaken with us, whether or not any person undertaking a transaction has actual or ostensible authority to do so.
- 12.2. If the Customer includes two or more persons, those persons' liability is joint and several.
- 12.3. If the Customer is a trust, these Terms bind each trustee in his or her capacity as trustee and personally. If PGW Seeds has given its prior written consent to a trustee being noted as an independent trustee, that trustee's liability to PGW Seeds will be limited to the assets of the trust as at the time of any default, except for wilful negligence, deliberate default or other breach of trust by such trustee or if such trustee has provided a guarantee personally in respect to your obligations pursuant to this or any other contract.
- 12.4. For the avoidance of doubt, nothing in these Terms will have the effect of contracting out of any provision of the Credit (Repossession) Act 1997, if it applies.

- 12.5. You indemnify us from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which we incur under these Terms except if we are fraudulent or negligent.

## 13. PGW SEEDS AS AGENT

- 13.1. PGW Seeds may act for either or both the vendor and/or purchaser in respect of the sale and purchase of any Products.
- 13.2. Where we at any time agree to act as agent for a party under a contract of sale of Products, we will not be obliged to pay or credit any amount on account of the purchase price payable under such contract of sale until we have received the full amount of the purchase price from the purchaser.
- 13.3. If you are the purchaser and we elect to credit any amount on account of the purchase price to the vendor and/or debit your account on account of the purchase price, you agree that:
  - a. the purchase price payable by you under that contract of sale will not be reduced; and
  - b. as between PGW Seeds and you, the subject of that contract sale will be deemed to be Product supplied by us to you (but only for the purposes of the security interest provided for by these Terms and created by the contract) and the purchase price payable under that contract of sale will be deemed to be an amount owing under these Terms.
- 13.4. If you are the vendor and we elect to credit your account on account of the purchase price, you agree that all rights under that contract of sale (including all rights in relation to amounts owing and any security interest in the goods sold) are deemed to be transferred to us in consideration of us crediting your account.
- 13.5. When acting as an agent for another (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 or to the Principal. We give no assurance as to the ability to supply or the financial or other position of the Principal.
- 13.6. Each person dealing with PGW Seeds as agent agrees that it will not make or support any claim or proceeding against PGW Seeds.
- 13.7. Unless otherwise specified, where PGW Seeds acts as agent you will pay all amounts owed to the vendor to PGW Seeds, which will then promptly account to the vendor for that amount subject to any right of set-off. PGW Seeds may choose in its sole discretion to pay the vendor before receiving full payment from you. In such case, you will not be released from any liability and the vendor's rights under the contract of sale are deemed to be transferred to PGW Seeds.
- 13.8. PGW Seeds may deduct commission owed to it from the proceeds of sale or from any account that you have with PGW Seeds. We may deduct commission from both parties when acting as agent for both parties to a transaction.
- 13.9. Where we are acting as agent for a vendor, the vendor warrants that it has provided accurate and complete information concerning the Products to us. We are not required to verify that information.
- 13.10. Where we act as agent for both parties, we may sell the Products to the purchaser for a different price than that paid to the Vendor and in such case we may carry the loss or take the profit arising from such difference.
- 13.11. PGW Seeds may in its sole discretion register a security interest on behalf of a vendor when acting as agent but has no obligation to do so.
- 13.12. Where PGW Seeds pays suppliers for goods or services you have purchased, PGW Seeds 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 or benefit 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 on 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: Together the Credit Application and these Terms are the entire agreement between us, you and the Guarantor(s), and supersedes all representations, agreements and other communications made by us. Certain Terms of Sale in respect of specific Products that may appear on the reverse of any of PGW Seeds' invoices/statements or other specific terms may apply in conjunction with or in place of these Terms if we specify.
  - 14.4. Our Decisions and No Waiver:
    - a. Any power 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.
    - b. If we delay or do not exercise any of our rights or remedies, that will not be a waiver of those rights or remedies. Any waiver we give must be in writing.
  - 14.5. Severability: If any part of these Terms is illegal, unenforceable or invalid, the remaining Terms are not affected.
  - 14.6. Variation: We may in our absolute discretion change these Terms at any time by publication on our Group website [www.pggwrightson.co.nz](http://www.pggwrightson.co.nz). The change will take effect from the time specified.
  - 14.7. Typographical Errors: We reserve the right to correct any typographical or clerical errors in any prices quoted or contained in an order or quotation.
  - 14.8. Inconsistency: If there is any inconsistency between these Terms and the terms of any order that may be lodged by you or with any delivery docket or invoices or other communication by or to us or you, these Terms will prevail subject to clause 14.3 and/or unless we specify otherwise.
  - 14.9. Consumer Guarantees Act and Fair Trading Act: You agree that the Products are both supplied and acquired in trade and that your Credit Application is made for business/trade purposes. You also agree that from 18 June 2014 that the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act; to contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act; that you have not relied on any representations made by PGW in entering into these terms or purchasing the Products; that this clause is fair and reasonable; and that you had the opportunity if you chose to negotiate these terms and receive advice from or be represented by a lawyer in relation to these terms.
  - 14.10. Disputes: Any dispute between us and you will be discussed between us in the spirit of goodwill.
  - 14.11. Governing Law: New Zealand law governs this agreement and the parties submit to the exclusive jurisdiction of the New Zealand courts.
  - 14.12. Relationship: The relationship between you and PGW Seeds is as independent purchaser and seller. There is no partnership, joint venture, employment or agency relationship. An agent or representative of PGW Seeds is not authorised to make any representations, warranties or agreements that PGW Seeds has not confirmed in writing. PGW Seeds is not bound by unauthorised statements.
- ## 15. PROTECTED CULTIVARS
- 15.1. Protected Cultivars are marketed or sold by PGW Seeds under conditions stipulated by the breeder or holder of any other intellectual property rights in the Protected Cultivar (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 subject to trademark or other protection.
  - 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 its agent.
  - 15.3. If you fail to comply with clause 15.2, then legal action may be taken by PGW Seeds and/or the relevant breeder or its agent to protect their interest in the Protected Cultivar. You acknowledge that this provision is also for the benefit of 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 PGW Seeds' prior written authority.