

## TERMS OF USE

YOU WILL BE TAKEN TO HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS BELOW BY USING THE SEED.

THIS CONTRACT IS BETWEEN THE LICENSEE OF THE PLANT BREEDER'S RIGHTS OF THE LICENSED VARIETIES, AND YOU, THE GROWER.

### Terms and conditions

It is agreed:

#### 1. Meaning of Words

The meaning of words starting with a capital letter that are used in this Contract is set out in Schedule 1.

#### 2. Grant of Licence

In return for you paying the EPR you may, non-exclusively:

- a) plant Seed on your own farm to produce Grain;
- b) produce more Grain on your own farm using Retained Seed; and
- c) Sell Grain other than for further propagation.

#### 3. Essentially Derived Varieties

You agree that any Essentially Derived Variety of any Licensed Variety created using the Seed or Retained Seed will be owned by the owner/s of PBR in the relevant Licensed Variety and you will do all things necessary to give effect to this clause.

#### 4. Notice to declare Grain production

4.1 On or before 31<sup>st</sup> August each year, we will provide, or arrange for a third party to provide, you with a notice to declare your Grain production for the previous 12 month period. You must accurately complete and return the notice as directed by that notice.

4.2 If for any reason you do not receive such a notice by 31<sup>st</sup> August, you must provide to us a written notice by 31 October with the following information for the previous 12 month period:

- a) your name and address;
- b) the variety/ies and quantity/ies of Grain produced by you;
- c) the variety/ies and quantity/ies of Grain Sold by you and the trading name of each purchaser;
- d) the variety/ies and quantity/ies of Retained Seed;
- e) the variety/ies and quantity/ies of Consumed Grain;
- f) tonnages of Grain of any variety/ies stored or warehoused for future Sale, and;
- g) the total End Point Royalty due to us in relation to the Grain.

4.3 In addition to the information you are required to provide under clauses 4.1 and 4.2 (above), you must provide any other reports or information set out in Appendix 2 or as required by the Licensee.

4.4 You agree that:

- a) any Authorised Distributor may pass on Details to us; and
- b) any entity that stores, warehouses or Sells Grain that you produce may pass on Details to us.

#### 5. Payment of End Point Royalty

5.1 You must pay to us, the End Point Royalty (and applicable GST) as set out in Schedule 2 for each tonne of Grain Sold or Consumed by you for the previous 12 month period.

5.2 Where clause 6 does not apply, we will, upon receipt of the information required to be provided by you under clause 4, issue a tax invoice to you for the End Point Royalty payable by you. End Point Royalty payments are due 30 days from the tax invoice issue date.

5.3 We reserve the right to charge interest on overdue amounts at the rate specified in Appendix 2.

#### 6. Royalties deducted by EPR Collector

6.1 If you Sell Grain to an EPR Collector, you agree that the EPR Collector will:

- a) deduct End Point Royalties (including GST) in relation to the Grain Sold from the Sale price to be paid by the EPR Collector to you for that Grain;
- b) pay the sums deducted under clause 6.1(a) to us in or towards satisfaction of your obligations under this Contract to pay the End Point Royalty with respect to the Grain; and
- c) provide Details to us.

6.2 We will require the EPR Collector to issue a tax invoice to you for the amount of End Point Royalty (including GST) deducted and paid to us by the EPR Collector.

#### 7. Your other Obligations

You must:

- a) make sure that anything you do under this Contract complies with all applicable laws;
- b) promptly notify us if you become aware of any unauthorised propagation, production, reproduction, sale or use of any Grain; and
- c) if you plan to sell any property on which Seed or Retained Seed has been planted:
  - (i) notify us and provide details of the purchaser;
  - (ii) make sure that it is a condition of sale that the purchaser takes over your obligations under this Contract; and
  - (iii) pay or have paid all EPRs due on any Grain that is on the property at the date of sale.

#### 8. Records

8.1 You must:

- a) keep records in sufficient detail to enable all EPRs to be easily and accurately determined;
- b) within 30 days after receiving a request from us, make those records available to us or an auditor appointed by us;
- c) pay our costs of any audit that shows you have underpaid us by more than 5% and make up the shortfall; and
- d) keep the records for 7 years from the date you Sell any Grain.

8.2 If any audit shows that you have overpaid us by more than 5% we will credit the overpayment against future payments.

#### 9. Promises and exclusions

9.1 We promise that:

- a) we have the right to enter into this Agreement with you; and
- b) the Seed you buy from us or an Authorised Distributor will be free from obligations to anyone else unless we have told you about those obligations.

9.2 Except as provided in clause 9.1 (above) we exclude all terms, conditions and promises implied by custom, the general law or statute except any promises that cannot be excluded by law.

9.3 To the extent permitted by law, our liability to you for breach of any promise that cannot be excluded is limited, at our option, to replacing the Seed or refunding the price you paid for the Seed.

#### 10. Liability

10.1 You:

- a) acknowledge that you Use the Licensed Varieties at your own risk;
- b) indemnify us against all Loss incurred by us resulting from your Use of any Seed, Retained Seed or Grain or any breach of this Contract.

10.2 If we contribute to any Loss which we have asked you to pay under clause 10.1, then you don't have to pay us for the portion of the Loss that we contributed to.

10.3 We exclude all liability for any special, indirect or consequential damages arising out of your Use of the Licensed Varieties, Seed, Retained Seed or Grain.

#### 11. Dispute resolution

Any dispute or difference arising out of or in connection with this Contract will be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

## 12. Term

This Contract takes effect from the date on which you Use any Seed and continues in relation to each Licensed Variety until terminated under clause 13.

## 13. Rights to end Contract

- 13.1 Either of us may end this Contract immediately by giving notice to the other if the other:
- breaches any provision of this Contract and fails to fix the breach within 30 days after receiving notice asking it to do so; or
  - breaches a provision of this Contract where that breach cannot be fixed.
- 13.2 We may end this Contract immediately by giving notice to you if you are unable to pay any of your debts (including EPRs) as and when they become due.
- 13.3 This Contract terminates automatically with respect to a particular Licensed Variety if we lose the right to grant the Licence in respect of that Licensed Variety.

## 14. At the end of Contract

- 14.1 At the end of this Contract:
- the Licence ends;
  - you must pay the EPR Collector or us any amounts outstanding;
  - except as provided under clause 14 (d) you must promptly:
    - Sell or destroy all Grain;
    - destroy all Seed; and
    - destroy all Retained Seed or Sell the Retained Seed other than for further propagation, and pay the applicable EPR on the Grain and the Retained Seed Sold.
  - you may grow out any crop planted at the end of this Contract and Sell or Consume the Grain from that crop and must pay EPR on that Grain, but you must not plant any new crops using the Grain;
  - the following clauses continue, along with any other clause intended to continue after this Contract ends: clauses 8 (Records), 9 (Promises and Exclusions), 10 (Liability) and this clause; and
  - accrued rights and remedies are not affected.

## 15. Notices

- 15.1 Any notices under this Contract must be in writing and must be given in accordance with clauses 15.2 and 15.3.
- 15.2 A notice given in accordance with this clause will be deemed received:
- if left at the recipient's address, on the date of delivery;
  - if sent by prepaid post, 10 days after the date of posting unless it is in fact received earlier, in which case, on the date of receipt;
  - if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice; or
  - when posted to our website and/or posted to the Variety Central website ([www.varietycentral.com.au](http://www.varietycentral.com.au)).

- 15.3 Only matters of a general nature relating to more than one grower may be the subject of a notice given in the manner described in 15.2d above. Notices given to individual growers must be addressed to the relevant contact person in Appendix 2.

## 16. Amendment

We may change the terms of this Contract by giving you at least 30 days notice.

## 17. Severability

If part or all of any clause of this Contract is illegal or unenforceable it will be severed from this Contract and will not affect the continued operation of the remaining provisions.

## 18. Assignment

Except to the extent necessary to comply with clause 7(c)(ii), you must not assign or transfer or attempt to assign or transfer any obligation or right arising out of this Contract, without our written consent.

## 19. Entire Contract

This Contract and schedules records the entire Contract between each of us and supersedes all earlier agreements and representations by either of us.

## 20. Governing Law

This Contract will be governed by the Governing Law, and the Courts of that State or Territory will have jurisdiction over all matters arising under it.

# Appendix 1: Glossary

## In this contract:

- Authorised Distributor** means us, or a distributor authorised by us to Sell Seed to you.
- Consume** means to use Grain so that it cannot be further propagated.
- Contract** means this agreement together with its schedules.
- Details** means details of the Licensed Varieties, details of the Sale/purchase of Seed and Grain, your name, your address, and details of your business or company (including ABN and CBH and/or NGR number).
- End Point Royalty** or **EPR** means the royalty payable by you for every tonne of Grain Sold or Consumed by you, or Retained Seed Sold by you as permitted by clause 14(c)(iii).
- EPR Collector** means us or any third party with whom we have entered into an EPR collection arrangement.
- Essentially Derived Variety** has the meaning given to it in the PBR Act, namely, a Plant Variety (as defined in the PBR Act) is taken to be an essentially derived variety of another Plant Variety if:
  - it is predominantly derived from that other Plant Variety; and
  - it retains the essential characteristics (as defined in the PBR Act) that result from the genotype or combination of genotypes of that other variety; and
  - it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.
- Grain** means harvested material from crops of the Licensed Varieties grown from Seed or Retained Seed.
- Licence** means the licence granted under clause 2.
- Licensed Varieties** means the varieties listed in Appendix 2.
- Loss** means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against us).
- PBR** means plant breeder's rights as defined in the PBR Act.
- PBR Act** means the Plant Breeder's Rights Act 1994 (Cth) as amended from time to time.
- Retained Seed** (or Farm Saved Seed) means Grain retained and used by you for the purpose of producing more Grain as permitted by clause 2.1b.
- Seed** means seed of the Licensed Varieties, but does not include Retained Seed.
- Sell** has the meaning given to it in the PBR Act, namely it includes letting on hire and exchanging by way of barter and 'Sale' and 'Sold' have equivalent meanings.
- Use** includes to plant or grow.

# Appendix 2: Details

## Item 1 Licensed Varieties and applicable End Point Royalties

Variety	End Point Royalty (GST excl) (per tonne of Grain Sold or Consumed)
Richmond	\$6.00/tonne
Hayman	\$6.00/tonne

## Item 2 Interest

Seednet may charge 10% interest for any invoiced amounts overdue by more than 30 days.

## Item 3 Governing Law

State of Victoria

## Item 4 Contact details

Seednet  
PO Box 1409, Horsham Victoria 3402  
Phone: 1300 799 246  
Fax: 03 5381 0490  
Email: [admin@seednet.com.au](mailto:admin@seednet.com.au)