



GRAINSEARCH

ABN 33 100 060 795

2011 Grower Licence and Royalty Agreement

Summary

- S.1. GrainSearch Pty Ltd (ABN 33 100 060 795) (**Grainsearch**) is the owner or licensee of the intellectual property in the plant varieties named in the Schedule (**the Varieties**).
- S.2. The purchase and/ or use of seed of the Varieties (**Seed**) for the 2011 season are subject to and conditional upon the terms and conditions of this 2011 Grower License and Royalty Agreement (**Licence**).
- S.3. Any person who purchases Seed from Grainsearch or an authorised Grainsearch retailer (**Grower**) acknowledges and agrees that by purchasing the Seed that they agree to be and are bound by the terms and conditions of this Licence.
- S.4. In consideration of the grant of the licence to use the Seed the Grower agrees to pay a royalty (**End Point Royalty**) to Grainsearch on all grain produced using the Seed (except Seed retained by the Grower for planting pursuant to clause 3.1.4).
- S.5. The Grower agrees and undertakes to provide Grainsearch, or the retailer who supplied the Seed as the case maybe, with their personal details and the details of the Seed purchase.

Terms and Conditions

1. Licence

- 1.1. In consideration for the purchase of Seed by the Grower from Grainsearch or an authorised Grainsearch retailer Grainsearch grants to the Grower a licence to use the Seed subject to and conditional upon the terms and conditions of this Licence.

2. Acknowledgement

- 2.1. The Grower acknowledges and agrees that:
 - 2.1.1. by purchasing the Seed that they agree to be and are bound by the terms and conditions of this Licence and that the right to use the Seed is strictly subject to the Grower being so licensed to do so; and
 - 2.1.2. no licence rights are granted by Grainsearch in respect to purchases of Seed from persons other than Grainsearch or authorised GrainSearch retailers

3. Conditions of Licence

- 3.1. GrainSearch licences the Grower to:
 - 3.1.1. Cultivate, produce and sell crops produced from the Seed (Crops) as commodity (but not as Seed);
 - 3.1.2. Sell or dispose of Seed to another person for use other than those specified in sub-clause 3.1.1;
 - 3.1.3. Retain Crop for the purpose of feeding the Grower's livestock (Stockfeed Commodity); and
 - 3.1.4. Retain Seed for the Grower's own use to produce further Crops (Retained Seed).
- 3.2. The Grower agrees not to:
 - 3.2.1. Sell, trade, barter, exchange or dispose of any Crop for use as Seed or if it seems reasonably likely that any Crop will be used as Seed;
 - 3.2.2. Reverse engineer Seed or allow any other person to reverse engineer Seed;
 - 3.2.3. Back cross Seed as recurrent parent or use any biotechnological process such as tissue culturing, metagenesis or transformations utilising any Seed or plant material from any Seed
- 3.3. All Retained Seed remains subject to this Agreement including the obligation to pay End Point Royalties in respect of any Crops produced from such Seed.

4. End Point Royalties

- 4.1. The Grower must pay GrainSearch an End Point Royalty calculated in accordance with the rates specified in the Schedule and by reference to each metric tonne of Crop the Grower produces.
 - 4.2. On or before the 31st of April each year, GrainSearch will issue the Grower with a Royalties Notice. The Grower must accurately complete and return the Royalties Notice to GrainSearch.
 - 4.3. Where the Grower sells or supplies Crop to a marketer (Collection Marketer) the Grower undertakes to authorise and instruct the Collection Marketer to:
 - 4.3.1. deduct the End Point Royalties payable in relation to that Crop (including any applicable GST) from the price to be paid by the Collection Marketer to the Grower for that Crop;
 - 4.3.2. pay the sums deducted pursuant to clause 4.3.1 to GrainSearch in or towards satisfaction of the Grower's obligation under this Licence to pay the End Point Royalty with respect to that Crop.
 - 4.4. GrainSearch will issue a tax invoice to the Grower for the amount of Royalty (including any applicable GST) required to be collected by the Collection Marketer to.
 - 4.5. Where the Grower does not sell or supply Crop to a Collection Marketer, GrainSearch will within 30 days of receipt of the Royalties Notice from the Grower, issue a tax invoice to the Grower in relation to the End Point Royalty payable by the Grower and the Grower shall pay such amount to Grainsearch within 30 days of receipt of the invoice.
- #### 5. Records
- 5.1. As a condition of the purchase of Seed from an authorised Grainsearch retailer and the sale of the Crop to a Collection Marketer, the Grower agrees to supply to the authorised Grainsearch retailer and any Collection Marketer(if applicable) their full name, address, contact and trading details.
 - 5.2. At the time of making payment in accordance with clause 4.5 and at any other time Grainsearch requests in writing, the Grower must provide Grainsearch with complete and accurate written details of:
 - 5.2.1. the Varieties and quantities of Crop produced and/or sold;
 - 5.2.2. persons to whom the Crop is sold and details of the Varieties and quantities of Crop sold to those persons;
 - 5.2.3. the Varieties and quantities of Stockfeed Commodity;
 - 5.2.4. the Varieties and quantities of Retained Seed; and
 - 5.2.5. Any other details reasonably required by Grainsearch in order to verify the Grower's compliance with the terms and conditions of this Licence.
 - 5.3. The Grower must obtain the necessary authorisations and information from any person from whom they purchase Seed or to whom they sell Crop to enable them to supply and disclose to Grainsearch any of these details required pursuant to clause 5.1 and 5.2.
- #### 6. Limitation of Liability
- 6.1. To the extent permitted by law Grainsearch excludes all warranties and liabilities in relation to the Seed howsoever arising (including all liabilities arising from Grain search's negligence),
 - 6.2. Where any warranty or liability in relation to the Seed (including a liability arising from Grainsearch's negligence) cannot be excluded by Grainsearch, Grainsearch limits its maximum liability to the extent legally permissible to:

- 6.2.1. the replacement of the Seed or the supply of agronomically equivalent Seed; or
 6.2.2. the payment of the cost of replacing the Seed or acquiring agronomically equivalent Seed.

7. Interpretative Provisions

- 7.1. **Amendment**
 This Licence may not be amended modified or supplemented except by written agreement by the parties or persons duly authorised on behalf of the parties.
- 7.2. **Waiver**
 No waiver by any party of any default in the strict and literal performance of or compliance with any provision condition or requirement in this Licence will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Licence nor to be a waiver of or in any way release any party from compliance with any provision condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Licence in any manner impair the exercise of such right accruing to it thereafter.
- 7.3. **Costs on Default**
 Any party who defaults in the payment of any moneys or in the performance of any obligations under this Licence will pay to the other party who exercises or attempts to exercise any right power authority or remedy conferred on that party under or by virtue of this Licence or otherwise the fair and reasonable costs thereof whether or not any proceedings in any court or tribunal are taken to protect any such right power authority or remedy.
- 7.4. **Jurisdiction**
 This Licence will be governed by and construed in accordance with the law of the State of Victoria and each of the parties hereby submits to the jurisdiction of the Courts of the State of Victoria.
- 7.5. **Entire Agreement**
 This Licence constitutes the sole and entire agreement between the parties and no warranties, representations, guarantees or other terms or conditions of any nature not contained and recorded therein will be of any force or effect.
- 7.6. **Invalidity of any Clause**
 Notwithstanding anything to the contrary in this Licence, if any provision of this Licence will be invalid and not enforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.
- 7.7. **Interpretation**
 In the interpretation of this Licence (including its recitals and the schedules) except to the extent that the context otherwise requires:
- 7.7.1. Words (including defined expressions) denoting the singular will be deemed to include the plural and vice versa.
 7.7.2. Words (including defined expressions) denoting any gender will be deemed to include all other genders.

- 7.7.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
 7.7.4. References to a statute or statutory provision will be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder.
 7.7.5. Headings are included for convenience only and will not affect the interpretation of this Licence or any schedule.
 7.7.6. References to clauses, recitals and schedules are to clauses of, and recitals and schedules to, this Licence.
 7.7.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
 7.7.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time;
 7.7.9. Where a word or phrase is given a definite meaning in this Licence a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 7.8. **Termination or Waiver in Writing**
 No termination or attempted waiver of any of the provisions of this Licence will be binding on a party unless in writing and signed by a duly authorised officer of that party or by that party.
- 7.9. **No Assignment**
 A party must not assign or permit a third party to obtain the benefit of its rights and interest under this Licence except with the prior written consent of all other parties.
- 7.10. **Agreement Binding on Successors**
 This Licence will extend to bind the parties and their respective heirs, executors, successors, assigns, administrators and legal personal representatives and any reference to any party will where the context so admit include their respective heirs, executors, successors, assigns, administrators and legal personal representatives.
- 7.11. **Joint Obligations**
 In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Licence and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.
- 7.12. **GST**
 For the purposes of this Licence the expressions "GST" and "tax invoice" bear the same meaning as those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth). All End Point Royalties and payments to be paid by the Grower do not include any amount payable in respect of GST. The price payable by the Grower will be increased by the amount of any applicable GST. All GST shall be payable on the due dates for payment as set out in the relevant tax invoice(s).

SCHEDULE

Plant Variety	Total End Point Royalty (\$ per mt excluding GST)
Amarok wheat	\$1.50
Beaufort (LR1078) wheat	\$3.00
SQP Revenue	\$3.50
GS1234 barley	\$2.00
GS5092 barley	\$2.00
Westminster barley	\$3.00