

Be SEEDsational Pty Ltd

ABN: 71 659 749 621

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Tel: 0412 226 387

APPLICATION FOR A COMMERCIAL CREDIT ACCOUNT

ACCOUNTS CONTACT		
Accounts Contact:	Sales Contact:	
E-mail:	E-mail:	
Phone:	Phone:	
Fax:	Fax:	
BUSINESS INFORMATION		
Sole Proprietor: ☐ Partnership: ☐ Company: ☐ Trustee: ☐		
Trading Name:		
Registered Business Name:		ABN:
Company Name (if company):		ACN:
Name of Trust (if trustee):		
Nature of Business:		Year of Incorporation:
Registered Address:	State:	Postcode:
Postal Address:	State:	Postcode:
Delivery Address:	State:	Postcode:
If company or partnership provide all names of Partners/Directors below (more than 2 detail on separate sheet)		
Name:	Name:	
Personal Address: State:	Personal Address:	
Postcode:	State:	Postcode:
Drivers License No.	Drivers License No.	

BANK DETAILS	

Bank Name:		Bank Contact Name:	
Bank Address:		Phone:	
BUSINESS/TRADE REFERENCES			
1. Company Name:			
Contact Name:		Position:	
Address:		State:	Postcode:
Phone:	Fax:	E-mail:	
2. Company Name:			
Contact Name:		Position:	
Address:		State:	Postcode:
Phone:	Fax:	E-mail:	
3. Company Name:			
Contact Name:		Position:	
Address:		State:	Postcode:
Phone:	Fax:	E-mail:	

TERMS AND CONDITIONS OF SALE 1. Applicability

- (a) These terms and conditions ('Terms') govern the sale or supply of all goods by Be SEEDSational Pty Ltd ('BE SEEDSATIONAL') to any person, business or company (the 'Buyer').
- (b) These Terms prevail over any oral representations between BE SEEDSATIONAL and the Buyer. Waivers or changes to these Terms will only have effect if made in writing by BE SEEDSATIONAL.
- (c) Any purchase order placed with BE SEEDSATIONAL, orally or in writing, will be confirmation of the Buyer's acceptance of these Terms.

2. Prices

- (a) The prices for the goods are the prices quoted to the Buyer by BE SEEDSATIONAL and confirmed by BE SEEDSATIONAL in writing.
- (b) BE SEEDSATIONAL will issue to the Buyer a 'Confirmation of Sale' form confirming the goods sold, delivery date, destination and price to be paid by the Buyer. It is the Buyer's responsibility to advise BE SEEDSATIONAL if the price stated is not correct. The agreed price includes the delivery charge unless otherwise stated.
- (c) Prices and quotations exclude any Australian or overseas taxes or duties and are exclusive of GST. The Buyer is liable for all taxes and duties, including GST, payable on the goods supplied to the Buyer.

3. Order Process

(1) Order process and requirements

- (a) Order is an order for Products submitted by the Customer.
- (b) Business Day is a day on which banks are open for business in New South Wales, other than a Saturday, Sunday or public holiday in that city.

The Buyer may place Orders from time to time during the Term; and must ensure each Order:

- (i) is submitted to BE SEEDSATIONAL in writing via email OR electronic data interchange as notified by BE SEEDSATIONAL;
- (ii) includes the date the order is made;
- (iii) sets out the company name, Australian Business Number or Australian Company Number, address and relevant contact details for BE SEEDSATIONAL and Buyer;
- (iv) specifies the UPC OR SKU OR OTHER IDENTIFIER, price and quantity of Products ordered;
- (v) sets out the Buyer's billing information and shipping address; and
- (vi) indicates the Buyer's preferred Delivery Date which must be at least 7 Business Days after receipt of the Order by BE SEEDSATIONAL.

(2) Acceptance or rejection of an Order BE SEEDSATIONAL:

- (a) can accept or decline all or part of an Order in its absolute discretion subject to any Force Majeure event of the kind as set out in clause 17 or BE SEEDSATIONAL's discretion to:

- (i) refuse any Order that it reasonably considers is impracticable to attempt to fulfil;
 - (ii) not hold an inventory allocation for the Buyer; and
 - (iii) supply other buyers in priority to the Buyer.
- (b) must:
- (i) assign a number to each Order it accepts (Order Number); and
 - (ii) provide an Order confirmation to the Buyer that notifies the Buyer of the Order Number and Delivery Date, and each party must use the relevant Order Number in all subsequent correspondence relating to the Order; and
- (c) is deemed to have accepted an Order when BE SEEDSATIONAL provides the Buyer with an Order Number and notifies the Buyer of the proposed Delivery Date or notifies the Buyer that the Order is ready for collection (whichever occurs first).

(3) Amending or cancelling an Order The Buyer:

- (a) may within 5 Business Days of placing an Order amend or cancel an Order by written Notice to BE SEEDSATIONAL; (b) subject to this clause must pay to BE SEEDSATIONAL all costs reasonably incurred by BE SEEDSATIONAL in fulfilling the Order up until the date BE SEEDSATIONAL receives written Notice of the amendment or cancellation.

4. Terms of Payment

- (a) Payment must be made in accordance with these Terms and Conditions of Sale .
- (b) If the Terms of Payment are not specified in these Terms and Conditions of Sale, the Buyer will be required to attend to payment immediately on delivery of the goods and receipt of a tax invoice from BE SEEDSATIONAL, unless otherwise agreed. (c) Payment means receipt by BE SEEDSATIONAL of cash or cleared funds.
- (d) Interest is payable by the Buyer on all late payments at the rate of 20% per annum (or any other rate notified in writing by BE SEEDSATIONAL to the Buyer from time to time), calculated daily from the due date until the date of payment. (e) Unless advised otherwise in writing by BE SEEDSATIONAL, the Buyer is to make payment to BE SEEDSATIONAL via bank transfer to the following account:

Bank: Westpac Banking Corporation

Account Name: Be SEEDSational Pty Ltd

BSB: 032-085

Account number: 5536002

5. Delivery Date (a) BE SEEDSATIONAL will confirm, in writing, the required delivery date ('the Delivery Date') and destination. It is the Buyer's responsibility to advise BE SEEDSATIONAL if the Delivery Date and destination are not correct.

- (b) BE SEEDSATIONAL will use all reasonable endeavors to meet the Delivery Date but BE SEEDSATIONAL is not and will not be liable for any loss or damage, however it arises, if the goods are not delivered by the Delivery Date. (c) BE SEEDSATIONAL reserves the right to deliver the goods in one delivery, or by instalment, unless otherwise agreed in writing. Each instalment will be deemed a separate sale and must be paid for separately by the Buyer.

6. Ownership of Goods (1) Notwithstanding delivery of the goods, ownership of goods delivered only passes to the Buyer when the goods are paid for in full. This includes payment of all taxes, duties and delivery charges. Until the Buyer has paid in full for the goods:

- (a) ownership of the goods remains with BE SEEDSATIONAL;
- (b) the Buyer holds the goods as bailee and fiduciary for BE SEEDSATIONAL; and

- (c) the Buyer may only dispose of the goods as BE SEEDSATIONAL's fiduciary and agent and provided that the entire proceeds of the sale of those goods are held by the Buyer on trust for BE SEEDSATIONAL.

(2) In the event of non-payment in accordance with these Terms or should the Buyer enter into administration, bankruptcy, receivership or liquidation then BE SEEDSATIONAL has the right to recover the unpaid for goods and its employees or agents are authorized by the Buyer to enter the Buyer's premises to collect the unpaid for goods. The Buyer is obligated to make available all such unpaid for goods if directed to do so in writing by BE SEEDSATIONAL. The Buyer may not revoke this permission. BE SEEDSATIONAL may resell the goods, without incurring any liability to the Buyer or any person claiming through the Buyer.

7. Risk and Insurance

The risk in the goods will, unless otherwise agreed in writing, pass to the Buyer upon delivery of the goods to the Buyer or its nominated agent. BE SEEDSATIONAL insures the goods in transit until delivery.

8. Acceptance and Return of Goods (1) Any return of goods is to be negotiated directly with BE SEEDSATIONAL. BE SEEDSATIONAL is not obliged to accept the return of any goods for credit. The Buyer is deemed to have accepted a delivery of goods:

(a) within forty-eight (48) hours after delivery unless prior to that time the Buyer has notified BE SEEDSATIONAL in writing of its rejection of that delivery and the reasons for the rejection are accepted by BE SEEDSATIONAL; or

(b) immediately upon use or consumption of the goods, whichever is earlier. If the goods are used or BE SEEDSATIONAL receives no notification of rejection of the goods within the required time then BE SEEDSATIONAL will be entitled to payment in full for the goods delivered and BE SEEDSATIONAL will not be liable for any claims, loss or damage, that may subsequently arise. (2) Any goods intended to be returned to BE SEEDSATIONAL must be returned in the same condition as dispatched or they will not be accepted. BE SEEDSATIONAL may grant or refuse any such request to return the goods at its sole discretion.

(3) If no satisfactory and accepted reason is provided for the return of the goods and, despite this, BE SEEDSATIONAL agrees to accept the return of goods for credit then the Buyer must pay to BE SEEDSATIONAL a fee of 15% of the price of the goods being returned, as a handling and restocking charge. The Buyer accepts that this cancellation fee or handling and restocking charge is reasonable. BE SEEDSATIONAL will debit this fee to the Buyer's commercial credit account.

9. Default

(1) The Buyer agrees that if:

- (i) the Buyer fails to pay when due any amount owing to BE SEEDSATIONAL; or
- (ii) the Buyer fails to comply with any of these Terms; or
- (iii) any step is taken to enter into any arrangement between the Buyer and its creditors; or
- (iv) the Buyer ceases to be able to pay its debts as they become due or ceases to carry on business; or
- (v) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the whole or any part of the Buyer's assets or business; or
- (vi) in BE SEEDSATIONAL's opinion, the Buyer's credit standing has materially changed,

BE SEEDSATIONAL may do any or all of the following (in addition to any other rights BE SEEDSATIONAL may have, including termination of this agreement):

- (i) require the Buyer to immediately pay all amounts that are invoiced but unpaid and to pay in advance for any further supply or delivery of goods (even if specified otherwise in any invoice or confirmation of order previously sent to the Buyer by BE SEEDSATIONAL);

- (ii) suspend or cease supplying goods to the Buyer (whether or not the Buyer has ordered goods that have not yet been supplied);
- (iii) enter the Buyer's premises and repossess goods for which payment is overdue; and
- (iv) cancel any other contract(s) with the Buyer or such parts as BE SEEDSATIONAL sees fit.

(2) These rights are without prejudice to any other right or demand available to BE SEEDSATIONAL. The Buyer will be liable to BE SEEDSATIONAL for all costs incurred by BE SEEDSATIONAL, including all legal costs on an indemnity basis, in recovering the unpaid for goods and will be liable to BE SEEDSATIONAL for all costs incurred by BE SEEDSATIONAL arising as a result of the non-payment of goods, including costs incurred in legal proceedings.

10. Termination

(a) Without affecting any other right or remedy available to it, either party may terminate this Agreement on giving not less than 2 weeks' written notice to the other party.

(b) Termination for breach

Without affecting any other right or remedy available to it, BE SEEDSATIONAL may terminate this Agreement with immediate effect by giving written notice to the Buyer if:

- (i) the Buyer is in default or fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than ten Business Days after being notified in writing to make such payment;
- (ii) the Buyer commits a Material Breach of this Agreement;

Material Breach includes a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit of which the Non-Defaulting Party would otherwise derive from a substantial portion of this Agreement or any of the obligations set out in this Agreement, over the Term; and in deciding whether any breach is material, no regard is given to whether it occurs by some accident, mishap, mistake or misunderstanding.

(iii) the Buyer commits a breach of this Agreement and that breach is irremediable or if that breach is remediable fails to remedy that breach within a period of 14 days after being notified in writing to do so;

(iv) the Buyer repeatedly breaches any of the terms of this Agreement in such a manner to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

(v) an Insolvency Event occurs in relation to the Buyer;

Insolvency Event is the occurrence of any one or more of the following events in relation to a party:

a) it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;

b) any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business;

e) any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;

g) it proposes a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;

h) it is taken to have failed to comply with a statutory demand under section 459F(1) of the Corporations Act;

i) a notice is issued under section 601AA or section 601AB of the Corporations Act and not withdrawn or dismissed within 15 days;

- j) it ceases to carry on business or threatens to do so, other than in accordance with the terms of this Agreement; or
 - (vi) any Force Majeure event of the kind set out in clause 17 prevents the Buyer from performing its obligations under this Agreement subject to this clause; or
 - (vii) the buyer assigns, novates, transfers, mortgages, charges, subcontracts, declares a trust over or deals in any other manner with any or all of its rights or obligations under this Agreement without the consent of BE SEEDSATIONAL, except where this Agreement provides otherwise.
- (c) In the case of termination of this Agreement, the unpaid for goods shall be immediately returned to BE SEEDSATIONAL at the Buyer's expense.

11. Warranty and Limitation of Liability (a) BE SEEDSATIONAL

warrants that the goods supplied are of merchantable quality.

- (b) BE SEEDSATIONAL otherwise excludes all conditions and warranties implied by statute, general law or custom except any implied condition or warranty the exclusion of which would contravene any statute (including the Trade Practices Act 1974 (Cth.) or cause any part of this term or condition to be void ('statutory condition').
- (c) BE SEEDSATIONAL limits its liability for breach of any express provision of these Terms or any statutory condition (other than an implied warranty of title) at BE SEEDSATIONAL's option.
 - (i) in the case of goods, to the replacement of the goods or the payment of the cost of replacing the goods; or
 - (ii) in the case of services, to the supply of the services again or the payment of the cost of having the services supplied again.
- (d) Except to the extent prohibited by law, BE SEEDSATIONAL excludes all liability for any loss or damage suffered by the Buyer (whether direct, indirect or consequential) arising in any way out of any defective goods or the manufacture, supply, resupply, acquisition, use or possession of the goods, or any negligent act or omission of BE SEEDSATIONAL, its officers, employees, contractors or agents, including but not limited to lost profits and damage sustained or incurred as result of a claim by a third party.

12. Indemnity (a) The Buyer agrees to indemnify BE SEEDSATIONAL and its

directors, officers, employees and agents, from and against any and all claims, losses, damages, costs, judgments, expenses and liabilities of any kind (including, without limitation, personal injury or property damage) arising out of or in connection with the Buyer's purchase, marketing, distribution or use of the goods whether in the good's present form or as processed or combined with other materials into another form.

- (b) Where the Applicant is a Trustee, the Applicant shall be liable on the account and in addition, the assets of the Trust shall be available to meet the payment of any monies payable

13. Confidentiality

- (a) Confidential Information includes any information of a confidential nature concerning the business, affairs, buyers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and buyer lists; and the terms of this Agreement. Group means in relation to a company, that company and its Related Bodies Corporate (as defined in section 9 of the Corporations Act) at the date of this Agreement.
- (b) Each party (Recipient) must keep secret and confidential and not disclose any Confidential Information that is disclosed to the Recipient by the other party or its Representatives, except:

- (i) where the information is in the public domain as at the date of this Agreement (or subsequently becomes in the public domain other than by breach of this clause by the Recipient);
 - (ii) if the Recipient is required to disclose the information by applicable law or the rules of any recognized stock exchange or other document with statutory content requirements, provided that the Recipient has, to the extent practicable having regard to those obligations and the required timing of the disclosure, consulted with the other party as to the form and content of the disclosure of the information;
 - (iii) as may be required by law, a court of competent jurisdiction, or any Government Agency (means any government body, department, commission, agency or entity or public authority or judicial body or tribunal) or regulatory authority (including but not limited to the rules of any recognized securities exchange);
 - (iv) where the disclosure is expressly permitted under this Agreement;
 - (v) if disclosure is made to the Recipient's Representatives to the extent necessary to enable the Recipient to properly perform its obligations under this Agreement, in which case the Recipient must ensure that its Representatives keep the information secret and confidential and do not disclose the information to any other person in accordance with this clause; or
 - (vi) if the party to whom the information relates has consented in writing before the disclosure.
- (c) Each party reserves all rights in its confidential Information. No rights or obligations in respect of a party's confidential Information other than those expressly stated in this Agreement are granted to the other party or are to be implied from this Agreement.

14. Intellectual Property

- (a) Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trademarks, the right to sue for passing off and rights to use, and protect the confidentiality of, Confidential Information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.
- (b) A party's Intellectual Property Rights remain the exclusive property of that party (or, where applicable, the third-party licensor from whom that party derives the right to use them). No rights or obligations in respect of a party's Intellectual Property Rights other than those expressly stated in this Agreement are granted to the other party or are to be implied from this Agreement.

15. Advice

Any advice, recommendation, information, assistance or service provided by BE SEEDSATIONAL in relation to goods sold is given in good faith and is believed by BE SEEDSATIONAL to be appropriate and reliable. However, any advice, recommendation, information, assistance or service provided by BE SEEDSATIONAL in relation to any goods supplied by it is provided without liability or responsibility on the part of BE SEEDSATIONAL.

16. Personal Information

Any personal information, including personal financial information, that is collected, used or disclosed by BE SEEDSATIONAL for the purposes of the sale or supply of goods to the Buyer is treated as confidential and will only be collected, used or disclosed in the following manner:

- (a) for the purposes of meeting BE SEEDSATIONAL's obligations under this agreement;
- (b) to respond to any queries that the Buyer may have;
- (c) to enquire about the personal financial history and credit worthiness of any individual seeking to establish a commercial credit account, or support a party that is seeking to establish a commercial credit account, with BE SEEDSATIONAL;
- (d) to recover any goods or money owing to BE SEEDSATIONAL; and
- (e) in compliance with the requirements of the *Privacy Act 1988* (Cth).

17. Force Majeure

BE SEEDSATIONAL will not be liable for any loss or damage caused by its failure or delay to supply the goods and to perform any of its obligations hereunder due to anything outside the reasonable control of BE SEEDSATIONAL including but not limited to acts or omissions of the Buyer, breakdown of plant or machinery, shortage of labor, strikes, lockouts, industrial disputes, fire or arson, storm or tempest, floods, theft, vandalism, riots, civil commotions, terrorist actions, wars, government restrictions, intervention and/or control, transport delays, accidents or embargoes of any kind.

18. Severance

If any provision of these Terms is or will be illegal, invalid or unenforceable, then that provision will be severed and the validity and enforceability of the remaining provisions will not be affected.

19. Waiver and Assignment (a) This agreement is not assignable by the

Buyer and no rights of the Buyer may be assigned without the express written consent of BE SEEDSATIONAL.

(b) No waiver by BE SEEDSATIONAL of any default shall be deemed a waiver of any prior or subsequent default.

20. Governing Law

These Terms will be governed by and construed in accordance with the laws of the State of New South Wales, in Australia. The parties agree to submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Federal Court of Australia.

21. Section and Paragraph Headings

The section and paragraph headings herein are for convenience only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs.

PRIVACY

I acknowledge that by completing this application to open a commercial credit account. I consent to BE SEEDSATIONAL Pty Limited conducting appropriate personal and financial checks for credit worthiness including collecting personal information, credit reports, financial information references and information from the referees provided, from credit reporting agencies and from financial institutions and banks. All personal information provided will be collected, used and disclosed in accordance with this consent, this Application to open a commercial credit account, the Terms and Conditions of Sale and the Privacy Act 1988 (Cth).

TERMS OF PAYMENT: 14 DAYS

I agree that the Terms and Conditions of Sale of BE SEEDSATIONAL Pty Ltd apply to this Application to open a commercial credit account. I agree that the Terms and Conditions of sale require payment in accordance with the terms of payment specified in this application (unless otherwise agreed). I acknowledge that any deviation from these trading terms may result in our credit facilities being withdrawn.

SIGNATURE OF APPLICANT _____ **DATE** _____

FULL NAME IN BLOCK LETTERS _____

TITLE SIGNATURE OF WITNESS

_____ **DATE**

FULL NAME IN BLOCK LETTERS

BE SEEDSATIONAL OFFICE USE	
Agreed Terms of Payment:	days
Credit limit: \$	Estimated Monthly Purchases: \$
Special Conditions:	
Date Reviewed:	
Authorised by: _____ (signature)	
Name: _____	