

# Variety Agreement for Hybrid Canola Varieties - TERMS OF USE

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

This Variety Agreement is made between Us 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. Use of Seed

2.1. In return for you agreeing to the terms and condition of this Variety Agreement, including the Schedules and paying the EPR we authorise you 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 modifications or enhancements made to any Variety of Seed arising or resulting from the Use of any Seed or Retained Seed acquired by You will be owned by Us 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 such enhancements or improvements, anywhere in the world.

#### 3. What you cannot do

3.1. You agree that you are not to Sell any grain for use in propagating, without Our 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 Variety Agreement 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 Variety Agreement complies with all applicable laws;
- B. promptly notify us if you become aware of any unauthorised propagation, 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 Variety Agreement ; 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 enter into this Variety Agreement; and
- B.** the Seed you buy from us or an Authorised Distributor will be unencumbered (save for the conditions in this Variety Agreement) 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 Varieties of Seed 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 Variety Agreement .

**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 Variety Agreement will be submitted to an expert in accordance with, and subject to, The Resolution Institute Expert Determination Rules.

## **12. Term**

This Variety Agreement takes effect from the date on which you accept or Use any Seed and continues in relation to each Variety of Seed until it is terminated in accordance with clause 13.

## **13. Rights to end Variety Agreement**

**13.1.** Either of us may end this Variety Agreement immediately by giving notice to the other if the other:

- A.** breaches any provision of this Variety Agreement and fails to fix the breach within 30 days after receiving notice asking it to do so; or
- B.** breaches a provision of this Variety Agreement where that breach cannot be fixed.

**13.2.** We may end this Variety Agreement 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.**

## **14. At the end of this Variety Agreement**

At the end of this Variety Agreement:

- A.** your authorisation in clause 2.1 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 Variety Agreement 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 Variety Agreement 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 Variety Agreement 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 15.2(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 Variety Agreement 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 Variety Agreement 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 Variety Agreement is illegal or unenforceable it will be severed from this Variety Agreement 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 Variety Agreement , without our written consent.

## **20. Entire agreement**

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

## **21. Governing Law**

This Variety Agreement 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:

- Authorised Distributor** means a distributor authorised by us to Sell Seed to you.
- Consume** means to use Seed so that it cannot be further propagated.
- Variety Agreement** means this agreement together with its schedules.
- Details** means details of the Varieties of Seed, 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).
- 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).
- EPR Collector** means us, or any third party with whom we have entered into an EPR collection arrangement.
- Harvested Material** means the grain or fodder from crops of the Varieties of Seed grown from Seed or Retained Seed.
- Variety (or Varieties) of Seed** means the varieties listed in Schedule 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).
- 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).
- Seed** means seed of the Varieties of Seed but does not include Retained Seed.
- Sell** includes letting on hire and exchanging by way of barter and 'Sale' and 'Sold' have equivalent meanings.
- Us/We** means the Nuseed entity identified in item 5(a) of this Schedule.
- Use** means to plant, grow, Sell, or Consume.
- You, the Grower**, as the person or entity who either purchases, accepts, retains or sows the Seed, as identified in item 5(b) of this Schedule.

- any amounts due but unpaid for more than 30 days; and
- 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:

**(a) 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](mailto:epr@nuseed.com)

### (b) Grower -

Contact person and address as provided by the Authorised Distributor or EPR Collector in accordance with clause 4.4 of the Variety Agreement.

### 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 this Variety Agreement 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 Varieties of Seed described above.  
 IMPORTANT: Please refer to <http://nuseed.com/au/resources/epr-> for any additional special conditions that may apply to specific Nuseed Varieties of Seeds.

## Schedule 2 – Details

### Item 1 Varieties of Seed and applicable End Point Royalties:

#### SCHEDULE OF VARIETIES/VARIETIES OF SEED – 2024/2025

#### Harvest

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

HYBRID VARIETY NAMES	END POINT ROYALTY	COMMERCIALISATION /MANAGEMENT FEE	TOTAL ROYALTY TO BE PAID BY GROWER
<b>HYBRID CANOLA</b>			
HyTTec Trident	\$5.00		\$5.00
HyTTec Trifecta	\$5.00		\$5.00
HyTTec Trophy	\$5.00		\$5.00
HyTTec Velocity	\$5.00		\$5.00

### Item 2 End Point Royalty:

The Grower must pay to Us, a grain accumulator or EPR Collector a Royalty calculated by reference to each metric tonne of Harvested Material the Grower produces less any quantity of Retained Seed.

### Item 3 Interest:

We, a grain accumulator or EPR Collector 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: