

HERITAGE SEEDS

Sow the Revolution

If the Grower or Reseller does not agree to be bound by these Terms and Conditions it must not register to participate in the Sow the Revolution Program. If the Grower or Reseller registers to participate in the Sow the Revolution Program, it will be deemed to be participating in the program on these Terms and Conditions and the supply of Seeds by Heritage Seeds, irrespective of any purported terms or conditions set out by the Grower or the Reseller, will be subject to these Terms and Conditions only, to the exclusion of all others.

Terms and Conditions

1. Terms and Conditions

- (a) These Terms and Conditions replace any existing written agreement between the Grower, the Reseller and Heritage Seeds for the supply of the Seeds by Heritage Seeds.
- (b) The supply of the Seeds by Heritage Seeds to the Reseller and the Grower will be made on the basis of these Terms and Conditions to the exclusion of all other terms.
- (c) If the Grower or the Reseller does not agree to be bound by these Terms and Conditions, it must not register for the Sow the Revolution Program.

2. Supply of Seeds

2.1 General

The Reseller agrees to provide, and the Grower engages the Reseller to provide, the Seeds on the terms of these Terms and Conditions.

2.2 Agent

Heritage Seeds appoints the Reseller as its agent to sell the Seeds to the Grower.

3. Term

These Terms and Conditions commence on the Registration Date and continue until the Expiry Date unless terminated earlier in accordance with these terms (**Term**).

4. Grower's obligations

4.1 Completion of Form

- (a) The Grower must complete and submit the Registration Form (unless the Reseller completes and submits the Registration Form on its behalf) within 30 days from the date the Seeds are planted.
- (b) Notwithstanding clause 4.1(a), the Registration Date must be no later than:
 - (i) 31 March 2019 with respect to Growers who will sow the Seeds in Central Queensland; or
 - (ii) 31 January 2019 with respect to Growers who will sow the Seeds in any other part of Australia.

4.2 Payment Terms

- (a) The Grower must pay the Agreed Price to the Reseller for each Bag in accordance with the payment terms agreed between the Grower and the Reseller.
- (b) The Reseller's payment terms referred to in clause 4.2(a) must state that the Seeds may be paid in full by the Grower within 90 days from the date of purchase.

- (c) Following the delivery of Seeds to the Reseller and the receipt of an invoice from Heritage Seeds, the Reseller must make full payment to Heritage Seeds for the Seeds within 90 days from the date of the invoice and in accordance with any other terms stated in the invoice.

4.3 Sowing Seeds

The Grower must sow the Seeds in the 2018/2019 growing season in order to participate in the Sow the Revolution Program.

4.4 Access to Grower's Property

On 2 Business Days' notice, the Grower must provide or allow the Heritage Seeds' Representative and / or the Reseller (as the case may be) access to the Grower's Property to obtain images of the Seeds sown during the grain fill crop stage and otherwise as required by these Terms and Conditions.

5. Warranties regarding Registration Form

- (a) The Reseller and / or the Grower must fully complete the Registration Form.
- (b) Each of the Reseller and Grower warrant and represent to Heritage Seeds that all information provided in the Registration Form is true and correct as at the Registration Date.
- (c) If any information provided in the Registration Form becomes inaccurate or incorrect (**Inaccurate Information**) after the Registration Date, the Grower or the Reseller (as the case may be) must promptly notify Heritage Seeds of the Inaccurate Information and provide Heritage Seeds with the correct information in writing.

6. No Harvest Claim

- (a) Subject to clause 10, if a crop of Seeds cannot be Harvested, the Grower or the Reseller must complete a No Harvest Claim in accordance with clause 6(c).
- (b) Heritage Seeds will accept and consider a No Harvest Claim provided that the Reseller and Grower have complied with clauses 4, 5 and 6 of these Terms and Conditions.
- (c) A No Harvest Claim must be lodged by 31 May 2019 (unless otherwise agreed by Heritage Seeds in writing).
- (d) For the avoidance of doubt, Heritage Seeds is under no obligation to consider any No Harvest Claim lodged after 31 May 2019 (unless otherwise agreed by Heritage Seeds in writing).
- (e) After a No Harvest Claim has been completed and submitted to Heritage Seeds, the Grower must allow the Heritage Seeds Representative to inspect the Grower's Property on 2 Business Days' notice.
- (f) If, following an inspection in accordance with clause 6(e), Heritage Seeds determines that a crop cannot be Harvested, Heritage Seeds will:
 - (i) accept the No Harvest Claim; and
 - (ii) issue a No Harvest Credit to the Reseller, and the Reseller will pass on the total amount of the No Harvest Credit to the Grower who submitted the No Harvest Claim within [10 Business Days] from the date of receipt of the No Harvest Credit from the Reseller.

7. Intellectual Property

7.1 Intellectual Property Rights in Seeds

- (a) Each of the Grower and the Reseller acknowledge and agree that the Heritage Seeds' IP is the sole property of Heritage Seeds, and the Grower and the Reseller must not in any way (directly or indirectly) question, challenge or dispute the ownership or validity of any Heritage Seeds' IP.
- (b) The Grower must promptly disclose to Heritage Seeds any Improvements.

- (c) The Grower acknowledges and agrees that Heritage Seeds will own all right, title and interest (including all Intellectual Property Rights) throughout the world in and to any Improvements (including the right to sub-license Improvements to another party) and all right, title and interest (including all Intellectual Property Rights) throughout the world in and to any Improvements are by these Terms and Conditions assigned to Heritage Seeds (**Assignment**) with effect from the date on which they are developed, discovered or devised.
- (d) The Grower must:
- (i) execute all such documents and do all such other things (and cause its Personnel to also do so if required) which Heritage Seeds reasonably requires from time to time in order to perfect or record the Assignment; and
 - (ii) notify Heritage Seeds of any issue, claim, demand, threat, notice of proceedings or causes of action (whether contingent, accrued or otherwise) relating to any Heritage Seeds' IP.

8. Representations and warranties

8.1 General warranties

Each party represents and warrants that, as at the date of these Terms and Conditions and on each day during the Term:

- (a) if it is a corporation, it is registered and validly existing under the laws of the jurisdiction in which it was incorporated;
- (b) it has full legal capacity and power to enter into these Terms and Conditions and to carry out the transactions that these Terms and Conditions contemplate;
- (c) it holds each Authorisation that is necessary or desirable to:
 - (i) execute these Terms and Conditions and to carry out the transactions that these Terms and Conditions contemplates; and
 - (ii) ensure that these Terms and Conditions are legal, valid, binding and admissible in evidence,
 and it is complying with any conditions to which any of these Authorisations is subject;
- (d) it is not the subject of an Insolvency Event; and
- (e) it is not entering into these Terms and Conditions as trustee of any trust or settlement.

8.2 Reliance on representations and warranties

Each party acknowledges that the other party has executed these Terms and Conditions and agreed to take part in the transactions contemplated by these Terms and Conditions in reliance on the representations and warranties that are made in clauses 5 and 8.

9. Liability

9.1 Limitation of liability

Subject to the provisions of this clause 9, neither party (**Party 1**) is liable to another party (**Party 2**) or to any other person for any:

- (a) Consequential Loss; or
- (b) damage of any kind caused by or resulting from any act or omission of Party 2 or any of its employees, agents, contractors or Personnel.

9.2 Exclusion of implied warranties

Any representation, warranty, condition, guarantee, indemnity or undertaking that would be implied in, or affect, these Terms and Conditions by legislation, common law, tort, equity, or by course of performance, dealing, trade, custom or usage is excluded to the maximum extent permitted by Law.

9.3 Non-excludable conditions

- (a) Nothing in these Terms and Conditions excludes, restricts or modifies any consumer guarantee, right or remedy conferred on a party by the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable Law.
- (b) To the fullest extent permitted by Law, the liability of Heritage Seeds for a breach of a non-excludable guarantee referred to in clause 9.3(a) is limited, at Heritage Seeds' option to:
 - (i) the supplying of the Seeds again; or
 - (ii) the payment of the cost of having the Seeds supplied again.

9.4 Cap on liability

The maximum aggregate liability of Heritage Seeds for all losses, damages, costs, expenses and claims arising out of, or in connection with, these Terms and Conditions, whether arising in or under contract (including for liability under any indemnity), statute, tort (including negligence), equity or otherwise at Law, is limited to the amount payable by the Reseller to Heritage Seeds in respect of the Seeds the subject of the relevant claim.

10. No Harvest due to Force Majeure

For the avoidance of doubt, in the event a crop of Seeds cannot be Harvested as a result of or in connection with a Force Majeure, Heritage Seeds will not incur or accept any Liability of any kind, nor satisfy any No Harvest Claim made by a Grower or Reseller with respect to such crop of Seeds.

11. Confidentiality

11.1 Obligations of confidence

Each party (**Receiving Party**) receiving or acquiring Confidential Information of the other party (**Disclosing Party**) acknowledges that the Disclosing Party's Confidential Information is the property of, and confidential to, the Disclosing Party. Subject to clause 11.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and not disclose, divulge or communicate that Confidential Information to, or otherwise place that Confidential Information at the disposal of, any person without the prior written approval of the Disclosing Party, except to its Related Bodies Corporate or Personnel (but then only to the extent necessary to enable the Receiving Party to comply with its obligations under these Terms and Conditions);
- (b) take all reasonable steps to secure and keep secure all Disclosing Party's Confidential Information coming into its possession or control; and
- (c) not deliberately memorise, use or make copies, notes or records of the Disclosing Party's Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations or exercise of its rights under these Terms and Conditions.

11.2 Exceptions

The obligations of confidentiality under clause 11.1 do not apply to any information that:

- (a) is generally available to the public (other than by reason of a breach of these Terms and Conditions);
- (b) was lawfully in the possession of the Receiving Party before disclosure to it by the Disclosing Party;
- (c) is obtained by the Receiving Party from a third person who, so far as the Receiving Party is aware after making reasonable enquiry, is not prohibited from transmitting the Confidential Information to the Receiving Party by a contractual, legal or fiduciary obligation to the Disclosing Party; or

- (d) is required to be disclosed by any applicable Law, court order, government agency or stock exchange.

12. Force Majeure

- (a) If either party (**Affected Party**) is prevented in whole or in part from carrying out its obligations under the Agreement as a result of Force Majeure, then the Affected Party must give prompt notice to the other party of its inability to meet its obligations under this Agreement whether temporary or permanent and the expected duration of the Force Majeure. No suspension of obligations pursuant to this clause will operate to extend the Term.
- (b) The Affected Party must undertake to remedy the Force Majeure to the best of its ability so as to resume performance of its obligations and commitment to this Agreement as soon as reasonably practicable.
- (c) Should either party be prevented from carrying out its obligations as a result of a Force Majeure, then the affected party must take all action reasonably practicable to mitigate any loss suffered by the parties as a result of the Force Majeure.
- (d) Any failure by either party to carry out any of its obligations, except the obligation to pay money, under this Agreement must not be deemed to be a breach of this Agreement if such failure is caused by Force Majeure and the party subject to the force majeure must be allowed such further time as is reasonable to fulfil its obligations under this Agreement.
- (e) If the Force Majeure continues for more than 90 consecutive days and while it continues, any party other than the Affected Party may, at its sole discretion, terminate this Agreement by giving written notice to the Affected Party and all other parties (if any).

13. Dispute resolution

13.1 Delivering a Dispute Notice

- (a) If any dispute arises between Heritage Seeds and the Reseller or the Grower relating to or arising out of clause 6 (**Dispute**), the party claiming that a Dispute has arisen must deliver to the other parties a notice containing particulars of the Dispute (**Dispute Notice**).
- (b) Notwithstanding the existence of a Dispute, the parties will, subject to these Terms and Conditions, continue to perform their obligations set out in the Terms and Conditions.

13.2 Parties must negotiate

Subject to clause 13.3, during the period of 15 Business Days after delivery of the Dispute Notice (**Initial Period**), each party must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

13.3 Expert determination

- (a) If a Dispute arises and the parties are unable to resolve the Dispute in accordance with clauses 13.1 to 13.2, then the matter must be referred to an Expert for determination.
- (b) The Expert:
- (i) must conduct its determination in accordance with the ADC Rules for Expert Determination, which Rules are taken to be incorporated into these Terms and Conditions;
 - (ii) will act as an expert and not as an arbitrator;
 - (iii) may determine the time, place and procedures (which will be as informal as is consistent with the proper conduct of the matter) for the determination by the Expert, having regard to the nature of the Dispute

and the provisions of these Terms and Conditions;

- (iv) may communicate privately with the parties or with their lawyers;
 - (v) may accept written submissions from a party in relation to the Dispute, provided a copy of the submission is also given to all other parties;
 - (vi) may co-opt other expert assistance;
 - (vii) must have regard to the fairness and reasonableness of any matters pertaining to the Dispute; and
 - (viii) must deal with any matter as expeditiously as possible and by no later than 20 Business Days after referral to the Expert.
- (c) If an Expert is required to resolve a Dispute:
- (i) the Expert's determination will, except in the case of manifest error, be final and binding on the parties;
 - (ii) the parties must attend the sessions with the Expert and make a determined and genuine effort to resolve the Dispute as soon as reasonably possible;
 - (iii) the parties must use reasonable endeavours to make available to the Expert all information relevant to the Dispute and which the Expert reasonably requires in order to resolve the Dispute;
 - (iv) everything that occurs before the Expert must be in confidence and in closed session;
 - (v) any information or documents disclosed by a party under this clause 13 must be kept confidential and cannot be used (and cannot be called into evidence in any subsequent litigation by any party) except to attempt to resolve the Dispute in circumstances where the parties have consented to such disclosure;
 - (vi) all discussions must be without prejudice;
 - (vii) each party must pay its own costs of complying with this clause unless the Expert otherwise determines, having regard to all the circumstances and the costs of the Expert and any other costs of complying with this clause, that such costs must be shared equally by the parties; and
 - (viii) the parties must continue performing their obligations under these Terms and Conditions while the Dispute is being resolved.

13.4 Other proceedings

A party may not commence court proceedings in respect of a Dispute unless it has complied with this clause 13 and until the procedures in this clause 13 have been followed in full, except where:

- (a) the party seeks injunctive relief in relation to a Dispute from an appropriate court; or
- (b) following those procedures would mean that a limitation period for a cause of action relevant to the issues in dispute will expire.

14. Default and termination

14.1 Termination for Insolvency Event

If a party is the subject of an Insolvency Event, then the other party, without limiting its other rights and remedies, may terminate these Terms and Conditions immediately by notice in writing to the defaulting party.

14.2 Termination for Default Event

- (a) If an Event of Default, other than an Insolvency Event occurs in relation to a party (**Relevant Party**) then the other party may give a notice (**Default Notice**) to the Relevant Party specifying the Event

of Default and requesting that the Relevant Party remedy the default within 10 Business Days after the Default Notice is received by the Relevant Party.

- (b) If the Relevant Party receives a Default Notice and does not comply with the Default Notice within the relevant period referred to in clause 14.2(a) or receives a Default Notice on more than 2 occasions in any 6 month period, then the other party, without limiting its other rights and remedies, may terminate these Terms and Conditions by giving to the Relevant Party notice with immediate effect.

14.3 Consequences of expiry or termination

- (a) If these Terms and Conditions expire or are terminated for any reason, then except to the extent that the parties otherwise agree:
- (i) any orders submitted by the Grower for Seeds that remain outstanding are also terminated as at that date; and
 - (ii) Heritage Seeds may invoice for, and the Reseller remains liable to Heritage Seeds for Seeds provided prior to the date of termination.
- (b) Subject to clause 14.3(c), on the expiry or termination of these Terms and Conditions, these Terms and Conditions are at an end as to their future operation except for the enforcement of any right or claim that arises on, or has arisen before, the expiry or termination.
- (c) Despite any other provision of these Terms and Conditions, this clause 14 and clauses, 8 (Representations and warranties), 9 (Liability), 7 (Intellectual Property Rights), 11 (Confidentiality), 12 (Dispute resolution), 16 (General) and 17 (Definitions and interpretation) survive the expiry or termination of these Terms and Conditions.

15. GST

15.1 Definitions

In this clause:

- (a) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the GST Act; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under these Terms and Conditions.

15.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with these Terms and Conditions are exclusive of GST.

15.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with these Terms and Conditions, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time as payment for the Taxable Supply is required to be made in accordance with these Terms and Conditions.

15.4 Reimbursement of expenses

If these Terms and Conditions requires a party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party

is entitled in respect of the Reimbursable Expense (**Net Amount**); and

- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

16. General

16.1 Nature of obligations

- (a) Any provision in these Terms and Conditions which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by these Terms and Conditions in favour of another is a separate obligation.

16.2 Entire understanding

These Terms and Conditions contain the entire understanding between the parties concerning the subject matter of these Terms and Conditions and supersedes, terminates and replaces all prior agreements and communications between the parties.

16.3 No adverse construction

These Terms and Conditions, and any provision of these Terms and Conditions, are not to be construed to the disadvantage of a party because that party was responsible for its preparation.

16.4 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to these Terms and Conditions.

16.5 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by these Terms and Conditions does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under these Terms and Conditions.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

16.6 Severability

Any provision of these Terms and Conditions which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from these Terms and Conditions in any other case,

without invalidating or affecting the remaining provisions of these Terms and Conditions or the validity of that provision in any other jurisdiction.

16.7 Successors and assigns

These Terms and Conditions bind and benefit the parties and their respective successors and permitted assigns under clause 16.8.

16.8 No assignment

- (a) Heritage Seeds may assign or otherwise transfer the benefit of these Terms and Conditions without the prior consent of the Grower or Reseller.
- (b) Each of the Grower and the Reseller must not assign or otherwise transfer the benefit of these Terms and Conditions without the prior written consent of Heritage Seeds.

16.9 Consents and approvals

Where anything depends on the consent or approval of a party then, unless these Terms and Conditions provide otherwise, that consent or approval may be given

conditionally or unconditionally or withheld, in the absolute discretion of that party.

16.10 No variation

These Terms and Conditions cannot be amended or varied except in writing signed by the parties.

16.11 Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of these Terms and Conditions.

16.12 Governing law and jurisdiction

- (a) These Terms and Conditions are governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State or Territory and the Commonwealth of Australia in respect of all matters arising out of or relating to these Terms and Conditions, their performance or subject matter.

16.13 Notices

Any notice or other communication to or by a party under these Terms and Conditions:

- (a) may be given by personal service, post facsimile, or email;
- (b) must be in writing, legible and in English addressed (depending on the manner in which it is given):
 - (i) if to Heritage Seeds:
 - 26 Prosperity Way
 - Dandenong South
 - VIC 3175
 - (ii) if to the Grower to the Reseller, to the notice details set out in the Registration Form,

or to any other address last notified by the party to the sender by notice given in accordance with this clause;
- (c) is deemed to be given by the sender and received by the addressee:
 - (i) if delivered in person, when delivered to the addressee;
 - (ii) if posted, at 9.00 am on the fifth Business Day after the date of posting to the addressee whether delivered or not;
 - (iii) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety and in legible form to the facsimile number of the addressee notified for the purposes of this clause; or
 - (iv) if sent by email, on the date and time shown on the email notice received by the server of the addressee,

but if the delivery or receipt is on a day which is not a business day or is after 5.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next business day. A **business day** in this clause means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place of receipt of the notice or communication.

16.14 Counterparts

If these Terms and Conditions consists of a number of signed counterparts, each is an original and all of the counterparts together constitute the same document.

16.15 No merger

A term or condition of, or act done in connection with, these Terms and Conditions does not operate as a merger of any of the undertakings, warranties and / or indemnities in these Terms and Conditions or the rights or remedies of the parties under these Terms and Conditions which continue unchanged.

16.16 Operation of indemnities

Unless these Terms and Conditions expressly provides otherwise:

- (a) each indemnity in these Terms and Conditions survives the expiry or termination of these Terms and Conditions; and
- (b) a party may recover a payment under an indemnity in these Terms and Conditions before it makes the payment in respect of which the indemnity is given.

16.17 Relationship of parties

Subject to clause 2.2, nothing in these Terms and Conditions may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

17. Definitions and interpretation

17.1 Definitions

In these Terms and Conditions:

Agreed Price means the price for a Bag agreed by the Reseller and the Grower;

Authorisation means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisaton or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by law if the Government Agency takes action within a specified period, that period expires without that action being taken;

Bag means a bag of the Seeds provided by Heritage Seeds;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

Confidential Information means the all information belonging or relating to a party to these Terms and Conditions, whether oral, graphic, electronic, written or in any other form, that is:

- (a) or should reasonably be regarded as, confidential to the party to whom it belongs or relates; or
- (b) not generally available to the public at the time of disclosure other than by reason of a breach of these Terms and Conditions;

For the avoidance of doubt any pricing information provided by, or in respect of the Terms and Conditions or the Seeds is deemed to be confidential information of Heritage Seeds under these Terms and Conditions;

Consequential Loss means any indirect, incidental, special or consequential loss or damage, pure economic loss damages and exemplary or punitive damages, including loss or damage in relation to loss of use, loss of production, loss of revenue, loss of profits or anticipated profits, loss of business, loss of business opportunity, loss of contract, loss of reputation or opportunity, business interruptions of any nature, loss of data, data corruption rectification costs or loss or damage resulting from wasted management time;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Event of Default means, the occurrence of any one or more of the following events or circumstances:

- (a) a party fails to carry out any material provision of these Terms and Conditions (including non-performance or breach of its obligations under these Terms and Conditions);
- (b) an Insolvency Event; or
- (c) a notice of deregistration of a party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;

Expert means an independent person:

- (a) having appropriate qualifications and experience relevant to determining the Dispute;
- (b) who is agreed by the parties or, failing agreement within 5 Business Days, is nominated at the request of any party by the Australian Disputes Centre (**ADC**) in accordance with the ADC Rules for Expert Determination; and
- (c) who does not act, or whose firm does not act, generally for any party;

Expiry Date means 31 December 2019;

Force Majeure means acts of God, newly interpreted or issued acts, regulations, or laws of any government, war, civil commotion, destruction of production facilities or materials by fire, flood, earthquake, explosion or storm, labour disturbances, epidemic, failure of public utilities or common carriers, accident breaking or other damage to machinery, shortage of power water or other critical resource and other similar extraordinary unforeseen events that are beyond the control of a party, but will not include general market or economic conditions and other ordinary risks of doing business;

Government Agency means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

Grower means the grower of the Seeds;

Grower's Property means the Grower's paddock on which the Seeds are sown;

GST has the meaning given to that expression in the GST Act;

GST Act means the *A New Tax System (Seeds and Seeds Tax) Act 1999 (Cth)*;

Harvest means if a silage cutter or header, cuts or harvests (or could cut or harvest) any grain or silage from a paddock;

Heritage Seeds' IP means any and all Intellectual Property Rights in, relating to or otherwise used in connection with any of the Seeds or any other subject matter provided by Heritage Seeds to the Grower or Reseller pursuant to these Terms and Conditions;

Heritage Seeds' Representative means the representative of Heritage Seeds as nominated from time to time by Heritage Seeds;

Improvements means any modification or development which is developed, discovered or devised by or on behalf of the Grower based on, incorporating or otherwise relating to any of the Seeds;

Insolvency Event means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a controller or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in paragraphs (a) to (d) under any Law,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by the other parties (which approval is not to be unreasonably withheld or delayed);

Intellectual Property Rights means all present and future intellectual and industrial property rights conferred by Law and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights;

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
- (c) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;

No Harvest Claim means the "No Harvest Claim" form available on the Website;

No Harvest Credit means a credit note for a value of \$240 (including GST) per Bag of Seeds which were sown and the subject of a No Harvest Claim;

Personnel means the employees, officers, agents and contractors of a person;

Reseller means a Heritage Seeds agent for the sale of the Seeds to the Growers;

Registration Date means the date on which the Grower or Reseller (as applicable) submits the Registration Form via the Website and registers on the Website to participate in the Sow the Revolution Program;

Registration Form means the online form to be completed by the Reseller and / or the Grower in order to register to participate in the Sow the Revolution Program, as located on the Website;

Seeds means the sorghum (HSG-114 or HSG-102) or corn (HM-114 or HM-152) seeds supplied by Heritage Seeds to the Reseller as a part of the Sow the Revolution Program;

Sow the Revolution Program means the "Sow the Revolution" buying system program offered by Heritage Seeds in respect of the Seeds;

Term has the meaning given to that term in clause 2.2;

Terms and Conditions means these terms and conditions; and

Website means the website where the Grower or Reseller registers to participate in the Sow the Revolution Program, located at www.heritageseeds.com.au/field-crops-2/summer-crop.varieties.

17.2 Interpretation

In these Terms and Conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of these Terms and Conditions;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;

- (f) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;
- (g) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (h) the word "month" means calendar month and the word "year" means 12 months;
- (i) a reference to a time of day is to that time in Melbourne, Victoria unless otherwise indicated;
- (j) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (k) a reference to a thing includes a part of that thing;
- (l) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (m) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (n) money amounts are stated in Australian currency unless otherwise specified; and
- (o) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the agency or body which performs most closely the functions of the defunct body.