

## Terms and Conditions (applying to all Contracts)

### Interpretation

1. These terms and conditions are entered into on behalf of and are intended to bind and be for the benefit of Midlands and the Midlands' successors and assigns.
2. In these terms and conditions, unless the context otherwise requires:  
**Contract** means the contract between Midlands and the Grower for the purchase of Seed and the cultivation of it. It may also include the purchase of the Crop by Midlands;  
**Crop** means the cultivated plants that are grown from the Seed and the resultant seed, bulbs, roots, tubers, or other similar plant matter;  
**Currency** means New Zealand Dollars;  
**Grower** means the person, firm, company or other entity who cultivates the Seed;  
**Midlands** means Midlands Seed Limited and its successors and assigns;  
**Seed** means any seed, bulbs, plants, roots, tubers, or other similar means of plant propagation supplied by Midlands to the Grower as a part of the Contract; and  
**Seed Price** means the price payable by the Grower to Midlands for the Seed.
3. Headings are used as a matter of convenience only and shall not affect the interpretation of these terms and conditions.

### No Agency

4. The Grower is an independent contractor and shall not be deemed to be the agent or employee of Midlands for any purposes under the Contract.

### Plant Variety Rights Act 2022

5. The Seed and Crop may be controlled by the Plant Variety Rights Act 2022 and subsequent amendments. All clauses of the Contract must be strictly adhered to. Seed and the Crop controlled by the Plant Variety Rights Act 2022 cannot be bought, sold or graded without the permission of Midlands.
6. Midlands will at all times endeavor to supply Seed that is true to type, purity and germination. However, Midlands shall not be responsible for any loss, failure or misdescription due to any Seed not conforming to type, purity or germination or any representation, act or omission on the part of Midlands.
7. The Grower will take all reasonable precautions to ensure and safeguard the varietal purity of the Seed, and the Crop.
8. The Grower will at all times indemnify Midlands against all losses, costs, claims and actions whatsoever suffered by Midlands and arising from the failure of any Crop supplied by the Grower in accordance with the specifications of Midlands and to conform with the variety purity tests and standards relating to the Crop.

### Payment

9. The Grower shall pay the Seed Price to Midlands on the 20<sup>th</sup> of the month following the invoice date.
10. Default in such payment shall attract interest at the rate of 24% per annum, charged on a daily basis, from the date the payment was due until the date payment is received by Midlands whether before or after judgment but without prejudice to Midlands' other rights and remedies in respect of non-payment

or late payment.

11. The Grower authorises Midlands to apply, without prior notice, all moneys held by Midlands on behalf of the Grower, in payment of any amount owed by the Grower to Midlands, whether pursuant to this Contract or otherwise.
12. The Grower authorises Midlands to deduct from the amount payable to the Grower any regulatory charges incurred by Midlands including, but not limited to, Customs, Ministry for Primary Industries levies and/or other costs which may be imposed after the date of the Contract and payable in respect of the Crop.
13. While every endeavour will be made by Midlands to pay the Grower in accordance with its usual terms of trade (for forward contracts the 20<sup>th</sup> day of the month following acceptance and for agency and remultiplication contracts upon receipt of payment by the company from its principal) Midlands will be under no liability for delay in payment caused by delay/ default in receipt of payment by it on the resale of the product.

### Grower Obligations

14. The Grower will sow the Seed in a proper and careful manner in properly prepared soil and will harvest and thresh the Crop in good order and condition. The Grower will ensure that all machinery is clean, free from contamination, disease, other grain and noxious seeds before and during use. All costs of production including, but not limited to, sowing, weed control, harvesting and threshing shall be paid by the Grower.
15. If for any reason the Grower is unable to sow the Seed, they shall immediately advise Midlands in writing and return the Seed and this Contract will terminate from the date all the Seed is returned to Midlands and any payments due to Midlands have been paid.
16. The Grower agrees to use the Seed supplied to them by Midlands for the sole purpose of sowing the area that is the subject of the Contract. Any Seed not sown shall be returned to Midlands within 21 days from the date on which the Seed was supplied.
17. It is the responsibility of the Grower to enter their Crop for certification. Midlands shall in no way be deemed responsible for any certified crop being rejected by the National Certification Authority because of contaminants.
18. The Crop shall be the fair average for the district and season, and shall be free of wild oats, chemical pollutants, noxious and undesirable weed species, disease, vermin and insects.
19. The Grower shall comply with all reasonable instructions from Midlands as to Crop husbandry and the use of sprays.
20. The Grower will ensure it has capacity on their property to store the Crop, if required by Midlands to do so.

### Inspection

21. Midlands shall have the right to inspect the Crop at any time before or after harvest and the Grower shall permit Midlands access to the Crop upon demand during the continuance of the Contract. Midlands shall also have the right of inspection and rejection at any store to which the Crop is delivered. If rejected, all transport, processing and storage costs shall be borne by the Grower and no storage increment will be payable.

### Screening

22. All screening and/or drying to meet minimum standards shall be at the expense and risk of the Grower. Any Crop that is artificially dried, must be declared as such before delivery.
23. Where dressing loss or maximum screenings exceeds the

figure(s) on the face of this Contract, Midlands shall at its option be entitled to purchase the excess at its market value as determined by Midlands, in its sole discretion.

24. All soil, weeds and foreign matter ("foreign matter") shall be deducted from calculation of weight. In the event of foreign matter exceeding acceptable standards then Midlands may, at its option elect to:
- 24.1 have the said Crop(s) cleaned of foreign matter at the Grower's expense in all things;
  - 24.2 accept the said Crop(s) at its weight net of such foreign matter; or
  - 24.3 reject the said Crop(s) or any part thereof.

#### **Delivery**

25. The Grower shall deliver the Crop to Midlands or any third party premises as directed by Midlands, at the Growers cost.
26. When delivery is stated "prompt after harvesting" the Crop shall be held by the Grower until Midlands gives instructions for delivery. The Crop is at Grower's risk until accepted by Midlands in accordance with clause 29.
27. In the event of adequate or suitable storage not being available to Midlands at the expected time of delivery or because of unavoidable delays in shipping, Midlands may require the Grower to store the Crop on their own property at the Grower's cost, pending availability of storage or of shipping.
28. Notwithstanding sampling of the harvested Crop by Midlands, the Grower shall be responsible for maintaining condition and quality as sampled so long as the Crop remains on the Grower's property or under the Grower's care.

#### **Acceptance / Title**

29. Acceptance of, and property in the Crop shall not pass to Midlands until (under the applicable specifications) all required weighing, testing (certificate of analysis), drying, cleaning, screening and grading have been completed and any unacceptable part of the Crop has been rejected by Midlands. Weights from weighbridge nominated by Midlands shall be final. Midlands has the right to accept or reject the Crop tendered that do not comply with the sample submitted or terms of the Contract.
30. For the avoidance of doubt a pro forma payment by Midlands will not of itself be deemed acceptance nor cause title to pass to Midlands. In the event a pro forma payment is made by Midlands and the Grower is unable to fulfil the requirements under the Contract, for either quantity or quality, then the total amount so payable shall be refunded to Midlands.

#### **Shortfall**

31. The Grower acknowledges that in the normal course of business Midlands may enter into contracts for the future sale of the Crop described herein. Should the Grower refuse, fail or be unable to deliver part or all of the Crop described, Midlands may purchase a similar quantity of the same Crop at prices current at expected time of delivery and recover any resultant loss from the Grower. Notwithstanding the foregoing Midlands may, at its sole discretion, permit the Grower to

replace the Crop with a crop complying strictly with the Contract specifications.

32. For the avoidance of doubt, it is agreed and declared that in the event of the Crop being sold to a third-party buyer ["the Buyer"] the Crop Price payable by Midlands specified on the face hereof is subject to adjustment, on the basis that the price to be paid to the Grower will be based upon the Buyer's test results and interpretations of quality.

#### **Security**

33. With the exception of a crop security in favour of Midlands, the Grower shall not without the prior written approval of Midlands grant any crop lien or security over the Crop.

#### **Disputes**

34. Any dispute arising between Midlands and the Grower will be determined by a sole arbitrator in accordance with the Arbitration Act 1996 and its amendments and the AMINZ Arbitration Rules current at the time arbitration is commenced. The place of arbitration will be Christchurch, New Zealand and the law applicable to the arbitral proceedings and the matters in dispute will be New Zealand. Either party may apply to AMINZ for appointment of the arbitrator.
35. Subject to clause 34, the Courts of New Zealand shall have the non-exclusive jurisdiction in connection with the Contract.

#### **Default**

36. If the Grower defaults on any of its obligations under this Contract or breaches any of the terms of this Contract or if the Grower commits any act of bankruptcy, enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property, Midlands, without prejudice to any other right it has at law or in equity may, at its option, repossess the Seed or Crop and may also suspend or terminate the Contract. Any costs involved in recovering monies owed to Midlands for the Seed or Crop (including legal fees) will be payable by the Grower.
37. If the Grower is in default under clause 36, Midlands appointed agent shall have the right to enter onto the Grower's property and take possession of the Seed and/ or Crop. Midlands shall not be responsible for any damage or costs the Grower may incur as a result of Midlands agent accessing the Growers property pursuant to this clause. The costs incurred by Midlands in respect to the enforcement under this clause shall be payable by the Grower.

#### **Waiver**

38. All the original rights, powers, exemptions and remedies of Midlands remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
39. Midlands is not deemed to have waived any condition unless such waiver is in writing under signature of Midlands or its authorised officer and any such waiver, unless the contrary is expressly stated, applies to and operates only in a particular transaction, dealing or matter.

#### **No Assignment**

40. The Grower may not assign or subcontract all or any of the Grower's rights or obligations under the Contract without the written consent of Midlands.

#### **Liability**

41. The person who signs this Contract on behalf of the Grower, warrants that they have the authority to do so, but shall

remain personally liable for the obligations of the Grower herein.

42. If the Grower states an intention to enter into the Contract herein and having received a copy of this Contract, but not having physically signed the Contract, they shall be deemed to be bound by the conditions herein.
43. The Grower acknowledges that the Contract is subject to limitations or exclusions of liability including:
  - 43.1. Midlands will not be liable for any direct, indirect, consequential or economic loss, damage or cost, or the loss of any revenue, profits, anticipated savings or goodwill incurred by the Grower or any third party arising from any spray or product manufactured or supplied by Midlands or any error, omission or misrepresentation in any technical advice or information provided by Midlands to the Grower in relation to the use of any spray or product.
  - 43.2. The liability of Midlands to the Grower for all claims (whether in contract, tort, misrepresentation, breach of any statutory duty or otherwise) is limited to the lesser of: (a) the value of the replacement cost of the affected seed associated with the Grower's claim; or (b) \$15,000 (including GST, if any).
  - 43.3. In the event of a loss arising from spray or other products supplied by Midlands, Midlands has the option, at its sole election, to supply suitable replacement seed in full satisfaction of any claim by the Grower.
  - 43.4. Midlands will not have any liability if the Grower does not: notify Midlands within 14 days of any defect or issue becoming apparent; allow Midlands to inspect and investigate including taking samples; comply with any Midlands directions (if any) as to reasonable efforts to remedy the issue.
  - 43.5. The Grower agrees that sections 9, 12A, 13 and 14(1) of the Fair Trading Act 1986 are contracted out of where the Grower is in 'trade' (as defined in section 2 of that Act) and the spray, product or technical advice is acquired by the Grower in trade. The Grower agrees that any remedy arising from section 35 of the Contract and Commercial Law Act 2017 shall be limited to clause 43.2 above.
  - 43.6. Except as provided for above, to the extent permitted by law, Midlands is excluded from all other liability to the Grower or any third party for loss or damage of any kind. The Grower agrees that for the purposes of sections 35-49 of the Contract and Commercial Law Act 2017 there shall be no right of cancellation and that any remedy is limited to those provided for under clause 43.2 above, including for misrepresentation. This clause 43 will not apply to the extent that the law prohibits Midlands from limiting its liability, nor to the extent that the liability Midlands is seeking to limit is caused by fraud or wilful deceit.

#### **Indemnity**

44. The Grower acknowledges that the Crop grown

pursuant to the Contract may be required for human consumption and therefore agrees:

- 44.1 That Midlands has the right to reject all or any part of the Crop which it, in its absolute discretion, considers to be or may become unfit for human consumption; and
- 44.2 To indemnify Midlands from and against any liability which might be incurred in any way however by reason of the Crop being unfit for human consumption in any respect.
- 44.3 To indemnify Midlands from and against any liability which might be incurred in any way howsoever by reason of the presence of pesticide residues on the Crop.
45. All Crop or other products produced or derived from the Seed must be returned to Midlands or delivered to any third party or parties on the written instructions of Midlands and may not in any circumstances be used for reproductive purposes in any form.

#### **Law and Jurisdiction**

46. The Contract in all respects is deemed to be a contract made in New Zealand and is governed by New Zealand law.

#### **Consumer Guarantees Act 1993**

47. The Grower acknowledges and agrees that unless the Grower has indicated to the contrary in writing at the time of the formation of the Contract, the Contract is entered into by the Grower for the purposes of a business and the provisions of the Consumer Guarantees Act 1993 do not apply.

#### **Privacy Act 2020**

48. The Grower authorises any person or Company to provide Midlands with information in response to its credit enquiries. The Grower further authorises Midlands to furnish to a third-party details of the application to which this Contract form part and any subsequent dealing that the Grower may have with Midlands.
49. Midlands will only use the Grower's personal information for purposes permitted by law including relating to the Growers dealings with Midlands. Where the Grower is a company or trust, Midlands has the right to undertake a credit assessment of the directors, shareholders or trustees.
50. The Grower has the right to inspect and correct the personal information held by Midlands.

#### **Personal Property Securities Act 1999 (PPSA)**

51. The Grower acknowledges that the Contract creates a security interest (Security Interest) (as that term is defined in the PPSA) in the Seed and the Crop. The Grower agrees that the Security Interest in the Seed and the Crop and the proceeds thereof, secures all amounts payable by the Grower to Midlands from time to time.
52. The Grower acknowledges and agrees (or is deemed to acknowledge and agree) that where title in the Seed and Crop passes to the Grower, for any reason whatsoever, these terms and conditions constitute a security agreement providing for both future advances and a security in favour of Midlands in all the Grower's present and after acquired property and the proceeds thereof, but excluding property (other than the said proceeds) not supplied by Midlands.
53. The Grower:
  - 53.1 Must, upon request, promptly give Midlands all assistance and information (which the Grower warrants is complete, accurate and up to date in all respects) as is necessary to register a financing

- statement and to meet all other requirements under the PPSA in respect of the Seed and Crop to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including excluding any variations to these terms and conditions reasonably requested by Midlands.
- 53.2 Agrees to Midlands registering a financing statement to protect its security interest under the Contract.
- 53.3 Must not register a financing change statement or change demand in respect of the Seed and Crop (as those terms are defined in the PPSA).
- 53.4 Must give Midlands not less than 14 days prior written notice of any change or proposed change in the Grower's name, or other details including, but not limited to, changes in the Grower's address, trading name, type of business or contact phone numbers.
- 53.5 Must pay to Midlands promptly, on request, the cost of registering or subsequently amending the financing statement and the costs of enforcing or attempting to enforce the Contract.
- 53.6 Agrees that sections 114(1)(a) and 134 of the PPSA will not apply to the Security Interests created by these terms and conditions, and agrees to contract out of the Grower's rights referred to in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA.
- 53.7 Waives its right to receive a verification statement under section 148 of the PPSA.
- 53.8 The Grower must store the Seed and the Crop separately from other grains and seed and must be clearly identified as being subject to Midlands security interest.

#### **General**

54. Midlands shall not be liable to the Grower for any damage, harm, injury, loss (including, without limitation, consequential loss), expenses, cost or any other thing directly or indirectly arising from any delay or failure of Midlands in the fulfilment of its obligations under the Contract where such delay or failure is the result, directly or indirectly, of anything beyond the reasonable control of Midlands. By way of example only, and not by way of limitation, things "beyond the reasonable control of Midlands" includes: Act of God, pandemic, epidemic, adverse weather, electrical failure, armed conflict, labour dispute, civil commotion, Government intervention, inability to

obtain labour or materials, accidents and/or transportation delays.

55. If any one or more provisions of the Contract are or become illegal, void or invalid, that shall not affect the legality and validity of the other provisions unless severing those illegal, void or invalid provisions:
- 55.1 Significantly alters the commercial result of performance or non-performance or default by the parties of their obligations under the document; and
- 55.2 Results in either:
- A substantially unequal exchange of values; or
  - The conferment of a benefit or imposition of an obligation which is, in all the circumstances substantially disproportionate to the consideration therefore, or materially and substantially different from that provided for under the Contract.

In which case Midlands may terminate the Contract by giving written notice to the Grower at any time with effect from such date as Midlands specifies (including, without limitation, terminating the Contract so as to render it void ab initio).

56. The written Contract may be executed in two or more counterparts, each of which shall be deemed to be an original upon signing of all necessary counterpart copies and in any event any signature or seal of which a scanned copy exists shall be deemed to be an original signature or seal.

#### **Intellectual Property**

57. It is agreed that all intellectual property relating to or created under this Contract shall remain the property of Midlands, unless the contrary is expressly agreed to in writing at the time of contracting.
58. The Grower agrees to retain control of all intellectual property, and, without limitation to the above, agrees not to disclose the intellectual property to any third party within the express written consent of Midlands.

#### **Amendments**

59. Midlands may from time to time amend its terms and conditions by publication on its website ([www.midlandsnz.com](http://www.midlandsnz.com)) whereupon the Grower shall be deemed to have agreed to the amended terms and conditions, which shall prevail over any previous terms and conditions, to the maximum extent permitted by law consistent with the existence of a contract

### **SPECIAL CONDITIONS (Applying to Multiplication Contracts)**

60. The price payable by Midlands for the Crop is that specified on the face hereof (hereinafter referred to as "the Payment Price"). The Payment Price is conditional upon the Crop satisfying the minimum purity and germination levels and not exceeding other crop seed and weed levels specified on the face of the Contract. If the quality of the Crop is below the minimum so specified and unacceptable to Midlands and rejected, Midlands shall be under no obligation to purchase. Midlands may however enter into negotiations with the Grower for the purchase of the Crop if it so wishes. The Grower may not without the written consent of Midlands sell or otherwise dispose of any Crop not purchased by Midlands nor shall they retain any part of the Crop for their own use, whether for seed or otherwise but must deliver the whole Crop to Midlands. Any Crop not purchased by Midlands, or with its prior authorisation sold to a third party, must be destroyed.
61. The price payable by Midlands for the second and ensuing production years (if applicable) shall be determined by the parties hereto prior to the forthcoming production year. The price payable, once determined shall be recorded in writing, signed by both the parties hereto and attached to the Contract.
62. Upon harvest, the Crop shall be delivered to a plant that has been approved by Midlands, in writing, for dressing. The Grower shall pay all transportation charges in delivering the Crop to an approved plant. Dressing shall be carried out under the direction and supervision of Midlands and the Crop shall be packaged as specified by Midlands. The Crop shall be sound, unadulterated, marketable and without bad odour so that it may be kept in bags during the normal foreseeable transport to the country of destination so specified. The Grower shall pay dressing charges, together with the costs for sacks, testing, certification and buried seed counts (if required).
63. Notwithstanding that the Crop may be at a plant approved by Midlands, it shall remain at the Grower's risk from fire or any other loss until it is accepted by Midlands in accordance with clause 28.
64. At the expiration of the Contract and in the absence of written agreement between the parties for an extension of the growing period or upon its earlier termination, the Crop shall be ploughed under by the Grower. Midlands shall have the right of inspection to ensure that the Crop has been ploughed under.
65. The Grower acknowledges that:
  - 65.1 In the normal course of its business, Midlands enters into contracts before harvest for the future sale of the Crop;
  - 65.2 Midlands has entered into contracts in anticipation of and/or in reliance on this Contract and
  - 65.3 Should the Crop not be produced in the specified quantity or not produced at all Midlands may suffer loss which can be recovered from the Grower.
66. The Grower covenants:
  - 66.1 That should they anticipate leasing or selling their farm property, they shall immediately advise Midlands thereof and shall make any agreement to lease or for sale and purchase subject to this Contract and conditional upon the entry into an identical agreement by the intended lessee or purchaser; and
  - 66.2 That if without the prior written agreement of Midlands, they remove the Crop or any part thereof out of production they shall be legally responsible for all reasonably foreseeable losses (including exchange losses, consequential losses and loss of profits) sustained by Midlands.
67. Midlands shall not be liable for any loss, damage, injury shortages, delay, late delivery or non-delivery whatsoever due to any cause or circumstances beyond its control. Without limiting the generality of the foregoing, such cause or circumstances shall include non-availability of, late departure, non-delivery, part delivery or late delivery by shipping or any other freight, acts of Government, strikes, lockouts, fire, accidents, acts of war, terrorism, riots, civil commotions, malicious mischief or theft.