

# AEXCO Variety License - TERMS OF USE



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.**

## 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 License

In return for you paying the EPR we grant you a non-exclusive license to use the Licensed Varieties to:

- a) plant Seed on your own farm to produce grain or fodder;
- b) produce more grain or fodder on your own farm using Retained Seed; and
- c) Sell grain or fodder other than for the purpose of further propagation.

#### 3. What you cannot do

3.1 You agree that:

- a) any Essentially Derived Variety of any Licensed Variety created using the Seed or Retained Seed will be owned by the owner/s of the PBR in the relevant Licensed Variety and you will do all things necessary to give effect to this clause.
- b) not to Sell any Grain for use as a Propagating Material without the Licensees or Owners express written permission.

#### 4. Notice to declare production of Harvested Material

4.1 On or before 31 March each year, we will provide, or arrange for a third party to provide, you with a notice to declare your production of Harvested Material for the previous twelve 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 March, you must provide to us a written notice by 30 April with the following information for the previous twelve month period:

- a) your name and address;
- b) the variety/ies and quantity/ies of Harvested Material produced by you;
- c) the variety/ies and quantity/ies of Harvested Material 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 Harvested Material that has been or is intended to be Consumed;
- f) the variety/ies and quantity/ies of Harvested Material that are stored or warehoused for future sale, and;
- g) the total End Point Royalty due to us in relation to the Harvested Material.

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 Schedule 2.

4.4 You agree that:

- a) any Authorised Distributor may pass on Details to us; and
- b) any entity that stores, warehouses, conditions, purchases or Sells

the Harvested Material that you produce may pass on Details to us.

#### 5. Payment of End Point Royalty

5.1 You must pay to us, by 30 April each year, the End Point Royalty (and applicable GST) as set out in Schedule 2 for each tonne of Harvested Material Sold or Consumed by you for the previous twelve 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.

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

#### 6. Royalties deducted by EPR Collector

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

- a) deduct End Point Royalties (including GST) in relation to the Harvested Material Sold from the Sale price to be paid by the EPR Collector to you for that Harvested Material;
- 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 Harvested Material, 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 or fodder; 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 Harvested Material 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 Harvested

Material.

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 all rights necessary to grant you the License of the Licensed Varieties; 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 and resulting from your Use of any Seed, Retained Seed or Harvested Material 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 Harvested Material.

## **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 accept or Use any Seed and, subject to clause 13, continues in relation to each Licensed Variety until it is terminated by the variety owner and/or licensee.

## **13 Rights to end Contract**

13.1 Either of us may end this Contract immediately by giving notice to the other if the other:

- a) breaches any provision of this Contract and fails to fix the breach within 30 days after receiving notice asking it to do so; or
- b) 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 License in respect of that Licensed Variety.

## **14 At the end of Contract**

At the end of this Contract:

- a) the License ends;
- b) you must pay the EPR Collector or us any amounts outstanding;
- c) except as provided under clause 14 (d) you must promptly:
  - i) Sell or destroy all Harvested Material;
  - ii) destroy all Seed, and;

iii) destroy all Retained Seed or Sell the Retained Seed other than for further propagation, and pay the applicable EPR on the Harvested Material and the Retained Seed Sold.

- d) you may grow out any crop planted at the end of this Contract and Sell or Consume the Harvested Material from that crop and must pay EPR on that Harvested Material, but you must not plant any new crops using the Harvested Material;
- e) 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
- f) 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:

- a) if left at the recipient's address, on the date of delivery;
- b) 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;
- c) 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
- d) 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 Schedule 2 or to the address provided by the Authorised Distributor or EPR Collector.

## **16 Waiver**

The failure of either of us at any time to insist on performance by the other of any obligation under this Contract is not a waiver of any right to claim damages for breach of that obligation unless we acknowledge in writing that the failure is a waiver.

## **17 Amendment**

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

17.2 If we change EPR rates we must notify you by October 1st in order for the change to take effect in the following Calendar Year.

## **18 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.

## **19 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.

## **20 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.

## **21 Governing Law**

This Contract will be governed by the Governing Law as stipulated in Schedule 2, and the Courts of that State or Territory will have jurisdiction over all matters arising under it.

## Schedule 1 Glossary

### In this contract:

1. **Authorised Distributor** means us, or a distributor authorised by us to Sell Seed to you.
2. **Consume** means to use Seed so that it cannot be further propagated.
3. **Contract** means this agreement together with its schedules.
4. **Details** means details of the Licensed Varieties, details of the Sale/purchase of Seed and Harvested Material, your name, your address, and details of your business or company (including ABN and CBH and/or NGR number).
5. **End Point Royalty** or **EPR** means the royalty payable by you for every tonne of Harvested Material Sold or Consumed by you, or Retained Seed Sold by you as permitted by clause 14(c)(iii).
6. **EPR Collector** means us, or any third party with whom we have entered into an EPR collection arrangement.
7. **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:
  - (a) it is predominantly derived from that other Plant Variety; and
  - (b) 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;
  - (c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.
8. **Harvested Material** means the grain or fodder from crops of the Licensed Varieties grown from Seed or Retained Seed.
9. **License** means the license granted under clause 2.
10. **Licensed Varieties** means the varieties listed in Schedule 2.
11. **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).
12. **PBR** means plant breeder's rights as defined in the PBR Act.
13. **PBR Act** means the Plant Breeder's Rights Act 1994 (Cth) as amended from time to time.
14. **Propagating Material**, has the meaning given to it in the PBR Act, namely in relation to a Plant of a particular Plant Variety, means any part or product from which, whether alone or in combination with other parts or products of that Plant, another Plant with the same essential characteristics can be produced.
15. **Retained Seed** (or Farm Saved Seed) means grain retained and used by you for the purpose of producing more grain or fodder as permitted by clause 2.1b.
16. **Seed** means seed of the Licensed Varieties, but does not include Retained Seed.
17. **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.
18. **Use** means to plant, grow, Sell, or Consume.

## Schedule 2 - Details



### Item 1 Licensed Varieties and applicable End Point Royalties

#### SCHEDULE OF VARIETIES

<b>Variety</b>	<b>EPR Due \$ per tonne (ex GST ) hay and grain</b>
<i>Brusher</i>	\$2.00
<i>Forester</i>	\$2.00
<i>Kangaroo</i>	\$2.00
<i>Mulgara</i>	\$2.00
<i>Tammar</i>	\$2.00
<i>Tungoo</i>	\$2.00
<i>Wintaroo</i>	\$2.00

\* These amounts are applicable from 1<sup>st</sup> of October 2013.

### Item 2 Interest

[Not Applicable]

### Item 3 Governing Law

South Australia

### Item 4 Contact details

AEXCO Pty Ltd  
PO Box 8178  
Newtown Victoria 3220

### Item 5 Grower / You

Contact person and address as provided by the Authorised Distributor or EPR Collector in accord with clause 4.4 of the Industry Standard Grower License Terms and Conditions

### Item 6 Special Conditions

This Agreement is binding without signature or execution by either party.