

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 Agreement is made between Us, as the PBR owner or Authorised Distributor of the Seeds, and You, and sets out the terms and conditions pursuant to which You will be authorised to acquire and grow Seeds and to Sell and otherwise Use the Grain.

TERMS AND CONDITIONS

It is agreed:

1. Meaning of Words

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

2. Grant of License

- 2.1. In return for you agreeing to the terms and condition of this Licence, including the Schedules and 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.
- 2.2. You acknowledge and agree that any Essentially Derived Variety of any Licensed Variety arising or resulting from the Use of any Seed or Retained Seed acquired by You will be owned by the owner/s of the PBR and You will on request and at Your own cost do all things necessary to give effect to this clause, including but not limited to assign and transfer any and all right, title and interest in the Essentially Derived Variety and the right to apply for protection of that Essentially Derived Variety, anywhere in the world, to the said owner/s of the PBR or its/their nominee.

3. What you cannot do

- 3.1. You agree that you are 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 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, (or by such later time as notified to You in writing by Us where clause 4.2 applies) 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

- 7.1. 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:
 - 1. notify us and provide details of the purchaser;
 - 2. make sure that it is a condition of sale that the purchaser takes over your obligations under this Contract; and
 - 3. pay or have paid all EPRs due on any Harvested Material that is on the property at the date of sale.

8. Records and Sample Collection

- 8.1. You must:
- A. keep records in sufficient detail to enable all EPRs to be easily and accurately determined;
 - B. keep the records for 7 years from the date You Sell any Harvested Material;
 - C. within 30 days after receiving a request from Us, make those records available to Us or an auditor appointed by Us;
 - D. upon giving reasonable notice, permit Us or any agent nominated by Us to enter the Grower's premises or any premises under the Grower's control during normal business hours for the purpose of inspecting and auditing all relevant records; and
 - E. if an audit is conducted and the audit report indicates that You have underpaid, under-estimated or under-calculated any amount due as EPRs by more than five percent (5%) You may be required to:
 - 1. pay all audit fees (on an indemnity basis);

2. pay the full amount of any shortfall (inclusive of any GST or other taxes owing on such amount); and
 3. pay interest on the amount of EPR owing at the rate outlined in Schedule 2 Item 3. Interest which shall be charged from the 1st April in the year EPR's owing were normally required to be paid.
- 8.2.** If any audit shows that you have overpaid us by more than 5% we will credit the overpayment against future payments.
- 8.3.** The Grower agrees that:
upon giving reasonable notice to the Grower We or an agent nominated by Us may collect images and/or samples of the Grower's plants and grain either on farm or at point of delivery (without notice) for the purpose of examining and verifying the variety.
- 9. Promises and exclusions**
- 9.1.** We warrant that:
- A.** we have all rights necessary to grant you the permission and License contained in clause 2; and
 - B.** the Seed you buy from us or an Authorised Distributor will be unencumbered and will not be subject to any obligations to anyone else unless We have told you about those obligations.
- 9.2.** Except to the extent 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.
- 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.** Except to the extent provided under non-excludable or unavoidable Law, We exclude all liability for any special, indirect or consequential damages arising out of Your Use or dealings with any Seed, Retained Seed or Harvested Material.
- 11. Dispute resolution**
- 11.1.** The Parties shall without delay and in good faith attempt to resolve any Dispute within thirty (30) days of the date one Party notifies the other in writing of the dispute.
- 11.2.** 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:
 1. Sell or destroy all Harvested Material;
 2. destroy all Seed; and
 3. 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 and Sample Collection), 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).
- 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 15.2(D) 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**
We may change the terms of this Contract by giving you at least 30 days notice.
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)(2), 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)(3).
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;
 - 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 2.1(B).
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. **Us/We** as the PBR owner or Authorised Distributor of the Seeds.
19. **Use** means to plant, grow, Sell, or Consume.
20. **You** as the person or entity who either purchases, accepts, retains or sows the seed of a PBR variety.

Schedule 2 – Details

Item 1 Licensed Varieties and applicable End Point Royalties:

The plant varieties as listed below are protected by PBR and are licensed or owned by Nuseed Proprietary Ltd.

SCHEDULE OF VARIETIES

All rates are \$ per tonne (ex. GST)

| VARIETY NAMES | END POINT ROYALTY DUE TO VARIETY OWNER | COMMERCIALISATION /MANAGEMENT FEE | TOTAL ROYALTY TO BE PAID BY GROWER |
|-------------------------|--|-----------------------------------|------------------------------------|
| WHEAT VARIETIES | | | |
| DERRIMUT | \$2.95 | | \$2.95 |
| PEAKE | \$2.95 | | \$2.95 |
| CANOLA VARIETIES | | | |
| ATR MAKO | \$5.00 | | \$5.00 |
| ATR BONITO | \$5.00 | | \$5.00 |
| ATR WAHOO | \$5.00 | | \$5.00 |
| HyTTec Trophy | \$10.00 | | \$10.00 |
| HyTTec Trident | \$10.00 | | \$10.00 |
| HyTTec Trifecta | \$10.00 | | \$10.00 |

Item 2 End Point Royalty:

The Grower must pay to Owner/Distributor a Royalty calculated by reference to each metric tonne of Harvested Material the Grower produces less any quantity of Retained Seed.

Item 3 Interest:

Owner/Distributor may charge interest at a rate equal to the Small Business Variable Small Overdraft Indicator Lending Rate published by the Reserve Bank of Australia from time to time plus 3%, calculated daily for:

- A. any amounts due but unpaid for more than 30 days; and
- B. any amounts found owing that have been shown to be either underpaid, under-estimated or under-calculated in any inspection or audit conducted under Clause 8.1 E.

Item 4 Governing Law:

This agreement will be governed by the laws applicable in the Australian State where the applicable variety was bred and developed.

Item 5 Contact details:

Nuseed Pty Ltd, ABN: 82 088 231 814
 PO Box 377, 5 Ballinger St, HORSHAM, VIC, 3402
 Phone: 1800 993 573 Fax: 1800 302 884
 Email: epr@nuseed.com

Grower -

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 Grower Information:

You consent to us collecting and providing your Details to any grain accumulator or EPR collector or third party auditor to confirm that You have adhered to your obligations under clauses 4 and 6 of the Variety Licence and to assist in the establishment of appropriate storage, segregation and marketing options.

Item 7 Special Conditions:

This agreement is applicable to all future production of each of the Licensed Varieties described above.
 IMPORTANT: Please refer to <http://nuseed.com/au/resources/epr-pbr> for any additional special conditions that may apply to specific Nuseed licensed varieties.