

APPLICATION FOR CREDIT



This Account application shall be in respect of LEFROY VALLEY – Ebony Bay Pty Ltd (ACN: 055 460 449) as trustee for the Grower Solutions Trust trading as Lefroy Valley (ABN: 75 545 401 221) – for a 30 day credit account.

**PLEASE READ THIS APPLICATION THE NOTES AND THE TERMS AND CONDITIONS CAREFULLY SO THAT YOUR APPLICATION CAN BE AUTHORISED PROMPTLY.
IT IS IMPORTANT THAT ALL INFORMATION IS SUPPLIED & COMPLETED FOR ALL REQUIRED SECTIONS.**

SECTION ONE - GENERAL INFORMATION (MUST BE COMPLETED BY ALL APPLICANTS)

BUSINESS NAME: _____ ACN: _____ ABN: _____

TRADING NAME: (if applicable) _____

PREVIOUS NAME OF BUSINESS: (if changed within the past 2 years) _____

MAILING ADDRESS: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

PHYSICAL ADDRESS: _____

SUBURB: _____ STATE: _____ POSTCODE: _____

TELEPHONE NO.: _____ FAX NO.: _____ MOBILE NO.: _____

BUSINESS LEGAL STATUS: (Please tick)

SOLE TRADER (Please go to SECTION TWO Q1)

PARTNERSHIP (Please go to SECTION TWO Q2)

COMPANY (Please go to SECTION THREE Q3)

TRUST (Please go to SECTION THREE Q4)

If Trustee is a Company, please complete SECTION THREE Q3 & Q4

SECTION TWO - PROPRIETOR/DIRECTOR INFORMATION (PLEASE COMPLETE WHERE RELEVANT)

Q1 SOLE TRADER Only

Full Name _____ Date of Birth _____ Driver Licence No _____

Residential Address _____ Suburb _____ State _____ Postcode _____

Phone No. _____ Mobile No. _____ Email _____

If a business premise is leased, please provide: Lessor Name _____

Lessor Contact Details _____

Please continue to SECTION FOUR

Q2 PARTNERSHIP Only (Please provide name and residential address of each partner. Please provide details of any additional partners on a separate sheet)

Full Name _____ Date of Birth _____ Driver Licence No _____

Residential Address _____ Suburb _____ State _____ Postcode _____

Phone No. _____ Mobile No. _____ Email _____

Full Name _____ Date of Birth _____ Driver Licence No _____

Residential Address _____ Suburb _____ State _____ Postcode _____

Phone No. _____ Mobile No. _____ Email _____

Full Name _____ Date of Birth _____ Driver Licence No _____

Residential Address _____ Suburb _____ State _____ Postcode _____

Phone No. _____ Mobile No. _____ Email _____

If a business premise is leased, please provide: Lessor Name _____

Lessor Contact Details _____

Is the above Partnership a Trustee of a Trust? If so, please complete **4a** in Q4 in Section 3. If not, please continue to SECTION FOUR.

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SECTION THREE - PROPRIETOR/DIRECTOR INFORMATION (PLEASE COMPLETE WHERE RELEVANT)

Q3

Registered Office Address: _____

Suburb: _____ State: _____ Postcode: _____

Type of Company: Private Public A.C.N. _____

State of Incorporation/Registration: _____ Date Business Commenced: _____

NAME & HOME ADDRESS OF EACH DIRECTOR

(It is necessary to notify Lefroy Valley of any change in Directors or Company details. Please provide details of any additional partners on a separate sheet)

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

If business premises is leased, please provide: Lessor Name: _____

Lessor contact details: _____

HOLDING OR PARENT COMPANY (if applicable)

Name _____ A.C.N. _____

Is the above company a Trustee of a Trust? If so, please also complete **4a** in Q4 below. **If not, please continue to SECTION FOUR.**

Q4

TRUST Only (Please refer to point 2 of Conditions for Application of Credit)

4a TRUST DETAILS:

Name of Trust _____

Type of Trust (e.g. Discretionary Family Trust/Unit Trust) _____

Country where Trust established _____

TRUSTEE DETAILS: (if more than one trustee, please provide details of any additional trustees on a separate sheet)

4b IF TRUSTEE IS AN INDIVIDUAL:

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

Full Name: _____ Date of Birth: _____ Driver Licence No: _____

Residential Address: _____

Suburb: _____ State: _____ Postcode: _____

Telephone No: _____ Mobile No: _____ Email: _____

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SECTION FOUR - CONTACT DETAILS (MUST BE COMPLETED BY ALL APPLICANTS)

PURCHASE CONTACT

Primary: Name _____ Phone _____ Email _____

Secondary: Name _____ Phone _____ Email _____

Do you quote a Purchase Order **YES** **NO**

ESTIMATED MONTHLY PURCHASES \$ _____

ACCOUNTS PAYABLE CONTACT

I/We give permission to Lefroy Valley - Ebony Bay Pty Ltd to send electronic messages / invoices & statements.

Primary: Name _____ Phone _____ Email _____

Secondary: Name _____ Phone _____ Email _____

Please continue to SECTION FIVE

SECTION FIVE - CREDIT REFERENCES & PRIVACY AUTHORITY (MUST BE COMPLETED BY ALL APPLICANTS)

You acknowledge you have read our Privacy Policy Statement which is located on our website at <http://www.lefroyvalley.com/privacy.aspx>

1. I/We consent and agree that Lefroy Valley - Ebony Bay Pty Ltd may carry out all necessary credit checks for both Commercial and Consumer credit with any credit reference bureau as well as referees stated on the Credit Application Form.
2. I/We understand that it is the applicant's responsibility to advise Lefroy Valley - Ebony Bay Pty Ltd of any changes to the applicants details.
3. I/We consent and agree that Lefroy Valley - Ebony Bay Pty Ltd may obtain the above information from time to time for the purpose of reviewing and assessing credit worthiness.
4. I/We acknowledge that the above authorisations will continue to remain in full force and be effective until the credit facility is cancelled.
5. I/We agree in the event that the account remains outstanding in excess of 60 days Lefroy Valley - Ebony Bay Pty Ltd may report the default to any credit reporting agency.

Name (Please print) _____

Signature: _____ Dated: / /

Name (Please print) _____

Signature: _____ Dated: / /

Name (Please print) _____

Signature: _____ Dated: / /

I This written agreement authorises Lefroy Valley - Ebony Bay Pty Ltd to access my/our credit file with any preferred credit reporting agency.

I **Note:** Must be signed by all persons whose names appear in Section 2 and/or Section 3 of the Credit Application.

TRADE REFERENCES (Major suppliers with whom you are currently trading)

Company Name _____ Phone _____ Account No. _____

Email _____

Address _____ Suburb _____ Postcode _____

Company Name _____ Phone _____ Account No. _____

Email _____

Address _____ Suburb _____ Postcode _____

Company Name _____ Phone _____ Account No. _____

Email _____

Address _____ Suburb _____ Postcode _____

Please continue to SECTION SIX

APPLICATION FOR CREDIT



SECTION SIX - DECLARATION (MUST BE COMPLETED BY ALL APPLICANTS)

In the last 5 years has any Proprietor, Director or Manager of the Applicant been the subject of Bankruptcy proceedings or been associated as a Manager, Member, Director or Partner of a business which has failed or was the subject of a Scheme of Arrangement, Receivership, Voluntary Administration, Liquidation or to which an Administration or Controller has been appointed?

YES NO If yes, please provide date: _____

I/WE DECLARE THAT THE INFORMATION GIVEN ABOVE IS CORRECT AND I/WE HEREBY APPLY FOR CREDIT FACILITIES FOR THE PURPOSE OF GOODS AND SERVICE FROM LEFROY VALLEY - EBONY BAY PTY LTD. I/WE FURTHER DECLARE THAT I/WE HAVE READ, ACCEPTED AND ACKNOWLEDGED THE TERMS AND CONDITIONS OF SALE OF GOODS AND THE CONDITIONS FOR APPLICATION OF CREDIT.

SIGNATURE	NAME	POSITION (Director/Partner/Owner)	DATE
1. _____			
2. _____			
3. _____			

Please continue to SECTION SEVEN

SECTION SEVEN - GUARANTEE (MUST BE COMPLETED BY ALL APPLICANTS)

We, the GUARANTORS whose signatures appear below, have read the attached "Conditions for Application for Credit" and "Lefroy Valley Terms and Conditions of Sale of Goods" (hereunder T&C); and in particular indemnity clause (point 11 in T&C) which provides that we guarantee the obligations of the applicant. The undersigned agrees to unconditionally guarantee payment of all sums owed, pursuant to this agreement and further agrees to its terms regarding venue and jurisdiction. This is intended to be a continuing guarantee and shall not be revoked except by written notice to the accounts department of Lefroy Valley - Ebony Bay Pty Ltd.

SIGNATURE	NAME	POSITION (Director/Partner/Owner)	DATE
1. _____			
2. _____			
3. _____			

Please initial all pages to accept Terms & Conditions and mail entire document to your Lefroy Valley office, faxed copies will not be accepted.

Victoria
Lefroy Valley
P.O. Box 2665
Seaford, VIC. 3198
Ph: 03 8770 6666

Queensland
Lefroy Valley
P.O. Box 7506MC
Toowoomba QLD. 4352
Ph: 07 4632 0555

Western Australia
Lefroy Valley
P.O. Box 115
Westminster, WA. 6061
Ph: 08 9409 5400

OFFICE USE ONLY

Comments:

Credit Limit: _____ Account No.: _____

Approved by: _____ Signature: _____

Date: ____ / ____ / ____ Entered into JIWA: ____ / ____ / ____

CONDITIONS FOR APPLICATION OF CREDIT

1. The Applicant is not entitled to any credit facilities until the Applicant receives notice in writing from the Distributor stating that credit facilities have been granted.
2. Where the Applicant is a trustee
 - (a) the Applicant agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Distributor; and
 - (b) the Applicant warrants that it has full power and authority for the benefit purposes and objects of the trust to make this application on behalf of the trust and that the Applicant shall be bound by the terms of this Application and be liable for payment of all monies owing to the Distributor both personally and as trustee.
3. The Applicant declares that the above information is true and correct in every particular and is aware that the Distributor will rely upon the correctness of the representations and information contained herein in granting credit facilities and any transactions associated therewith or entered into pursuant thereto.
4. The Applicant (if a corporation) is solvent and able to pay its debts as they fall due and is not in liquidation or being wound up and no meeting is being called or resolution is being passed or order made for such purposes and no Receiver and Manager has been appointed in respect of the Applicant and the Applicant has not made any compromise or arrangement with its creditors or any class of them and no Application has been proposed or made to any Court for any order summoning a meeting of its creditors or any class of them.
5. The Distributor may exercise any power under the Privacy Act 1988 (Cth) relevant to assessing this credit application or collecting overdue payments from the Applicant.
6. If the Distributor considers it relevant to assessing the application for commercial credit or for collecting overdue payments, the Applicant agrees to the Distributor obtaining a credit report containing personal credit information about the Applicant in relation to commercial credit provided by the Distributor and in relation to collecting overdue payments.
7. The Applicant agrees that the Distributor may give to and seek from any credit providers names in this credit application and any credit providers that may be named in a credit report issued by a credit reporting agency information about the Applicant's credit arrangements.

The Applicant understands the information may be used to:

- (a) assess an application by the Applicant for credit;
 - (b) notify other credit providers of a default by the applicant;
 - (c) exchange information with other credit providers as to the status of this credit account where the Applicant is in default with other credit providers or;
 - (d) assess the Applicant's credit worthiness.
8. The Applicant has read and understood the Terms and Conditions of Sale of Goods ("see the Terms and Conditions") attached to this Credit Application and in consideration of the Distributor supplying the goods the Applicant shall comply with, observe and perform the Terms and Conditions in respect of the purchase of the goods from the Distributor.
 9. The Applicant agrees to indemnify the Distributor and keep the Distributor indemnified from and against and in respect of any claim, action, loss, cost, expense or liabilities suffered or incurred by the Distributor arising from or in any way related to the breach of any of the Terms and Conditions.
 10. The Applicant has had full and ample opportunity prior to the execution of this Credit Application to obtain independent legal advice as to the extent and implications of this Credit Application and executes this Credit Application accordingly.

Lefroy Valley Terms and Conditions of Sale of Goods

1. Placement of Orders

The Purchaser shall order the goods from the Distributor (“Goods”) in writing or verbally (“Order”) and each Order will specify:

- (a) the date of placement of the Order;
- (b) the Goods ordered under the Order;
- (c) a preferred delivery date for the Goods being not less than three days from the date of the placement of the Order (“Delivery Date”); and
- (d) the place of delivery of the Goods the subject of the Order.

2. Acceptance of Orders and Formation of Agreement

2.1 Any instructions received by the Distributor from the Purchaser for the supply of Goods and/or the Purchaser’s acceptance of Goods supplied by the Distributor shall constitute acceptance of these Terms and Conditions contained herein.

2.2 The Distributor may decline any Order, for any reason whatsoever, from the Purchaser by written or verbal notice to the Purchaser within three days of receipt of the Order by the Distributor.

2.3 Acceptance of an Order by the Distributor forms a legally binding contract governed by the Terms and Conditions as well as any other terms and conditions agreed between the Distributor and the Purchaser from time to time (if any) (“Agreement”).

2.4 In the event of any inconsistency between these terms and conditions and the terms and conditions of the Purchaser, these terms and conditions shall prevail to the extent necessary to resolve such inconsistency.

3. Delivery of Orders

The Distributor shall deliver each Order to the place of delivery specified in the Order by such mode as the Distributor shall determine. In the event of loss or damage to the Goods in transit, the Purchaser shall notify the Distributor in writing immediately of any loss or damage that is discovered and shall render the Distributor such assistance as may be necessary to successfully claim for recovery of the loss. Failure to do so will result in the Purchaser being liable for payment of the Goods.

4. Prices

4.1 Prices quoted are those ruling at the date of issue of quotation as determined by the Distributor and are based upon all charges affecting the cost of transport and delivery of the Goods ruling on the date the quotation is made and any alterations thereto either before acceptance of the Order or during the currency of the Order shall be to the Purchaser’s account.

4.2 All prices payable by the Purchaser shall be in Australian dollars. If the Goods are purchased outside Australia, the Australian dollar figure is to be determined based on the prevailing exchange rates as at the date of delivery of the Goods.

5. Payment of the invoice

5.1 All accounts are to be settled in full within 25 days of the date of the Distributor’s statement.

5.2 Should the Purchaser default in the payment of any monies due under these Terms and Conditions, then all monies due to the Distributor shall immediately become due and payable, and must be paid by the Purchaser within seven (7) days of the date of the default and the Distributor shall be entitled to charge interest at the rate of 15% per annum on all overdue accounts from the date of due payment until the date of actual payment.

5.3 Any expenses, costs or disbursements incurred by the Distributor in recovering any outstanding monies including debt collection, agency fees and solicitor’s costs (on full indemnity basis) shall be paid by the Purchaser.

5.4 The Distributor shall be entitled at any stage during the continuance of these Terms and Conditions to request such security or additional security as the Distributor shall in its discretion think fit and shall be entitled to withhold supply of any Goods or credit arrangements until such security or additional security is provided.

6. Personal Property Securities Act 2009 (Cth) (“PPSA”)

6.1 The Purchaser consents to the Distributor creating and maintaining a registration on the Register (in any required form) in relation to any security interest contemplated or created by the Agreement.

6.2 The Purchaser agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register. The Distributor reserves the right to register a financial statement or financial charge statement in respect of any security interest and you waive the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 6.1 or 6.2, in respect of the Goods.

6.3 The Purchaser undertakes to do any and all acts that are reasonably required by the Distributor so as to:

- (a) allow the Distributor to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of the Goods and its proceeds;
- (b) allow the Distributor to register a financing statement or financing charge statement;
- (c) ensure that the Distributor maintains its secured position under the PPSA;
- (d) not register a financing charge statement without the Distributor’s prior written consent; and

(e) not register or commit to the register of a financial statement or financing charge statement in respect of the Goods, in favour of third party, without the Distributor’s prior written consent.

6.4 The Distributor and Purchaser agree that no information (as defined in section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause may be waived by providing written notice to the Distributor authorising the disclosure of the above information to a specified party.

6.5 In the event that the Agreement is subject to Chapter 4 of the PPSA, the Distributor and Purchaser agree that, pursuant to section 115(1) of the PPSA, the Purchaser waives sections 95, 96, 118, 121 (4), 125, 130, 132 (3)(d), 134, 135, 142 and 143.

6.6 Additionally, in the event that chapter 4 of the PPSA applies to the Agreement, the Distributor and Purchaser agree that, pursuant to section 115(7) of the PPSA, the following provisions do not apply to the Agreement: sections 127, 129(2), 129 (3), 130 (1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137.

6.7 The Agreement (including clause 7 of these Terms and Conditions) is a security agreement for the purposes of the PPSA. For the avoidance of any doubt, collateral, for the purposes of section 20(2) of the PPSA includes, but is not limited to, Goods (as described in the Agreement) or Goods provided at any subsequent time.

6.8 The Distributor may apply amounts received in connection with the sale of the equipment to satisfy obligations secured by security interests contemplated or constituted by the Agreement at its absolute discretion.

6.9 The Purchaser agrees to notify the owner in writing of any change to its details as set out in the Agreement within 7 days of the date of any such change.

7. Title to Goods

7.1 The Distributor shall:

- (a) remain the sole and absolute owner of the Goods until the price for the Goods has been received in full by the Distributor from the Purchaser;
- (b) remain the sole and absolute owner of the Goods until the price for all other Goods supplied by the Distributor has been received in full by the Distributor from the Purchaser; and
- (c) subject to the provisions of the PPSA, be entitled, in addition to the right conferred by paragraph 7.2(b) of this paragraph 7, to retake possession of all Goods in the possession of the Purchaser which have been supplied by the Distributor sufficient to clear any outstanding indebtedness by the Purchaser to the Distributor under the terms of the Agreement and the Distributor shall not be required to distinguish between Goods which have been paid for and Goods which have not been paid for.

7.2 Subject to the provisions of the PPSA, until the Distributor has received the price of the Goods and all other Goods supplied by the Distributor in full:

- (a) the Purchaser shall be bailee of the Goods for the Distributor and shall store them upon its premises separately from its own Goods or those of any other person and shall store them in a manner enabling them to be readily identifiable as Goods of the Distributor;
- (b) the Purchaser grants the Distributor an irrevocable license to enter the Purchaser’s premises and retrieve the Goods;
- (c) the Purchaser shall not sell or dispose of any of the Goods or any interest in the Goods without the prior written consent of the Distributor.

7.3 If the Distributor consents in writing to the sale or disposal or if any sale or disposal is made in breach of paragraph 7.2 and notwithstanding such breach:

- (a) the Purchaser shall inform any person to whom it proposes to sell or dispose of the Goods or any interest in the Goods (“Acquirer”) of the Distributor’s interest;
- (b) any sale or disposal shall be made as agent (including as agent exceeding its authority, where appropriate) of the Distributor;
- (c) the Purchaser shall ensure that the terms of the sale or disposal to the Acquirer includes a term which is identical in substance to this paragraph 7;
- (d) notwithstanding that the payment of the price for the Goods would not otherwise have been due by the Purchaser, the Purchaser shall be obliged to pay the price for the Goods to the Distributor as soon as it receives payment from the Acquirer;
- (e) the Purchaser shall hold all its rights against the Acquirer on trust for the Distributor and, to the extent necessary to discharge all debts owing to the Distributor in respect of the supply of Goods or other Goods only, any proceeds it receives;
- (f) the Purchaser agrees that the Distributor shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Purchaser pays the full price for the Goods to the Distributor;
- (g) the Purchaser agrees that the Distributor shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Purchaser pays the full price to the Distributor for all other Goods supplied by the Distributor; and
- (h) the Purchaser shall, at the Distributor’s request, assign its claims against the Acquirer and agrees irrevocably to appoint the Distributor and each of its officers as its attorney to give effect to and complete that assignment.

7.4 Where:

- (a) the Purchaser makes a new object from the Goods, whether finished or not;
 - (b) the Purchaser mixes the Goods with other articles; or
 - (c) the Goods become part of the other product, the Purchaser agrees with the Distributor:
 - (d) that the ownership of the new object or the other article immediately passes to the Distributor, to the extent necessary to repay all moneys owing to the Distributor and to no greater extent; and
 - (e) until payment of all sums owing to the Distributor whether under this or any other contract, that the Purchaser shall hold the Goods as a fiduciary for the Distributor until payment of all sums owing to the Distributor whether under this or any other contract.
- 7.5 For the purposes of removing doubt and subject to the PPSA, the ownership of the new object or other Goods passes to the Distributor at the beginning of the single operation or event by which the product is converted into a new object, is mixed, commingled or becomes part of other Goods ("**New Goods**").
- 7.6 Without limiting the generality of clauses 7.6 and 7.7 of this paragraph 7, the Distributor and the Purchaser agree that where the Goods are seeds of any kind (e.g. carrots) then the resulting crop (whether or not ready for harvest) shall constitute "**New Goods**".
- 7.7 Where the Purchaser has not paid the Distributor in the manner required by these Terms and Conditions:
- (a) the Purchaser agrees with the Distributor to keep the New Goods as a fiduciary for the Distributor and, unless otherwise required by the Distributor, to store the New Goods in a manner that clearly shows the ownership of the Distributor;
 - (b) the Purchaser grants the Distributor a security interest
- 7.8 In the event of any part (including in that expression subclauses, phrases and individual words thereof) of this paragraph 7 being or becoming void or unenforceable (whether by reason, width of expression, non-registration under any relevant legislation, lack of notice to any relevant person or for any other reason whatsoever) that part shall be severed from this paragraph 7 and the validity and enforceability of all other parts of this paragraph 7 shall in no way be affected thereby.
- 7.9 Without limiting any other provisions of these Terms and Conditions:
- (a) where the Goods provided are seeds which are planted, cultivated and grown by the Purchaser into a crop (as defined in the PPSA) ("**Crop**"), the Purchaser grants the Distributor a security interest in that Crop in favour of the Distributor as security for payment of any unpaid moneys owed to the Distributor by the Purchaser under the Agreement ("**Crop Security Interest**"); and
 - (b) the Purchaser must do all things necessary and execute all documents necessary to enable the Distributor to register, perfect and maintain the Crop Security Interest with the Register in accordance with clause 6.3 of these Terms and Conditions.
- 8. Risk**
Risk in the Goods shall pass to the Purchaser upon delivery of the Goods to the Purchaser or collection of the Goods by the Purchaser, its agent or courier as the case may be.
- 9. Warranties and acknowledgments**
- 9.1 The Distributor warrants that all the Goods shall comply at the time of delivery with the current laws, regulations and specifications in force.
- 9.2 Subject to clause 9.1 of these Terms and Conditions, all warranties that might otherwise be given or deemed to be given by the Distributor are excluded from these Terms and Conditions to the fullest extent permitted by the law.
- 9.3 The Purchaser
- (a) warrants that it acquires any Goods or services supplied to it under these Terms and Conditions for the purposes of its business, and for the purposes of:
 - (i) re-supply;
 - (ii) using them up or transforming them in the course of a process of production or manufacture; or
 - (iii) repairing or treating other Goods or fixtures on land.
 - (b) hereby acknowledges that the Distributor relies on the warranty given in clause 9.3(a) in agreeing to supply Goods and services to the Purchaser;
 - (c) hereby acknowledges that information provided to the Purchaser by the Distributor is provided in good faith and for guidance only on the understanding that neither the Distributor, its agents, its employees, nor its contractors are responsible for the results of any actions taken on the basis of such information or on the basis of any error in or omission from such information; and
 - (d) hereby acknowledges that it has satisfied itself as to the suitability of any Goods or services ordered for its purposes prior to placing its Order with the Distributor.
- 10. Exclusion of Warranty**
Any liability of the Distributor to the Purchaser for:
- (a) any claim or action in respect of a breach of warranty given or deemed to be given by the Distributor in these Terms and Conditions or by any other means;
 - (b) any negligent, reckless, or wilful act or omission performed or made by the Distributor, its servants, contractors, agents, or associated entities;
 - (c) any breach of the term or conditions of these Terms and Conditions other than warranties referred to in clause 10(a);
 - (d) any unjust enrichment of the Distributor at the Purchaser's expense; and

- (e) any breach of any statutory, equitable, or common law duty not comprehended in clauses 10(a) to 10(d) of these Terms and Conditions, is excluded to the fullest extent permitted by law.

11. Indemnity

The Purchaser hereby indemnifies the Distributor from any liability, loss or damage (including but not limited to any liability or obligation to pay legal costs on a full indemnity basis) accruing to the Distributor from any claim or legal action in respect of:

- (a) any breach of any term, condition, or warranty (whether express or implied) of these Terms and Conditions; or
- (b) any negligent, reckless, or wilful act or omission performed or made by the Distributor, its servants, contractors, agents, or associated entities.

12. Limitation of liability

(a) To the extent permitted by the *Competition and Consumer Act 2010* (Cth) and relevant State legislation, the sole obligation of the Distributor under these terms and conditions shall be to use its best endeavours to provide the goods or to replace (at the Distributor's discretion) any part of the goods which is found to be defective and in no event shall the Distributor be liable for any other claims or damages including but not limited to, claims for negligent or misleading advice and damages or injury to any person, corporation or other entities.

(b) In the event that any goods supplied pursuant to these Terms and Conditions is supplied to the customer as a "Consumer" of goods or services within the meaning of that term in the *Competition and Consumer Act 2010* (Cth) and/or similar State legislation the consumer will have the benefit of certain non-excludable rights and remedies in respect of the goods and nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty right or remedy which pursuant to the *Competition and Consumer Act 2010* (Cth) or similar legislation is so conferred.

(c) However, if the goods are not ordinarily acquired for personal, domestic or household use or consumption pursuant to section 3 of the *Competition and Consumer Act 2010* (Cth) Schedule 2 and similar provisions of relevant state legislation the Distributor hereby limits its liability to payment of an amount equal to the cost of replacing the goods, or supplying equivalent goods, the cost of having the goods replaced or acquiring equivalent goods.

13. Purchaser's acknowledgments

The Purchaser acknowledges that:

- (a) the Purchaser shall not represent to the public or any consumer that the Distributor is the manufacturer of the Goods;
- (b) the Goods are supplied for the purpose of commercial production; and
- (c) the sale of the Goods is not a sale by sample.

14. Plant Variety Rights

The Purchaser acknowledges that seed may be subject to the *Plant Breeder's Rights Act 1994* (Cth) ("the Act") and the Purchaser shall in all circumstances comply with the Act and acknowledges that it has no plant breeder's rights or licenses in respect of such rights to the seed and the Purchaser agrees to defend, indemnify, protect and hold harmless the Distributor, its successors assigns and distributors for and against any claim arising by reason of contravention of the Act and infringement of plant breeder's rights and all claims for actual or implied infringement of any letters patent, trademarks, copyright, design, confidential information or similar protection whether then granted by the Commonwealth of Australia or any foreign State or the Common Law.

15. Restriction as to Use

The Purchaser covenants and agrees and shall procure that each of its Associated Persons does not use any seed or plant material provided by the Distributor to produce seed for sale or supply to other persons or for personal use.

16. Disease

The Purchaser acknowledges that diseases of plants produced by seeds can be transmitted by the wind, by insects, by animals or by humans and may be diseases originating in the seed, the plants or the soil. Although the Distributor believes the seed to be free from disease the Purchaser acknowledges that one of the criteria for determining the purchase price of seed is the limitation upon liability referred to above and the purchase price payable by the Purchaser would be much greater if the liability undertaken by the Distributor was not so limited.

17. Treatment of seed

In relation to seed that is specifically treated or tested, the Distributor assures the Purchaser that the treatment or testing has been carried out in the proper manner and that the seed conformed to the required standards and specifications before treatment as tested provided that any warranties, terms and conditions in relation to the performance of the treatment and the testing implied by custom, statutory or otherwise is hereby excluded to the fullest extent permitted by law.

18. Force majeure

Where a party is unable, wholly or in part by reason of an act of God, strike lockout or other interference with work, war declared, or undeclared, blockade, disturbance, lightning, fire, drought, earthquake, storm, flood, explosion, failure of crop grown by the Distributor or by any agent of the Distributor, Governmental or quasi-Governmental restraint, expropriation prohibition intervention direct or embargo, unavailability or delay in availability of equipment or transport, inability or delay in obtaining government or quasi-Governmental approvals consents permits licences authorities or allocations and any other cause whether of a kind specifically

set out above or otherwise which is not reasonably within the control of the party affected ("force majeure") to carry out any obligation under these Terms and Conditions and that party:

- (a) gives the other party prompt notice of that force majeure with reasonably full particulars thereof and in so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended so far as it is affected by force majeure during the continuance thereof provided that:
 - (i) an obligation to pay money is never excused by force majeure; and
 - (ii) the requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes or claims or demands by any Government on terms contrary to the wishes of the party affected.

19. Default

The Distributor may withdraw credit facilities to the Purchaser, with immediate effect by notice in writing to the Purchaser upon the occurrence of any one of the following events:

- (a) if the Purchaser has failed to pay the purchase price of the Goods within the period specified from time to time by the Distributor;
- (b) if the Purchaser has entered into any composition or arrangement with its creditors, has appointed a controlling trustee pursuant Part X of the Bankruptcy Act 1966, has resolved to appoint an administrator or is obliged to execute a deed of company arrangement pursuant to Part 5.3A of the Corporations Act 2001 (Cth), or has a receiver appointed over any of its assets, has filed for its own bankruptcy, or is the subject of any resolution or petition for winding up or orders for the sequestration of its estate in bankruptcy, or judicial management (other than for the purposes of amalgamation or reconstruction);
- (c) if the Purchaser has breached of any term of these Terms and Conditions and fails to rectify such breach (if capable of rectification) within seven days of service of a notice in writing calling upon it to rectify such breach; or
- (d) if the Purchaser purports to assign the benefit of these Terms and Conditions or credit facilities without prior consent in writing of the other party.

Any termination of these Terms and Conditions shall be without prejudice to any rights which either party may have against the other arising out of or in connection with these Terms and Conditions.

20. Notice

Notice, approval consent or other communication given, sent or made to a party under these Terms and Conditions must be in writing and left by 5pm on a business day or sent by certified prepaid post, facsimile to the facsimile number of the party as entered on the face of these Terms And Conditions or to such other address, facsimile number as the party from time to time may notify to the other party for the purpose of this clause. Proof of dispatch is proof of receipt:

- (a) in the case of a letter, on the third business day after posting; and
- (b) in the case of a facsimile transmission, of a production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purposes of this clause.

21. Place of Agreement

The contract for the sale of the Goods arising from these Terms and Conditions is made in the State or Country where the company issuing the invoice for the Goods is registered and the parties agree to submit all disputes arising between them to the Courts of such State or Country and any Court competent to hear an appeal therefrom.

22. Whole Agreement

These Terms and Conditions and any documents referred to herein contain the whole of the agreement between the parties and no understanding arrangement or provision not expressly set forth herein shall be binding upon the parties.

23. Amendment

No variation, modification or alteration of any of the terms of these Terms and Conditions shall be of any effect unless in writing and signed by each of the parties.

24. Enforcement

The failure of either party at any time to enforce any of the provisions of these Terms and Conditions or to exercise any right shall not constitute a waiver of the same or affect the party's right thereafter to enforce the same.

25. Severance

If any provision of these terms and conditions is deemed to be unlawful or unenforceable. Such provisions shall be severed from these Terms and Conditions and all other provisions hereof shall remain in force.

26. Assignment

No party may assign the burdens or benefits of this Agreement without the consent of the other party.

27. Goods and Services Tax

27.1 Unless the contrary intention appears, in this clause:

- (a) "GST" means a tax levied on the value of any Goods supplied by the Distributor or any other money payable to the Distributor under these terms and conditions; and
- (b) "GST Law" means the same as in the *A New Tax System (Goods and*

Services Tax) Act 1999 (Cth).

- 27.2 The Purchaser must pay to the Distributor the amount of any GST the Distributor pays or is liable to pay on the Goods.
- 27.3 The Purchaser must pay to the Distributor the amount of the GST that the Purchaser is liable to pay at the same time and in the same manner as the Purchaser is obliged to pay for the Goods at the time the Purchaser is obliged to pay that amount.
- 27.4 The price for the good, fixed or determined, under these Terms and Conditions does not include GST on that good and the Purchaser must pay the amount of GST in addition to the price for that good, fixed or determined, under these Terms and Conditions.
- 27.5 The Distributor shall provide to the Purchaser such particulars as are required by the GST Law in order that the Purchaser may obtain a credit for the amount of GST payable on the Goods.

28. No partnership

Nothing contained in these Terms and Conditions shall create a partnership between the Distributor and the Purchaser.

29. Definitions and Interpretation

- 29.1 In these Terms and Conditions unless the context otherwise requires the following expressions shall have the following meanings:
 - (a) "Associated Persons" means, in relation to a corporation, any related corporation director or substantial shareholder pursuant to the Corporations Act 2001 (Cth) and in relation to a natural person, any spouse or blood or adopted relative of that person or that person's spouse.
 - (b) "Distributor" means Ebony Bay Pty Ltd (ACN 055 460 449) as trustee for the Grower Solutions Trust trading as Lefroy Valley and any of its agents, distributors, or related entity or related body corporate (as those terms are used in the *Corporations Act 2001 (Cth)*) from whom the Purchaser may order Goods or services.
 - (c) "Goods" means the seed, plant material, chemical, fertiliser, or any other item sold by the Distributor to the Purchaser as specified on official invoices and statements.
 - (d) "Purchaser" means the purchaser ordering and taking delivery of the goods and includes all or any one or more of them jointly and severally and each of their personal representatives successors in title transferees and permitted assigns.
 - (e) "Register" has the meaning given in section 147 of the PPSA.
 - (f) "Terms and Conditions" means the Lefroy Valley Terms and Conditions of Sale of Goods as amended or varied from time to time.
- 29.2 Words importing the singular number or plural number shall include the plural number and singular number respectively.
- 29.3 Words importing any gender shall include any other gender or genders.
- 29.4 Words importing persons shall include corporations.
- 29.5 References to statutes include all amendments thereto and statutes passed in substitution therefore or re-enactments thereof respectively.
- 29.6 The headings used herein are for ease of reference only and shall not affect the construction or interpretation of these Terms and Conditions.
- 29.7 Any covenant or agreement on the part of or in favour of any two or more persons shall bind them or be in favour of them both jointly and severally.
- 29.8 These terms and conditions shall be interpreted in accordance with the laws of the State in which the goods are purchased.