

INDUSTRY STANDARD PBR LICENCE AGREEMENT



CONTRACT BETWEEN

Commercialising Party:

Grower:

.....
INSERT DETAILS (REFERRED TO IN THIS CONTRACT AS 'WE' OR 'US')

.....
INSERT DETAILS (REFERRED TO IN THIS CONTRACT AS 'YOU')

Introduction

- A. We are the owner of, or otherwise entitled to licence, the PBR in the Licensed Varieties.
- B. You wish to buy Seed of the Licensed Varieties.
- C. We have agreed to sell or allow sale of the Seed to you on the attached terms and subject to the PBR Act.

SIGNED AS AN AGREEMENT

Signed for Commercialising Party:

by an authorised officer in the presence of

Signed by Grower:

by an authorised officer in the presence of

.....
SIGNATURE OF OFFICER

.....
SIGNATURE OF OFFICER

.....
NAME OF OFFICER (PRINT)

.....
NAME OF OFFICER (PRINT)

.....
OFFICE HELD

.....
OFFICE HELD

.....
SIGNATURE OF WITNESS

.....
SIGNATURE OF WITNESS

.....
NAME OF WITNESS (PRINT)

.....
NAME OF WITNESS (PRINT)

.....
OFFICE HELD

.....
OFFICE HELD

TERMS AND CONDITIONS

IT IS AGREED

1. Meaning of Words

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

2. Grant of Licence

- 2.1 In return for you paying the EPR we grant you a non-exclusive licence for the Permitted Use to:
 - (1) produce or reproduce the Seed to grow Grain;
 - (2) grow more Seed on your own farm; and
 - (3) Sell Grain.

3. What you cannot do

- 3.1 You may do anything allowed in this Contract (including the Schedules) but you must not Sell or otherwise dispose of Grain as Seed in breach of our rights under the PBR Act.
- 3.2 If in the course of exercising your rights under this Contract an Essentially Derived variety of any Licensed 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.

4. Payments

- 4.1 You must pay us or our EPR Collectors the EPR for all Grain other than Farm Saved Seed in accordance with Schedule 2.
- 4.2 You authorise the EPR Collector to make all deductions necessary to enable the EPR Collector to pay the EPR to us.

5. Your Obligations

- 5.1 You must:
 - (1) comply with this Contract and any special conditions set out in Schedule 2;

- (2) register your name, address and contact information with the Seller;

- (3) make sure that anything you do under this Contract complies with all applicable laws;

- (4) if we have authorised you to Sell Grain for further Propagation, promptly notify us if you become aware of any unauthorised propagation, production, sale or use of that Grain; and
- (5) if you plan to sell any property on which Seed is grown:

- (a) notify us and provide details of the purchaser;
- (b) make sure that it is a condition of sale that the purchaser takes over your obligations under this Contract; and
- (c) pay or have paid all EPRs due on any Grain that is on the property at the date of sale.

6. Records

6.1 You must:

- (1) keep records in sufficient detail to enable the EPR to be easily and accurately determined;
- (2) within 30 days after receiving a request from us make those records available to us or an auditor appointed by us;
- (3) pay our costs of any audit that shows you have underpaid us by more than 5% and make up the shortfall; and
- (4) keep the records for at least 7 years from the date you buy Seed.

- 6.2 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.

7. Reporting

- 7.1 At the same time as you make payments in accordance with this Contract you agree to provide reports containing the following information:
- (1) an accurate description of Licensed Varieties grown;
 - (2) quantities of Grain produced and/or Sold;
 - (3) persons to whom Grain is Sold and details of the varieties and quantities Sold to each such person; and
 - (4) varieties and quantities of Farm Saved Seed.
- 7.2 In addition, you agree to provide any reports described in Schedule 2.
- 7.3 You agree that:
- (1) any Authorised Distributors may pass on all Details of each purchase to us; and
 - (2) any entity that stores, warehouses or Sells Grain that you produce may pass on Details to us.

8. Promises and Exclusions

- 8.1 We promise that:
- (1) we have all rights necessary to grant you the licence of the Licensed Varieties; and
 - (2) the Seed you buy will be free from obligations to anyone else unless we have told you about those obligations.
- 8.2 Except as provided in clause 8.1 we exclude all terms, conditions and promises implied by custom, the general law or statute except any promises that cannot be excluded by law.
- 8.3 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.

9. Liability

- 9.1 You:
- (1) acknowledge that you Use the Licensed Varieties at your own risk;
 - (2) indemnify us against all Loss incurred by us and resulting from your Use of the Seed or breach of this Contract.
- 9.2 If we contribute to any Loss which we have asked you to pay under clause 9.1, then you don't have to pay us for the portion of the Loss that we contributed to.
- 9.3 We exclude all liability for any special, indirect or consequential damages arising out of your Use of the Licensed Varieties, the Seed or Grain.

10. Dispute Resolution

- 10.1 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.

11. Term

- 11.1 This Contract takes effect from the date on which it is signed by both of us and continues in relation to each Licensed Variety until PBR for that variety lapses.

12. End of Contract

- 12.1 Either of us may end this Contract immediately by giving notice to the other if the other:
- (1) breaches any provision of this Contract and fails to fix the breach within 30 days after receiving notice asking it to do so; or
 - (2) breaches a provision of this Contract where that breach cannot be fixed.
- 12.2 We may end this Contract immediately by giving notice to you if you are unable to pay any of your debts as and when they become due.

- 12.3 Either of us may end this Contract as it applies to a particular Licensed Variety where we are not the owner of PBR in a Licensed Variety and we lose the right to grant the Licence.

13. After End of Contract

- 13.1 After the end of this Contract:
- (1) the Licence ends;
 - (2) you must pay the EPR Collector or us amounts outstanding at the date of termination;
 - (3) except as provided under clause 13.1(4), you must promptly Sell or destroy all Grain or Seed in your possession or control and pay any applicable EPR;
 - (4) you may grow out any crop planted at the date of termination and Sell or Consume the Grain from that crop and must pay EPR on that Grain, but must not plant any new crops;
 - (5) the following clauses continue: clauses 6 (Records), 7 (Warranties and Exclusions), 9 (Liability) and this clause; and
 - (6) accrued rights and remedies are not affected.

14. Notices

- 14.1 Any notices given under this Contract must be in writing, addressed to the contact person specified in Schedule 2.
- 14.2 A notice given in accordance with this clause will be deemed received:
- (1) if left at the recipient's address, on the date of delivery;
 - (2) 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; and
 - (3) 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.

15. Waiver

- 15.1 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.

16. Amendment

- 16.1 We may change the terms of this Contract by giving you at least 30 days notice.
- 16.2 If we change EPR rates we must notify you by October 1st in order for the change to take effect in the following Financial Year.

17. Severability

- 17.1 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.

18. Assignment

- 18.1 Except to the extent necessary to comply with clause 5.1(5)(b), you must not assign or attempt to assign any obligation, or otherwise transfer any right arising out of this Contract, without our written consent.

19. Entire Contract

- 19.1 This Contract and schedules records the entire Contract between each of us and supersedes all earlier agreements and representations by either of us.

20. Governing Law

- 20.1 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.

INDUSTRY STANDARD PBR LICENCE AGREEMENT SCHEDULES



Schedule 1 Glossary In this contract:

- (1) **Authorised Distributor** means us, or a distributor authorised by us to sell Seed.
- (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 Licensed Varieties, quantities of Grain purchased and/or Sold, details of Seller or purchaser, and your name and address.
- (5) **End Point Royalty** or **EPR** means the end point royalty for each Licensed Variety that you must pay for every tonne of Grain Sold or Consumed (other than Farm Saved Seed) as set out in Schedule 2.
- (6) **EPR Collector** means us or any third party with whom we have entered into an EPR collection arrangement.
- (7) **Essentially Derived** has the meaning given to it in the PBR Act, namely, a Plant Variety 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 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) **Farm Saved Seed** means Seed retained as Propagating Material for the purposes of subsequent planting by you in order to produce further Grain for the Permitted Use.
- (9) **Financial Year** means a 12 month period ending on 30 June.
- (10) **Grain** means harvested material from the Licensed Varieties.
- (11) **Licence** means the licence granted under clause 2.
- (12) **Licensed Varieties** means any varieties of Seed that you purchase from us or any Authorised Distributor which are subject to protection under the PBR Act.
- (13) **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).
- (14) **PBR** means plant breeder's rights as defined in the PBR Act.
- (15) **PBR Act** means the Plant Breeder's Rights Act 1994 (Cth) as amended from time to time.
- (16) **Permitted Use for Grain of the Licensed Varieties** means Use for:
 - (a) the production of Grain for which payment of EPR is required under the terms of this licence; or
 - (b) the reproduction of Seed as permitted by this licence for Farm Saved Seed.
- (17) **Plant** has the meaning given to it in the PBR Act, namely it includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages.
- (18) **Plant Variety** has the meaning given to it in the PBR Act, namely a Plant grouping (including a hybrid):
 - (a) that is contained within a single botanical taxon of the lowest known rank; and
 - (b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that Plant grouping; and
 - (c) that can be distinguished from any other Plant grouping by the expression of at least one of those characteristics; and
 - (d) that can be considered as a functional unit because of its suitability for being propagated unchanged.
- (19) **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.
- (20) **Reproduction** has the meaning given to it in the PBR Act, namely in relation to propagating material of a Plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent Plants is multiplied.
- (21) **Seed** means seed of the Licensed Variety and includes seed that you buy and Farm Saved Seed.
- (22) **Sell** has the meaning given to it in the PBR Act, namely it includes letting or hire and exchanging by way of barter and 'Sale' has an equivalent meaning.
- (23) **Seller** means us or an Authorised Distributor.
- (24) **Use** means to plant, grow, Sell, or Consume.

Schedule 2 Details

Note: details to be inserted on a case by case basis.

Item 1 **Licensed Varieties**

Variety Remaining term of PBR protection

Item 2 **End Point Royalty**

Item 3 **Reporting Obligations**

Item 4 **Governing Law**

Item 5 **Address for notices**

Commercialising Party (contact person and address)

Grower (contact person and address)

Item 6 **Special Conditions**

COPY