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.

Customer means your application to open an Account.

Credit Application means your application to open an Account.

PGW Seeds means PGG Wrightson Limited and includes each of its 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 to you from time to time, including: a. the products, merchandise, seeds, grains or services described or referred to (whether by item, product group, 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: where any product or service, or any part thereof, is pledged or hypothecated by you to us or held by us to secure any obligation to us.

c. where any product, service, or any part thereof, is pledged or hypothecated (whether or not by way of security interest or other equivalent security or other equivalent security interest) for the purposes of a particular transaction.

d. where any product, service, or any part thereof, is pledged or hypothecated for the purposes of a particular transaction and the proceeds of any security interest in that product, service or part thereof are used to purchase or supply Products.

2. CUSTOMER ACCOUNTS

2.1. You must tell us of any changes to your contact details or of 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 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 under these Terms until all of your obligations to us have been satisfied in full to our satisfaction.

3. ORDERS

3.1. An offer will come into existence between us once your Order has been accepted by us. We will accept your offer by giving you a delivery docket or invoice. Any additional terms we impose on the offer will form part of the contract between us for that Order.

3.2. You cannot cancel an Order for Products after we accept it.

3.3. We will use our reasonable endeavours to source all Products ordered by you and quoted by us.

3.4. We will supply Products within a reasonable time of your order.

3.5. Ownership of and title to all Products remains with us and only passes to you once all money you owe us is paid for in full.

4. PAYMENT

4.1. You must pay for any Products or services rendered by us before or during delivery or as and when billed for, as agreed.

4.2. You must pay for any Products and services rendered by us at the time such Products and services are supplied. If you do not pay the amount due under these Terms, we may take action under the PPSA to ensure that we are paid for the products supplied.

4.3. We may charge interest on any overdue charges, at the rate we determine from time to time, after a default event has occurred.

4.4. PGW Seeds may deduct (without prior notice) any money that you owe to PGW Seeds from any money that we owe to you 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 you; and

b. 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

c. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to you; or

d. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to PGW Seeds; or

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 date of purchase. If full payment of the excess amount has not been 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 entitled to deliver any Products if any monies 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 at which they are unloaded from our facilities. If you elect to have any Product picked up by you, you must take delivery of such Product at the time specified, whether or not the Product is in place at the time specified. You are responsible for the Products until you have taken delivery.

5.3. Ownership of title to all Products remains with us and only passes to you on delivery.

5.4. If you fail to take delivery of any Products, we may treat those Products as having been delivered to you and the title in those Products will pass to you.

5.5. We have no obligation to deliver any Products if any monies due and payable by the Applicant remain outstanding.

6. PERSONAL PROPERTY SECURITIES ACT 1999

6.1. You grant to us a security interest in all Products and all proceeds of sale of Products under these Terms for the purpose of securing payment for your obligations to us.

6.2. We are entitled to any moneys owing to us at any time and we will apply such monies:

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. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to you; or

c. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to you; or

d. held by PGW Seeds or any subsidiary on your behalf on any account in or towards payment of any amount owing to PGW Seeds; or

6.3. Our security interest shall be a floating charge over all Products, and the proceeds of sale of the Products, and any other property or things in which the Products are merged or from which the Products are derived.

6.4. We may at any time as security for our obligations under these Terms, register a security interest in your name for the purpose of securing all amounts owing by you to us.

6.5. You must keep all Products in good order and condition and maintain insurance to the full value of the Products.

6.6. Your rights in respect of the Products are subject to our security interest.

6.7. You must provide us with all information and assistance that we require to register a security interest in the PPSR in our name as secured party even where we are acting as an agent for a vendor.

6.8. We are entitled to enter any place where we believe the Products may be located at any time without prior notice to you.

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 credit limit; or

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

c. you hold the Products as our bailee; and

7.2. If a default event occurs, we may take any of the following actions:

a. we may suspend or terminate the supply of Products to you or cease to supply Products to you or cease to supply Products to you or cease to supply Products to you; or

b. we may suspend or terminate the supply of Products to you; or

7.3. We may take any action under the PPSA to ensure that we are paid for the products supplied.
payment, immediately become due and payable; and
d. you irrevocably give us and our agents to licence to enter any place where we believe the Products may be kept and remove them to such place as we may require in order to exercise our rights or remedies under these Terms.

10. WARRANTIES AND PGW SEEDS’ LIABILITY

10.1. If due solely to the act, omission or negligence of PGW Seeds, any Product is defective or does not conform to your order, we will, at our option, refund your purchase price, replace it with another product of similar quality or arrange for the repair of the defective Product.

10.2. Except as set out in clause 10, neither we nor our agents will be liable in any way (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.

11. RIGHTS OF Nitrogenous Fertilisers

11.1. 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 purchase of the Products.

11.2. Products (other than services) can only be returned to us if:

- a. they are not custom-made (e.g. you have ordered that the Product be supplied in a blunted, coated or treated form will be deemed to be custom-made unless we agree otherwise) and form part of PGW Seeds’ stock in trade; and
- b. they are in the condition in which the Products have not been damaged, used, altered, written on, marked, attached, or otherwise destroyed or adulterated.

11.3. If you are or have been or become a customer of PGW Wrightson Finance Ltd (previously a subsidiary of PGW Wrightson Limited) you are entitled to credit your account with PGW Wrightson Finance Ltd your business information (with entity entry) as is necessary for the proper operation of your accounts with either entity. You can revoke this authority at any time by advisors writing in us.

12. RETURNS

12.1. 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.

13. GENERAL

13.1. Assignment: You may not transfer any right or benefit under these Terms. You agree to transfer your rights and obligations under these Terms by notifying us in writing.

13.2. Enforcement: You will pay us on demand all costs (including legal costs on a solicitors/client basis or any other protection.

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 PGW Seeds supplied to you by us (or for the purposes of your contract with the vendor) and the vendor’s right under that contract of sale will be deemed to be transferred to us.

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 agreeing to use the capacity to supply the financial or other position of the Principal.

13.5. Each person dealing with PGW Seeds as agent agrees that it will not make or support any claim or proceeding against PGW Seeds.

13.6. Unless otherwise specified, where PGW Seeds acts as agent you will pay all amounts owed to the Vendor as a result of the Transaction. PGW Seeds 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 a case, you will not be released from any liability and the vendor will be subrogated to our rights and remedies under these Terms.

13.7. 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 and acting as agent.

13.8. 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.

13.9. 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.

13.10. 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.

14.5. Relationship 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 fail to do any of the rights or remedies, that will be a waiver of those rights and remedies. An exercise or non-exercise must be in writing.

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

14.7. Variation: We may in our absolute discretion change these Terms at any time by publication on our Group website www.pgwrightson.co.nz. The change will take effect from the time of publication.

14.8. Typographical Errors: We reserve the right to correct any typographical or clerical errors in any terms priced quoted or contained in an order or quotation.

14.9. Inconsistency: If there is any inconsistency between these Terms and the terms of any order that may be placed by you, these Terms will govern. The other terms and conditions of the order shall be disregarded. If any term or condition of these Terms is held to be invalid, the remaining Terms are not affected.

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

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

15. RELATIONS BETWEEN YOU AND PGW SEEDS

15.1. If the Customer includes two or more persons, those persons’ liability is joint and several.

15.2. If the Customer is a trust, then each trust beneficiary or in his capacity as trustee and personally if PGW Seeds in its prior exercise of the trust as an independent trustee, that trustee’s liability to PGW Seeds will be limited to the assets of the trust at the time of any default, negligence or fraud by the trustee or any 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.

15.3. For the avoidance of doubt, and in line with these Terms, there will be no effect of certificates of the Credit (Repossession) Act 1997, if it applies.