



TERMS AND CONDITIONS FOR THE PURCHASE OF SEED (Effective 10 May 2022)

BETWEEN

Succession Ecology Pty Ltd of 7 Angus Avenue
Edwardstown SA 5039 (ABN 56 605 880 028) (SE)

-AND-

You the customer (**Customer**)

NOW IT IS AGREED

1. Dictionary

In this agreement the following terms have the following meanings

Business Day means a day on which all banks (as defined in the Banking Act 1959) with offices in the City of Adelaide are open for business in the City of Adelaide.

Business Hours means between the hours of 9.00am and 5.00pm (Australian Central Standard Time).

Customer means the person, partnership, corporation or other entity (including trust) purchasing the Product as identified on the Order Form and their heirs, executors, administrators, successors and assigns of such party or parties.

Force Majeure means an act, omission or circumstance over which the party could not have reasonably exercised control or taken steps to anticipate or avoid.

GST Law means A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and also includes any associated legislation and delegated legislation.

Intellectual Property means all statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions (including registered and unregistered patent rights), registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial scientific, literary or artistic (including musical) fields.

Order Form means the order form, quote or invoice for Product made by the Customer of SE, including Price, quantity of Product and delivery location and constituted by this document.

Price means the amount the Customer will pay to SE for the Product as stipulated in the Order Form.

Product means plant seed SE agrees to supply to the Customer.

SE means the party or parties so described on page 1 of this Agreement and their heirs, executors, administrators, successors and assigns of such party or parties.

2. These Terms

2.1. The acceptance of the Order Form by SE includes agreement by both SE and the Customer that these terms set out the sole basis for the sale of Product to the exclusion of any conditions of sale appearing on any document of the Seller.

2.2. The Customer acknowledges having had fair opportunity to read, understand and negotiate with SE regarding these terms.

2.3. Subject to any special written offer by SE, that may be agreed in writing, these terms form part of each Order Notice for SE to supply The Product to the Customer and these terms negate any terms the Customer may issue;

2.4. The Customer's failure to acknowledge these terms is not evidence that these terms do not apply;

2.5. The Customer accepts these terms if after receipt of a copy of these terms referred to the Customer by SE, the Customer places an Order Form for the Product; and

2.6. At any time SE may change or replace these terms by so notifying the Customer. Any such change or replacement applies to any Order Form placed after the change was so notified.

3. Product availability

3.1. The Customer acknowledges that Product availability and delivery times may change depending upon a number of factors including seasonal changes and if their Order Form is time sensitive should clarify with SE about waiting times and availability prior to placing an order.

3.2. At any time SE may change its range of Product(s).

3.3. Product(s) offered from SE's inventory are subject to prior sale to other buyers.

4. Quotations

4.1. Unless otherwise stated, an SE quotation to supply Product expires 10 working days after issue.

4.2. A quotation for a stated date for delivery, kind or quantity of Product is not valid for a different date, kind or quantity of Product.

4.3. SE may vary / withdraw its quotation before SE in fact receives the Customer's acceptance of the quotation.

5. Orders

5.1. The Customer may place an Order Form orally or in writing—an oral order is not effective until confirmed in writing by the Customer.

5.2. SE may have a minimum order requirement stated in a current price list, and / or require

an Order Form be placed a minimum period before the expected date of delivery.

- 5.3. An Order Form, if accepted by SE, is effective even if the Customer has not specified a delivery date or method.
 - 5.4. Any Order Form is subject to SE's acceptance, and SE may decline an order in full or in part.
 - 5.5. SE accepts an order (in full or in part) either by so notifying the Customer or by executing the order.
 - 5.6. After SE accepts an Order Form, the Customer may not modify, delay or cancel the order unless SE agrees in writing.
- 6. Prices**
- 6.1. Unless otherwise stated, prices stated in SE's Quotation or order:
 - 6.1.1. includes usual packaging and insurance;
 - 6.1.2. if the Customer shall request a delay in the delivery of Product then SE reserves the right to charge reasonable storage costs of the Order;
 - 6.1.3. are for delivery to occur at the premises or location as agreed in the Order Form; and
 - 6.1.4. are exclusive of GST unless otherwise stated.
 - 6.2. Unless otherwise stated delivery and transport costs are not included in the prices stated but shall be specified if requested by the Customer.
 - 6.3. Unless SE quotes otherwise, SE may vary a price after the Order Notice forms if the Customer varies the quantity of Product contracted for and SE has accepted that change.
 - 6.4. A price is fully earned when the Product is delivered unless otherwise agreed in the Order form.
- 7. GST**
- SE may recover from the Customer an amount equal to any GST for which SE becomes liable by its sale of Product to the Customer. Such amount is payable by the Customer to SE at the time the price of that Product is payable.
- 8. Tax invoice**
- 8.1. SE will issue an invoice to the Customer as soon as practicable upon dispatch of the Product.
 - 8.2. SE may issue two or more separate invoices per Order Notice if Product is dispatched separately.
- 9. Payment for Product**
- 9.1. SE may require the Customer pay a deposit as specified within the Order Notice (plus GST thereon) in advance.
 - 9.2. The Customer must pay for the Product within 14 days of the invoice unless otherwise agreed within the Order Notice.
 - 9.3. The Customer may not deduct from any price any set off, counterclaim or rebates asserted by the Customer or other sum (such as taxes or charges).
 - 9.4. SE may require payment of its invoices by electronic transfer in clear funds to a bank account last nominated by SE in writing.
 - 9.5. Payment by cheque is not made until the cheque clears.
 - 9.6. If the Customer does not pay for any Product within the time required, SE may:
 - 9.6.1. recover from the Customer daily interest at 5% per annum on the unpaid amount of the price of that Product calculated on and from the due date until the date payment in full (plus accrued late payment interest) is made to SE;
 - 9.6.2. without liability, cancel or suspend delivery of any Product not fully paid for and yet to be delivered under any Order Notice;
 - 9.6.3. resume possession of the Product not fully paid for and then credit the Customer with SE's estimated re-sale value of that Product less costs; and/or
 - 9.6.4. exercise any other rights or remedies SE has in relation to the default.
 - 9.7. Interest accrued and not paid for 30 days adds to the debt (is capitalised), and thereafter attracts interest.
- 10. Set off**
- In addition to rights of set off under the general law, SE may set off any debt or liability the Customer (alone or with others) owes to SE on any account against any debt or liability SE owes to the Customer on any account. If a liability is unliquidated or otherwise unascertained, SE may set off an amount estimated by SE in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess.
- 11. Promotional material**
- Any promotional materials (other than official technical specifications) SE publishes only give a general idea of the Products on offer and cannot be relied on for any purpose.
- 12. Warranties**
- 12.1. SE warrants that any Product supplied:
 - 12.1.1. conforms to the Order Notice as to the kind and quantity of Product;

12.1.2. conforms to the description for that kind of Product under Australian trade usage;

12.1.3. is of merchantable quality and to be free from defect in material workmanship; and

12.1.4. is free of third party security interests.

12.2. Subject to law and these terms, SE does not give any other warranty, condition or guarantee in connection with its supply of Product.

12.3. If SE specially manufactures or provides the Product to the Customer's own specifications without express reliance upon SE's expertise, the use of those specifications is at the Customer's risk.

13. Supply

13.1. In the delivery of a product SE may deliver less than a quantity ordered if unable to deliver the full quantity. In that case the unit sale price of the Product remains the same, but any applicable transport or service costs included in the price relative to quantity would be reduced in a fair proportion.

13.2. If applicable, SE may deliver an order by instalment, but if SE fails to deliver a particular instalment by a date specified the Customer may not rescind the Order Notice.

14. Delivery

14.1. If SE quotes or proposes a delivery date or timeframe for provision of the Product that proposal is an estimate only and is subject to factors that include, but are not limited to:

14.1.1. If SE need to order in, harvest, collect or manufacture Product to fill and SE shall not be penalised by such delay.

14.2. If at the Customer's request SE agrees to procure transport of a Product to or at the direction of the Customer, then:

14.2.1. if the Customer does not specify a method of transport or particular carrier, SE may decide the method or carrier;

14.2.2. SE does not guarantee a particular arrival date or time;

14.2.3. a receipt signed by an apparently responsible person at the nominated destination is sufficient evidence of arrival of the Product unless proved to the contrary;

14.2.4. SE need not provide proof of arrival unless the Customer made written request of proof of arrival; and

14.2.5. If the Customer shall vary the location for delivery as agreed in the Order notice SE may recover the

reasonable increased cost of transport from the Customer.

15. Risk of loss

15.1. Risk of loss / damage / deterioration in any Product passes from SE to the Customer when the Product is dispatched or collected from SE's premises.

15.2. SE must maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred relevant to the supply of the Product.

15.3. After risk passes, the Customer is responsible for insurance of the Product.

16. Ownership

16.1. Ownership of Product passes from SE to the Customer only when that Product is fully paid for. Until that time the Customer holds the product for SE as owner and, if SE so requires, the Customer must store it in a way it can be identified as SE's property.

16.2. If the Customer's payment for any Product is voided or conceded to be voidable or void, SE resumes ownership the product.

17. On-sales and other use of Product

17.1. Product is not provided to the Customer for resale without SE's written consent.

17.2. If the Customer does resale the Product then:

17.2.1. The Customer must ensure that the provision of the Product is free from defect and is of merchantable quality; and

17.2.2. The Customer is responsible for addressing any complaints received from their customers or the third parties supplied to; however

17.2.3. If a claim is made that SE is responsible for any defect then the Customer shall notify SE promptly and the provisions stipulated in clause 19 shall apply and SE's liability to the Customer shall be limited in accordance with these terms and conditions.

17.3. As a continuing obligation the Customer indemnifies and holds harmless SE against any claim for any loss, damage, personal injury or death to the extent caused by the Customer's improper storage, handling, distribution or use of Product or any other reasons that are not SE's responsibility.

18. Short delivery

18.1. A claim that a delivery of Product was not of the kind or quantity of Product ordered is not valid unless advised in writing (with reasonable details) to SE within 7 business

days after the supply was first available for inspection by the Customer or their agent.

- 18.2. Where there is an alleged shortfall the parties shall:
- 18.2.1. Endeavor and co-operate in investigating and resolving, if found, a shortfall;
 - 18.2.2. If the parties cannot agree a resolution within 5 business days then SE shall arrange for the Product to be weighed and certified;
 - 18.2.3. If a shortfall is found upon certification then SE shall make up the shortfall and bear the cost of the certification; however
 - 18.2.4. If upon certification there is found no shortfall then the Customer shall bear all costs of the certification, including transport and delivery.

19. Defective Product

- 19.1. Subject to applicable laws (if any):
- 19.1.1. a claim that Product is defective for reasons that are SE's responsibility is not valid unless advised in writing (with reasonable details) to SE within 5 Business Days after the defect was first known to the Customer or their agent; and
 - 19.1.2. no later than 10 Business Days after making a claim the Customer must advise SE what action (if any) the Customer requires to resolve the claim;
 - 19.1.3. SE may decline a claim for defective Product if the Customer does not take reasonable steps to preserve the Product pending an inspection by SE's agent, if SE requires inspection.
- 19.2. If a claim for defective Product is found or admitted to be without merit, SE may recover from the Customer as a debt all reasonable costs SE incurs investigating the claim.
- 19.3. If the Customer is a consumer (as defined in the Australian Consumer Law) in relation to the Order Form, the following provisions of shall apply in relation to that Order Notice as to comply with section 102 of the Australian Consumer Law and regulation 90 of the Competition and Consumer Regulations 2010:
- 19.3.1. SE is the person giving the warranty;
 - 19.3.2. A defect in the Product must appear within 12 months or within the period of warranty as specified by the original manufacturer for the Customer to be

entitled to claim the warranty against defects;

- 19.3.3. To claim the warranty the Customer must notify SE and make the Product available to SE - if SE so requires, bring the Product to SE's business address;
- 19.3.4. The Customer bears the expense of claiming the warranty against defects.
- 19.3.5. If the Product is defective SE honors its warranty against defects by taking one or more of the actions stated in clause 21; and
- 19.3.6. The benefits to the Customer given by the warranty are in addition to other rights and remedies of the Customer under a law in relation to the goods or services to which the warranty relates

20. Time bar

Subject to applicable laws, any claim for any short delivery / defective Product not made within time is barred for all purposes.

21. Vendor liability

- 21.1. If a Product SE delivers was not of the kind or quantity contracted for then SE's total liability is limited to prompt delivery of the kind of Product contracted for or prompt delivery of the shortfall quantity, as applicable, and at SE's cost.
- 21.2. If a Product SE delivers otherwise does not conform to the Order Form or (for reasons that are SE's responsibility) is defective, then SE's total liability is limited to (at SE's choice and at SE's cost):
 - 21.2.1. prompt delivery of replacement Product or equivalent goods; or
 - 21.2.2. prompt repair of the Product; or
 - 21.2.3. payment of the cost of the Customer acquiring equivalent goods or having the Product repaired;
- 21.3. If SE is to replace Product that is or likely to be defective for reasons that are SE's responsibility:
 - 21.3.1. SE retains or resumes ownership of the original Product;
 - 21.3.2. SE may collect the original Product from the Customer or require that original Product be transported, dumped or otherwise dealt with at SE's reasonable cost.
 - 21.3.3. Subject to the Australian Consumer Law if it applies, in no case is SE liable for any loss of revenue / profits / goodwill or any incidental, consequential or punitive damages as a result of any claim in connection with its supply of Product.

22. Vendor rights

In addition to SE's other rights and remedies, SE may suspend or cancel a Order Notice and retake possession of Product not fully paid for if either:

- 22.1. SE reasonably believes the Customer to be insolvent or to have ceased permanently to trade; or
- 22.2. the Customer is in default under any Order Notice with SE.

SE may resell Product it repossesses as it sees fit and then apply the net proceeds of resale in reduction of any debt the Customer owes to SE.

23. Enforcement Costs

A party (Party 1) may recover from the other party (Party 2) all reasonable costs or expenses Party 1 incurs in recovering or attempting recovery of moneys owing by Party 2 under a Sale Contact or in otherwise enforcing Party 1's rights under a Order Notice. Such costs may include legal costs on a solicitor / client basis.

24. Brands

SE retains all ownership in its brands and the goodwill of the Product, and may restrict the Customer's use of SE's brands.

25. Confidentiality

If SE contracts on the basis of a discount or rebate to its current list prices, during and for 12 months after the Order Notice the Customer must not disclose that pricing to a third party except as necessary to perform or enforce the Order Notice or as required by law.

26. Force majeure

A party is not liable for a failure to perform the Order notice to the extent its performance is prevented by a circumstance not within that party's reasonable control and without its negligence.

27. About an Order Notice

- 27.1. These terms and the relevant Order Notice (as accepted by SE) together are the whole contract between the parties about SE's sale and supply of Product to the Customer.
- 27.2. Any provision of a Order Notice found to be unenforceable must be read down to the extent necessary to avoid that result or if it cannot be read down it must be severed without affecting the validity and enforceability of the remainder of the Order Notice.
- 27.3. Any Order Notice may only be modified (includes delayed) or cancelled as the parties agree in writing.
- 27.4. To be valid, a waiver under any Order Notice must be in writing signed by the party granting the waiver.

27.5. The Customer may not assign any Order Notice except with SE's prior written consent.

27.6. Upon notice to but with need for consent of the Customer, SE may assign any Order Notice to a person who acquires SE's business in succession to SE.

27.7. The laws in South Australia govern a Order Notice, and SE has exclusive right to nominate the court in which any legal action is to be commenced and conducted. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.

27.8. A notice required or authorised to be given or served on a party under this Agreement must be in writing and may be given or served by facsimile, express or registered post, electronic mail (email) or hand to that party at its facsimile number, email address or address as the party may have last notified the other party or parties in writing. Notices sent via post are deemed to arrive in two business days. Notices via email or Facsimile are deemed to arrive the next business day.

27.9. SE may sub-contract part or whole of the performance of the supply of the Product, but SE is not relieved of performance of any obligations under the Order Notice and will be liable for all acts and omissions of a sub-contractor as though they were the actions of SE itself.

28. Intellectual property

- 28.1. No Intellectual Property is transferred by virtue of this agreement.
- 28.2. SE grants to the Customer a limited, royalty free, irrevocable licence, non-exclusive Licence to any Intellectual Property contained in the Product for the sole purpose of using the Product for its intended use.

29. Viability of Seed

- 29.1. If the Product shall include the supply of flora seed the Customer accepts that the viability of that seed is not guaranteed 100% and the Price under the Order Notice accounts for this variation.
- 29.2. A Seed Quality Statement is provided, with an Order Notice, outlining the expected or average viability and quality of the flora seed to be supplied and the Customer acknowledges that they have read and accept the supply of flora seed in accordance with the statement.