

Centor Oceania Terms & Conditions of Sale



1. DEFINITION

In these Terms and Conditions:

Company means Ipeco Pty Ltd (ABN 86139195476) trading as Centor Oceania.

Contract means these Terms and Conditions of trade.

Customer means the person, corporation or firm acquiring goods or services from the Company.

Goods means the provision of Goods or rendering of Service/s by the Company for the Customer.

2. APPLICATION

2.1 The Customer's Order is accepted by the Company on the basis that (subject to clause 8) these Terms and Conditions constitute the Contract between the Customer and the Company for the sale and purchase of the Goods.

2.2 This Contract supersedes all prior discussions, representations, agreements and arrangements in relation to the sale and purchase of the Goods.

3. INCOTERMS

An agreement by the Company to sell on the basis of any particular Incoterm shall be deemed to be a reference to the relevant term as set out in the rules for the interpretation of trade terms published by the International Chamber of Commerce "Incoterms 2010" (ICC Publication No. 560). In the event of any inconsistency between the Terms of Sale and the Incoterms 2010, the Terms of Sale prevails.

4. PURCHASE ORDERS

4.1 When ordering, an official order is to be submitted by the Purchaser to the Company quoting an order number, full description of the Goods to be purchased, the applicable Incoterm, the agreed price and payment terms, the place of Delivery, and the desired date of Delivery. Reference to the Company's quote number to the Purchaser should also be made (where applicable).

4.2 These Terms of Sale apply to the Purchaser and to the Company in respect of Goods ordered by the Purchaser and, unless otherwise agreed, any terms and conditions set out in the Purchaser's order will not bind the Company notwithstanding any statement by the Purchaser in its order that its terms and conditions shall prevail over these Terms of Sale.

4.3 A contract shall only be or be deemed to have been entered into between the Company and the Purchaser for the supply of the Goods when the Purchaser's order has been accepted by the Company in writing.

5. PRICE BASIS

5.1 The Price is that ruling at the date of dispatch of the Goods.

5.2 Any price quoted on any document or correspondence issued by the Company:

(a) excludes GST and any other taxes or duties imposed on or in relation to the Goods and services, in addition to payment of the Price of the Goods and services;

(b) excludes the cost of packaging, freight, delivery, or other costs incurred by the Company in the course of supply and delivery to the Customer;

(c) All prices payable by the Purchaser shall be in Australian dollars. If the Goods are purchased outside Australia, the Australian dollar figure is to be determined based on the prevailing exchange rates as at the date of delivery of the Goods.

(d) is based on costs of all kinds in relation to the Goods ruling at the date of the quotation and is subject to fair adjustment by the Company to take into account any alteration in such costs prior to delivery of the Goods or (in the case of delivery by installments) prior to the final delivery.

(e) The Purchaser shall be responsible for all charges, duties, taxes, fees or other expenses of any kind incurred in connection with the purchase of the Goods.

5.3 The extension of credit to the Purchaser by the Company shall be at the sole discretion of the Company and, where extended, unless otherwise advised in writing by the Company, the Company requires payment in full within thirty (30) days of the end of the month in which Delivery of the Goods occurs or as otherwise specified in the invoice.

6. PAYMENT

6.1 The Customer agrees to accept and pay for the Goods in accordance with this Contract.

6.2 Payments on 30 Day Account must be made in full by the end of the month immediately following the date of the invoice (in this clause, "the Due Date").

6.3 Payments in respect of Equipment must be made in accordance with arrangements made on confirmation of order with the final payment in full on delivery.

6.4 Payments in respect of export orders must be made by cash or confirmed by irrevocable letter of credit from an Australian bank unless otherwise agreed in writing.

6.5 Payment in full on or before the Due Date is a condition precedent to future deliveries under this or any other Contract with the Customer.

6.6 Without prejudice to any other right or remedy the Company may have, it may charge the Customer on any overdue amounts interest at a rate of 5% per annum above the then maximum rate specified by the Company's bank for overdrafts of less than \$100,000.00.

6.7 Time of payments is of the essence of the Contract. Payment by EFT to the Company's bank account is the preferred option.

6.8 The Terms and Conditions as to payment may be revoked or amended at the sole discretion of the Company at any time by written notice to the Customer.

6.9 If the Customer does not make a payment by the Due Date then all money owed by the Customer to the Company (whether or not it is then payable) is immediately due and payable (without notice) by the Customer to the Company.

6.10 The Company will not be liable for any currency exchange costs or losses, or any transfer fees incurred by the Customer.

7. RISK AND TITLE

7.1 Risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer at the time when the Goods have been placed on the vehicle which is to effect delivery from the Company's store or warehouse and the Goods remain at the Customer's risk unless and until the Company retakes possession of the Goods pursuant to this Contract.

7.2 In addition to any other rights the Company may have against the Customer, the Company may repossess the Goods if any sum due in respect of them is outstanding or if the Company reasonably believes that any such sum will not be paid in full when it falls due for payment.

7.3 Until full payment in cleared funds is received by the Company for all Goods and services supplied by it to the Customer, as well as other amounts owing to the Company by the Customer:

(a) title and property in all Goods remain vested in the Company and do not pass to the Customer;

(b) the Customer must hold the Goods as fiduciary Bailee and agent for the Company;

(c) the Customer must keep the Goods and maintain the labelling and packaging of the Company;

(d) the Customer is required to hold the proceeds of any sale of the Goods on trust for the Company in a separate account however failure to do so will not affect the Customer's obligations to deal with the proceeds as trustee;

(e) the Company may without notice, enter any premises where it suspects the Goods may be and remove them, notwithstanding that they may have been attached to other Goods not the property of the Company, and for this purpose the Customer irrevocably licenses the Company to enter such premises and also indemnifies the Company from and against all costs, claims, demands or actions by any party arising from such action.

8. WARRANTY

8.1 The Customer warrants that it understands the nature and characteristics of the goods, including their particular attributes and intended functions as well as any hazards associated with treatments applied to the goods and is familiar with all information made available to it.

8.2 The Customer warrants that it will not disclose to a third party the content of this agreement or any information supplied to it by the Company.

8.3 The Company warrants that the goods will be capable of performing the tasks set out and within the periods or times set out on the labels (if any) affixed to the goods (or packaging of the goods) by the Company.

8.4 In relation to products that are specifically developed for seed application, the Company assures the Customer that the product testing has been carried out in the proper manner and that the products conformed to the required standards and specifications for treatment as tested provided that any warranties terms and conditions in relation to the performance of the treatment and the testing implied by custom, statutory or otherwise is hereby excluded to the fullest extent permitted by law.

8.5 All coating material is designed to be used, and is intended for use on seed. Seed health and viability are the responsibility of the Customer and the Customer is responsible for testing the material on the seed intended to be coated to assess its functionality and compatibility with other seed treatment chemicals.

8.6 For a period of one (1) year from the first start-up run of the machinery and equipment sold to the Customer (collectively, the "Equipment"), the Company warrants:

(a) that the Equipment will perform within the required specifications as defined by the Company, and

(b) that the Equipment will be free from manufacturing defects. The Company will replace all faulty parts, including labor, for that period of time.

8.7 Performance of the Equipment is dependent upon many factors, including but not limited to, seed type, pesticide type and formulation, polymer type, and performance of peripheral equipment. The Company will not be liable under the foregoing warranty, or in any other respect, with respect to any matter arising from the misuse or abuse of the Equipment, damage to the Equipment due to negligence or neglect, improper installation of the Equipment, failure of the Equipment if it is used for other than its intended purpose, or damage to the Equipment caused by accident, fire, floods or acts of God.

8.8 Further warranties may be given by the Company with respect to the Goods and set out in the packaging in which the Goods are supplied or in enclosures supplied with the Goods.

9. LIMITATION OF LIABILITY

9.1 Except as specifically set out herein, or contained in any warranty statement provided with the Goods or services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or services, whether implied by statute, common law, trade usage, custom or otherwise is hereby expressly excluded.

9.2 The Company is not liable for any loss or damage consequential or otherwise, however caused (including, but not limited to, the negligence of the Company), suffered by the Customer in connection with the Contract, any supply under the Contract, any misrepresentation by the Company or any statement by a third party accepted in good faith by the Company and repeated by it.

9.3 The Company is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, however caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.

9.4 The Company will not be liable for any loss or damage suffered by the Customer where the Company has failed to deliver Goods or fails to meet any delivery date or cancels or suspends the supply of Goods.

9.5 If the Trade Practices Act 1974 (TPA) or any other legislation implies a condition or warranty into this Contract in respect of Goods or any services supplied by the Company, and the Company's liability for breach of that condition or warranty may not be excluded, the exclusion in clause 9.2 does not apply to that liability and instead the Company's liability for any breach of that condition or warranty is limited to:

(a) in relation to the Goods, the Company doing any one or more of the following (at its election):

(1) replacing the Goods or supplying equivalent Goods;

(2) repairing the Goods;

(3) paying the cost of replacing the Goods or of acquiring equivalent Goods; or

(4) paying the cost of having the Goods repaired; and

(b) in relation to any supply of services, the Company doing either or both of the following (at its election):

(1) supplying the services again; or

(2) paying the cost of having the services supplied again.

(c) Nothing in these Terms and Conditions is intended to exclude, restrict or modify any rights which the Customer may have under any legislation which may not be excluded, restricted or modified by agreement.

9.6 Any warranty provided by the Company in the Contract does not apply in circumstances where:

(a) the Goods or services are not defective;

(b) the Goods were used or services required for a purpose other than for which they were intended;

(c) the Goods were repaired, modified or altered by any person other than the Company;

(d) the defect has arisen due to misuse, neglect or accident;

(e) the Goods have not been stored or maintained as recommended by the Company;

(f) the defect has arisen due to normal wear and tear on the Goods; or

(g) the Customer is in breach of the Terms.

9.7 The Customer acknowledges that:

(a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by the Company in relation to the Goods or services or their use or application.

(b) it has the sole responsibility of satisfying itself that the Goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Company.

(c) any description of the Goods provided in a quotation or invoice is given by way of identification only and the use of such description does not constitute a contract of sale by description.

10. WARRANTY, COVENANT AND INDEMNITY BY THE CUSTOMER

10.1 The Customer warrants the accuracy of any specification or information provided by the Company, and the design, manufacture and installation by others of any equipment associated with the Goods or these Terms and Conditions.

10.2 The Customer covenants not to make any claim or take any proceedings against any employee or agent of the Company in connection with this Contract including in respect of any misrepresentation or negligence of the Company or any employee of the Company.

10.3 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 10.1 or clause 10.2.

10.4 If the Customer does not accept the Goods in accordance with this Contract the Customer must (without prejudice to any other rights of the Company) indemnify the Company in respect of any loss, damage or claim,

including any license or other fee, the cost of labour and other overheads and redundancy payments attributable to the Customer's Order or its failure to accept the Goods.

10.5 In accordance with the established custom of the seed technology and agricultural trade any express or implied condition or warranty statutory or otherwise whatsoever not expressly stated in these terms is excluded. The price of all goods sold by the Company is based upon the foregoing limitations upon liability and would be higher if a more extensive liability were required. In accepting the goods upon these conditions the Customer acknowledges that the limitation of the Company's liability is fair and reasonable.

11. DELIVERY AND PACKING SHORTAGES

11.1 The Price does not include the cost of carriage or insurance of the Goods from the premises of the Company or its subsidiaries to the point of delivery to the Customer and the Customer must bear all such costs, the cost of packing and the cost of any excess for special or express delivery requested by the Customer.

11.2 The Customer authorizes the Company to subcontract delivery in its absolute discretion.

11.3 Unless otherwise stated, all export Orders will be delivered Free on Board (FOB), Ex Works, which expression has the meaning assigned to it by the current version of International Commercial Terms (Incoterms); packing will be an extra charge.

11.4 The Company may charge for storage and administration costs incurred against Goods held for more than 14 days awaiting sufficient delivery instructions.

10.5 No refund of any charge made for packing will be made except in the cost of non-expendable pallets or containers which are charged for and for which credit will be given if returned carriage paid in good condition.

11.6. Subject to clause 9, it is a condition precedent to any claim for damages to the Goods, short delivery, delivery to the wrong place, or non-delivery that notice be given to the Company and the carrier within seven days of delivery in the case of inland orders and twenty-eight days of delivery in the case of export orders, in all cases taking into account date of dispatch.

12. RETURN OF GOODS

12.1 Subject to clause 9, the Customer must not return Goods for any reason except upon the written consent of the Company obtained in advance of such return.

12.2 Any consent given under clause 12.1 may specify the Terms and Conditions and charges upon which any such return may be made.

12.3 The Company will not under any circumstances accept Goods for return that:

- (a) have been specifically produced, imported or acquired to fulfill any contract;
- (b) are discontinued Goods or no longer stocked by the Company;
- (c) are goods that have passed their Use By Date;
- (d) have been altered in any way;
- (e) have been used; or
- (f) are not in their original condition and packaging.

12.4 If the Company accepts Goods for return, the Customer will receive a credit for the returned Goods equal to the price charged by the Company less a 15% deduction for handling and restocking charges, and any further deduction agreed for any wear and tear.

12.5 The Customer must:

- (a) obtain the Company's prior written approval for return of Goods; and
 - (b) pay all freight charges and costs associated with return of Goods.
- 12.6** Subject to clause 10, if any Goods returned by Customer to the Company for warranty service are determined by the Company not to be covered by the warranty, the Customer must reimburse the Company for all related shipping and other costs incurred by the Company, and pay to the Company an amount equal to the Company's standard service charge in effect at the time.

13. EXTENDED DELIVERIES

13.1 If the Contract provides for the Goods to be specified by the Customer by schedule from time to time, any schedule relating to the Contract and delivered by the Customer is subject to acceptance by the Company.

13.2 Where a schedule is accepted under clause 13.1, any requirements stated in the schedule to be "firm" are deemed to form part of the Contract and may only be cancelled with the prior written approval of the Company.

14. CANCELLATION

14.1 If, through circumstances beyond the control of the Company, the Company is unable to effect delivery or provision of Goods or services, then the

Company may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer.

14.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Company after that order has been accepted.

14.3 If the Customer purports to cancel an order and the Company agrees to the cancellation, any deposit paid by the Customer will be forfeited.

14.4 The Company, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice. The Company may request additional information or the provision of further security to a credit facility and may suspend or cancel a credit facility if the information or security requested is not provided within a reasonable time.

15. LAWFUL USE OF THE GOODS

15.1 The Customer must:

- (a) acquaint itself with the requirements of all relevant Governmental and statutory or other authority relating to the Goods and to the applications to which the Goods are put.
- (b) comply with such requirements at all times while the Goods are in its possession or under its control.
- (c) procure that any Customer of the Goods from the Customer acquaints itself with and complies with such requirements.
- (d) obtain all necessary licenses or permits under all relevant laws and regulations in relation to the Goods.

15.2 The Customer must comply with instructions by the Company relating to the Goods.

15.3 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 15.1 or 15.2.

16. PATENTS

No right or license is granted to the Customer under any patent copyright, registered design or other intellectual or industrial property right or interest other than the right to resell the Goods.

17. GOODS MADE TO THE CUSTOMER'S SPECIFICATION

17.1 If the Goods are manufactured to the design or specification of the Customer, the Customer warrants that the design, specification and Goods do not infringe any patent, copyright, registered design or other like protection of any other person and comply with any applicable statute, statutory instrument or regulation for the time being in force.

17.2 The Customer indemnifies and agrees to keep indemnified the Company in respect of any breach of clause 17.1.

18. VARIATION WITHIN SPECIFICATION

Variation by the company within the specification for the Goods does not constitute a breach of Contract or impose upon the Company any liability whatsoever.

19. PERSONAL PROPERTY SECURITY ACT 2009 (Cth) ("PPSA")

19.1 The Purchaser consents to the Company creating and maintaining a registration on the Register (in any required form) in relation to any security interest contemplated or created by the Agreement.

19.2 The Purchaser agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register. The Company reserves the right to register a financial statement or financial charge statement in respect of any security interest and you waive the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 7.1 or 7.2, in respect of the Goods.

19.3 The Purchaser undertakes to do any and all acts that are reasonably required by the Company so as to:

19.3.1 allow the Company to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of the Goods and its proceeds (including proceeds of sale);

19.3.2 allow the Company to register a financing statement or financing charge statement;

19.3.3 ensure that the Company maintains its secured position under the PPSA;

19.3.4 not register a financing charge statement without the Company's prior written consent; and

19.3.5 not register or commit to the register of a financial statement or financing charge statement in respect of the Goods, in favour of third party, without the Company's prior written consent.

19.4 The Company and Purchaser agree that no information (as defined in section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause may be waived by providing written notice to the Company authorising the disclosure of the above information to a specified party.

19.5 In the event that the Agreement is subject to Chapter 4 of the PPSA, the Company and Purchaser agree that, pursuant to section 115(1) of the PPSA, the Purchaser waives sections 95, 96, 118, 121 (4), 125, 130, 132 (3)(d), 134, 135, 142 and 143.

19.6 Additionally, in the event that chapter 4 of the PPSA applies to the Agreement, the Company and Purchaser agree that, pursuant to section 115(7) of the PPSA, the following provisions do not apply to the Agreement: sections 127, 129(2), 129 (3), 130 (1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

19.7 The Agreement (including clause 7 of these Terms and Conditions) is a security agreement for the purposes of the PPSA. For the avoidance of any doubt, collateral, for the purposes of section 20(2) of the PPSA includes, but is not limited to, Goods (as described in the Agreement) or Goods provided at any subsequent time.

19.8 The Company may apply amounts received in connection with the sale of the equipment to satisfy obligations secured by security interests contemplated or constituted by the Agreement at its absolute discretion.

19.9 The Purchaser agrees to notify the owner in writing of any change to its details as set out in the Agreement within 7 days of the date of any such change.

20. REPAIR

The Customer acknowledges that any goods left with the Company for inspection or repair etc. are subject to the provisions of the Uncollected Goods Act 1967 as amended which confers on the Company right of sale in certain circumstances after a period of 6 months from the date which the goods are ready for re-delivery.

21. ASSIGNMENT

The Company may assign, sub-Contract or sub-let this Contract or any part thereof without seeking the consent of the Customer.

22. CUSTOMER RESTRUCTURE

The Customer must notify the Company in writing of any change in its structure of management including any change in director, shareholder or management or change in partnership or trustee within 7 days of the date of any such change.

23. FORCE MAJEURE

The Company shall have no liability whatsoever under or in any way related to the sale and purchase of the Goods or otherwise for any failure to fulfil any obligation hereunder to the extent that such fulfilment is prevented by circumstances beyond its reasonable control including but without limitation to industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts of terrorism, or acts of war. Should an event of force majeure occur, then the Company may terminate the Contract by written notice to the Customer.

24. WAIVER

24.1 Any waiver by the Company must be in writing signed by the Company.

24.2 Failure by the Company to enforce any right or remedy is not a waiver of any right or remedy, or a waiver of a continuing breach.

24.3 No person acting without the express written authority of a Director of the Company is authorized to give or make on behalf of the Company any undertaking, assertion, statement or admission in respect of the Goods or their supply at variance with these Terms and Conditions.

25. OWNERSHIP AND CONFIDENTIALITY OF PROPRIETARY INFORMATION

25.1 The Purchaser acknowledges that all Proprietary Information in respect of the Goods and all right title and interest therein are the sole property of the Company and the Purchaser shall gain no right of title or interest in the Proprietary Information whatsoever. The Purchaser specifically acknowledges the Company's exclusive rights to ownership of any modification, translation or adaptation of the Proprietary Information and any other improvement or development based thereon which is developed, supplied, installed or paid for by or on behalf of the Purchaser or any customer of the Purchaser.

25.2 The Purchaser acknowledges that the Proprietary Information is confidential and contains trade secrets and that its disclosure will cause the Company to suffer financial loss.

25.3 The Purchaser shall implement all measures necessary to safeguard the Company's ownership and confidentiality of the Proprietary Information.

25.4 For the purposes of this clause "Proprietary Information" means any and all information relating to the Goods or the installation thereof including designs, drawings, instruction booklets, specifications, drawings, componentry, trademarks and patents and any and all proprietary information, intellectual property and copyright in such proprietary information.

26. GOVERNING LAW

26.1 This Contract is governed by the laws of Victoria, Australia and any dispute between the parties in connection with the Contract is to be resolved in accordance with the laws of Victoria (Australia).

26.2 The parties irrevocably submit generally and unconditionally to the jurisdiction of the courts of Melbourne in the state of Victoria in respect of claims, proceedings and matters arising out of or in connection with this Contract.

26.3 So far as it is consistent with these Terms and Conditions, the convention on Contracts for the International Sale of Goods 1980 (sometimes known as the Vienna Convention) applies to any export sale.

27. PLACE OF AGREEMENT

The contract for the sale of the Goods arising from these Terms and Conditions is made in the State or Country where the company issuing the invoice for the Goods is registered and the parties agree to submit all disputes arising between them to the Courts of such State or Country and any Court competent to hear an appeal therefrom.

28. VARIATION

Any variation to these Terms and Conditions must be in writing signed by a Director of the Company, and refer expressly to the provisions being amended.

29. NOTICE

29.1 Any Notice must be in writing and delivered by hand or sent by post, as follows:

Address: P.O. Box 8239, Carrum Downs, Victoria, 3201. Australia.
Attention: Company Director

29.2 A Notice is regarded as given by the sender and received by the addressee:

(a) If the Notice is delivered by hand, when delivered to the addressee.

(b) If the Notice is sent by post, on the second business day following the date of postage/when delivered to the addressee.

(c) If sent by facsimile, when the transmission is successfully completed (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible or incomplete by telephone or Notice within 2 hours of the transmission being received.

(d) If sent by electronic mail, when the addressee opens the message (as reported by the sender's machine), unless the addressee informs the sender that the transmission is illegible, incomplete or corrupted by telephone or Notice within 2 hours of the transmission being received.

29.3 A Notice is delivered on receipt:

(a) On a day which a business day or after 4:00pm (recipient's time) is regarded as received at 9:00am on the following business day.

(b) Before 9:00am (recipient's time) on a business day it is regarded as received at 9:00am on that day.

30. PRIVACY

30.1 The Company is bound by the Privacy Amendment (Private Sector) Act 2000 and will ensure that all credit and personal information obtained in connection with the Customer will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorized access, use, modification or disclosure and any other misuse. Such information may be accessed by request to the Company in accordance with the Privacy Act.

30.2 The Company requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by the Company in connection with this Contract.