



## Terms and Conditions of Website Use

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2. Operators of other websites must obtain our permission before linking to our website.

## Privacy

We respect your privacy absolutely and will not disclose any personal information, unless required by law or consented by you.

## Sale of Goods

Our products and services are sold in accordance with our Terms and Conditions of Sale of Goods, located for your convenience on this website.

## Miscellaneous

We may amend the information on this website at any time and without prior announcement. You should, next time you visit this website, view the conditions again and note any changes.

## Lefroy Valley Terms and Conditions of Sale of Goods

**1. Placement of Orders** The Purchaser shall order the goods from the Distributor in writing or verbally and each order will specify:

1.1 The date of placement of the order.

1.2 The goods ordered.

1.3 A preferred delivery date for the goods being not less than three days from the date of the placement of the order ("delivery date").

1.4 The place of delivery of the order.

**2. Acceptance of orders** The Distributor may decline any order from the Purchaser by written or verbal notice to the Purchaser within three days of receipt of the order by the Distributor.

**3. Delivery of Orders** The Distributor shall deliver each order to the place of delivery specified in the order by such mode as the Distributor shall determine. In the event of loss or damage to the goods in transit the purchaser shall notify the Distributor in writing immediately loss or damage is discovered and shall render the Distributor such assistance as may be necessary to successfully claim for recovery of the loss. Failure to do so will result in the purchaser being liable for payment of the goods.

**4. Prices** Prices quoted are those ruling at the date of issue of quotation as determined by the Distributor and are based upon all charges affecting the cost of transport and delivery of the goods ruling on the date the quotation is made and any alterations thereto either before acceptance of the order or during the currency of the order shall be to the Purchaser's account.

All prices payable by the Purchaser shall be in Australian dollars. If the goods are purchased outside Australia the Australian dollar figure is to be determined based on the prevailing exchange rates as at the date of delivery of the goods.

### **5. Payment of the invoice**

5.1 All accounts are to be settled in full within 25 days of the date of the Distributor's Statement.

5.2 Should the Purchaser default in the payment of any monies due under these Terms and Conditions, then all monies due to the Distributor shall immediately become due and payable and shall be paid by the Purchaser within seven (7) days of the date of demand and the Distributor shall be entitled to charge interest at the rate of 15% per annum on all overdue accounts from the date of due payment until the date of actual payment.

5.3 Any expenses, costs or disbursements incurred by the Distributor in recovering any outstanding monies including debt collection, agency fees and solicitor's costs shall be paid by the Purchaser.

5.4 The Distributor shall be entitled at any stage during the continuance of these Terms and Conditions to request such security or additional security as the Distributor shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such security or additional security shall be obtained.

### **6. Title to goods.**

6.1 The Distributor shall;

6.1.1 remain the sole and absolute owner of the goods until the price for the goods has been received in full by the Distributor from the Purchaser;

6.1.2 remain the sole and absolute owner of the goods until the price for all other goods supplied by the Distributor has been received in full by the Distributor from the Purchaser;

6.1.3 be entitled in addition to the right conferred by paragraph 6.2(b) of this paragraph 6, to retake possession of all goods in the possession of the Purchaser which have been supplied by the Distributor sufficient to clear any outstanding indebtedness by the Purchaser to the Distributor under the terms of this Agreement and the Distributor shall not be required to distinguish between goods which have been paid for and goods which have not been paid for.

6.2 Until the Distributor has received the price of the goods and all other goods supplied by the Distributor in full:

(a) The Purchaser shall be bailee of the goods for the Distributor and shall store them upon its premises separately from its own goods or those of any other person and shall store them in a manner enabling them to be readily identifiable as goods of the Distributor;

(b) The Distributor shall have the right at any time to enter the Purchaser's premises and retrieve the goods;

(c) The Purchaser shall not sell or dispose of any of the goods or any interest in the goods without the prior written consent of the Distributor.

6.3 If the Distributor consents in writing to the sale or disposal or if any sale or disposal is made in breach of paragraph 6.2 and notwithstanding such breach:

(a) The Purchaser shall inform any person to whom it proposes to sell or dispose of the goods or any interest in the goods (the Acquirer) of the Distributor's interest;

(b) Any sale or disposal shall be made as agent (including as agent exceeding its authority, where appropriate) of the Distributor;

(c) The Purchaser shall ensure that the terms of the sale or disposal to the Acquirer includes a term which is identical in substance to this paragraph 6;

(d) Notwithstanding that the payment of the price for the goods would not otherwise have been due by the Purchaser, the Purchaser shall be immediately obliged to pay the price for the goods to the Distributor immediately it receives payment from the Acquirer;

(e) The Purchaser shall hold all its rights against the Acquirer and, to the extent necessary to discharge all debts owing to the Distributor in respect of the supply of goods or other goods only, any proceeds it receives in trust for the Distributor.

(f) The Purchaser agrees that the Distributor shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until the Purchaser pays the full price for the goods to the Distributor;

(g) The Purchaser agrees that the Distributor shall be entitled to trace all and any proceeds arising from any sale or disposal of the goods until the Purchaser pays the full price to the Distributor for all other goods supplied by the Distributor; and

(h) The Purchaser shall at the Distributor's request assign its claims against the Acquirer and agrees irrevocably to appoint the Distributor and each of its officers as its attorney to give effect to and complete that assignment.

6.4 Until the price for the goods has been received by the Distributor in full from the Purchaser, the Purchaser shall act at all times in a fiduciary capacity of the utmost good faith towards the Distributor.

6.5 Until the price for all other goods supplied by the Distributor has been received by the Distributor in full from the Purchaser, the Purchaser shall act at all times in a fiduciary capacity of the utmost good faith towards the Distributor.

6.6 Where:

(a) The Purchaser makes a new object from the goods, whether finished or not;

(b) The Purchaser mixes the goods with other articles; or

(c) The goods become part of the other product, the purchaser agrees with the Distributor;

(d) That the ownership of the new object or the other article immediately passes to the Distributor, to the extent necessary to repay all moneys owing to the Distributor and to no greater extent

(e) Until payment of all sums owing to the Distributor whether under this or any other contract that the Purchaser shall hold them as a fiduciary for the Distributor until payment of all sums owing to the Distributor whether under this or any other contract.

6.7 For the purposes of removing doubt, the ownership of the new object or other goods passes to the Distributor at the beginning of the single operation or event by which the product is converted into a new object, is mixed or becomes part of other goods ("the New Goods").

6.8 Without limiting the generality of clauses 6.6 and 6.7 of this paragraph 6, the Distributor and the Purchaser agree that where the goods are seeds of any kind (eg carrots) then the resulting crop (whether or not ready for harvest) shall constitute 'New Goods'.

6.9 Where the Distributor has not been paid in the manner required by these terms, the Purchaser agrees with the Distributor to keep the New Goods as a fiduciary for the Distributor and, unless otherwise required by the Distributor, to store the New Goods in a manner that clearly shows the ownership of the Distributor.

6.10 In the event of any part (including in that expression subclauses, phrases and individual words thereof) of this paragraph 6 being or becoming void or unenforceable (whether by reason width of expression, non-registration under any relevant legislation, lack of notice to any relevant person or for any other reason whatsoever) that part shall be severed from this paragraph 6 and the validity and enforceability of all other parts of this paragraph 6 shall in no way be affected thereby.

**7. Risk** Risk in the goods shall pass to the Purchaser upon delivery of the goods to the Purchaser or collection of the goods by the Purchaser its agent or courier as the case may be.

### **8. Warranties and acknowledgments**

8.1 The Distributor warrants that;

8.1.1 All the goods shall comply at the time of delivery with regulations and specifications currently in force;

8.1.2 All vegetable seeds are "standard seeds" unless otherwise stated.

8.2 Subject to clause 8.1 of these Terms and Conditions, all warranties that might otherwise be given or deemed given by the Distributor are excluded from these Terms and Conditions to the fullest extent permitted by the law.

8.3 The Purchaser:

8.3.1 warrants that it acquires any goods or services supplied to it under these Terms and Conditions for the purposes of its business, and for the purposes of re-supply or for the purpose or using them up or transforming them in the course of a process of production or manufacture or of repairing or treating other goods or fixtures on land;

8.3.2 hereby acknowledges that the Distributor relies on the warranty given in clause 8.3.1 in agreeing to supply goods and services to the Purchaser;

8.3.3 hereby acknowledges that information provided to the Purchaser by the Distributor is provided in good faith and for guidance only on the understanding that neither the Distributor, its agents, its employees, nor its contractors are responsible for the results in any actions taken on the basis of such information or on the basis of any error in or omission from such information; and

8.3.4 hereby acknowledges that it has satisfied itself as to the suitability of any goods or services ordered for its purposes prior to placing its order with the Distributor.

### **9. Exclusion of Warranty**

9.1 Any liability of the Distributor to the Purchaser for:

9.1.1 any claim or action in respect of a breach of warranty given or deemed given by the Distributor in these Terms and Conditions or by any other means;

9.1.2 any negligent, reckless, or wilful act or omission performed or made by the Distributor, its servants, contractors, agents, or associated entities;

9.1.3 any breach of the term or conditions of these Terms and Conditions other than warranties referred to in clause 9.1.1;

9.1.4 any unjust enrichment of the Distributor at the Purchaser's expense;

9.1.5 any breach of any statutory, equitable, or common law duty not comprehended in clauses 9.1.1 to 9.1.4 of these Terms and Conditions is excluded to the fullest extent permitted by law.

**10. Indemnity** The Purchaser hereby indemnifies the Distributor from any liability, loss or damage (including but not limited to any liability or obligation to pay legal costs on a full indemnity basis) accruing to the Distributor from any claim or legal action in respect of:

10.1 any breach of any term, condition, or warranty (whether express or implied) of these Terms and Conditions; or

10.2 any negligent, reckless, or wilful act or omission performed or made by the Distributor, its servants, contractors, agents, or associated entities.

**11. Purchaser's acknowledgments** The Purchaser acknowledges that;

11.1. The Purchaser shall not represent to the public or any consumer that the Distributor is the manufacturer of the goods

11.2. The goods are supplied for the purpose of commercial produce production.

11.3. The sale of the goods are not a sale by sample.

**12. Plant Variety Rights** The Purchaser acknowledges that seed may be subject to the Plant Variety Rights Act 1987 ("the Act") and the Purchaser shall in all circumstances comply with the Act and acknowledges that it has no Plant Variety Rights or Licences in respect of such Rights to the seed and the Purchaser agrees to defend, Indemnify, protect and hold harmless the Distributor, its successors assigns and distributors for and against any claim arising by reason of contravention of the Act and Infringement of Plant Variety Rights and all claims for actual or implied infringement of any letters patent, trade marks, copyright, design, confidential information or similar protection whether then granted by the Commonwealth of Australia or any foreign State or the Common Law.

**13. Restriction as to Use** The Purchaser covenants and agrees and shall procure that each of its associated persons does not use seed or plant material provided by the Distributor to produce seed for sale or supply to other persons or for personal use.

**14. Disease** The Purchaser acknowledges that diseases of plants produced by seeds can be transmitted by the wind, by insects, by animals or by humans and may be diseases originating in the seed, the plants or the soil. Although the Distributor believes the seed to be free from disease the Purchaser acknowledges that one of the criteria for determining the purchase price of seed is the limitation upon liability referred to above and the purchase price payable by the Purchaser would be much greater if the liability undertaken by the Distributor was not so limited.

**15. Treatment of seed** In relation to seed that is specifically treated or tested, the Distributor assures the Purchaser that the treatment or testing has been carried out in the proper manner and that the seed conformed to the required standards and specifications before treatment as tested provided that any warranties terms and conditions in relation to the performance of the treatment and the testing implied by custom, statutory or otherwise is hereby excluded to the fullest extent permitted by law.

**16. Force majeure** Where a party is unable, wholly or in part by reason of an act of God, strike lockout or other interference with work, war declared, or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, failure of crop grown by the Distributor or by any agent of the Distributor, Governmental or quasi-Governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining government or quasi-Governmental approvals consents permits licences authorities or allocations and any other cause whether of a kind specifically enumerated above or otherwise which is not reasonably within the control of the party affected ("force majeure") to carry out any obligation under these terms and conditions and that party:

16.1. Gives the other party prompt notice of that force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation.

16.2. Uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance thereof provided that:

16.3. An obligation to pay money is never excused by force majeure.

16.4. The requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes or claims or demands by any Government on terms contrary to the wishes of the party affected.

**17. Default** The Distributor may withdraw credit facilities to the Purchaser, with immediate effect by notice in writing to the Purchaser upon the occurrence of any one of the following events;

17.1. If the Purchaser has failed to pay the purchase price of the goods within the period specified from time to time by the Distributor.

17.2. If the Purchaser has entered into any composition or arrangement with its creditors, has appointed a controlling trustee pursuant Part X of the Bankruptcy Act 1966, has resolved to appoint an administrator or is obliged to execute a deed of company arrangement pursuant to Part 5.3A of the Corporations Act 2001, or has a receiver appointed over any of its assets, has filed for its own bankruptcy, or is the subject of any resolution or petition for winding up or orders for the sequestration of its estate in bankruptcy, or judicial management (other than for the purposes of amalgamation or reconstruction).

17.3. If the Purchaser has committed a breach of any term of these terms and conditions and fails to rectify such breach (if capable of rectification) within seven days of service of a notice in writing calling upon it to rectify such breach.

17.4. If the Purchaser assigns the benefit of these terms and conditions or credit facilities without prior consent in writing of the other party. Any termination of these terms and conditions shall be without prejudice to any rights which either party may have against the other arising out of or in connection with these terms and conditions.

**18. Notice** Notice, approval consent or other communication given, sent or made to a party under these terms and conditions must be in writing and left for 5pm on a business day or sent by certified prepaid post, facsimile to the Facsimile Number of the party as entered on the face of these terms and conditions or to such other address, Facsimile Number as the party from time to time may notify to the other party for the purpose of this clause. Proof of dispatch is proof of receipt

18.1. In the case of a letter, on the third business day after posting

18.2. In the case of a facsimile transmission, of a production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile No. of the recipient notified for the purposes of this clause.

**19. Place of Agreement** The contract for the sale of the goods arising from these terms and conditions is made in the State or Country where the company issuing the invoice for the goods is registered and the parties agree to submit all disputes arising between them to the Courts of such State or Country and any Court competent to hear an appeal therefrom.

**20. Whole Agreement** These terms and conditions and any documents referred to herein contain the whole of the agreement between the parties and no understanding arrangement or provision not expressly set forth herein shall be binding upon the parties.

**21. Amendment** No variation, modification or alteration of any of the terms of these terms and conditions shall be of any effect unless in writing and signed by each of the parties.

**22. Enforcement** The failure of either party at any time to enforce any of the provisions of these terms and conditions or to exercise any right shall not constitute a waiver of the same or effect the party's right thereafter to enforce the same.

**23. Severance** If any provision of these terms and conditions is deemed to be unlawful or unenforceable. Such provisions shall be severed from these terms and conditions and all other provisions hereof shall remain in force.

**24. Goods and Services Tax**

**24.1 Definitions**

Unless the contrary intention appears, in this clause:

"GST" means a tax levied on the value of any goods supplied by the Distributor or any other money payable to the Distributor under these terms and conditions.

"GST Law" means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**24.2 Purchaser Must Pay GST**

The Purchaser must pay to the Distributor the amount of any GST the Distributor pays or is liable to pay on the goods.

**24.3 Purchaser Must Pay GST At Same Time**

The Purchaser must pay to the Distributor the amount of the GST that the Purchaser is liable to pay at the same time and in the same manner as the Purchaser is obliged to pay for the goods at the time the Purchaser is obliged to pay that amount.

**24.4 Prices Do Not Include GST**

The price for the good, fixed or determined, under these terms and conditions does not include GST on that good and the Purchaser must pay the amount of GST in addition to the price for that good, fixed or determined, under these terms and conditions.

**24.5 Distributor To Provide Particulars**

The Distributor shall provide to the Purchaser such particulars as are required by the GST Law in order that the Purchaser may obtain a credit for the amount of GST payable on the goods.

**25. No partnership** Nothing contained in these terms and conditions shall create a partnership between the Distributor and the Purchaser.

**26. Definitions and Interpretation**

26.1 In these terms and conditions unless the context otherwise requires the following expressions shall have the following meanings:

26.2 "the Distributor" means Ebony Bay Pty Ltd (ACN 055 460 449) and any of its agents, distributors, or related entity or related body corporate (as those terms are used in the Corporations Act 2001) from whom the Purchaser may order goods or services.

26.3 "the Purchaser" means the purchaser ordering and taking delivery of the goods and includes all or any one or more of them jointly and severally and each of their personal representatives successors in title transferees and permitted assigns.

26.4 "the goods" means the seed, plant material, chemical, fertiliser, or any other item sold by the Distributor to the Purchaser as specified on official invoices and statements.

26.5 "associated persons" means, in relation to a corporation, any related corporation director or substantial shareholder pursuant to the corporations Law and in relation to a natural person, any spouse or blood or adopted relative of that person or that person's spouse.

26.6 "Trade Practices Act" means the Trade Practices Act 1974 as amended.

26.7. Words importing the singular number or plural number shall include the plural number and singular number respectively.

26.8. Words importing any gender shall include any other gender or genders.

26.9. Words importing persons shall include corporations.

26.10. References to statutes include all amendments thereto and statutes passed in substitution therefore or re-enactments thereof respectively.

26.11. The headings used herein are for ease of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

26.12. Any covenant or agreement on the part of or in favour of any two or more persons shall bind them or be in favour of them both jointly and severally.

26.13 These terms and conditions shall be interpreted in accordance with the laws of the State in which the goods are purchased.

**Disclaimer:**

Disclaimer: Lefroy Valley carries out stringent trialling prior to releasing varieties. We strongly recommend that all varieties be trialled under your growing conditions prior to commercial sowings taking place. For details of up to date trial results in your area please contact Lefroy Seeds. All cultural and descriptive information is supplied in good faith, as a guide only. Varietal performance is influenced by many variables namely soil conditions, cultural and management practices. No liability will be accepted by Lefroy Valley or its representatives as to final performance based on this information.

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