

InterGrain Industry Standard Seed License & Royalty Agreement

This Agreement contains legal obligations please read carefully



BREEDING SOLUTIONS

It is agreed

1. Meaning of Words

1.1 The meaning of words starting with a capital letter that are used in this Contract is set out in Schedule 1.

2. Grant of Licence

2.1 In return for you paying the EPR we grant you a nonexclusive licence for the Permitted Use to:

- (1) produce or reproduce the Seed to grow Grain;
- (2) grow more Seed on your own farm; and
- (3) Sell Grain.

3. What you cannot do

3.1 You may do anything allowed in this Contract

(including the Schedules) but you must not Sell or otherwise dispose of Grain as Seed in breach of our rights under the PBR Act.

3.2 If in the course of exercising your rights under this

Contract an Essentially Derived variety of any Licensed

Variety is created, you acknowledge that we are entitled to claim ownership of PBR in that Essentially Derived variety in accordance with the PBR Act.

4. Payments

4.1 You must pay us or our EPR Collectors the EPR for all Grain other than Farm Saved Seed in accordance with Schedule 2.

4.2 You authorise the EPR Collector to make all deductions necessary to enable the EPR Collector to pay the EPR to us.

5. Your Obligations

5.1 You must:

(1) Make sure that anything you do under this

Contract complies with all applicable laws;

(2) If we have authorised you to Sell Grain for further Propagation, promptly notify us if you become aware of any unauthorised propagation, production, sale or use of that Grain; and

(3) if you plan to sell any property on which Seed is grown:

(a) notify us and provide details of the purchaser;

(b) make sure that it is a condition of sale that the purchaser takes over your obligations under this Contract; and

(c) pay or have paid all EPRs due on any Grain that is on the property at the date of sale.

6. Records

6.1 You must:

(1) keep records in sufficient detail to enable the EPR

to be easily and accurately determined;

(2) within 30 days after receiving a request from us make those records available to us or an auditor appointed by us;

(3) pay our costs of any audit that shows you have underpaid us by more than 5% and make up the shortfall; and

(4) keep the records for at least 7 years from the date you buy Seed.

6.2 If any audit shows that you have overpaid us by more than 5% we will pay the costs of the audit and credit the overpayment against future payments.

7. Reporting

7.1 At the same time as you make payments in accordance with this Contract you agree to provide reports containing the following information:

(1) an accurate description of Licensed Varieties grown;

(2) quantities of Grain produced and/or Sold;

(3) persons to whom Grain is Sold and details of the varieties and quantities Sold to each such person; and

(4) varieties and quantities of Farm Saved Seed.

7.2 In addition, you agree to provide any reports described in Schedule 2.

7.3 You agree that:

(1) any Authorised Distributors may pass on all details of each purchase to us; and

(2) any entity that stores, warehouses or Sells Grain that you produce may pass on Details to us.

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8. Promises and Exclusions

8.1 We promise that:

- (1) we have all rights necessary to grant you the licence of the Licensed Varieties; and
- (2) the Seed you buy will be free from obligations to anyone else unless we have told you about those obligations.

8.2 Except as provided in clause 8.1 we exclude all terms, conditions and promises implied by custom, the general law or statute except any promises that cannot be excluded by law.

8.3 Our liability to you for breach of any promise that cannot be excluded is limited, at our option, to replacing the Seed or refunding the price you paid for the Seed.

9. Liability

9.1 You:

- (1) acknowledge that you Use the Licensed Varieties at your own risk;
- (2) indemnify us against all Loss incurred by us and resulting from your Use of the Seed or breach of this Contract.

9.2 If we contribute to any Loss which we have asked you to pay under clause 9.1, then you don't have to pay us for the portion of the Loss that we contributed to.

9.3 We exclude all liability for any special, indirect or consequential damages arising out of your Use of the Licensed Varieties, the Seed or Grain.

10. Dispute Resolution

10.1 Any dispute or difference arising out of or in connection with this Contract will be submitted to an expert in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules.

11. Term

11.1 This Contract takes effect from the date on which you open the bag in which the seed was purchased and continues until PBR for the variety of Seed lapses.

12. End of Contract

12.1 Either of us may end this Contract immediately by giving notice to the other if the other:

- (1) breaches any provision of this Contract and fails to fix the breach within 30 days after receiving notice asking it to do so; or
- (2) breaches a provision of this Contract where that breach cannot be fixed.

12.2 We may end this Contract immediately by giving notice to you if you are unable to pay any of your debts as and when they become due

12.3 Either of us may end this Contract as it applies to a particular Licensed Variety where we are not the owner of PBR in a Licensed Variety and we lose the right to grant the Licence.

13. After End of Contract

13.1 After the end of this Contract:

- (1) the Licence ends;
- (2) you must pay the EPR Collector or us amounts outstanding at the date of termination;
- (3) except as provided under clause 13.1(4), you must promptly Sell or destroy all Grain or Seed in your possession or control and pay any applicable EPR;
- (4) you may grow out any crop planted at the date of termination and Sell or Consume the Grain from that crop and must pay EPR on that Grain, but must not plant any new crops;
- (5) the following clauses continue: clauses 6 (Records), 7 (Warranties and Exclusions), 9 (Liability) and this clause; and
- (6) accrued rights and remedies are not affected.

14. Notices

14.1 Any notices given under this Contract must be in writing, addressed to the contact person specified in Schedule 2.

14.2 A notice given in accordance with this clause will be deemed received:

- (1) if left at the recipient's address, on the date of delivery;
- (2) if sent by prepaid post, 10 days after the date of posting unless it is in fact received earlier, in which case, on the date of receipt; and
- (3) if sent by fax, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice.

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15. Waiver

15.1 The failure of either of us at any time to insist on performance by the other of any obligation under this Contract is not a waiver of any right to claim damages for breach of that obligation unless we acknowledge in writing that the failure is a waiver.

16. Amendment

16.1 We may change the terms of this Contract by giving you at least 30 days notice.

16.2 If we change EPR rates we must notify you by October 1st in order for the change to take effect in the following Financial Year.

17. Severability

17.1 If part or all of any clause of this Contract is illegal or unenforceable it will be severed from this Contract and will not affect the continued operation of the remaining provisions.

18. Assignment

18.1 Except to the extent necessary to comply with clause

5.1(5)(b), you must not assign or attempt to assign any obligation, or otherwise transfer any right arising out of this Contract, without our written consent.

19. Entire Contract

19.1 This Contract and schedules records the entire

Contract between each of us and supersedes all earlier agreements and representations by either of us.

20. Governing Law

20.1 This Contract will be governed by the Governing Law, and the Courts of that State or Territory will have jurisdiction over all matters arising under it

Schedule 1 Glossary

In this contract:

(1) **Authorised Distributor** means us, or a distributor authorised by us to sell Seed.

(2) **Consume** means to use Seed so that it cannot be further propagated.

(3) **Contract** means this agreement together with its schedules.

(4) **Details** means Licensed Varieties, quantities of Grain purchased and/or Sold, details of Seller or purchaser, and your name and address.

(5) **End Point Royalty** or **EPR** means the end point royalty for each Licensed Variety that you must pay for every tonne of Grain Sold or Consumed (other than Farm Saved Seed) as set out in Schedule 2.

(6) **EPR Collector** means us or any third party with whom we have entered into an EPR collection arrangement.

(7) **Essentially Derived** has the meaning given to it in the PBR Act, namely, a Plant Variety is taken to be an essentially derived variety of another Plant Variety if:

(a) it is predominantly derived from that other Plant Variety; and

(b) it retains the essential characteristics that result from the genotype or combination of genotypes of that other variety; and

(c) it does not exhibit any important (as distinct from cosmetic) features that differentiate it from that other variety.

(8) **Farm Saved Seed** means Seed retained as Propagating Material for the purposes of subsequent planting by you in order to produce further Grain for the Permitted Use.

(9) **Financial Year** means a 12 month period ending on 30 June.

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(10) **Grain** means harvested material from the Licensed Varieties.

(11) **Licence** means the licence granted under clause 2.

(12) **Licensed Varieties** means any varieties of Seed that you purchase from us or any Authorised Distributor which are subject to protection under the PBR Act.

(13) **Loss** means all liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis and whether incurred by or awarded against us).

(14) **PBR** means plant breeder's rights as defined in the PBR Act.

(15) **PBR Act** means the Plant Breeder's Rights Act 1994 (Cth) as amended from time to time.

(16) **Permitted Use for Grain of the Licensed Varieties** means Use for:

- (a) the production of Grain for which payment of EPR is required under the terms of this licence; or
- (b) the reproduction of Seed as permitted by this licence for Farm Saved Seed.

(17) **Plant** has the meaning given to it in the PBR Act, namely it includes all fungi and algae but does not include bacteria, bacteroids, mycoplasmas, viruses, viroids and bacteriophages.

(18) **Plant Variety** has the meaning given to it in the PBR Act, namely a Plant grouping (including a hybrid):

- (a) that is contained within a single botanical taxon of the lowest known rank; and
- (b) that can be defined by the expression of the characteristics resulting from the genotype of each individual within that Plant grouping; and
- (c) that can be distinguished from any other Plant grouping by the expression of at least one of those characteristics; and
- (d) that can be considered as a functional unit because of its suitability for being propagated unchanged.

(19) **Propagating Material**, has the meaning given to

it in the PBR Act, namely in relation to a Plant of a particular Plant Variety, means any part or product from which, whether alone or in combination with other parts or products of that Plant, another Plant with the same essential characteristics can be produced.

(20) **Reproduction** has the meaning given to it in the PBR Act, namely in relation to propagating material of a Plant of a particular variety, means any process, whereby the number of units of that propagating material that have the capacity to grow into independent Plants is multiplied.

(21) **Seed** means seed of the Licensed Variety and includes seed that you buy and Farm Saved Seed.

(22) **Sell** has the meaning given to it in the PBR Act, namely it includes letting or hire and exchanging by way of barter and 'Sale' has an equivalent meaning.

(23) **Seller** means us or an Authorised Distributor.

(24) **Use** means to plant, grow, Sell, or Consume.

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Schedule 2 Details

Item 1 Licensed Varieties as listed in Item 2 Wheat and Barley variety table

Item 2 InterGrain variety End Point Royalties are calculated by multiplying the tonnes sold by the rate listed below.

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Wheat Variety	End Point Royalty (EPR) for 2012/13 per tonne GST exclusive	Licensee
Camm	\$0.95	Free to trade
Karlgarin	\$0.95	Seednet
Harrismith	\$1.12	Free to trade
Wyalkatchem (WA)	\$1.92	Free to trade WA only
Wyalkatchem (Other States)	\$1.92	Seedmark outside WA
Clearfield JNZ	\$1.12	Free to trade
Clearfield STL	\$1.12	Free to trade
EGA Bonnie Rock	\$2.50	Free to trade
EGA Castle Rock	\$1.67	Free to trade
EGA Jitarning	\$2.70	Free to trade
EGA 2248	\$3.62	Free to trade
EGA Eagle Rock	\$2.50	Free to trade
Emu Rock (WA)	\$3.50	Approved for farmer to farmer trading in accordance with the Industry Standard Seed License & Royalty Agreement. Contact Ash Brooks - Mobile: 0488 488 904 for all enquiries
Emu Rock (VIC,SA & Sthn NSW)	\$3.50	Available for sale - Contact InterGrain Ash Brooks - Mobile: 0488 488 904
Impose CL Plus (WA)	\$3.50	Available for sale - Contact InterGrain Ash Brooks - Mobile: 0488 488 904
Bullaring	\$2.50	Free to trade
Tammarin Rock	\$2.50	Free to trade
Binnu	\$3.00	Free to trade
Yandanooka	\$3.00	Free to trade
Fortune	\$3.00	Free to trade
Magenta	\$3.00	Free to trade
Zippy	\$3.00	Free to trade
Endure	\$3.00	Free to trade
King Rock	\$3.00	Free to trade
Kunjin	\$3.50	Approved for farmer to farmer trading in accordance with the Industry Standard Seed License & Royalty Agreement. Contact Ash Brooks - Mobile: 0488 488 904 for all enquiries
Wedin	\$3.50	Approved for farmer to farmer trading in accordance with the Industry Standard Seed License & Royalty Agreement. Contact Ash Brooks - Mobile: 0488 488 904 for all enquiries

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Barley Variety	End point Royalty (EPR) for 2012/13 per tonne GST exclusive	Licensee
Baudin (WA)	\$3.00 (malting) & \$1.00 (feed)	Free to trade
Baudin (Other States)	\$3.00 (malting) & \$1.00 (feed)	Licensed to Seednet
Bass (WA)	\$3.50	Licensed to Syngenta. Approved for farmer to farmer trading only in WA in accordance with the Industry Standard Seed License & Royalty Agreement. Contact Ash Brooks - Mobile: 0488 488 904 for all enquiries
Bass (Other States)	\$3.50	Licensed to Syngenta. Contact Ash Brooks - Mobile: 0488 488 904 for all enquiries
Doolup	\$0.45	Free to trade
Hamelin	\$3.00 (malting) & \$1.00 (feed)	Free to trade
Hannan	\$1.50	Free to trade
Lockyer	\$1.50	Free to trade
Roe	\$1.50	Free to trade
Vlamingh	\$3.50 (malting) & \$1.50 (feed)	Free to trade

Item 3 Reporting Obligations as per item 7 of this agreement

Item 4 Governing Law Western Australia

Item 5 Address for notices: InterGrain Pty Ltd, 19 Ambitious Link, Bibra Lake WA 6163

Item 6 Grower provides permission to InterGrain to provide grower contact details to commercialisation partners.

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