These terms of trade as amended from time to time (Terms) apply to all Products transactions with us, where you have agreed to be bound by these Terms, and/or where you use our PGW Wrightson Seeds Account.

1. DEFINITIONS
Account means a monthly charge account to buy Products from us with deferred payment. Application means your application to open an Account. CCLA means the Contract and Commercial Law Act 2017. Customer or you means the purchaser of Products from PGWS. Default Event has the meaning given to it in clause 7.1. PGWS, we or us means PGW Wrightson Seeds Limited and each of our subsidiaries and trading entities including PGW Wrightson Grain, PGW Wrightson Turf, Agricom and Canzon Maze Seed. PPSSA means the Personal Property Securities Act 1999. Products means all products, merchandise, seeds, grains and services (including services and advice provided for a fee, and including agency products and services) supplied or to be supplied by or through you to us from time to time, including:
b. the products, merchandise, seeds, grains or services described or referred to (whether by item, product category, brand, kind or other wise) in the delivery docket, invoice or like equivalent document that we give you; and
c. solely for the purposes of the application of clauses 5 and 6:
ii. where any products, merchandise, seeds or grain purchased by you from us are your inventory (as defined in the PPSSA), then also inventory for so long as you hold it as such; and
ii. any objects, products or mass which the products, merchandise, seeds or grain subsequently become a part of or an accession to; and
iii. in the case of products which are used up or consumed:
A. all resulting seed product, plant product, whether harvested or not; and
B. all livestock, which are grown or improved by the use or consumption of such products.
Protected Cultivar means a cultivar for which plant variety rights have been applied for or granted under the Plant Variety Rights Act 1987, or which are otherwise the subject of intellectual property rights held by PGWS or a third party.
Warranties/Warranties means representations, warranties, conditions, guarantees, duties or liabilities, or customer rights.
2. APPLICATION AND ACCOUNT
2.1 You must tell us of any changes to your contact details or to any of the other information given to us on your Application. We will assign a Customer number to your Account. Invoices, statements and other information directly relating to your dealings with us will be sent to you by email unless you request otherwise. We may impose a credit limit on your Account and alter that credit limit without notice to you. If you exceed your credit limit we may refuse to supply Products to you.
2.2 On request by you we will:
a. make a written statement in respect of any obligations of you to us by a person or entity satisfactory to us in our sole discretion; and
b. provide, or arrange for another person or entity satisfactory to us in our sole discretion to provide, a bond or other security in an amount we specify to secure your obligations to us.
Any such guarantee, bond or other security must be on terms as we consider appropriate.
2.3 We may close or suspend your Account at any time. On closure of your Account:
a. all your rights under these Terms terminate, except for any rights that have accrued to you prior to the closure of your Account; and
b. all your obligations to us continue under these Terms until all of your obligations to us have been satisfied in full or our satisfaction.
3. ORDERS
3.1 A contract will come into existence between us once your Product order has been accepted by us. We will accept your order by giving you a delivery docket or invoice, or electronic confirmation of your order for the delivery of the Products. A delivery docket or invoice or electronic confirmation will form part of the contract between us for the relevant Product. You cannot cancel an order for Product after acceptance.
3.2 We will use our reasonable endeavours to source the Product ordered by you and quoted by us. You acknowledge that your placing an order with us and/or our acceptance of your order does not guarantee our supply of the Products. If we cannot provide the agreed quantity of Products for any reason, we will not be liable for that shortfall and you must take delivery of and pay for such lesser quantity as we are able to supply.
3.3 Products can be purchased from our online websites using the payment mechanisms that we make available. By ordering online you agree to these Terms and that you are 18 or over. Certain products may not be available online. Delivery will be to your nominated delivery address however some Products must be collected.
4. TERMS OF PAYMENT
4.1 You will pay the price plus GST for the Products stated in the delivery docket or invoice plus any applicable freight or incidental charges. Unless we specify otherwise, the price must be paid to PGWS by the 20th day of the month following purchase. We may choose to pass on to you external and internal legal costs of payment processing such as bank cheque processing fees and credit card surcharges for payments you make to us and payments we make to you. PGWS may in its sole discretion write off small credit balances on your Account for administration efficiency.
4.2 Interest on overdue payments not made within the period set out in clause 4.1 will be charged on a daily basis at 21.5% p.a. Any prompt payment discounts or other discounts may be reversed for overdue payments at our discretion.
4.3 All amounts payable by you to us will be paid in full in cleared funds, without any set-off, counterclaim or deduction (whether with or without notice) any money that you owe to PGWS from money that we owe to you or that PGWS holds on your behalf. You authorise PGWS to accept payment at risk:
a. held by PGWS or any subsidiary or related company on your behalf on any account in or towards payment of any amount owing to PGWS; and
b. received from you and on your account in payment of any amount owing to PGWS.
4.4 PGWS may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from you in any manner (and in any order and to any amounts owing to PGWS or any vendor) PGWS thinks fit (despite any direction to the contrary and whether before or after any default by you).

4.5 A payment will not be treated as received until the date on which that payment is credited to the bank in the ordinary course of business. You must pay any costs associated with any method of payment and such costs may be added to (and form part of) the price. We may at any time specify the method of payment you must use. If we are required by law to repay any amount on account of the price at that time will be deemed not to have been paid by you and we will be restored to the position it would have been in had no such payment been made. We are not obliged to deliver any Products if any moneys due and payable by you remain outstanding.
5. DELIVERY, TITLE AND RISK
5.1 We will not be liable for any delay in delivery of any Products to you. If you do not take delivery by the delivery date specified, you will pay reasonable storage costs until you take delivery.
5.2 All Products are at your risk from the point of loading onto the carrier or being made available for uplifting by you, whether or not you take delivery of the Products at that time.
5.3 Ownership of and title to all Products remains with us, as the case may be, and only passes to you once all money you owe us, on any account, is paid for in full (even if you incorporate the Products with other items, including without limitation those items described in the definition of Products in clause 1). You acknowledge and agree that the retention of title is a security interest for the purposes of the PPSSA.
5.4 Until title in the Products passes to you:
a. you hold the Products as bailees and
b. you must store the Products in a manner which will protect them from damage or deterioration, and separately from your own goods or otherwise ensure that the Products are separately identified or identifiable. We authorise you in the ordinary course of your business, to use the Products or sell them for full consideration. This authority is revoked immediately and automatically in the event of a Default Event and may also be revoked by notice in writing to you at any time in our sole discretion; and
c. you must insure the Products for their full insurable value and, if we require, have our or our vendor's interest in the Products insured as additional insureds on policies we specify.
5.5 Regardless of section 109 of the PPSSA, we may repossess the Products and dispose of them for our own benefit, if a Default Event occurs. For this purpose, we, and/or our agents may at any time without prior notice to you, enter any place where we or the believe the Products may be kept and remain there to take whatever action may be required to reposess the Products. You indemnify us and our agents for all costs and liabilities (including our legal costs on a solicitor/client basis) in connection with the repossession, storage or resale of the Products (including any shortfall arising from resale at a lower price).
5.6 If you sell or use any Products before the transfer of ownership and title in accordance with clause 5.3, the proceeds of such sale or use (in whatever form) are our property, and you must pay all such proceeds to us or otherwise deal with such proceeds as we direct. Nothing in this clause can be construed as ceasing any dealing by you with the Products, unless we permit. We may use you for the purchase price even where ownership of the Products has not passed to you.
6. PERSONAL PROPERTY SECURITIES ACT 1999
6.1 You and each guarantor hereby charge in favour of us all your present and after-acquired property on the terms contained in the Auckland District Law Society form of General Security Agreement current at the time of signing the Application. You also grant to us a specific security interest in all Products (and all proceeds) supplied or to be supplied by us and in any objects, products or mass which the Products subsequently become a part of or an accession or accessory to, so as to secure all payments under these Terms and all moneys owing by you to us from time to time. You will do all things necessary so as to enable us to register financing statements on the Personal Property Securities Register (PPSR), and to ensure the specific security interest is a first ranking perfected security interest over the Products and any proceeds. We may register a security interest on the PPSR in our name as secure party where even we are acting as an agent.
6.2 If the Products the subject of the security interest subsequently become part of other product or mass, then nothing in these Terms can be construed as limiting the application of sections 82 to 86 of the PPSA. Your rights in sections 116, 120(2), 121, 125 to 127,129 and 131 of the PPSA do not apply.
6.3 You waive your right under section 148 of the PPSA to be given a copy of any verification statement in relation to any financing statement or financing change statement that we may register. The security interests granted by you take effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Products.
6.4 We may use the benefit of any security interest, security agreement, encumbrance, charge or mortgage given by you or any guarantor or other grantor of surety to us to secure payment and performance of your obligations under these Terms. If you do not comply with our prior written consent grant any lien or security interest over the Products to any other party whatsoever nor commit any act or omission that would give any other party a security interest over those Products until all such Products are paid for in full.
7. DEFAULT EVENT
7.1 Default Event means any of the following which occurs without our prior written consent:
a. You fail to comply with these Terms, or any other contract with us, including failing to pay us on time or exceeding your approved credit limit; and
b. we reasonably believe that you are unlikely to be able to immediately pay any sums owing to us or a vendor of Products; or
c. information you have given to us, or which is given to us on your behalf, is untrue, misleading or deceptive in a material respect or otherwise in a way that is material to us in our sole discretion; or
d. you are in default on any other obligations to us other than in respect of a Default Event; or
e. you have been or may be declared bankrupt or liquidated; or
f. you are insolvent or become insolvent; or
g. any guarantor or other grantor of surety of your obligations under these Terms is in default with us, or the events in this clause apply to them; or
h. at any time in our view any of these conditions apply or are at risk.
7.2 If a Default Event occurs then without prejudice to our other remedies:
a. we will be entitled to suspend or cancel all or any part of any contract that we have with you which remains unperfected; and
9. RETURNS

9.1 Subject to clauses 9.2 and 9.3, if you are not satisfied with the Products provided by us for any reason, you can return the Products (other than services) to us within 30 days of your taking delivery of the Products.

9.2 Products (other than services) can only be returned to us if:
   a. they do not require refrigeration, and/or are not close to any expiry date (as determined by us);
   b. they are not custom-made or procured for you (seed that you have ordered to be customised or grown for you);
   c. they were supplied to you in packaged and sealed form and not in bulk, and are returned in their original packaging unopened, and include all accessories.
   d. we are satisfied that their condition has not deteriorated and you pay for their return;
   e. you provide evidence of purchase from us, to our satisfaction.

We may choose to either credit your Account or debit card holding on your behalf to the extent that a refund is due. We reserve the right to return your personal information to third parties for these purposes. You can inspect and correct your personal information held by us.

10. PGWS’ ROLE AS AGENT

10.1 If you purchase PGWS’ goods or services, PGWS may act as agent for the seller, for the purpose of selling goods or services to you, and passing on the proceeds of your purchase to the seller. If PGWS has any right of set-off against you, PGWS may deduct an amount from any sum you owe to us in order to satisfy this obligation. Otherwise, you must pay the purchase price on demand. If you pay by cheque, a bank transfer will not be considered paid until the cheque or transfer has cleared.

11. LIABILITY

11.1 Clause 10.1 sets out your sole rights to compensation/remedies from us for any matter covered by these Terms. Without limiting clause 10.1, neither we nor our agents will be liable in any way (including negligence, tort and equity) to you or to any other person in connection with this or any other contract or the supply or failure to supply any Products or the purported exercise of our rights under these Terms for any:
   a. loss whatsoever of income, profits, savings, or goodwill or for any indirect or consequential loss or special or exemplary damages; or
   b. amount exceeding the purchase price of the Products; or
   c. amount not claimed by you, an item of the circumstances giving rise to the claim.

12. CUSTOMER’S LIABILITY

12.1 You are deemed to be bound by all transactions undertaken with us, whether or not any person undertaking a transaction has actual or ostensible authority to do so. If the Customer includes two or more persons, those persons’ liability is joint and several. If the Customer is a trust, these Terms bind each trustee in his or her capacity as trustee and personally. If PGWS has granted a payment plan to a trustee being noted as an independent trustee, that trustee’s liability to PGWS will be limited to the assets of the trust at the time of any default, except as otherwise agreed in writing. If PGWS has advanced a loan to a trustee being noted as an independent trustee, that trustee has provided a guarantee personally in respect of your obligations pursuant to these Terms that are not covered by a trust agreement.

13. PGWS’ RULES AS AGENT

13.1 PGWS may be a representative advising (and where PGWS determines, PGWS may act as agent for) both the supplier and/or purchaser in respect of the sale and purchase of any Products.

13.2 If we wish to credit any amount on account of the purchase price to the supplier for whom we are agent and/or debit your account on account of the purchase price before you have paid the purchase price to us (which we are not obliged to do), you agree that:
   a. the purchase price payable by you under that contract for sale will not be reduced and the purchase price will be payable to PGWS immediately; and
   b. all the supplier’s rights under that contract including those relating to the payment of the purchase price for those Products and the Free-on-Board ship price (or any security interest) shall then be subrogated in favour of and enforceable by PGWS.

13.3 You are not responsible or liable in any way for anything done or not done by or on behalf of either party to a contract arranged by us if we do not have actual or ostensible authority to assume any security interest shall then be subrogated in favour of and enforceable by PGWS.

13.4 We may choose to either credit your Account or debit card depending on how you paid for any Products.

13.5 Unless otherwise stated, we may take all reasonable steps to collect any amounts payable under these Terms from you, including by using our credit reference service, and will deduct amounts owed to us from the purchase price, or any amount, subject to any right to set off or right to deduct or commission other amounts.

13.6 Commission may be payable by both parties when PGWS has acted for both parties to a transaction. Where PGWS acts as agent for supplier/vendor, PGWS gives no Warranties to the purchaser. Clauses 10 and 11 apply to PGWS’s services as agent. The CCLA (and not clauses 10 and 11) applies directly between the supplier and purchaser unless the supplier’s terms of sale have been incorporated into the sale and state that they prevail over any inconsistent provision of the CCLA.

13.7 Where PGWS is acting as your agent, you acknowledge that PGWS may disclose your name and contact details, and any other details relevant to the transaction to the other party to the transaction.

13.8 PGWS may in its sole discretion register a security interest as agent for a supplier but has no obligation to do so.

13.9 Where PGWS acts as a supplier for a buyer it may withhold payment to a supplier for amounts owed to PGWS, which will then promptly pass the amount to the buyer for the amount, subject to any right to set off or right to deduct or commission other amounts.

14. GENERAL

14.1 Assignment: You may not transfer any right, benefit or obligation under these Terms. We may assign our rights and obligations under these Terms to a third party at any time without your consent.

14.2 Enforcement: You will pay us on demand all costs (including legal costs on a solicitor/client basis) incurred by us in connection with any default by you or enforcement action taken by us.

14.3 Entire Agreement: Except as set out in this clause, the Application and these Terms are the entire agreement between us, you and the guarantor(s), and supersede all representations, agreements and other communications made by us. Certain Terms of Sale in respect of specific Products may appear on the reverse of any of PGWS’s invoices or statements or other specific Terms may apply in conjunction with or in place of these Terms if we specify. For Products purchased from our online websites, these Terms, the Application and the Website Terms of Use apply in the order determined by us. If any part of these Terms is inconsistent with the CCLA, that part prevails over the relevant provision of the CCLA.

14.4 Our Decisions and No Waiver:
   a. any power or discretion conferred on us by these Terms may be exercised by us, or we may refrain from exercising that power or discretion, at our absolute and unfettered discretion.
   b. if we delay or do not exercise any of our rights or remedies, that will not be a waiver of those rights or remedies. Any waiver we give must be in writing.

14.5 Severability: If any part of these Terms is illegal, unenforceable or invalid, the remaining Terms are not affected.

14.6 Variation: We may in our absolute discretion change these Terms at any time by publication on our Group website www.pggtreecertification.co.nz. The change will take effect from the time you load your transactions with us are covered by the then current Terms at the time of the transaction.

14.7 Typographical Errors: We reserve the right to correct any typographical or clerical errors in any agreement or order placed or in any correspondence, statement or other document.

14.8 Inconsistency: If there is any inconsistency between these Terms and the terms of any order that may be lodged by you, or with any delivery docket or invoices or other communications from or to you, these Terms will prevail subject to clause 14.3 and/or unless we specify otherwise.

14.9 Consumer Guarantees Act and Fair Trading Act: You agree: that the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act, to contract out of sections 9, 12A, 13, and 14(1) of the Fair Trading Act; that you have not relied on any representations made by PGWS in entering into these terms or purchasing the Products; that this clause is fair and reasonable; and that you had the opportunity if you chose to negotiate these terms and receive advice from or be represented by a lawyer in relation to these terms.

14.10 Disputes: Any dispute between us and you will be discussed between us in the spirit of these Terms.

14.11 Governing Law: New Zealand law governs this agreement and the parties submit to the exclusive jurisdiction of the New Zealand courts.

14.12 Relationship: The relationship between you and PGWS is as independent purchaser and seller. There is no partnership, joint venture, employment or agency relationship unless we specify. An agent or representative may not represent that there is an agency relationship or any representation; warranties or agreements that PGWS has not confirmed in writing. PGWS is not bound by unauthorised statements.

15. PROTECTED CULTIVARS

15.1 Protected Cultivars are owned and sold by PGWS under conditions stipulated by the breeder or holder of any other intellectual property rights in the Protected Cultivar (in this clause referred to together as a breeder). Such conditions may include protection granted under the Plant Variety Rights Act 1987, the Geographical Indications Act 1990, the Plant Breeder’s Rights Act 1990, the Plant Variety Rights Act 1987. The Protected Cultivar may also be sold subject to unauthorised statements.

15.2 The recipient of any Products shall be deemed to have agreed to and accepted the terms and other conditions applicable to such Products without limitation or qualification.

15.3 You acknowledge this provision is also for the benefit of the breeder or its agent of any Protected Cultivar and must be reflected in any agreement between the breeder and you.

15.4 Registered trademarks of Protected Cultivar and may be enforced by that breeder or its agent.