

These Terms of Sale and any additional terms on any applicable delivery docket, receipt, invoice, Website order confirmation or other relevant document prepared by PGG Wrightson in relation to any Sale apply to cash/card purchases in a PGG Wrightson or Fruited Supplies store, or online website purchases of Products from PGW.

## 1. DEFINITIONS

- 1.1 **Card** means a credit or debit card.
- 1.2 **CCLA** means the Contract and Commercial Law Act 2017.
- 1.3 **Click and Collect** means the service of that name offered on our Website, whereby you order a Product and pay for it at the time you place the order, and collect it from our physical store when it becomes available for collection.
- 1.4 **PGW, we or us** means PGG Wrightson Limited and each of our subsidiaries and trading divisions, both separately and all together as part of the PGG Wrightson Limited group.
- 1.5 **PGW Account** means an account to buy and/or sell Products from or through PGW and its trading divisions and/or subsidiary companies, including a charge account with deferred payment.
- 1.6 **Promotional Material** means advertising, marketing and other promotional material in relation to Products and services provided by PGW or its subsidiaries.
- 1.7 **Products** means all products, merchandise sold to you in our retail stores or via our Website from time to time, including:
  - a. the products and merchandise described or referred to (whether by item, product category, brand, kind or otherwise) in the delivery docket, invoice or like equivalent document that we give you; and
  - b. free advice provided by PGW in relation to any product or merchandise.
- 1.8 **Purchaser or You** means the purchaser of Products.
- 1.9 **Sale** means any sale of Products where PGW is either selling the Products on its own account or on behalf of PGW's Principal if PGW is acting as agent.
- 1.10 **Web Account** means an account for our Website which allows a user to register and log in online.
- 1.11 **Web Account Holder** means a user who completes PGW's online registration process for a Web Account and is confirmed by PGW as having a Web Account.
- 1.12 **Website** means PGW's online shopping website at store.pggwrightson.co.nz

## 2. CASH/CARD PURCHASES IN STORE

- 2.1 If you buy Products in store and pay with cash or Card, you agree that these Terms of Sale apply. These Terms of Sale are also referred to on your invoice for the Products.
- 2.2 You must pay PGW the purchase price (plus GST) in full in advance for all Products either by Card, in cleared funds, or in cash, or by charging your online orders to your PGW Account, if you have one linked to your Web Account (note this functionality may not be available for all PGW Accounts). PGW may at its election charge a surcharge on credit card payments, whether made in store or on our Website of any percentage of the transaction payment amount.

## 3. ONLINE WEBSITE PURCHASES

- 3.1 By browsing the Website, or placing an order on the Website, you agree to these Terms of Sale.
- 3.2 You can browse and order as a guest or you can register as a Web Account Holder and open a Web Account. You can link your PGW Account, if you have one, to your Web Account. Your address details will be saved by us. While registering and opening a Web Account you can consent to receiving Promotional Material from us by email on an ongoing basis. You may withdraw this consent and unsubscribe at any time from receiving further Promotional Material by following the unsubscribe function in your Web Account or on any email containing Promotional Material.
- 3.3 Unless stated otherwise on the Website, prices displayed for Products include GST. Prices displayed on the Website may change without notice. The price cannot be varied after we accept an order unless we both agree otherwise in writing. Prices displayed on the Website exclude delivery costs. Delivery costs are shown separately before completion of an order. If a price displayed on the Website is incorrect, we may contact you before arranging delivery of the Product to confirm whether you want to buy the Product at the correct price and then arrange any additional payment or refund so you pay the correct price.
- 3.4 Product descriptions and specifications displayed on the Website may change without notice. Notwithstanding any change to the description or specifications displayed on the Website, the specifications of a Product you order will be as shown on the Website at the time or order unless we both agree otherwise in writing.
- 3.5 You may order a Product from the Website by following the directions on the Website and providing all details we require to enable us to process payment, charge the purchase to your PGW Account, fulfil the order and arrange delivery (if applicable). By placing an order, you offer to Purchase the Products ordered. Orders are deemed to have been received and accepted by us at the time we send an order confirmation to your nominated email address.
- 3.6 You can buy Products displayed on our Website by:
  - a. using our online Card transaction facility. We do not store your Card Information when you buy Products from us online. We use the secure Hosted Payment page solution from Windcave to process online orders. Customers can see their Cards being authorised in real time, in a Secure Socket Layer (SSL) protocol secure environment. Windcave is certified AIS compliant. Your Card details will be used only to fulfill the transaction between us or as otherwise authorised by you or permitted by law; or
  - b. charging your online orders to the PGW Account, if you have one linked to your Web Account, and that functionality is available. The PGW Customer Account Terms of Trade located at [www.pggwrightson.co.nz](http://www.pggwrightson.co.nz) also apply to all transactions on PGW Accounts. PGW Accounts with separate loyalty and volume related discount arrangements will be charged the price as per those arrangements (not the Website price) when the online order is

- 3.7 We may decline to fulfil any order. We may cancel any order before the Products have been dispatched. Any payment you make for an order which we cancel or refuse to fulfil will be refunded in full (or, if debited to a PGW Account and not yet paid for, credited to that PGW Account). All orders are made subject to Product availability at our physical stores.
- 3.8 Payment for an order or charging to your PGW Account will be processed immediately upon an order being made.
- 3.9 We may limit the number or quantity of any Product you can purchase in any transaction.
- 3.10 Delivery may take additional time during sales, holidays and for other reasons. You are responsible for ensuring the correct delivery address details are provided when you place an order. We are not:
  - a. liable for any costs in relation to the resending of an order if incorrect delivery address details are provided.
  - b. responsible for any delay in delivery caused by any factor beyond our reasonable control.
  - c. responsible for any order that is delayed, declined or not accepted due to any interruption to an internet connection or computer issue.
- 3.11 Not all Products can be delivered and some must be collected in store by you. Where a Product you order cannot be delivered, you will be advised of this before completing your order.
- 3.12 If you order Products for delivery outside New Zealand, if we agree to deliver then import duties and taxes may be levied on those Products when they are delivered. You will be responsible for paying all such duties and taxes. Where completion of delivery depends on payment of import duties or taxes, we are not obliged to complete delivery until you have paid all applicable import duties and taxes.
- 3.13 It is your responsibility to ensure that accessing the Website and any links or files or downloads from the Website do not expose your computer to viruses, malicious computer code or anything else that may interfere with or damage your computer or any information.
- 3.14 If you are under the age of 18 years you cannot place orders on our Website. By accepting these Terms of Sale you confirm you are over the age of 18 years.
- 3.15 If you breach, or we suspect that you have breached these Terms of Sale, we may suspend or terminate your Web Account and/or your PGW Account and any future memberships, registrations, accounts or current or future accounts held by related entities. All decisions under this clause are final and are at the sole discretion of PGW.

## 4. TITLE, RISK AND DELIVERY

- 4.1 Ownership of and title to all Products remains with us or the Vendor, as the case may be, and only passes to you upon payment in full for the Products being made to PGW.
- 4.2 All Products sold on our Website or in store are at the Purchaser's risk from the point of loading onto the carrier or being made available for uplifting by the Purchaser, whether or not the Purchaser takes delivery of them at that time.
- 4.3 We will not be liable for any delay in delivery of any Products to you.

## 5. TERMS SPECIFIC TO SEED, PLANT STOCK & SPRAYS

- 5.1 PGW understands all seeds, plants, bulbs and tubers have been taken from reliable stocks, but does not guarantee that they are described accurately or uncontaminated and accepts no liability in relation to any planting or crop.
- 5.2 As the composition, use and effect of sprays and hormone chemicals is outside PGW's control, the Purchaser agrees that it will not rely on any representation by PGW, or make or support any claim against PGW, concerning any sprays or hormone chemicals supplied by PGW.
- 5.3 If any invoice/statement or any relevant document refers to Royalty Conditions for seed, that seed is a PROTECTED SEED VARIETY and may not be used for seed production or re-sold without the Plant Breeder's written consent. If this is unacceptable, the seed may be returned unopened within 7 days for a full refund.

## 6. PURCHASER'S RIGHT TO COMPENSATION

- 6.1 Subject to clause 8, if due solely to PGW's act, omission or negligence, any Product is defective or does not materially conform to our description, we will at our option:
  - a. repair or replace it; or
  - b. pay compensation to a maximum amount that does not exceed twice its purchase price.
- 6.2 To the extent permitted by any contract for supply entered into between PGW and a third party supplier of the relevant Products, PGW will pass through or assign to you the rights to, and benefit of, any supplier warranties, indemnities and associated remedies (whether contained in such contract of supply or any statute) provided by that third party supplier in relation to those Products. For the avoidance of doubt, no clause in these Terms excludes or limits any benefit of, any supplier warranties, indemnities and associated remedies (whether contained in such contract of supply or any statute) provided by a third party supplier in relation to those Products including under section 12 of the CCLA.
- 6.3 We give no warranty concerning any Product's description, condition, unencumbrance, quality or fitness for any purpose. In particular, no warranty is made concerning any sprays, chemicals or plant/seed matter. It is your

responsibility to satisfy yourself as to the condition and quality and fitness for purpose of the Products and you accept the Products on this basis. Other than as required by law or as set out in clause 6.2, all other statutory and other implied warranties to be given, made, performed or met by PGW, including those in Part 3 of the CCLA, are negated and excluded to the fullest extent that it is lawful for us to do so.

## 7 RETURNS

7.1 Subject to clauses 7.2 and 7.3, if you are not satisfied with the Products provided by us for any reason, you can return the Products to us at your cost within 30 days of your taking delivery of the Products following the Returns process on our Website.

7.2 Products can only be returned to us if:

- a. they do not require refrigeration, and/or are not close to any expiry date (as determined by us).
- b. they are not custom-made or procured for you (seed that you have ordered to be supplied in a blended, coated or treated form will be deemed to be custom-made unless we agree otherwise) and form part of our usual stock-in-trade.
- c. they were supplied to you in packaged and sealed form and not in bulk, and are returned in that original packaging and unopened, and include all accessories.
- d. we are satisfied that their condition has not deteriorated and you pay for their return.
- e. you provide evidence of purchase from us, to our satisfaction.

Where we agree that the Products are able to be returned, we will credit the Card or PGW Account or refund you depending on how you paid for the Products. You accept that there may be a delay in the processing of any refund or credit under this clause and PGW is not responsible for such delay.

7.3 Clause 7 sets out your sole rights to return Products. Products sold by PGW as agent for any other party may not under any circumstances be returned except as allowed by law.

## 8 PGW'S LIABILITY

8.1 Clause 6.1 sets out your sole rights to compensation/remedies from us for any matter covered by these Terms. Except as set out in clause 6.1, neither we nor our agents will be liable in any way (including negligence, tort and equity) to you or to any other person in connection with this or any other contract or the supply or failure to supply any Products or the purported exercise of our rights under these Terms; or relating to your Web Account or PGW Account; or relating to the Website or any advice, opinion, statement, representation or omission, negligent or otherwise, contained on our Website; for any:

- a. loss whatsoever, including loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages; or
- b. in relation to any claim or series of related claims, any amount exceeding twice the purchase price of the relevant Products giving rise to the claim(s); or
- c. amount not claimed within 7 days of you becoming aware of the circumstances giving rise to the claim.

8.2 You must use all Products strictly in accordance with any directions, instructions and terms contained on Product labels, packaging and any other product information supplied with the Products.

## 9 PURCHASER'S LIABILITY

9.1 If PGW cannot provide the agreed or requested quantity of Products for any reason outside its reasonable control, PGW will contact you and you may then choose to either:

- a. accept delivery of a lesser quantity of Products agreed by you; or
- b. cancel the transaction, and receive the corresponding refund or credit to the Card or PGW Account used for original payment.

9.2 PGW will not be liable to you for any delay in processing any refund or credit under clause 9.1.a or 9.1.b, or for loss whatsoever relating to PGW's inability to supply the agreed or requested quantity of any Product. The remedies set out in clause 9.1.a and 9.1.b are your sole remedies in relation to any Inability of PGW to supply the agreed or requested quantity of any Product.

9.3 You indemnify us from and against any liabilities, losses, damages, costs (including legal costs on a solicitor/client basis) or claims which we incur or suffer in the course of our dealings with you under these Terms of Sale and in respect of any breach by you of these Terms of Sale except if we are fraudulent or negligent.

## 10 PGW AS AGENT

10.1 PGW may act as agent for a Principal vendor in respect of the sale and purchase of any Products. We are not responsible or liable in any way for anything done or not done by or on behalf of either party to a contract arranged by us as agent. We give no assurance as to the ability of a Principal vendor to supply any Products or perform any obligations. PGW may receive a rebate, commission or fee from its Principal vendor for providing marketing and credit services.

10.2 Where PGW acts as agent for a Principal vendor, PGW:

- a. Gives no warranties to the Purchaser. Clauses 6 and 8 apply to PGW's services as agent. The CCLA (and not clauses 6 and 8) applies direct between the Principal vendor and Purchaser unless the Principal vendor's terms of sale have been incorporated into the sale and state that they prevail over any inconsistent provision of the CCLA.
- b. May sell the Products to the Purchaser for a different purchase price than that paid to the Principal vendor.

## 11 CLICK AND COLLECT

11.1 After your order has been confirmed by PGW, Click and Collect orders can only be modified with PGW's agreement.

11.2 Click and Collect is only available for the items and at the locations specified on our Website. When placing the order, you must select the store from which to collect the order. The Website Click and Collect page will show an estimated period after which your order will be available for collection. We will notify you by email or other agreed method when your order is ready to be collected.

11.3 There will be no collection fee payable when you collect an order.

11.4 We will not be liable to you or any other person for any delay in an order becoming available for collection.

11.5 You must collect all orders within 14 days of us notifying you that the order is available for collection. If you do not collect an order within this period, we will refund the purchase price less all delivery costs.

11.6 When collecting an order, you, or your nominee must:

- a. collect the order from the store nominated when placing the order;
- b. provide us with confirmation of the order or receipt for your order;
- c. provide us with current Government issued photographic identification;
- d. provide us with proof of age and qualifications or accreditations (if required under clause 11.7).

We are not obliged to provide you with any Products you have ordered unless you or your nominee (as applicable) complies with subclauses a - c above.

11.7 Where the law prescribes that a person must be of a certain age or have a certain qualification or accreditation to buy any Product, we will not allow anyone to collect such a Product until they prove that they are of the required age or have the necessary qualification or accreditation.

11.8 We may change or terminate the Click and Collect service at any time and without notice.

## 12 MISCELLANEOUS

12.1 Enforcement: The Purchaser will pay PGW on demand all costs (including legal costs on a solicitor/client basis) incurred by PGW in connection with any default by the Purchaser or any enforcement action taken by PGW.

12.2 Entire agreement: Except as set out in this clause, these Terms of Sale are the entire agreement between us and any Purchaser for cash/card purchases in store or online website purchases, and supersede all representations, agreements and other communications made by us. Certain Terms in respect of specific Products that may appear on the reverse of any of PGW's invoices/statements or other specific terms may apply in conjunction with or in place of these Terms of Sale if we specify. For Products purchased from our Website, these Terms of Sale, the Website Terms of Use, and the PGW Customer Account Terms of Trade (where online purchases are able to be charged to your PGW Account) apply in the order determined by us. If any part of these Terms of Sale is inconsistent with the CCLA, that part prevails over the relevant provision of the CCLA.

12.3 Force majeure: PGW will not be liable for any failure to perform or delay in performing its obligations caused by circumstances beyond its reasonable control, including but not limited to fire, storm, flood, earthquake, landslide, explosion, accident, war, rebellion, Insurrection, riot, civil commotion, protest, sabotage, labour disputes, labour shortages, transportation embargoes, acts of God, acts of Government or any agency thereof or judicial action, any epidemic or pandemic or outbreak or spreading of any infectious disease and any measures implemented in response by PGW, the Government, any regulator or any other third party. Where PGW is unable to fulfil its obligations for reasons contemplated by this clause, PGW may:

- a. notify you in writing of the reason for its failure and the effect of the failure; and
- b. use all reasonable endeavours to avoid or remove the cause and perform its obligations as soon as reasonably possible.

The performance of PGW's obligations will be suspended to the extent affected by such delay or failure and PGW will be granted an extension of time for performance equal to the period of such delay or failure, except that if the delay or failure continues for more than 10 working days, PGW may terminate the affected order without penalty or payment. The provisions of this clause apply to PGW only.

12.4 Our Decisions and No Waiver:

- a. any power or discretion conferred on us by these Terms of Sale may be exercised by us, or we may refrain from exercising that power or discretion, at our absolute and unfettered discretion.
- b. if we delay or do not exercise any of our rights or remedies, that will not be a waiver of those rights or remedies. Any waiver we give must be in writing.

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

12.6 Variation: We may in our absolute discretion change these Terms of Sale at any time by publication on our Group website [www.pggwrightson.co.nz](http://www.pggwrightson.co.nz) and on [store.pggwrightson.co.nz](http://store.pggwrightson.co.nz). The change will take effect from the time loaded. Your transactions with us are covered by the then current Terms of Sale at the time of the transaction.

12.7 Typographical Errors: PGW reserves the right to correct any typographical or clerical errors in any prices quoted or contained in an order or quotation, invoice, statement or other document.

12.8 Inconsistency: If there is any inconsistency between these Terms of Sale and the terms of any order that may be lodged by you or with any delivery docket or invoices or other communication by or to us or you, these Terms of Sale will prevail unless we specify otherwise.

12.9 Disputes: Any dispute between us and you will be discussed between us in the spirit of goodwill.

12.10 Governing Law: New Zealand law governs these Terms of Sale and the parties submit to the exclusive jurisdiction of the New Zealand courts.

12.11 Privacy: PGW will only use the your personal information for purposes relating to your dealings with us, including credit assessment and direct marketing. You authorise PGW to release your personal information to third parties for these purposes. You can inspect and correct your personal information held by PGW.

12.12 Confidentiality: You must keep completely confidential all information regarding the strategies, business affairs, accounts, finance or contractual arrangements of the others.

12.13 Consumer Guarantees Act: You agree that where the Products are both supplied and acquired in trade the Consumer Guarantees Act 1993 does not apply and this clause contracts out of the provisions of the Consumer Guarantees Act.

12.14 Relationship: The relationship between you and PGW is as independent purchaser and seller. There is no partnership, joint venture, employment or agency relationship unless we specify. An agent or representative of PGW is not authorised to make any representations, warranties or agreements that PGW has not confirmed in writing. PGW is not bound by unauthorised statements.