



## STANDARD TERMS AND CONDITIONS

to all sales agreements

These Standard terms and conditions to are effective as of October 4th 2018, ("Effective Date") by and between:

Companies **Nuseed Europe, Nuseed Ukraine and Nuseed Russia**, which are established in accordance with the respective countries' legislation, hereinafter referred to as the "**Seller**", in the person of the appropriate **Company Director**, acting in accordance to the Charter, on the one side,

And any **LLC** "", established in accordance with the respective countries' legislation, hereinafter referred to as the "**Buyer**", in the person of the **Director**, acting in accordance with the Charter, on the other side, hereinafter referred to collectively as the "**Parties**" and individually as a "**Party**", and conclude the Sales Agreement (hereinafter referred to as the "Agreement") to which they apply:

### 1. GENERAL

In these conditions ("**Conditions**") the following definitions apply:

**Business Day:** day (other than Saturday, Sunday or public holiday) when banks are open for business in the recipient's location or, if the former is not applicable, in the Seller's location;

**Agreement:** agreement between Seller and Buyer for the sale and purchase of Products, in accordance with these Conditions;

**Products:** goods (or any part of them) agreed in the Agreement to be supplied to Buyer by Seller.

### 2. APPLICATION OF CONDITIONS

- 2.1 These Conditions apply to the Agreement to the exclusion of all other terms that are not otherwise expressly contemplated by the Agreement and that the Buyer seeks to impose or incorporate, or which are implied by trade, custom practice or course of dealing.
- 2.2 These Conditions apply to all Seller's sales. The Seller may issue a new version of these Conditions. Variations to the current version of these Conditions have no effect unless expressly agreed in writing and signed by an authorized person on behalf of the Seller.
- 2.3 Each order constitutes an offer by the Buyer to purchase Products under these Conditions. The Buyer must ensure the terms of its order and any specifications are complete and accurate. Orders are deemed accepted when the Seller issues written confirmation of the order or the Seller delivers Products to the Buyer, at which point the agreement comes into existence.
- 2.4 The Agreement, including all Schedules hereto and these Conditions, constitutes the entire agreement between the Parties. Characteristics of Products contained in public statements and representations of Seller, or its agents, including without limitation in advertisements, prospectuses, catalogues, websites or other materials only form part of the Agreement if they are explicitly contained in a written order confirmation issued by Seller.

### 3. QUALITY

All information concerning Products and their performance given orally or in writing by the Seller is given in good faith, but shall not be a representation by the Seller as to the Products' performance or suitability. Performance may



depend on local climatic and other conditions. Sales are made by the Seller on the basis that the Buyer has satisfied itself of the suitability of Products for its requirements.

#### **4. TITLE AND RISK**

**4.1** Until ownership of Products passes to the Buyer, the Buyer must: (a) hold Products on a fiduciary basis as the Seller's bailee; (b) store Products (at no cost to the Seller, unless otherwise agreed in writing) separately from all other goods of Buyer or any third party so as to remain readily identifiable as Seller's property; (c) not remove, deface or obscure identifying marks or packaging on or relating to Products; (d) maintain Products in satisfactory condition

**4.2** The Seller shall be entitled to recover payment for Products notwithstanding that ownership of any of Products has not passed from Seller to Buyer.

**4.3** The Buyer grants the Seller, its agents and employees an irrevocable license at any time to enter any premises where the Products are or may be stored to inspect them or, where the Buyer's right to possession has terminated, to recover them. All recovery costs incurred by Seller in this regard shall be paid by Buyer.

**4.4** The Buyer shall cooperate in any measures necessary for the protection of the Seller's title and rights. In particular, it authorizes the Seller to enter into or register any reservation of property in the required form in public registers, books or similar records, or in accordance with any relevant applicable laws and undertakes to complete and fulfill all appropriate formalities.

#### **6. ADVICE**

The Seller assumes no liability for advice given or results obtained from advice, all such advice being given and accepted at the Buyer's risk. The Buyer is responsible for making its own tests and verifications before applying advice.

#### **7. WARRANTIES**

The Seller warrants title and that any Products sold conform to Seller's standard specifications and labeling. Unless otherwise mentioned herein, the Seller excludes all other warranties of any kind, express or implied, as to merchantability, fitness for a particular purpose or any other matter with respect to Products whether used alone or in combination with other products. These Conditions also apply to replacement Products. The Buyer shall inform its customers of these warranty exclusions, and shall not give any warranties in respect of Products over and above those stated in these Conditions and the Seller shall not accept any liability beyond the warranties granted in Condition 7, including liability to Buyer's customers, other sellers or resellers or end users.

#### **8. LIMIT OF LIABILITY**

**8.1.** Subject to Conditions 7 and 8, the following provisions set out the entire financial liability of the Seller (including without limitation liability for acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: any breach of these Conditions; and any representation, statement or act or omission including negligence arising under or in connection with the Agreement.



**8.2.** For the avoidance of doubt this Condition is subject to Condition 7: (a) Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Agreement shall be limited in all cases to replacement of Products or refund of the purchase price and (b) the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of good-will or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Agreement.

## **9. PRICE AND PAYMENT**

**9.1.** The Seller may invoice the Buyer for Products on or at any time after completion of delivery.

**9.2.** The Buyer shall pay invoices in full in cleared funds without any deduction, set-off or counterclaim within 30 days of the invoice date (unless otherwise specified on the invoice) to an account nominated by the Seller. Time of payment is of the essence.

**9.3.** The Seller may set-off amounts owing to it by the Buyer or a Buyer affiliate against amounts due to the Buyer or a Buyer affiliate from the Seller.

**9.4.** The Buyer may not set-off amounts owing to it by the Seller or a Seller affiliate against amounts due to the Seller or a Seller affiliate from Buyer.

**9.5.** If the Buyer fails to pay the Seller sums due under the Agreement all outstanding invoices and payments payable to Seller shall become due immediately.

**9.6.** The Seller may charge interest on such sums from the due date for payment at the maximum rate permitted by applicable law in addition to the fine at the double discount rate of the respective National Bank, both accruing on a daily basis until payment is made, whether before or after any judgment (arbitral award).

**9.7.** Without prejudice to any of the rights or remedies of the Seller, the Seller shall have the right to cancel any further deliveries if the Buyer or a Buyer affiliate fails to make any payment when due. **9.8.** The Buyer shall reimburse the Seller for all administrative and legal expenses incurred by the Seller in the collection of any such amounts payable by Buyer.

**9.9.** Notwithstanding Condition 10, should the Seller reasonably believe that the Buyer's financial condition is insufficient to meet the Buyer's payment obligations when due, the Seller reserves the right to make delivery of all or part of the Products subject to satisfactory payment guarantees or pre-payment.

## **10. TERMINATION**

**10.1.** Without prejudice to any other right or remedy under applicable law, if payment is not received by the due date, if the Buyer fails to provide a suitable payment guarantee, if necessary, or if the Buyer becomes subject to any event in Condition 11.2, or the Seller believes the Buyer is about to become subject to any of them and notifies the Buyer of that, then without limiting the Seller's own rights, all outstanding sums shall immediately become due to the Seller and the Seller may (i) cancel or suspend further deliveries under this Agreement without incurring liability to the Buyer; and (ii) provided the Products have not been resold, require the Buyer to deliver the Products or enter the Buyer's premises to recover the Products.

**10.2.** For the purpose of Condition 11.1 the events are: a bankruptcy order made against the Buyer or the Buyer makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statute for the time



being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of a Buyer or for the granting of an administration order in respect of a Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of a Buyer.

#### **11. FORCE MAJEURE**

The Seller may defer the date of delivery or terminate the Agreement or reduce the volume of Products ordered by the Buyer (without liability to the Buyer) if it is prevented from, delayed, is inadvisable, commercially impractical, illegal or impossible in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency or defense requirements, riot, civil commotion, fire, explosion, flood, extreme climatic conditions, epidemic, lock-outs, injunction, embargoes, import or export regulations; labor, containers, transportation facilities accident, malfunction of machinery or apparatus, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable raw materials including fuel and power. Provided that, if the event in question continues for a continuous period in excess of 120 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Agreement. Force majeure events shall not excuse payment obligations.

#### **12. INTELLECTUAL PROPERTY**

The Seller owns or has the right to exercise the intellectual property rights in Products including without limitation trademark, plant variety protection, patent rights and know-how ("Intellectual Property Rights"). The Buyer shall not infringe any Intellectual Property Rights in Products. The Buyer shall immediately inform the Seller of any infringement claims or legal proceedings involving the Buyer regarding the Intellectual Property Rights. The Buyer agrees to discuss and agree with the Seller on the defence strategy that shall be used.

#### **13. MISCELLANEOUS**

**13.1.** If a provision of these Conditions and/or the Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions and sub-provision shall continue in full force and effect.

**13.2.** Failure or delay by the Seller in enforcing or partially enforcing a provision of these Conditions and/or the Agreement will not be construed as a waiver of its rights. Waivers by the Seller of a breach or default by the Buyer will not be deemed a waiver of a subsequent breach or default and will not affect the other terms of these Conditions and/or the Agreement.

**13.3. (a)** Notices given to a Party under or connected to the Agreement shall be in writing, addressed to that Party at its registered office (if a company) or principal place of business (in other cases) or such other address as that Party specifies in writing under this Condition, and shall be sent by recorded delivery, commercial courier or confirmed fax;



**(b)** notices or other communications are deemed to have arrived: if delivered personally, when left at the respective address; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

**13.4.** The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement and the Buyer hereby gives its consent to this. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the Seller's prior written consent.

**13.5.** A person who is not a party to the Agreement shall have no rights under or in connection with it.

#### **14. CONVENTIONAL SEED WARRANTY**

The Seller certifies that the seeds delivered are conventional seeds, meaning that they have been produced from parental seeds, which were not genetically modified, and have been produced according to specifications developed to minimize the adventitious presence of impurities, including genetically modified impurities. The Seller further certifies that its production methods are based on accepted industry standards for seed production and seed purity.

#### **15. SEED QUALITY DISPUTES**

In case of disputes relating to seed quality, an accredited NAL or ISTA laboratory mutually agreed by the Parties can be used to provide an opinion on the matter in dispute. If the Parties do not agree the laboratory, SGS international inspection shall be involved. The costs of this laboratory will be shared equally by both Seller and Buyer. Complaints relating to seed germination rates shall be time limited to within 3 months of issue of ISTA certificate.

#### **16. PLANT DISEASES**

Plant diseases can be transmitted by wind, insects, animals or humans, and may be seed-borne or soil-borne. Whilst the Seller has used reasonable efforts to satisfy itself that the seeds are disease-free, the Seller does not warrant that the seeds are disease-free.

#### **19. PROHIBITED ACTIVITIES**

The Buyer shall not use the seeds, or propagating material or harvested material derived from planting the seeds, for any further propagation of the variety, nor offer for sale, sell or otherwise market the seeds, propagating material or harvested material for such purpose unless the seeds were provided for that purpose or as required under applicable law. The Buyer shall grant the Seller or its designee direct access to the Buyer's premises, including fields and greenhouses, and to premises of third parties performing services for the Buyer, to enable an audit of Buyer's compliance with Conditions 13 and 19. The Buyer shall, at the Seller's request, grant reasonable access to all relevant administrative records.