

# Growing Terms

Plant Force Investments Pty Ltd ABN 42 159 220 407 trading as Plantrite (Plantrite)

## 1 Definitions

- (a) **Amount Payable** means the amount determined by clause 8(a);
- (b) **Cancellation Fee** means 100% of the value of the remaining or cancelled Goods the subject of an Order;
- (c) **Delivery Charges** means the delivery charges specified in the Quotation or such charges advised by Plantrite to the Customer from time to time;
- (d) **Estimated Delivery Date** means the date specified in clause 5(a).
- (e) **Interest Rate** means 2% per calendar month calculated daily;
- (f) **Order** has the meaning specified in clause 4(d);
- (g) **Quotation** means a quotation issued to the Customer by Plantrite at the request of the Customer to purchase the Goods from Plantrite;
- (h) **Stock Maintenance Fee** means the value equal to 5% of the value of the portion of the Goods held by Plantrite in accordance with clause 5(g) calculated by Plantrite and payable prior to delivery of the Goods by Plantrite to the Customer.

## 2 Application of Terms

- (a) The terms set out in this document (**Terms**) apply in every case where Plantrite provides goods or services of any kind (**Goods**) to the Customer placing the order or on whose behalf the order is placed (**Customer**), unless otherwise agreed in writing between Plantrite and the Customer.
- (b) Acceptance of Goods by the Customer is conclusive evidence before any court that these Terms (as varied under clause 22.13) apply and are binding on it and the Guarantors referred to in clause 15.
- (c) Subject to clause 21, if there is any inconsistency between these Terms and the terms of any Quotation for the provision of Goods, these Terms prevail.

## 3 Quotation

- (a) Any written Quotation is based on the quantities listed, and is exclusive of Delivery Charges that shall, unless otherwise stated in the Quotation, be borne by the Customer.
- (b) The prices quoted do not include GST (and GST is to be borne by the Customer).
- (c) A Quotation remains open for acceptance and the prices remain valid until the date specified in the Quotation, and if no date is specified, for 14 days from the date of the Quotation.
- (d) The quantity, quality and description of and specifications of the Goods are unless otherwise agreed, fixed as set out in the Quotation.
- (e) Provision of a Quotation by Plantrite to the Customer does not constitute a contract.
- (f) Plantrite may at any time, and in its absolute discretion, amend or withdraw a Quotation.

## 4 Orders

- (a) Customer Orders must be received by Plantrite before 30 September for delivery of Goods the following year. Plantrite may accept Orders after this time at its sole discretion including as to species, amounts and delivery dates.
- (b) Any Order placed by the Customer with Plantrite for the supply of Goods shall be in accordance with the Quotation, (if applicable) and is subject to these Terms.
- (c) Plantrite may, despite providing a Quotation and in its absolute discretion and for any reason, refuse to accept any Order that may be placed with it by the Customer.
- (d) Once a Customer has placed an order with Plantrite and Plantrite has accepted that order in full or in part (**Order**), the Customer may not vary, amend or cancel the Order without Plantrite's prior written consent which may be refused at Plantrite's sole discretion.
- (e) Plantrite will not accept any Order without first receiving the payment of the first tranche of the Amount Payable.
- (f) Plantrite will use best endeavours to report to the Customer on a monthly basis setting out the growth stages of the Goods together with any issues or potential delays in the growing schedule. A failure by Plantrite to provide a report shall not allow the Customer to delay payment of any Amount Payable.
- (g) All Goods ordered by the Customer are at the risk of the Customer from the time the Goods are identified as being grown for the Customer. Plantrite is not liable for any loss of or damage to the Goods due to natural events including frost or hail or any other circumstance other than the gross negligence of Plantrite.
- (h) If the Customer wishes to insure the Goods during the growing period, they must arrange and do so at their own cost. Plantrite will provide all information requested to facilitate the same. Plantrite will not insure the Goods.
- (i) Plantrite will use all reasonable endeavours to grow the Goods ordered however, if the exact species or amount of any species making up the Goods is not available for any reason, Plantrite may offer to supply an alternative species subject to availability. The Customer may reject such replacement species in which case the Order and final tranche of the Amount Payable will be adjusted for those unavailable Goods. Plantrite will in no case be liable if it is unable to supply the Ordered Goods. The maximum extent of its liability will be the refund of amounts received for the portion of Goods it is unable to supply and such adjustment will be made in the final tranche of the Amount Payable.

## 5 Delivery and Delay

- (a) Plantrite may state the estimated delivery date of the Goods in the Quotation, which date may be varied by Plantrite by prior written notice to the Customer (**Estimated Delivery Date**). In all cases this Estimated Delivery Date will fall between 1 June and 31 August (**delivery window**) in the relevant delivery year.. The Customer may also notify Plantrite of specific requested delivery dates within the above delivery window and Plantrite will use best endeavours to meet such requests. Any Goods delivered outside of the delivery window specified above will have no warranty and remain at the sole risk of the Customer. Plantrite shall make all reasonable efforts to deliver the Goods on the Estimated Delivery Date but shall not be responsible for any consequential, indirect or any other loss incurred as a result of any failure by Plantrite to do so.
- (b) Any failure or inability by Plantrite to deliver the Goods on the Estimated Delivery Date shall not confer any right on the Customer to cancel or terminate these Terms, or to refuse to accept delivery of the Goods or to claim damages from Plantrite for breach of contract or to bring any other action against Plantrite.
- (c) Delivery is deemed to occur when the Goods are delivered:
  - (i) to a carrier for transporting to the Customer; or
  - (ii) if the Goods are delivered directly to the Customer, unless otherwise agreed in writing, on the delivery vehicle upon arrival at the Customer's nominated premises,whether Plantrite arranges, procures or effects the transport of the Goods at the request of the Customer or otherwise. The Customer is liable for arranging and supervising the unloading of the Goods from any delivery vehicle at the Customer's sole risk. All cell trays supplied with the Goods must be returned to Plantrite at the Customer's expense within a reasonable period of planting the Goods. All trays that are not returned will incur an additional fee of \$7.70 per tray incl gst.
- (d) Where delivery is to be made during a certain period, Plantrite may at its option deliver the Goods in batches during that period.
- (e) Where Plantrite delivers the Goods to the Customer, the Customer shall pay the Delivery Charges and Plantrite shall be entitled to choose the carrier for and manner

of delivery or transport. If no Delivery Charges are specified, the Delivery Charge shall be \$250 per delivery load plus \$3 per km return from Plantrite's Bullsbrook premises. Any measures requested by the Customer to protect the Goods in transit shall be at the Customer's expense and risk.

- (f) If the Customer is, for any reason, unable or fails or refuses to take delivery of the Goods or any portion of them on the Estimated Delivery Date, including where Plantrite has specifically agreed to an extension to the Estimated Delivery Date, the Goods may be held by Plantrite in accordance with the following conditions:
  - (i) The Customer acknowledges that immediately prior to the Estimated Delivery Date, excluding any agreed holding period the Customer must make payment in full for the Goods in full;
  - (ii) Plantrite may, at its reasonable discretion, hold the Goods and the Customer agrees to pay the Stock Maintenance Fee, which will be invoiced and payable immediately upon the Customer confirming the new delivery date and before actual delivery of the Goods. In no case shall Plantrite be obliged to hold any Goods after the agreed Estimated Delivery Date.
  - (iii) The Customer acknowledges that after any agreed holding period expires, the Customer must accept delivery of the Goods, failing which Plantrite may dispose of the Goods at its sole discretion without penalty and will be entitled to retain any amount payable to Plantrite without deduction of any kind.
  - (iv) If the Customer fails to pay the Stock Maintenance Fee or make payment in full for the Goods before the Estimated Delivery Date, Plantrite may dispose of the Goods at its sole discretion without penalty and will be entitled to retain and recover from the Customer any Amount Payable to Plantrite without deduction of any kind.
  - (v) Plantrite has no obligation to mitigate any losses or attempt to resell any Goods if the Customer cancels any Order, fails to make payment or fails to take delivery of any Goods.

## 6 Seed Supply

- (a) Where the Customer supplies seed for the Order, unless otherwise agreed in writing:
  - (i) it must provide the Seed in a single delivery within the period agreed in the quotation or correspondence;
  - (ii) the Seed must be of a sufficient quality and quantity to allow Plantrite to grow Goods to fulfil the Order. Plantrite will not be liable for any shortfall in Goods should the Seed supplied be insufficient quality or quantity to produce the requested Goods quantities;
  - (iii) It accepts that any Goods that are produced from the seed may not meet the quality it expects or that may have been expected from commercially available seed;
  - (iv) It will abide by any requirements relating to seed that Plantrite may reasonably make at any time.
- (b) The Customer indemnifies Plantrite against any claim from any third party related to the supply of seed by the customer.

## 7 Cancellation Fee

- (a) If the Customer cancels an Order without Plantrite's prior written consent or, subject to clause 10(a), fails or refuses to take delivery of any of the Goods then the Customer must pay the Cancellation Fee.
- (b) The Customer acknowledges that the Cancellation Fee represents a genuine pre-estimate of Plantrite's minimum probable loss in such circumstances given that the Goods have been produced to order specifically for the Customer.

## 8 Payments by the Customer

- (a) Unless otherwise set out in the Quotation, the Customer must pay the Amount Payable in the following tranches:
  - (i) 25% immediately upon executing this Agreement;
  - (ii) 25% on or before 15 December;
  - (iii) 25% on or before 15 March; and
  - (iv) 25%, together with any additional Amounts Payable or other adjustments prior to delivery of the Goods or the first batch of the Goods where delivery occurs in batches.
- (b) The Customer must pay, the whole amount of any debit balance shown on an invoice or statement issued by Plantrite (**Amount Payable**) on or before the earlier of the due date for payment shown on the invoice or statement or the date above (**Due Date**), with time being of the essence in clear funds by way of direct deposit. Payment will be deemed received when it is shown as clear in Plantrite's account.
- (c) Plantrite may immediately cease to continue with growing work on the Customer Goods if any Amount Payable is overdue and any damage or stunting of the Goods growth will be the risk of the Customer.
- (d) An Amount Payable by the Customer under these Terms must be paid without deduction, retention or set-off of any kind and for any reason.
- (e) Plantrite may appropriate any money, paid to it by the Customer in such manner and at such times as Plantrite, in its absolute discretion, determines.
- (f) The amount stated in a certificate signed by Plantrite's duly authorised representative or solicitor as being due and payable by the Customer to Plantrite under these Terms is prima facie evidence that such amount is owing.
- (g) Plantrite may, at its discretion, apply a credit balance in any of the Customer's trading accounts with Plantrite towards satisfaction of a debit balance in any of the Customer's other trading accounts.
- (h) The Amount Payable does not include the cost of delivering or transporting Goods to the Customer.

## 9 Retention of Title

- (a) Title to all Goods purchased by the Customer that have not been paid for (**Bailed Goods**) remains with Plantrite until they are paid for in full.
- (b) The Customer must hold all Bailed Goods in the possession of the Customer:
  - (i) as fiduciary, bailee and agent for Plantrite;
  - (ii) in such a manner that the Bailed Goods remain clearly identifiable and are able to be matched to specific invoices; and
  - (iii) safe and free from deterioration, destruction, loss or harm.
- (c) The Customer must not sell, transfer, encumber or otherwise deal with any Bailed Goods without the prior written consent of the Supplier, which consent the Supplier may withhold in its absolute discretion.

## 10 Risk in Goods and Customer Obligations

- (a) The Customer must inspect all Goods delivered to the Customer or its nominated agent within 24 hours of delivery to the relevant Premises (**Inspection Period**) in order to ensure that Goods delivered are as ordered by the Customer and are not delivered in a damaged state. The Customer must notify Plantrite within the Inspection Period if Goods are found to be other than as ordered by the Customer or have been delivered in a damaged state.
- (b) Subject to clause 12(a)(ii) if the Customer has not notified Plantrite within the Inspection Period that Goods delivered were not as ordered by the Customer, or that Goods were delivered in a damaged state, then the Goods will be deemed to have been delivered in good condition, as ordered and are accepted by the Customer (**Acceptance**).

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- (c) To the extent permitted by law, if the Customer is in breach of these Terms, Plantrite may (without prejudice to any other rights) repossess the delivered Goods and the Customer licences Plantrite and its employees and agents to enter its premises at any time without notice for such purpose, with all related costs of Plantrite to be paid by the Customer on demand.

## 11 Returns

The Goods the subject of an Order are grown specifically for the Customer. The Customer may not return any Goods. Goods that are confirmed by Plantrite as being defective following delivery must be disposed of by the Customer at its sole cost.

## 12 Liability

- (a) Subject to clause 10(b), Goods supplied by Plantrite are deemed to be defective if the Goods:

- (i) are materially damaged to the extent that they would be unlikely to survive planting out (merchantable quality); or
- (ii) do not comply with any implied warranty applicable to the supply of the Goods which cannot be excluded.

- (b) When Goods are defective (as defined in clause 12(a)) Plantrite may, at its option elect to:

- (i) replace the Goods; or
- (ii) reimburse the Customer for the cost of supplying the Goods; or
- (iii) supply goods that are as far as reasonably possible equivalent to the Goods; or
- (iv) if payment of the purchase price for the Goods has not been made by the Customer – release the Customer from any obligation to pay the purchase price; or
- (v) if payment of the purchase price for the Goods has been made by the Customer – refund the purchase price to the Customer, subject to the Customer, where applicable, first restoring the unencumbered ownership of the Goods to Plantrite.

- (c) To the extent permitted by law, the sole remedies of the Customer under or in relation to these Terms or the supply of Goods under them, whether in contract, in tort (including the law of negligence), under statute or otherwise, are only as specified in these Terms and are subject to the limitations set out in clause 12(d) and the following limitations:

- (i) Plantrite will use all reasonable efforts to ensure that the Goods are free from pests, diseases and/or viruses latent or patent, but does not warrant such and will not be responsible for any loss or damage caused by the same.
- (ii) Plantrite makes no guarantee as to the suitability of any of the Goods for any specific use. Plantrite does not recommend any one particular type of Goods in preference to any other, or claim to be an authority on any one of its Goods.
- (iii) Any description of the Goods under these Terms shall not create an express warranty that any Goods shall conform to that description.
- (iv) The Customer shall make its own determination of the suitability of the Goods for the use and environment contemplated by the Customer. All information is believed to be correct and is given in good faith. The Customer shall not rely upon any of Plantrite's skill or judgment.
- (v) Plantrite, and Plantrite's officers, employees and agents, will not have any liability or other obligation to any person or other entity, including the Customer, arising out of, or in any way directly or indirectly connected with, the matters referred to in clause 12(a) except to comply with its obligations under clause 12(b);
- (vi) all conditions, warranties and other terms pertaining to the condition or quality of Goods are excluded to the extent permitted by law (including the CCA); and the Customer must not make any claim or demand, or take any action or other proceeding against Plantrite, or any of Plantrite's officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss of contract or opportunity, loss of goodwill or any indirect, special or consequential loss or damage of any nature arising out of, or in any way directly or indirectly related to these Terms and/or the supply of Goods under them, including in relation to any of the matters referred to in clause 12(a).
- (vii) all conditions, warranties and other terms pertaining to the condition or quality of Goods are excluded to the extent permitted by law (including the CCA); and the Customer must not make any claim or demand, or take any action or other proceeding against Plantrite, or any of Plantrite's officers, employees or agents, for any loss of profits, loss of revenue, loss of anticipated savings, loss of contract or opportunity, loss of goodwill or any indirect, special or consequential loss or damage of any nature arising out of, or in any way directly or indirectly related to these Terms and/or the supply of Goods under them, including in relation to any of the matters referred to in clause 12(a).

- (d) To the extent permitted by law, Plantrite's total liability for any claim under or in relation to these Terms and/or the supply of Goods under them is limited to the price paid by the Customer for the Goods, or part of them, the subject of the claim.

## 13 Interest and Enforcement Costs

- (a) If any Amount Payable is not paid by the Due Date in accordance with these Terms, Plantrite may charge and recover interest on the outstanding amount at a rate equivalent to the Interest Rate.

- (b) If the Customer breaches its obligations under these Terms, the Customer must immediately pay to Plantrite on demand, all costs and expenses incurred by Plantrite in the enforcement of these Terms including, without limitation, costs and expenses including legal costs (on a full indemnity basis) freight costs, storage costs, electricity and telephone charges (except to the extent such costs and expenses directly result from Plantrite's breach of these Terms). The Customer authorises Plantrite to debit any trading account held by the Customer (**Trading Account**) with such costs and expenses.

## 14 Plant Breeder's Rights

- (a) The Customer acknowledges that the Goods may be protected in that the rights to them are owned by a third party owner or breeder and they are subject to the *Plant Breeder's Rights Act 1994* (PBR).

- (b) The Goods are supplied on the sole and express basis that they will not be propagated (as defined in the PBR) and that the Customer shall not breed the Goods in any way or sell or part with possession of the Goods to any person or entity who has not agreed to these Terms.

- (c) The Customer acknowledges that damages may not be a sufficient remedy for breach of this provision and that injunctive relief would be appropriate in the event that Plantrite has reason to believe that the Customer or someone else may breach this provision.

- (d) So far as permitted by law, in the event that the third party owner of the Goods has any preferential rights of ownership to any mutation derived from those Goods then the Customer agrees to acknowledge and accept those preferential rights and not to challenge any such rights.

## 15 Guarantee

- (a) In this clause 15, **Guarantor** means each person who has agreed at any time to be a guarantor of the Customer's obligations to Plantrite.

- (b) In consideration of Plantrite agreeing to supply Goods to the Customer at the request of the Guarantor on these Terms, the Guarantor unconditionally and irrevocably guarantees (and if more than one, then jointly and severally) to Plantrite:

- (i) the payment of any Amount Payable; and
- (ii) the performance of each of the Customer's obligations under these Terms.

- (c) If and to the extent that any Amount Payable is not paid when due, the Customer's Guarantor must immediately on demand from Plantrite pay to Plantrite the amount of the Amount Payable and/or any other amount payable under these Terms that has not been paid.

- (d) If the Customer fails to perform the Customer's obligations under these Terms when they are due, the Guarantor must immediately on demand from Plantrite cause the Customer to perform the Customer's obligations under these Terms.

- (e) As a separate and principal obligation the Guarantor indemnifies Plantrite against any loss, cost or liability suffered, paid or incurred by Plantrite in relation to:

- (i) any failure of the Customer to perform the Customer's obligations under these Terms; or
- (ii) the failure of the Guarantor to cause the Customer to perform the Customer's obligations under these Terms.

- (f) This clause 15 is enforceable against a Guarantor whether or not Plantrite has:

- (i) made demand upon the Customer;
- (ii) given notice to the Customer or any other person in respect of anything; or
- (iii) taken any other steps against the Customer or any other person, and whether or not the guarantee given by the Guarantor under this clause 15 is unenforceable for any reason, either in whole or in part.

## 16 Security Interest

- (a) The Customer and the Guarantor each:

- (i) grant a security interest in all of its present and after-acquired personal property (as defined in the PPSA) (**Personal Property**) and in all of its present and future rights in relation to any Personal Property to Plantrite;
- (ii) charge as a fixed charge all of its other rights, property and undertaking of any kind and wherever situated, whether present of future including, without limitation, any interest in any real property (both legal and beneficial) (other than any Personal Property to which the PPSA applies) to Plantrite; and
- (iii) agree to mortgage all of its present and future interests in any real property to Plantrite, on request from Plantrite, as security for the performance of its obligations under these Terms including payment of any Amount Payable.

- (b) The Customer and the Guarantor must each:

- (i) within 10 days of request from Plantrite, execute such documents as Plantrite requires to perfect the security interest, charge and mortgage; and
- (ii) pay on demand any duty (including any fines and penalties) assessed on the charge or mortgage.

- (c) Unless Plantrite otherwise agrees, the costs of registering a financing statement must be paid by the Customer and may be debited against the Customer's Trading Account. The Customer and each Guarantor acknowledge that Plantrite, by virtue of the charge and mortgage, has a caveatable interest in any real property of the Customer and/or the Guarantor which is or becomes subject to the charge and/or mortgage and may lodge a caveat over that property.

- (d) The Customer and each Guarantor appoints Plantrite (and if Plantrite is a corporation, each officer of Plantrite for the time being) as its agent and authorised representative for the purpose of requesting information from other secured parties under section 275 of the PPSA.

- (f) Without limiting any other provision of these Terms, the Customer and each Guarantor waives its rights to receive any notice under the PPSA (including a copy of any verification statement) unless the notice is required by the PPSA and that requirement cannot be excluded.

- (g) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest created under these Terms, the Customer and each Guarantor agrees with Plantrite that:

- (i) nothing in section 125, Division 6 of Part 4.3 and section 143 of the PPSA will apply to these Terms or the security interest under it; and
- (ii) it waives its rights to do any of the following:
  - (A) object to the purchase of the collateral by Plantrite under section 129;
  - (B) receive a statement of account under section 132(3)(d) following a disposal showing the amounts paid to other secured parties and whether security interests held by other secured parties have been discharged;
  - (C) receive a statement of account under section 132(4) if there is no disposal; and
  - (D) redeem the collateral under section 142.

- (h) The Customer, the Guarantor or Plantrite will not disclose information of the kind mentioned in section 275(1) of the PPSA unless required by law.

## 17 Attorney

- (a) The Customer and each Guarantor irrevocably appoints Plantrite and each of Plantrite's authorised officers, jointly and severally, to be its attorney to do any act or thing which it is required to do under these Terms.

- (b) Plantrite may only exercise the power set out in clause 17(a) where the Customer or Guarantor (as applicable) is in breach of these Terms. Plantrite may exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.

- (c) A third party may rely on a copy of these Terms certified by a solicitor as evidence of the appointment of Plantrite as the attorney of the Customer or Guarantor.

- (d) The Customer and each Guarantor must ratify all acts and things done by Plantrite and its authorised officers in the exercise of the power of attorney granted in accordance with this clause.

## 18 GST

If Plantrite has any liability to pay Goods and Services Tax (GST) on the supply of any Goods to the Customer, the Customer must pay to Plantrite an amount, equal to the Supplier's GST liability, at the same time as the Amount Payable is paid for the Goods, (unless the consideration for that supply is expressed specifically to be GST inclusive).

## 19 Privacy disclosure and consent

The Customer authorises Plantrite to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by the Customer;
- (b) use, disclose or exchange with other credit providers and entities, information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
- (c) disclose the contents of any credit report on the Customer to Plantrite and any of their solicitors and mercantile agents.

## 20 Access by Customer

- (a) On receipt of a written request by the Customer, Plantrite may, in its reasonable discretion and subject to any direction by Plantrite, grant the Customer access to the premises of Plantrite for the sole purpose of examining the Goods for sale to the Customer.

- (b) The Customer must access the business premises in such a way as to cause as little disruption as possible to Plantrite's business.

## 21 Additional Terms

The additional terms, covenants and conditions (if any) set out in the Quotation are deemed to be incorporated in this Agreement as if fully set out in this Agreement and if any inconsistency arises with the terms, covenants and conditions contained in this

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Agreement then the terms, covenants and conditions set out in the Quotation will prevail.

## **22 Interpretation**

In these Terms, unless the context otherwise requires:

- (a) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (b) a reference to a party to these Terms includes the party's successors, permitted substitutes and permitted assigns and, where applicable, the party's legal personal representatives; and
- (c) a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, on each of them severally and on any two or more of them jointly.

## **22.2 PPSA defined terms**

In these Terms, the terms accession, account, collateral, financing statement, financing change statement, inventory, proceeds, purchase money security interest, secured party and security interest have the same meanings as in the PPSA.

## **22.3 Nature of Goods**

The Customer acknowledges that all Goods will be purchased for the purpose of re-supply or in connection with a business carried on by the Customer with or without other persons and not for personal, domestic or household use.

## **22.4 Time of essence**

Time is to be of the essence insofar as it relates to the Customer's or a Guarantor's obligations to Plantrite under these Terms.

## **22.5 Delays - force majeure**

The Customer agrees and acknowledges that growth and performance of the Goods is dependent on a wide range of conditions beyond Plantrite's control. Plantrite is not responsible for any delay or failure of performance occasioned or caused by transport or traffic delays, fire, frost, hail, plant disease or contamination, breakdown of plant and equipment, shortage of materials or labour, flood, storm or tempest, theft, vandalism, civil unrest or accidents of any kind, strikes, riots, fire, insurrection, embargoes, failure of carriers or suppliers, inability to obtain materials or transportation facilities, acts of God or of the public enemy, governmental tariffs and quotas, compliance with any law, regulation or other governmental or court order (whether or not valid), or other causes beyond the control of Plantrite, even if the cause could be alleviated by the payment of money, or the performance is prevented or delayed because of the failure by Plantrite.

## **22.6 No waiver**

- (a) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver.
- (b) A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the party granting that waiver unless made in writing.

## **22.7 Assignment**

Plantrite may at any time assign its rights and interests or novate its rights and obligations (in whole or in part) under these Terms. The Customer must not assign its rights or obligations under these Terms without Plantrite's prior written consent, which consent may be refused or given subject to such terms and conditions as Plantrite may determine in its absolute discretion.

## **22.8 Severance**

If any provision of these Terms or their application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of these Terms, which will continue in full force and effect as if the invalid or unenforceable provision had not been included in them.

## **22.9 Indemnities**

Each indemnity in these Terms is a continuing obligation, independent of the other obligations of the party giving it, and survives the end of these Terms or the supply arrangement between the Customer and Plantrite.

## **22.10 Further co-operation**

The Customer must do anything (including executing a document) Plantrite reasonably requires in writing to give full effect to these Terms.

## **22.11 Terms binding**

These Terms bind the Customer and each Guarantor both personally and as trustee of any trust of which it is trustee.

## **22.12 Notices**

Notices in respect of these Terms may be provided to the Customer and Guarantors by mail or facsimile to the recipient's address provided by it to Plantrite.

## **22.13 Variation of Terms**

Plantrite reserves the right to vary these Terms from time to time. It may give notice of any variation of these Terms by publishing the revised Terms on its website and may (but is not obliged to) notify the Customer and/or the Guarantors that it has done so on an invoice, statement or other written communication. If the Customer continues to deal with and place orders for the supply of Goods with Plantrite after any such variation of these Terms, the Customer is taken to have agreed to those Terms as varied and to have taken the supply of Goods on those varied Terms.

## **22.14 Governing law**

These Terms will be construed in accordance with and governed by the laws of Western Australia. The Customer and Plantrite submit to the non-exclusive jurisdiction of the courts of Western Australia.