

STANDARD TERMS AND CONDITIONS OF SUPPLY

Pre 7 November 2023

1. CONTRACT TERMS

This Agreement is comprised of:

- a) these Standard Conditions; and
- b) the document titled "Customer Contact" setting out Particulars and Special Conditions, and
- c) represents the parties' entire agreement relating to its subject matter.

All previous representations, communications, agreements, statements and understanding (whether oral or in writing) relating to the subject matter of this Agreement are superseded by this Agreement.

All other terms and conditions, express or implied, including any alternate terms proposed by the Customer, are excluded to the fullest extent permitted by law.

The parties must comply with any Special Conditions set out in the Particulars. If there are any inconsistencies between the Special Conditions and these Standard Conditions, the Special Conditions will prevail to the extent of the inconsistency.

2. SUPPLY

- a) PCA's obligation to supply Products to the Customer is conditional upon PCA accepting a Purchase Order for the Products. The acceptance of one Order does not create any obligation on PCA to accept any other Order.
- b) Once PCA has accepted a Purchase Order, the Customer cannot change or cancel the Purchase Order without the prior written consent of PCA.
- c) If PCA has notified the Customer that PCA has accepted the Purchase Order then, subject to payment of the Purchase Price:
 - i) PCA must sell to the Customer the Products specified in that Purchase Order in accordance with this Agreement; and
 - ii) the Customer must buy from PCA the Products specified in that Purchase Order for the Purchase Price.

3. FEES AND RISK

- a) The Customer must pay the Purchase Price for the Products in accordance with the Payment Terms unless otherwise agreed by the parties in writing.
- b) Products will be delivered in accordance with the Delivery Requirements. Unless otherwise agreed or specified in the Delivery Requirements, PCA will request a third party to deliver the Products to the address nominated by the Customer in the Purchase Order.

- c) The Customer bears the risk relating to the Products from the time the Purchase Order is accepted by PCA, unless specified otherwise in the Delivery Requirements.

4. RETENTION OF TITLE

- a) The Products delivered by PCA to the Customer under this Agreement remain the property of PCA until the Customer has paid both the Purchase Price of the Product and all other money owed to PCA.
- b) PCA and the Customer intend and agree that the retention of title in this clause 4 secures the Purchase Price of the Products and creates a Purchase Money Security Interest in the Products.
- c) PCA may allocate payments made by the Customer to PCA under this Agreement, or any other agreement with PCA, to any obligation owed by the Customer to PCA.
- d) Until property in the Products passes to the Customer, the Customer:
 - i) will hold the Products as bailee and agent for PCA;
 - ii) must not deal with the Products contrary to the terms of this Agreement; and
 - iii) irrevocably authorises PCA to enter, at any time, the premises where the Products are stored or are reasonably thought by the Customer to be stored, for the purposes of examination of the Products, and warrants that it has the capacity to grant that right of entry.
- e) Upon taking possession of the Products and until property in the Products passes to the Customer, the Customer must store the Products:
 - i) separately from other goods of the Customer, so that the Products are not mixed with those other goods; and
 - ii) in such a way that the Products are recognisable as the property of PCA.
- f) Once the Customer takes possession of the Products, the Customer must insure the Products against all usual risk to full preplacement value and keep them insured, and hold any insurance money received by the Customer for Products on trust for PCA.
- g) While the Products remain the property of PCA:
 - i) the Customer may use or sell the Products in the ordinary course of business, provided that the Customer will be agent for PCA in any sale if the Products are sold. The Customer must account to PCA for part of the proceeds of any such sale equal to the amount owing by the Customer to PCA for those Products. However, any such agency will only extend to the obligation to account for proceeds and PCA will not be bound by any contract between the Customer and the Customer's purchaser; and
 - ii) the Customer must not, without PCA's prior written consent, grant or allow another to hold a security interest in:
 - (A) the Products; or
 - (B) the proceeds of the Products.

If the Customer uses the Products in a manufacturing or value-added process of its own or of a third party, the Customer will account such part of the proceeds of the manufacturing or value-added process as relates to the Products for PCA. Such part will be deemed to

equal in dollar terms the amount owing by the Customer to PCA for those Products at the time of receipt of such proceeds.

- h) It is a condition of this Agreement that the Customer complies with clause 4(g).
- i) If the Customer fails to comply with any obligation under these terms then, without limiting any other remedies available to PCA:
 - i) upon request by PCA, the Customer must return the Products on which there are outstanding amounts owing;
 - ii) the Customer authorises PCA and any person authorised by PCA to enter premises where the Products may be located to take possession of the Products; and
 - iii) PCA may retain, sell or otherwise dispose of the Products.
- j) To the extent permitted by law, the parties contract out of sections 95, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
- k) The Customer must unconditionally ratify any actions taken by PCA under clause 4(i).
- l) The Customer is liable for, and indemnifies PCA from and against, all loss or damage (including legal costs) incurred or suffered by PCA however caused in connection with PCA exercising its rights under this clause 4 or attempting to do so.

5. CONFIDENTIAL INFORMATION

- a) Each party (“recipient”) must:
 - i) maintain the confidentiality of the Confidential Information of the other party (“disclosing party”); and
 - ii) only use the Confidential Information for the purposes of the business relationship between the Customer and PCA.
- b) A recipient’s obligations under clause 5(a) do not apply to Confidential Information of the disclosing party that:
 - i) is, or has become, part of the public domain other than through a breach of an obligation of confidence owed to the disclosing party;
 - ii) was in the recipient’s possession prior to disclosure by the disclosing party and was not obtained in breach of an obligation of confidence owed to the disclosing party;
 - iii) after disclosure by the disclosing party, is received by the recipient from another person in circumstances that do not give rise to a breach of an obligation of confidence owed to the disclosing party; or
 - iv) the recipient is obliged to disclose by law or the rules of a stock exchange.
- c) Confidential Information of a disclosing party that is within the possession or control of a recipient must be returned to the disclosing party upon request.

6. LIABILITY

6.1 LIMITATION

- a) PCA's liability to the Customer for any Products that do not comply with the Specifications is, to the extent permitted by law, limited to an obligation to either supply replacement Products or, at PCA's option, repay to the Customer the amount paid to PCA for the Products.
- b) Despite any other provision of the Agreement and to the extent permitted by law, the maximum liability of PCA to the Customer for breach of contract, negligence or otherwise in connection with Products supplied or to be supplied under the Agreement is limited to the amount paid or payable by the Customer for those Products.
- c) Any claim by the Customer against PCA for loss or damage however caused (including by the negligence of PCA), suffered by the Customer in connection with this Agreement must be made within seven days of the Customer becoming entitled to make the claim.

6.2 CONSEQUENTIAL LOSS

Without limiting clause 6.3, PCA is not liable for any Consequential Loss however caused (including by the negligence of PCA), suffered or incurred by the Customer in connection with this Agreement.

6.3 EXCLUSION OF WARRANTIES

- a) Subject to clause 6.3(b), all terms, conditions, warranties and representations that are not expressly set out in these Standard Conditions or the Special Conditions are expressly excluded.
- b) PCA does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified except to a limited extent, as between PCA and the Customer by law including liability under the Competition and Consumer Act 2010 (Cth). However, where such statutory provisions apply, to the extent to which PCA is entitled to do so, PCA's liability will be limited at its option to, in the case of a supply of goods, PCA replacing the goods or supplying equivalent goods or repairing the goods, or in the case of a supply of services, PCA supplying the services again or paying the cost of having the services supplied again.

6.4 ACKNOWLEDGEMENT

The Customer acknowledges and agrees that the Products delivered to the Customer may contain foreign materials as identified in the Specifications.

7. INDEMNITY

The Customer is liable for, and indemnifies PCA from and against, all loss or damage (including legal costs) incurred or suffered by PCA however caused in connection with:

- a) any breach of this Agreement by the Customer;
- b) any breach of law by the Customer;

- c) any claim by a third party against PCA in connection with receipt of the Products supplied to the Customer under this Agreement;
- d) personal injury or death of any person (including any employee of the Customer or PCA) in connection with use of the Products; or
- e) any act or omission of the Customer, its officers, employees, agents or contractors.

8. INTELLECTUAL PROPERTY RIGHTS AND REBRANDING

- a) The Customer acknowledges and agrees that nothing in this Agreement grants the Customer any intellectual property rights (including without limitation plant breeder's rights, copyright, trade marks, patents and designs) of PCA.
- b) Subject to clause 6.3, the Customer acknowledges and agrees that PCA does not give any express or implied warranties in relation to the Products including any warranties in relation to use of the Products not infringing any third party's intellectual property rights (including plant breeder's rights, copyright, trade marks, patents and designs).
- c) The Customer must not propagate plant material using the Products.

9. TERM AND TERMINATION

9.1 TERM

Subject to the rights of early termination under this Agreement, this Agreement will continue for the Term.

9.2 TERMINATION FOR BREACH

If:

- d) the Customer commits a breach of this Agreement; or
- e) an Insolvency Event occurs in relation to the Customer,

then PCA may terminate this Agreement by written notice to the Customer in which case this Agreement will terminate on a later date specified in that written notice or, if no date is specified, immediately.

9.3 TERMINATION FOR CONVENIENCE

- f) PCA may terminate this Agreement at any time by giving three months' written notice to the Customer.
- g) The Customer may terminate this Agreement at any time by giving:

- i) if the Products supplied or to be supplied by PCA is a domestic product, three months' prior written notice to PCA; or
- ii) if the Products supplied or to be supplied by PCA is an imported product, six months' prior written notice to PCA.

9.4 AFTER TERMINATION OR EXPIRY

- a) On termination or expiry of this Agreement accrued rights or remedies of a party are not affected.
- b) Termination of this Agreement will not affect clauses 6, 7 and 8 and any other clause of this Agreement which is expressly or by implication intended to come into force or continue after termination.

10. FORCE MAJEURE

PCA will not be:

- a) in breach of this Agreement as a result of; or
- b) liable for,

any failure or delay in the performance of PCA's obligations under this Agreement to the extent that such failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the Customer.

11. TAXES

- a) The Customer must pay all stamp duty, taxes, duties, government charges and other taxes of a similar nature (including fines, penalties and interest) imposed, levied, assessed or payable in Australia or overseas in connection with this Agreement.
- b) Except under clause 11(c), the consideration for a Supply made under or in connection with this Agreement does not include GST.
- c) If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- d) If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- e) In clauses 11(b), 11(c) and 11(d):
 - i) GST Act Recipient has the meaning given to 'Recipient' in the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
 - ii) GST Act Supplier means the entity making the Supply; and
 - iii) other capitalised terms that are not defined in clause 13.1 have the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

12. GENERAL

- a) The laws of Queensland, Australia govern this Agreement.
- b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.
- c) Where this Agreement contemplates that PCA may consent to, elect, determine, approve, nominate, decide or consider any matter or thing, PCA may provide such consent or make such election, determination, approval, nomination, decision or consideration in its absolute discretion and conditionally or unconditionally without being required to give reasons or act reasonably, unless this Agreement expressly requires otherwise.
- d) The Agreement may only be varied by written agreement between the parties.
- e) The Customer must not assign, in whole or in part, or novate the Customer's rights and obligations under this Agreement without the prior written consent of PCA.
- f) PCA may assign its interest under this Agreement.
- g) Time is not of the essence in the performance of obligations under this Agreement except in relation to performance of payment obligations.
- h) Unless expressly stated otherwise, this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- i) Each provision of this Agreement will be read and construed as a separate and severable provision or part and if any provision is void or otherwise unenforceable for any reason then that provision will be severed and the remainder will be read and construed as if the severable provision had never existed.
- j) This Agreement represents the parties' entire agreement, and supersedes all prior representations, communications, agreements, statements and understandings, whether oral or in writing, relating to its subject matter.
- k) PCA may subcontract the performance of all or any part of PCA's obligations under this Agreement.
- l) A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.
- m) Without limiting any other remedies available to PCA, if the Customer fails to pay any amount payable under this Agreement, the Customer must pay Interest on that amount.
- n) To the extent that it is applicable the parties agree that the UN Convention of Contracts for the International Sale of Goods does not apply to this Agreement.
- o) The Customer is liable for, and indemnifies PCA from and against, all legal costs incurred by PCA in connection any claim or allegation by either party against the other party in connection with this Agreement including any claim or allegation that either party has breached this Agreement.

13. DEFINITIONS AND INTERPRETATION

13.1 DEFINITIONS

In this Agreement:

Agreement	means the agreement between PCA and the Customer for the sale and purchase of Products constituted in accordance with clause 1(a) of these Standard Conditions.
Business Day	means any day which is not a Saturday, Sunday or a public holiday in Kingaroy, QLD.

Confidential Information	means, in relation to a party, information however held or recorded relating to the party, its business or assets including financial or taxation information, information relating to customers or suppliers, present and future business and marketing plans, particulars of employees or contractors, Product specifications and manufacturing process, the terms of the Agreement (including the Purchase Price) and any other information which the party identifies as confidential.
Consequential Loss	means consequential loss, indirect loss, loss of revenues, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain, lost opportunities (including opportunities to enter into arrangements with third parties) and loss or damage in connection with claims against the Customer by third parties.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Customer	means the customer identified in the Particulars.
Delivery Requirements	means the delivery requirements identified in the Particulars or otherwise agreed by the parties in writing. If the Delivery Requirements refer to terms defined in the Incoterms, the definition of those terms in the Incoterms will apply.
Force Majeure Event	means any act, occurrence, event or omission outside a party's control (other than an obligation to pay) and includes: <ul style="list-style-type: none"> (a) a physical natural disaster including fire, flood, lightning or earthquake; (b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law; (c) epidemic or quarantine restriction; (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; (e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency; (f) law taking effect after the date of this Agreement; (g) strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors; and (h) failure of a third party to deliver the Products to the Customer.

Incoterms	means the latest version of the terms of trade known as Incoterms published by the International Chamber of Commerce.
Insolvency Event	<p>in the context of a person means:</p> <p>(a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the person;</p> <p>(b) the person or the person's property or undertaking becomes subject to a personal insolvency arrangement under part X of the <i>Bankruptcy Act 1966</i> (Cth) or a debt agreement under part IX of the <i>Bankruptcy Act 1966</i> (Cth);</p> <p>(c) the person is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act or is presumed to be insolvent under the Corporations Act;</p> <p>(d) the person ceases to carry on business; or</p> <p>(e) an application or order is made for the liquidation of the person or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the person, otherwise than for the purpose of an amalgamation or reconstruction.</p>
Interest	<p>means interest on any payment owing under this Agreement calculated:</p> <p>(a) at the rate of 1.5% per month or, if lower, the maximum rate permitted by applicable law; and</p> <p>(b) daily from the date on which such payment was due to the date on which the payment is made (both inclusive) including the relevant Interest.</p>
Particulars	means the Particulars set out in the document titled "Customer Contract" relating to the supply of the Products by PCA to the Customer.
Payment Terms	means the payment terms specified the Particulars or otherwise agreed by the parties in writing.
PCA	means Peanut Company of Australia Limited ACN 057 251 091.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
PPSA Information	means any information or documents of the kind mentioned in section 275(1) of the PPSA in relation to a security interest in the Products or the proceeds of the Products.
Proceeds	has the meaning provided under the PPSA.

Products	means the products specified in the Particulars and any other products agreed by the parties in writing from time to time.
Purchase Money Security Interest	has the meaning provided under the PPSA.
Purchase Order	means a purchase order from the Customer to PCA for the supply of Products under the Agreement.
Purchase Price	in respect of a Product means the purchase price and cost of delivery for that Product specified in the Particulars or otherwise agreed by the parties in writing.
Related Body Corporate	has the meaning given to that term by section 9 of the Corporations Act.
Security interest	has the meaning provided under the PPSA.
Specifications	means the specifications for the Products set out in the Particulars or otherwise agreed to by the parties in writing.
Standard Conditions	means these standard terms and conditions of supply.
Term	means the term of the Agreement specified in the Particulars.

13.2 INTERPRETATION

In this Agreement:

- a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- b) no rule of construction applies in the interpretation of this Agreement to the disadvantage of the party preparing the document on the basis that it put forward this document or any part of it; and
- c) a reference to a party is a reference to PCA or the Customer, and a reference to the parties is a reference to both PCA and the Customer.