

**BETWEEN**

Succession Ecology Pty Ltd ATF SE Trading Trust of 7 Angus Avenue  
Edwardstown SA 5039 (ABN 79 919 229 765) (SE)

-AND-

You the customer (**Customer**)

<<Insert Customer: NAME, ADDRESS and ABN>>

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**NOW IT IS AGREED**

**1. Dictionary**

In this agreement the following terms have the following meanings

**SE** means the party or parties so described on page 1 of this Agreement and their heirs, executors, administrators, successors and assigns of such party or parties.

**Background Intellectual Property** means Intellectual Property developed prior to or independently of, and without reference to, the provision of the Product and or Services.

**Business Day** means a day on which all banks (as defined in the Banking Act 1959) with offices in the City of Adelaide are open for business in the City of Adelaide.

**Business Hours** means between the hours of 9.00am and 5.00pm (South Australia time).

**Confidential information** means and includes any information that by its nature is confidential, is designated by a party as confidential, or the recipient knows or ought to know is confidential but does not include information which:

- (a) is or becomes public knowledge other than by breach of this Agreement;
- (b) was known by the recipient as at the date of this Agreement; or
- (c) has been independently developed or acquired by the recipient without reference to the disclosing party's Confidential Information.

where the burden of establishing any of the exceptions referred to in (a), (b) and (c) shall be upon the recipient.

**Customer** means the person, partnership, corporation or other entity (including trust) purchasing the Product and/or Service as identified on page 1 of this Agreement, or quote or estimate and their heirs, executors, administrators, successors and assigns of such party or parties.

**Customer Intellectual Property** means Intellectual Property provided by the Customer to SE for use in the provision of the Product and/or Services

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and also includes any associated legislation and delegated legislation.

**Force Majeure** means an act or omission or circumstance over which the party could not have reasonably exercised control or taken steps to anticipate or avoid.

**Intellectual Property** means all statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions (including registered and unregistered patent rights), registered and unregistered trademarks, designs, the right to have Confidential Information (including trade secrets and know-how) kept confidential, and all other rights resulting from intellectual activity in industrial scientific, literary or artistic (including musical) fields;

**Product and/or Service** means the product and/or service(s) SE agrees to supply to the Customer.

**Price** means the amount the Customer will pay SE for the Product and/or Service as stipulated in the Contract.

- 2. Contract** means the agreement, in whatever form, whereby the Customer agrees to purchase and SE agrees to supply the Product and/or Service. **These Terms**

- 2.1. The Customer acknowledges having had fair opportunity to read, understand and negotiate with SE regarding these terms.
  - 2.2. Subject to any special written offer by SE, that may be agreed in writing, these terms form part of each Contract for SE to supply The Product and/or Service to the Customer and these terms negate any terms the Customer may issue.
  - 2.3. The Customer's failure to acknowledge these terms is not evidence these terms do not apply.
  - 2.4. The Customer accepts these terms if after receipt of a copy of these terms referred to the Customer by SE, the Customer places an order for The Product and/or Service.
  - 2.5. At any time SE may change or replace these terms by so notifying the Customer. Any such change or replacement applies to any Contract that forms after the change was so notified.
- 3. Product and/or Service availability**
- 3.1. At any time SE may change its range of Product and/or Services on offer without notice.
  - 3.2. Product(s) offered from its inventory are subject to prior sale to other buyers.
- 4. Quotations**
- 4.1. Unless otherwise stated, an SE quotation to supply Product and/or Service expires 30 working days after issue.
  - 4.2. A quotation for a stated date for delivery, kind or quantity of Product and/or Service is not valid for a different date, kind or quantity of Product and/or Service.
  - 4.3. SE may vary / withdraw its quotation before SE in fact receives the Customer's acceptance of the quotation.
- 5. Contract formation**
- 5.1. A Contract forms only if and when either:
    - 5.1.1. the Customer places a firm order for a particular kind and quantity of Product and/or Service with SE, and SE accepts that order; or
    - 5.1.2. SE issues a quotation for a particular kind and quantity of Product and/or Service and the Customer accepts that quotation by so advising SE before the quotation expires or is withdrawn.
- 6. Orders**
- 6.1. The Customer may place an order orally or in writing – and an oral order is not effective until confirmed in writing by the Customer.
  - 6.2. The Customer may place a "standing order" for repeat quantities of Product and/or Service, which order remains valid until its revocation is notified to SE.
  - 6.3. SE may have a minimum order requirement stated in a current price list, and / or require an order be placed a minimum period before the expected date of delivery.
  - 6.4. An order, if accepted by SE, is effective even if the Customer has not specified a delivery date or method.
  - 6.5. Any order is subject to SE's acceptance, and SE may decline an order in full or in part.
  - 6.6. SE accepts an order (in full or in part) either by so notifying the Customer or by executing the order.
  - 6.7. After SE accepts an order, the Customer may not modify, delay or cancel the order unless SE agrees in writing.
- 7. Prices**
- 7.1. Unless otherwise stated, prices stated in SE's Quotation or order:
    - 7.1.1. includes usual packaging and insurance;
    - 7.1.2. if the Customer shall request a delay in the delivery of Product and/or Services then SE reserves the right to charge reasonable storage costs of any product, plant and or equipment they have sourced for the purpose of the Order;
    - 7.1.3. are for delivery to occur at the premises or location as agreed in the Order or Quotation; and

- 7.1.4. are exclusive of GST.
- 7.2. Unless otherwise stated delivery and transport costs are not included in the prices stated but shall be specified if requested by the Customer.
- 7.3. SE's expenses, not otherwise specified in this clause 7, may only be charged if agreed and may either be:
- 7.3.1. Fixed in the Contract; or
- 7.3.2. If not specified then their reasonable cost.
- 7.4. Unless SE quotes otherwise, SE may vary a price after the Contract forms if the Customer varies the quantity of Product and/or Service contracted for and SE has accepted that change.
- 7.5. A price is fully earned when the Product and/or Service is delivered or performed, subject to clause 9.3.
- 8. GST**  
SE may recover from the Customer an amount equal to any GST for which SE becomes liable by its sale of Product and/or Service and/or Service to the Customer. Such amount is payable by the Customer to SE at the time the price of that Product and/or Service is payable.
- 9. Tax invoice**
- 9.1. On or as soon as practicable after each supply of Product and/or Service, SE must issue a tax invoice for that supply.
- 9.2. The Customer waives right to dispute anything on an invoice not notified in writing (giving reasonable details) to SE within 10 working days after the Customer receives that invoice.
- 9.3. SE may, having notified the Customer in the Contract, issue an invoice for payment prior to the provision of the Product and/or Service.
- 9.4. SE may issue separate invoices throughout the delivery of the Product and/or Service at key stages or on a periodic basis, being no more than once per 14 day period, and such invoice shall be reflective of the product and or services delivered to date. In all events SE may invoice such services on practical completion.
- 10. Payment for Product and/or Service and/or Service**
- 10.1. If SE need order in or manufacture Product and/or Service to fill the Customer's order, SE may require the Customer pay a deposit as specified within a quotation (plus GST thereon) in advance.
- 10.2. The Customer must pay for Product and/or Service with 14 days of the invoice unless otherwise agreed within a quotation or estimate the limit of which is not exceeded by that or any other outstanding price of Product and/or Service from the Customer, in which latter case the Customer must pay SE's invoice by the due date shown on the invoice.
- 10.3. Unless SE agrees in writing, the Customer may not deduct from any price any set off, counterclaim or rebates asserted by the Customer or other sum (such as taxes, charges).
- 10.4. SE may require payment of its invoices by electronic transfer in clear funds to a bank account last nominated by SE in writing.
- 10.5. Payment by cheque is not made until the cheque clears.
- 10.6. If the Customer does not pay for any Product and/or Service within time, SE may:
- 10.6.1. recover from the Customer daily interest at 5% per annum on the unpaid amount of the price that Product and/or Service calculated on and from the due date until the date payment in full (plus accrued late payment interest) is made to SE;
- 10.6.2. without liability, cancel or suspend delivery of any Product and/or Service not fully paid for and yet to be delivered under any Contract;
- 10.6.3. resume possession of the Product and/or Service not fully paid for and then credit the Customer with SE's estimated re-sale value of that Product and/or Service less costs; and / or
- 10.6.4. exercise any other rights or remedies SE has in relation to the default.
- 10.7. Interest accrued under term 10.6.1 and not paid for 30 days adds to the debt (is capitalised), and thereafter attracts interest.
- 11. Set off**  
In addition to rights of set off under the general law, SE may set off any debt or liability the Customer (alone or with others) owes to SE on any account against any debt or liability SE owes to the Customer on any account. If a liability is unliquidated or otherwise unascertained, SE may set off an amount estimated by SE in good faith on account of such liability, without prejudice to the obligation of the parties to account for any shortfall or excess.
- 12. Promotional material**  
Any promotional materials (other than official technical specifications) SE publishes only give a general idea of Product and/or Services on offer and cannot be relied on for any purpose.
- 13. Warranties**
- 13.1. SE warrants that Product and/or Service supplied:
- 13.1.1. conforms to the order as to the kind and quantity / volume of Product and/or Service;
- 13.1.2. conforms to any samples SE previously gave for the order;
- 13.1.3. conforms to the description for that kind of Product and/or Service under Australian trade usage;
- 13.1.4. is of merchantable quality;
- 13.1.5. is free of third party security interests.
- 13.2. Subject to law and these terms, SE does not give any other warranty, condition or guarantee in connection with its supply of Product and/or Service.
- 13.3. If SE specially manufactures or provides the Product and/or Service to the Customer's own specifications without express reliance upon SE's expertise, the use of those specifications is at the Customer's risk.
- 14. Supply**
- 14.1. If in the delivery of a product SE may deliver less than a quantity ordered if unable to deliver the full quantity. In that case the unit sale price of the product remains the same, but any applicable transport or service costs included in the price relative to quantity would be adjusted in a fair proportion.
- 14.2. If applicable, SE may deliver an order by instalment, but if SE fails to deliver a particular instalment by a date specified the Customer may not rescind the Contract.
- 15. Delivery**
- 15.1. If SE quotes or proposes a delivery date or timeframe for provision of the Product and/or Service that proposal is an estimate only and is subject to factors that include, but not limited to:
- 15.1.1. If SE need order in, harvest, collect or manufacture a component of the Product and/or Service to fill the Customer's order then the availability of that component;
- 15.1.2. If SE is to carry out field work as part of the Product and/or Service which may be impacted by factors outside SE's control, for instance, but not limited to, weather, conditions and access; and
- 15.1.3. Workload capacity and availability of SE's staff; and SE shall not be penalised by such delay.
- 15.2. If at the Customer's request SE agrees to procure transport of Product and/or Service to or at the direction of the Customer, then:

- 15.2.1. if the Customer does not specify a method of transport or particular carrier, SE may decide the method or carrier;
- 15.2.2. SE does not guarantee a particular arrival date or time;
- 15.2.3. a receipt signed by an apparently responsible person at the nominated destination is sufficient evidence of arrival of the Product and/or Service unless proved to the contrary;
- 15.2.4. SE need not provide proof of arrival unless the Customer made written request of proof of arrival; and
- 15.2.5. If the Customer shall vary the location for delivery as agreed in the Contract SE may recover the reasonable increased cost of transport from the Customer.

#### 16. Risk of loss

- 16.1. Risk of loss / damage / deterioration in any work product created in connection to the Product and/or Service passes from SE to the Customer when the Product and/or Service is supplied.
- 16.2. SE must maintain insurance cover at all relevant times sufficient to cover any loss or costs that may be incurred relevant to the supply of the Product and/or Service, including public liability insurance and if applicable product liability insurance.
- 16.3. If SE, and its staff and sub-contractors, are engaged to provide services at the Customer's premises or a location controlled by the Customer then the Customer shall maintain appropriate insurance.
- 16.4. After risk passes, the Customer is responsible for insurance of any work material supplied in connection with the Product and/or service.

#### 17. Ownership

- 17.1. Ownership of any product or work material produced in connection with the Product and/or Service passes from SE to the Customer only when that Product and/or Service is fully paid for. Until that time the Customer holds such work product or product for SE as owner and, if SE so requires, the Customer must store it in a way it can be identified as SE's property.
- 17.2. If the Customer's payment for any Product and/or Service is voided or conceded to be voidable or void, SE resumes ownership of any product or work material in connection with the Product and/or Service.

#### 18. On-sales and other use of Product and/or Service

- 18.1. If SE supplies flora seed to the Customer for the purpose of resale then:
  - 18.1.1. The Customer must ensure that the provision of that seed to their customers or third parties is free from defect and is of merchantable quality;
  - 18.1.2. The Customer is responsible for addressing any complaints received from their customers or the third parties supplied to; however
  - 18.1.3. If a claim is made that SE is responsible for any defect then the Customer shall notify SE promptly and the provisions stipulated in clause 20 shall apply and SE's liability to the Customer shall be limited in accordance with these terms and conditions.
- 18.2. Any other product or work material produced in connection with the Product and/or Service is not provided to the Customer for resale.
- 18.3. The Customer must not use, on-sell or otherwise supply any product or work material produced in connection with the Product and/or Service not fit for purpose at that time.
- 18.4. As a continuing obligation the Customer indemnifies and holds harmless SE against any claim for any loss, damage,

personal injury or death to the extent caused by the Customer's improper storage, handling, distribution or use of Product and/or Service or any other reasons that are not SE's responsibility.

#### 19. Short delivery

- 19.1. A claim that a delivery of Product and/or Service was not of the kind or quantity of Product and/or Service contracted for is not valid unless advised in writing (with reasonable details) to SE within 7 business days after the supply was first available for inspection by the Customer or their agent.
- 19.2. Where the shortfall in supply is in relation to the supply of flora seed or similar product then upon the Customer notifying SE of a suspected shortfall the parties shall:
  - 19.2.1. Endeavor and co-operate in investigating and resolving, if found, a shortfall;
  - 19.2.2. If the parties cannot agree a resolution within 5 business days then SE shall arrange for the flora seed to be weighed and certified;
  - 19.2.3. If a shortfall is found upon certification then SE shall make up the shortfall and bear the cost of the certification; however
  - 19.2.4. If upon certification there is found no shortfall then the Customer shall bear all costs of the certification, including transport and delivery.

#### 20. Defective Product and/or Service

- 20.1. Subject to applicable laws (if any):
  - 20.1.1. a claim that Product and/or Service is defective for reasons that are SE's responsibility is not valid unless advised in writing (with reasonable details) to SE within 2 working days after the defect was first known to the Customer or their agent; and
  - 20.1.2. no later than 14 days after making a claim the Customer must advise SE what action (if any) the Customer requires to resolve the claim;
  - 20.1.3. SE may decline a claim for defective Product and/or Service if the Customer does not take reasonable steps to preserve the Product and/or Service pending an inspection by SE's agent, if SE requires inspection.
- 20.2. If a claim for defective Product and/or Service is found or admitted to be without merit, SE may recover from the Customer as a debt all reasonable costs SE incurs investigating the claim.
- 20.3. If the Customer is a consumer (as defined in the Australian Consumer Law) in relation to the Contract, the following provisions of this term shall apply in relation to that Contract as to comply with section 102 of the Australian Consumer Law and regulation 90 of the Competition and Consumer Regulations 2010:
  - 20.3.1. SE is the person giving the warranty.
  - 20.3.2. A defect in the Product and/or Service must appear within 12 months or within the period of warranty as specified by the original equipment manufacturer for the Customer to be entitled to claim the warranty against defects.
  - 20.3.3. To claim the warranty the Customer must notify SE as stated in term 26.1 and make the Product and/or Service available to SE - if SE so requires, bring the Product and/or Service to SE's business address.
  - 20.3.4. The Customer bears the expense of claiming the warranty against defects.
  - 20.3.5. If the Product and/or Service is defective SE honors its warranty against defects by taking one or more of the actions stated in term 28.2.
  - 20.3.6. The benefits to the Customer given by the warranty are in addition to other rights and remedies of the

Customer under a law in relation to the goods or services to which the warranty relates

#### 21. Time bar

Subject to applicable laws, any claim for any short delivery / defective Product and/or Service not made within time is barred for all purposes.

#### 22. Vendor liability

- 22.1. If Product and/or Service SE delivers was not of the kind or quantity contracted for then SE's total liability is limited to prompt delivery of the kind of Product and/or Service contracted for or prompt delivery of the shortfall quantity, as applicable, and at SE's cost.
- 22.2. If Product and/or Service SE delivers otherwise does not conform to the Contract or (for reasons that are SE's responsibility) is defective, then SE's total liability is limited to (at SE's choice and at SE's cost):
- 22.2.1. prompt delivery of replacement Product and/or Service or equivalent goods; or
- 22.2.2. prompt repair of the Product and/or Service; or
- 22.2.3. payment of the cost of the Customer acquiring equivalent goods or having the Product and/or Service repaired;
- provided that if both:
- 22.2.4. the Customer is a consumer (as defined in the Australian Consumer Law) in relation to the Contract; and
- 22.2.5. that Product and/or Service is of a kind ordinarily acquired for personal, domestic or household use or consumption
- 22.3. then these terms do not exclude, restrict or modify the statutory guarantees the Australian Consumer Law implies in the Contract and this term does not limit SE's liability under those statutory guarantees as regards that particular Product and/or Service.
- 22.3.1. If SE is to replace Product and/or Service that is or likely to be defective for reasons that are SE's responsibility:
- 22.3.2. SE retains or resumes ownership of the original Product and/or Service;
- 22.3.3. SE may collect the original Product and/or Service from the Customer or require that original Product and/or Service be transported, dumped or otherwise dealt with at SE's reasonable cost.
- 22.4. Subject to the Australian Consumer Law if it applies, in no case is SE liable for any loss of revenue / profits / goodwill or any incidental, consequential or punitive damages as a result of any claim in connection with its supply of Product and/or Service.

#### 23. Vendor rights

In addition to SE's other rights and remedies, SE may suspend or cancel a Contract and retake possession of Product and/or Service not fully paid for if either:

- 23.1. SE reasonably believes the Customer to be insolvent or to have ceased permanently to trade; or
- 23.2. the Customer is in default under any Contract with SE.

SE may resell Product and/or Service it repossesses as it sees fit and then apply the net proceeds of resale in reduction of any debt the Customer owes to SE.

#### 24. Customer-supplied specifications / materials

If SE is to manufacture, package or supply any Product and/or Service using specifications / materials sourced from the Customer, then:

- 24.1. the Customer warrants that such specifications do not infringe third party rights or applicable law, and that such materials are fit for purpose and will be delivered to SE in the form and within the time SE requires:

24.2. SE is not obliged to check those specifications or test those materials before use; and

24.3. the use of those specifications / materials is wholly at the Customer's risk

#### 25. Enforcement Costs

A party (Party 1) may recover from the other party (Party 2) all reasonable costs or expenses Party 1 incurs in recovering or attempting recovery of moneys owing by Party 2 under a Sale Contract or in otherwise enforcing Party 1's rights under a Contract. Such costs may include legal costs on a solicitor / client basis.

#### 26. Brands

SE retains all ownership in its brands and the goodwill of the Product and/or Services, and may restrict the Customer's use of SE's brands.

#### 27. Confidentiality

If SE contracts on the basis of a discount or rebate to its current list prices, during and for 12 months after the Contract the Customer must not disclose that pricing to a third party except as necessary to perform or enforce the Contract or as required by law.

#### 28. Force majeure

A party is not liable for a failure to perform a Contract to the extent its performance is prevented by a circumstance not within that party's reasonable control and without its negligence.

#### 29. Dispute resolution

- 29.1. Except as this term allows, any dispute in connection with a supply of Product and/or Service must not be the subject of litigation or arbitration pending the party raising the dispute notifying the other party as to the nature of the dispute (with reasonable details), what action the party giving notice thinks will resolve the dispute, and inviting the other party to a meeting of the parties' respective agents at some mutually convenient location with a view to resolving the dispute.
- 29.2. At such meeting each party must send to the meeting an agent with authority to resolve the dispute, and at the meeting make a good faith attempt to resolve the dispute.
- 29.3. This term does not prejudice the right of a party to seek a Court order to prevent immediate and irreparable harm, nor to suspend or terminate a Contract where the basis for doing so is not in dispute.

#### 30. About the Customer

- 30.1. If in a Contract the Customer is more than 1 person, that Contract binds each such person jointly and severally, and each of them is taken to have authority to bind the other/s in connection with the Contract, including that a notice to / from any such person is notice to / from all of them.
- 30.2. The Customer must notify SE within 14 days if:
- 30.2.1. The Customer is a partnership and any of the partners change; or
- 30.2.2. The Customer is a company or contracts as trustee and there is a change of control as applied to that company or trust (where **control** has its meaning in the *Corporations Act 2001*).

#### 31. About a Contract

- 31.1. These terms and the relevant order (as accepted by SE) together are the whole contract (Contract) between the parties about SE's sale and supply of Product and/or Service to the Customer.
- 31.2. Any provision of a Contract found to be unenforceable must be read down to the extent necessary to avoid that result or if it cannot be read down it must be severed without affecting the validity and enforceability of the remainder of the Contract.
- 31.3. Any Contract may only be modified (includes delayed) or cancelled as the parties agree in writing.

- 31.4. To be valid, a waiver under any Contract must be in writing signed by the party granting the waiver.
- 31.5. The Customer may not assign any Contract except with SE's prior written consent.
- 31.6. Upon notice to but with need for consent of the Customer, SE may assign any Contract to a person who acquires SE's business in succession to SE.
- 31.7. The laws in South Australia govern a Contract, and SE has exclusive right to nominate the court in which any legal action is to be commenced and conducted. The parties irrevocably submit to the jurisdiction of those courts, and any courts that have jurisdiction to hear appeals from those courts.
- 31.8. A notice required or authorised to be given or served on a party under this Agreement must be in writing and may be given or served by facsimile, express or registered post, electronic mail (email) or hand to that party at its facsimile number, email address or address as the party may have last notified the other party or parties in writing. Notices sent via post are deemed to arrive in two business days. Notices via email or Facsimile are deemed to arrive the next business day.
- 31.9. SE may sub-contract part performance of the supply of the Products and/or Service:
- 31.9.1. Having first notified the Customer as to the name and contact details of the sub-contractor;
- 31.9.2. Obtained from the sub-contractor, as is reasonably necessary, an agreement to confidentiality and waiver and/or ownership of Intellectual Property in line with the Contract and these terms and conditions; and
- 31.9.3. SE is not relieved of performance of any obligations under the Contract and will be liable for all acts and omissions of a sub-contractor as though they were the actions of SE itself.
- 32. Intellectual property**
- 32.1. Background Intellectual Property is not transferred by virtue of this agreement.
- 32.2. The Customer grants to SE a non-exclusive, non-assignable and revocable license for the term of this agreement to use the Customer Intellectual property for the purpose of providing the Product and/or Service.
- 32.3. SE grants to the Customer a non-exclusive, non-assignable and revocable license for the term of this agreement to use their Intellectual Property for the purpose of enjoying the Product and/or Service and/or any work material produced therefrom.
- 32.4. SE grants the Customer a royalty free, non-exclusive, non-assignable and revocable license to use such of its Background Intellectual Property as is required to reasonably enjoy their Product and/or Service.
- 32.5. Any modifications to SE's Intellectual Property developed in the course of the delivery of the Product and/or Service shall be owned by SE and the Customer agrees, to the extent necessary, assign or execute any document necessary to record SE's ownership.
- 33. Occupation Health & Safety**
- 33.1. If SE or its employees, agents or contractors, shall be physically engaged on the Customer's premises, site or location(s) controlled by the Customer then the Customer shall ensure:
- 33.1.1. That all proper and reasonable work place health and safety standards and polices are in place;
- 33.1.2. All of SE's employees, agents and/or contractor's on site are properly inducted;
- and SE shall ensure:
- 33.1.3. It and its employees, agents and contractors comply with the site work health and safety policies and procedures.
- 33.2. If either SE or the Customer become aware of a workplace incident occurring on site then they shall notify the other party promptly and co-operate in the investigation of the incident and any remedial action necessary.
- 33.3. Either party may, acting reasonably, suspend the performance of the Contract if they are reasonably concerned about the health and safety of persons on a site or following an incident until satisfied that the site is safe.
- 34. Restraint**
- 34.1. Unless waived, neither party will solicit, induce or otherwise encourage the employees of the other party to leave their employment during the term of this Agreement and for a period of six (6) months following the cessation of this Agreement, for any reason.
- 34.2. Unless waived, the parties agree that if they shall solicit, induce or otherwise encourage one or more employees of the other party to leave their employment then they shall pay the equivalent of 10% of that employee's current total salary package for that financial year to the other as liquidated damages. If the employee is a casual then the amount of liquidated damages shall be fixed at \$5,000.00.
- 34.3. If a party becomes entitled to an assessment of liquidated damages against the other in accordance with the proceeding clause, they may issue an invoice, including their calculation for the assessment and providing sufficient information to substantiate that calculation, to the other party whom shall have 14 days to make payment of the invoice.
- 34.4. Nothing in this clause 34 shall not abrogate any other remedy either party shall have under this agreement or at Law for breach of 34.1.
- 35. Viability of Seed (if applicable)**
- 35.1. If the Product and/or Service shall include the supply of flora seed the Customer accepts that the viability of that seed is not guaranteed 100% and the Price under the Contract accounts for this variation.
- 35.2. A Seed Quality Statement is provided, with these terms and conditions, outlining the expected or average viability and quality of the flora seed to be supplied and the Customer acknowledges that they have read and accept the supply of flora seed in accordance with the statement.

