

## Seed Licence and Royalty Agreement

**This License is the Standard Industry Agreement adopted by the majority of Plant Breeding and Commercialisation companies in Australia**

**YOU WILL BE TAKEN TO HAVE READ, UNDERSTOOD AND ACCEPTED THE TERMS BELOW BY ACCEPTING OR USING THE SEED.**

**THIS CONTRACT IS BETWEEN OWNER/S OF PLANT BREEDERS RIGHTS OR LICENSEE, OF THE LICENSED VARIETIES, AND YOU, THE GROWER.**

This agreement contains legal obligations. Please read carefully.

1. Seed Force Pty Ltd (ABN 11 118 991 272) (Seed Force) is the owner or licensee of the intellectual property in the plant varieties named in the Schedule (**the Varieties**).
2. The purchase and/or use of Seed of the Varieties (**Seed**) from the **1 March 2016** season are subject to and conditional upon the terms and conditions of this Grower Licence and Royalty Agreement (**Licence**).
3. Any person who purchases Seed from Seed Force or an authorised Seed Force distributor and is a grower of that seed, acknowledges and agrees that by purchasing the Seed that they agree to be and are bound by the terms and conditions of this Licence.
4. In consideration of the grant of the licence to use the Seed the Grower agrees to pay a royalty (**End Point Royalty**) to Seed Force on all grain produced using the Seed (except Seed retained by the Grower for planting pursuant to Clause 3.1.4).
5. The Grower agrees and undertakes to provide Seed Force or the retailer who supplied the Seed as the case may be, with their personal details and the details of the Seed purchase.

### Terms and Conditions

#### 1.0 Licence

- 1.1 In consideration for the purchase of Seed by the Grower from Seed Force or an authorised Seed Force sub licence holder or distributor, Seed Force grants to the Grower a licence to use the Seed subject to and conditional upon the terms and conditions of this Licence.

#### 2.0 Acknowledgement

- 2.1 The Grower acknowledges and agrees that:
  - 2.1.1 by purchasing the Seed that they agree to be and are bound by the terms and conditions of this Licence and that the right to use the Seed is strictly subject to the Grower being so licensed to do so; and
  - 2.1.2 no licence rights are granted by Seed Force in respect to purchases of Seed from persons other than Seed Force or authorised Seed Force sub licence holder or distributor.

#### 3.0 Conditions of Licence

- 3.1 Seed Force licences the Grower to:
  - 3.1.1 cultivate, produce and sell crops produced from the Seed (Crops) as commodity (but not as Seed);
  - 3.1.2 notify Seed Force if you plan to sell any property on which seed is grown;
  - 3.1.3 retain Crop for the purpose of feeding the Grower's livestock (Stock Feed Commodity);
  - 3.1.4 retain Seed for the Grower's own use to produce further Crops (Retained Seed); and
  - 3.1.5 pay or have paid all EPR's due on any Grain that is on the property at the date of sale.

#### 3.2 The Grower agrees not to:

- 3.2.1 sell, trade barter, exchange or dispose of any Crop for use as Seed or if it seems reasonably likely that any Crop will be used as Seed;
- 3.2.2 modify or engineer the seed or allow any other person to do so;
- 3.2.3 back cross Seed as recurrent parent or use any biotechnological process such as tissue culturing, mutagenesis or transformations utilising any Seed or plant material from any Seed; and
- 3.2.4 if the course of exercising your rights under this Contract an Essentially Derived variety of any Licenced Variety is created, you acknowledge that we are entitled to claim ownership of PBR in that Essentially Derived Variety in accordance with the PBR Act.

- 3.3 All Retained Seed remains subject to this Agreement including the obligation to pay End Point Royalties in respect of any Crops produced from such Seed.

#### 4.0 End Point Royalties

- 4.1 The Grower must pay Seed Force an End Point Royalty calculated in accordance with the rates specified in the Schedule and by reference to each metric tonne of Crop the Grower produces.
- 4.2 You authorise the EPR Collector to make all deductions necessary to enable the EPR Collector to pay the EPR to us.
- 4.3 Where the Grower does not sell or supply Crop to a Collection Marketer, the Grower must complete a royalty Notice Form as supplied by Seed Force and Seed Force will within 30 days of receipt of the Royalties Notice from the Grower, issue a tax invoice to the Grower in relation to the End Point Royalty payable by the Grower and the Grower shall pay such amount to Seed Force within 30 days of receipt of the invoice.

#### 5.0 Records

- 5.1 You must:
  - 5.1.1 keep records in sufficient detail to enable the EPR to be easily and accurately determined;
  - 5.1.2 within 30 days after receiving a request from us, make those records available to us or an auditor appointed by us;
  - 5.1.3 pay our costs of any audit that shows you have underpaid us by more than 5% and make up the shortfall; and
  - 5.1.4 keep the records for at least 7 years from the date you buy Seed.
- 5.2 If any audit shows that you have overpaid us by more than 5%, we will pay the costs of the audit and credit the overpayment against future payments.

## 6.0 Reporting

- 6.1 At the same time as you make payments in accordance with this Contract, you agree to provide reports containing the following information:
- 6.1.1 an accurate description of Licenced Varieties grown;
  - 6.1.2 quantities of Grain produced and/or Sold;
  - 6.1.3 persons whom Grain is Sold and details of the varieties and quantities sold to each such person; and
  - 6.1.4 varieties and quantities of Farm Saved Seed.
- 6.2 In addition, you agree to provide any reports described in Schedule 2.
- 6.3 You agree that:
- 6.3.1 any Authorised Distributors may pass on all details of each purchase to us; and
  - 6.3.2 any entity that stores, warehouses or Sells Grain that you produce may pass on Details to us.

## 7.0 Promises & Exclusions

- 7.1 We promise that:
- 7.1.1 we have all rights necessary to grant you the licence of the Licenced Varieties; and
  - 7.1.2 the Seed you buy will be free from obligations to anyone else unless we have told you about those obligations.
- 7.2 Except as provided in Clause 7.1, we exclude all terms, conditions and promises implied by custom, the general law or statute except any promises that cannot be excluded by law.
- 7.3 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.

## 8.0 Liability

- 8.1 You:
- 8.1.1 acknowledge that you Use the Licenced Varieties at your own risk; and
  - 8.1.2 indemnify us against all Loss incurred by us and resulting from your Use of the Seed or breach of this Contract.
- 8.2 If we contribute to any Loss which we have asked you to pay under Clause 8.0, then you don't have to pay us for the portion of the Loss that we contributed to.
- 8.3 We exclude all liability for any special, indirect or consequential damages arising out of your Use of the Licenced Varieties, the Seed or Grain.
- 8.4 *Amendment* - This Licence may not be amended, modified or supplemented except by written agreement by the parties or persons duly authorised on behalf of the parties.
- 8.5 *Waiver* - No waiver by any party of any default in the strict and literal performance of or compliance with any provision condition or requirement in this Licence will be deemed to be a waiver of provision, condition or requirement of this Licence nor to be a waiver of or in any way release any party from compliance with any provision condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Licence in any manner impair the exercise of such right accruing to it thereafter.
- 8.6 *Costs on Default* - Any party who defaults in the payment of any moneys or in the performance of any obligations under this Licence will pay to the other party who exercises or attempts to exercise any right power, authority or remedy conferred on that party under or by virtue of this Licence or otherwise the fair and reasonable costs thereof whether or not any proceedings in any court or tribunal are taken to protect any such right, power, authority or remedy.

## 9.0 Governing Law

- 9.1 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.

## 10.0 Entire Agreement

- 10.1 This Contract and Schedules record the entire Contract between each of us and supersedes all earlier agreements and representations by either of us.
- 10.2 *Invalidity of any Clause* - Notwithstanding anything to the contrary in this Licence, if any provision of this Licence will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.
- 10.3 *Interpretation* - In the interpretation of this Licence (including its recitals and the schedules except to the extent that the context otherwise requires:
- 10.3.1 words (including defined expressions) denoting the singular will be deemed to include the plural and vice versa;
  - 10.3.2 words (including defined expressions) denoting any gender will be deemed to include all other genders;
  - 10.3.3 words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated and vice versa;
  - 10.3.4 references to a statute or statutory provision will be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder;
  - 10.3.5 headings are included for convenience only and will not affect the interpretation of this Licence or any schedule;
  - 10.3.6 references to clauses, recitals and schedules are to clauses of and recitals and schedules to this Licence;
  - 10.3.7 references to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be;
  - 10.3.8 reference to a document or agreement includes reference to that document or agreement as changed, notated or replaced from time to time; and
  - 10.3.9 where a word or phrase is given a definite meaning in this Licence a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 10.4 *Termination or Waiver in Writing* - No termination or attempted waiver of any of the provisions of this Licence will be binding on a party unless in writing and signed by a duly authorised officer of that party or by that party.
- 10.5 *No Assignment* - A party must not assign or permit a third party to obtain the benefit of its rights and interest under this Licence except with the prior written consent of all other parties.
- 10.6 *Agreement Binding on Successors* - This Licence will extend to bind the parties and their respective heirs, executors, successors, assigns, administrators and legal personal representatives and any reference to any party will where the context so admit include their respective heirs, executors, successors, assigns, administrators and legal personal representatives.
- 10.7 *Joint Obligations* - In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants agreements, declarations and consents contained in this Licence and made and given by that party have been entered into, made and given and are binding upon that person or persons constituting that party.

10.8 **GST** – For the purposes of this Licence the expressions “GST” and “Tax Invoice” bear the same meaning as those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth). All End Point Royalties and payments to be paid by the Grower do not include any amount payable in respect of GST. The price payable by the Grower will be increased by the amount of any applicable GST. All GST shall be payable on the due dates for payment as set out in the relevant tax invoice(s).

### Schedule 1 Glossary

**In this Contract:**

1. **Authorised Distributor** means a Seed Force sub-licence holder or distributor authorised by us to sell Seed.
2. **Contract** means this agreement together with its schedules.
3. **End Point Royalty or EPR** means the end point royalty for each licenced Variety that you must pay for every tonne of Grain Sold or Consumed (other than Farm Saved Seed) as set out in Schedule 2.
4. **Grain** means harvested material from the Licenced Varieties.
5. **Licenced Varieties** means any varieties of Seed that you purchase from Seed Force or any Authorised Distributor which are subject to protection under the PBR Act.
6. **Seed** means Seed of the Licenced Variety and includes Seed that you buy and Farm Saved Seed.

### Schedule 2 Glossary

**Details**

ITEM 1	ITEM 2	ITEM 3
Licenced Varieties	EPR Rate \$ per MT GST incl.	GST
RGT Accroc	\$4.40	\$0.40
RGT Planet	\$4.40	\$0.40
SF Ovalo*	\$4.40	\$0.40
SF Hekto	\$4.40	\$0.40
SF Scenario	\$3.96	\$0.36
SF Adagio	\$3.96	\$0.36
SF Brazzil	\$7.70	\$0.70

\*excludes Tasmania

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