

Website and Knowledge Base Terms of Use

POLICY OWNER: New Zealand Marketing Manager - PGG Wrightson Seeds and Grain

DATE OF LAST APPROVAL: July 2020

Website and Knowledge Base Terms of Use

APPLICATION OF THESE TERMS AND CONDITIONS

- 1.1 These terms and conditions ("Terms"), in addition to our [Privacy Policy](#) and any specific terms posted within our Websites, govern your use of our Websites and Knowledge Base Products.
- 1.2 Our Websites and Knowledge Base Products are intended to be accessed and used by those in trade in New Zealand only.
- 1.3 By accessing or using our Websites and/or Knowledge Base Products, you agree to these Terms. If you do not agree to these Terms, you must not access or use any of our Websites or Knowledge Base Products.
- 1.4 If you are an organisation, you agree that you will be responsible for any breach of these Terms by any Individual.

USING OUR WEBSITES

- 2.1 You assume all responsibility and risk with respect to your use of our Websites.
- 2.2 We do not warrant, guarantee or represent that our Websites will be:
 - (a) available or accessible at any time or location;
 - (b) timely, secure, uninterrupted or free from disruption;
 - (c) compatible with any operating system, IT environment, platform, operating system, hardware, software or device; or
 - (d) free from viruses, worms, easter eggs or other harmful elements.
- 2.3 We are under no obligation to generate any data, information, content, or other outputs from your use of our Websites (including from any Tools).
- 2.4 Unless otherwise expressly agreed in writing, we are under no obligation to accept any order for Knowledge Base Products.
- 2.5 We may at any time and without notice modify, suspend, discontinue, or withdraw part or all of our Websites and/or any or all Knowledge Base Products without liability to you.
- 2.6 Unless you opt-out, if you use or access any Knowledge Base Products that require you to provide us with any contact details, you agree to receive communications from us, including via email and text. Such communications may include operational communications concerning your use of the Knowledge Base Products, updates concerning new and existing Knowledge Base Products, and promotions.

ONLINE CONTENT AND KNOWLEDGE BASE PRODUCTS

- 3.1 You must be in trade to access or use any Knowledge Base Products or Tools. You warrant that if you are using or accessing any Knowledge Base Products or Tools, you are doing so in trade for trade, commercial or business purposes or use.
- 3.2 Our Online Content and Knowledge Base Products:
 - (a) are provided on an "as is" and "as available" basis;
 - (b) are provided for information purposes only (and you should neither act, nor refrain from action, on the basis of any such information);
 - (c) do not constitute advice or recommendations;

- (d) cannot be relied on and are not a substitute for your own enquiries and professional advice; and
- (e) are used at your own risk.

3.3 We make no guarantee, representation or warranty that any Online Content or Knowledge Base Products is correct, complete, accurate, up-to-date, or fit for any purpose or of a particular quality.

3.4 You are solely responsible for the accuracy or completeness of any inputs you enter into any Tool, or for the interpretation of any outputs you obtain from any Tool, even if we review these or provide you with feedback or guidance on your use of any Tool. We do not verify, nor do we provide any warnings with respect to, any data inputted into any Tool or to any of its outputs. We may include a disclaimer on any output generated by our Websites, which you must not remove, amend or obscure.

3.5 To the maximum extent permitted by law, if you are in trade:

- (a) all implied or statutory warranties, guarantees, conditions, and representations in respect of all Online Content and Knowledge Base Products, including as to quality, fitness, reliability, timeliness, merchantability, or suitability for any particular purpose or otherwise, are excluded; and

- (b) you agree that it is fair and reasonable that any consumer protection legislation does not apply, and, accordingly, to the maximum extent permitted by law, no consumer protection legislation applies to any Online Content or Knowledge Base Products (including the Fair Trading Act 1986 and the Consumer Guarantees Act 1993).

3.6 For clarity, this clause 3 applies:

- (a) to all Tools and any output generated by any Tools; and
- (b) notwithstanding any description we give to any Online Content or Knowledge Base Products (e.g. that particular content is described as "advice" or a "recommendation").

INTERACTIVE AREAS AND USER CONTENT

4.1 You are solely responsible for your use of any Interactive Areas and you access them at your own risk.

4.2 You agree that you will not submit any User Content that:

- (a) violates or infringes in any way upon the rights of others, including any statements which may defame, harass, or threaten others;
- (b) is false, misleading or inaccurate;
- (c) is offensive or abusive;
- (d) violates any law;
- (e) is protected by copyright, trademark, trade secret, or other right without the express permission of the owner of such copyright, trademark, trade secret, or other right; and
- (f) contains any unsolicited or unauthorised advertising or promotional materials.

4.3 You acknowledge and agree that any User Content you upload will be publically available.

4.4 We may, but have no obligation to, monitor any User Content. We do not verify or control User Content, and are not responsible for its accuracy or completeness.

4.5 You must indemnify us for any loss or damage we incur resulting from any User Content you upload (even if we reviewed, monitored or commented on that User Content).

4.6 We automatically own and may commercially exploit all User Content

without payment to you or any third parties.

FEES AND PAYMENT TERMS

- 5.1 We may charge a fee for you to use or access any of the Knowledge Base Products. Any such fees will be set out on our Websites or as agreed between us prior to you purchasing any Knowledge Base Products.
- 5.2 We may charge a non-refundable deposit or require an upfront payment before agreeing to provide any Knowledge Base Products to you.
- 5.3 Payment terms are governed by our [Terms of Trade](#) if you have an account with us unless we require an upfront payment prior to the relevant Knowledge Base Product being delivered. If you do not have an account, we will provide payment instructions when you make your order. We may require an upfront payment before the Knowledge Base Product is provided.
- 5.4 Unless stated otherwise, fees are exclusive of GST and any disbursements (for example, any venue, accommodation, travel, catering, or postage costs).

PERMISSION TO ACCESS RESTRICTED CONTENT

- 6.1 You will need to provide us with certain information about yourself and, if you are an organisation or seeking permission on behalf of others, any Individuals to access Restricted Content and/or attend Seminars. We may decline any request, or withdraw any consent given, to you or any Individual to access Restricted Content and/or attend Seminars.
- 6.2 If we grant you permission to access Restricted Content, we will provide you with login details to access Restricted Content and may at our discretion provide you with an account in accordance with our [Terms of Trade](#) (if you do not already have one). You will need to be logged-in to access Restricted Content.
- 6.3 You must ensure that your login details are kept confidential at all times. You are responsible for any breach of these Terms by any person using your login details.

BOOKING SEMINARS

- 7.1 A list of Seminars will be made available from time-to-time on our Websites, together with any relevant details, such as how to book or access the Seminar, cost (if any), and any applicable dates.
- 7.2 You may request that we provide a Seminar that is bespoke or customised to you. If we agree to such a request, the description, cost (if any) and any other terms (in addition to these Terms) will be as agreed between us.
- 7.3 Following receipt by us of your order for a Seminar, we will contact you confirming any payment instructions and any relevant information, such as time and place or joining instructions.
- 7.4 You must comply with all health and safety rules and regulations and any other reasonable security requirements that apply to the premises at which any In-Person Seminars are provided.

CANCELLATION POLICY

- 8.1 We will not refund any payment or reverse any amount that has been invoiced for any:
 - (a) deposit;
 - (b) disbursements incurred by us (except to the extent we obtain any refund in respect of those disbursements);
 - (c) Seminar Materials, Online Seminars or Restricted Content that has already been provided by us or accessed or downloaded by you; or
 - (d) In-Person Seminar or Online Seminar that is given live, unless notice in writing of cancellation is received by us at least 10

working days prior to the date of the In-Person Seminar or live Online Seminar, in which case we will refund any payment made or reverse any amount that has been invoiced in respect of that Seminar (which, for clarity, excludes any amounts paid or invoiced in respect of (a), (b) and (c) of this clause 8.1).

- 8.2 You may request a deferral to the date of a Seminar in which case we will consider on a case-by-case basis holding any payment in credit.
- 8.3 From time to time we may need to reschedule or cancel a Seminar. This may be due to, for example, trainer availability (e.g. sickness or bereavement), venue availability or low course attendance. We will arrange a new time that is mutually suitable or, if no agreement is reached, we will refund any payments.

THIRD PARTY LINKS, PRODUCTS AND SERVICES

- 9.1 We may provide access or links to, promotional information about, or advertisements of third party websites, products or services. Any such access, promotion or advertisements is provided for convenience only and any use or reliance by you on such third party websites, products or services is at your sole risk. We do not control, review or endorse, or make any representation with respect to any, third party websites, products, services or advertisements, and we have no liability in respect of your dealings with third parties.
- 9.2 If you wish to provide a link to any of our Websites, you must obtain our written consent before doing so.

NO LIABILITY

- 10.1 In no circumstances (and regardless of the legal basis of any claim, including in tort (including negligence), contract, equity or any other legal principle or theory), will we be liable for any loss or damage of any kind, including direct, indirect, consequential or special loss or damage, in connection with or arising from accessing or using any Websites, Online Content or Knowledge Base Products, including, but not limited to, compensatory, direct, consequential, incidental, indirect, special or punitive damages, loss of anticipated profits, loss of revenue, loss of goodwill, loss of data, business interruption, even if we have been advised of or should have known of the possibility of such damages or loss.
- 10.2 You must pay us any losses, damages, costs and expenses (including lawyers' fees) we incur or suffer as a result of any breach by you, any Individuals, or any person using your login details, of these Terms.
- 10.3 We reserve the right to assume the exclusive defence and control of any demand, claim or action by a third party against you arising hereunder or in connection with any Knowledge Base Products. You agree to provide us with prompt notice of any such claim and fully cooperate with us in any defence by us of any such demand, claim, action, settlement or compromise negotiations, as requested by us.

INTELLECTUAL PROPERTY RIGHTS

- 11.1 You agree that:
 - (a) we own, or hold rights to, all Intellectual Property Rights;
 - (b) you have no interest in or rights to any Intellectual Property Rights and you will not assert any such interests or rights;
 - (c) any new Knowledge Base Product or Online Content, or enhancement, adaptation, change, modification or improvement in or to any of our Knowledge Base Products or Online Content, and the Intellectual Property Rights in any such new Knowledge Base Product or Online Content or enhancement, adaptation, change, modification or improvement in or to any Knowledge Base Product or Online Content:
 - (i) will immediately on creation, vest solely and absolutely in us without payment to you or any third party;
 - (ii) may be re-used, republished, adapted or otherwise commercially exploited by us, without payment to you or any third party and irrespective of whether such new Knowledge Base Product or Online

Content or enhancement, adaptation, change, modification or improvement in or to any Knowledge Base Product or Online Content was created, customised, enhanced, adapted, modified or improved solely for you and/or was paid for by you;

- (d) you must not (and not allow any third party to) without our (and any applicable third party's) written permission:
- (i) copy, reproduce, modify, adapt, transfer, reproduce, re-publish, prepare derivative works based upon, licence, assign or sell any Knowledge Base Product or Online Content;
 - (ii) broadcast, post, transmit, distribute, or stream to any person beyond your organisation any of the Seminars;
 - (iii) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source file content of any Knowledge Base Product or our Websites; or
 - (iv) remove, modify or obscure any copyright, trademark or other proprietary notices from any portion of the Knowledge Base Products; and
- (e) you must act at all times in a manner consistent with this clause 11 and will not do any act which would put in issue the ownership of the Intellectual Property Rights or which would damage or prejudice our reputation or goodwill.

11.2 We automatically own and may commercially exploit all inputs you enter into, and all resulting outputs from, any Tool without payment to you or any third parties.

11.3 In addition to any other rights or remedies which we may be entitled under these Terms or otherwise at law, you agree that damages would be an insufficient remedy for a breach of this clause 11 and you will consent to urgent injunctive or other equitable relief for any breach by you of this clause 11.

11.4 We grant you a limited, revocable, non-exclusive, non-sublicensable license to view or browse any Online Seminar and Restricted Content for the agreed number of viewers or users and print or copy pages (subject to fair dealing) for your own internal training purposes (subject to the payment of any applicable fee and your continued compliance with these Terms). We may revoke this licence at any time and without reason and require you to delete any copies of Online Seminars and Restricted Content.

CONFIDENTIALITY

12.1 You must always keep our Confidential Information confidential and secure, and not disclose, exploit or otherwise misuse, any Confidential Information, except to the extent:

- (a) strictly necessary for the purpose of obtaining the educational benefit intended from our Knowledge Base Products;
- (b) it is, or becomes, public without any breach by you of this clause 12; or
- (c) we consent in writing to such disclosure or use.

12.2 You must delete and destroy all Confidential Information in your possession or control:

- (a) once that Confidential Information is no longer strictly necessary for the purpose of obtaining the educational benefit intended from our Knowledge Base Products; or
- (b) if we so request.

PRIVACY

13.1 The nature of the Knowledge Base Products provided by us means that we will obtain, use and disclose certain information about you and any Individuals. We will store this information and use it to contact you,

provide you with details of the Knowledge Base Products you have purchased and otherwise as required during the normal provision of the Knowledge Base Products, to identify whether you are using our Knowledge Base Products, assist with the provision of Knowledge Base Products, for promotional and marketing purposes, and to ensure that you have access to relevant Knowledge Base Products. In addition, you also agree that our [Privacy Policy](#) (displayed separately on our Websites) governs our use of the personal information we receive about you and any Individuals, in addition to our rights set out in these Terms.

13.2 If you are an organisation or person acting on behalf of others, you warrant that you have obtained the permission of all Individuals for us to obtain and use those Individuals' information in accordance with the [Privacy Policy](#) and these Terms.

GENERAL

14.1 *Prices*: unless expressly provided otherwise, all prices on our Websites are quoted in New Zealand dollars and exclude GST and disbursements.

14.2 *Severability*: if any provision or part of any provision of these Terms is found to be invalid, unenforceable or in conflict with the law (including with respect to any exclusion or limitation on remedies, damages or liability), that part is replaced with a provision which, as far as legally possible, accomplishes the original purpose of that part. The remaining terms will continue to be binding.

14.3 *New Zealand law applies*: these Terms are governed by and construed in accordance with the laws of New Zealand. You submit to the non-exclusive jurisdiction of the Courts of New Zealand.

14.4 *Force Majeure*: The following provisions apply on the occurrence of a Force Majeure Event:

- (a) Non-performance by you or us of any of our or your respective obligations (other than to pay money) under these Terms will be excused during the time and to the extent that such performance is prevented, wholly or in part, by a Force Majeure Event.
- (b) The party claiming the benefit of this clause will promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under these Terms and the likely duration of such non-performance. In the meantime such party will take all reasonable steps to remedy or abate the Force Majeure Event.
- (c) Performance of any obligation affected by a Force Majeure Event will be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure Event.

14.5 *No agency or partnership*: nothing in these Terms evidences or will be deemed to constitute a partnership or joint venture relationship between you and us.

14.6 *No Waiver*: a failure, delay or indulgence by us in exercising any power or right will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right will not preclude further exercises of that power or right or the exercise of any other power or right.

14.7 *Updates to Terms*: We may update these Terms at any time without prior notice. You and any Individuals agree to be bound by the most recent Terms published on our Websites that apply when you access or use any of our Websites or Knowledge Base Products. We strongly recommend that you read these Terms every time you access or use any of our Websites or Knowledge Base Products.

DEFINITIONS

15.1 In these Terms:

- (a) "Confidential Information" means any information identified as, or would reasonably be expected to be, proprietary, confidential or commercially sensitive to us, whether that information is provided in-person or online, including in written, graphic, recorded, machine readable or other form and, without limiting the foregoing, includes any information directly or indirectly concerning, or related to, our affairs, business, finances, customers, assets, prices, transactions or trade secrets.

- (b) "Force Majeure Event" means any event beyond a party's control and includes, but is not limited to, unavailability of any presenter due to ill health, bereavement or other emergency, Government edict, order or regulation, any restrictions on gathering and movement, natural or man-made disasters, flight delays or cancellations, failure of any user's hardware or software, internet connection loss, drop out or quality deterioration or temporary unavailability of our Websites.
- (c) "Individuals", if you are an organisation or acting on behalf of others, means those individuals: under your management or control; and/or you are acting on behalf of.
- (d) "In-Person Seminar" means any in-person presentation or training session that we provide, whether at our, your, or a third party's premises.
- (e) "Intellectual Property Rights" means all intellectual and industrial property rights and interests and other proprietary right or form of intellectual property (including common law rights and interests and whether registration can and has been granted or not) that we own, or hold rights to, including (but is not limited to):
- (i) all rights to, and any interests in, all brands, logos, formulae, techniques, know-how, methods, recipes, plans, data, drawings, specifications, characteristics, designs, inventions, programmes, concept, discoveries, improvements, experience, trade secrets, copyright, patents and trademarks, Confidential Information, technical information, licenses or similar user rights in respect of any such rights or interests anywhere in the world;
 - (ii) all Online Content;
 - (iii) the software and architecture forming part of our Website and Knowledge Base Products; and
 - (iv) all Knowledge Base Products.
- (f) "Interactive Areas" means those parts of our Websites where you and third parties can upload or post any User Content.
- (g) "Knowledge Base" means our online repository of information, including Online Seminars, Restricted Content, resources, articles, guidance, data, Tools, Q&A and Interactive Areas, that are accessible at <https://knowledgebase.pggwrightsonseeds.com>.
- (h) "Knowledge Base Products" means Seminars, Seminar Materials and Restricted Content.
- (i) "Online Content" means all information, data, articles, commentary, graphics, resources, content, Tools, reports, outputs, Online Seminars, and materials on our Websites (including Knowledge Base Content) or generated from or produced by our Websites (including from any Tools).
- (j) "Online Seminar" means any seminar, webinar, video, course or podcast, whether posted or provided to you online or remotely via audio-visual facilities (e.g. Skype, Zoom or other video-conferencing technology).
- (k) "Restricted Content" means any Online Content that requires login access.
- (l) "Seminar Materials" means any information provided by us to accompany any Seminar, whether in hardcopy or electronic form.
- (m) "Seminars" means In-Person Seminars and Online Seminars.
- (n) "Tool" includes any tool, function, calculator, or feature of our Websites that produces an output and includes, without limitation, any tool that produces: (a) an estimate (e.g. of costs or crop yield, value or maturity); (b) a recommendation (e.g. of the type, timing, location, or quantity of inputs to be applied; or of the kind or sequence of crops to be grown); and (c) an evaluation (e.g. of soil type and conditions or crop health or quality).
- (o) "User Content" means any content which you or a third party posts on any of our Interactive Areas, and includes comments, videos, photos, messages, and other materials or items.
- (p) "we", "our" and "us" means PGG Wrightson Seeds Limited and each of its related companies, and their directors, officers and employees.
- (q) "Websites" includes: <https://www.pggwrightsonseeds.com/>; Knowledge Base ; <https://www.pggwrightsonturf.co.nz/>; <https://www.agricom.co.nz/>; any other website we may operate from time-to-time; and any posts we make, or pages we operate, on any third party sites, including Facebook, Twitter, Instagram, LinkedIn, YouTube and any other social media platform.
- (r) "you", and "your" means the person who accesses or uses our Websites and/or Knowledge Base Products and includes any Individuals where you are an organisation or person acting on behalf of others.