

Pacific Seeds Pty Ltd

Variety licence and royalty agreement
Juncea canola

Background

- A Pacific Seeds is the licensee of a variety of seed canola quality Brassica juncea called Dune.
- B Pacific Seeds wishes to grant a licence to Growers to plant and grow seed of that variety on the condition that Growers pay a royalty to Pacific Seeds, in accordance with the terms and conditions of this Agreement.

Agreed terms

1. Defined terms & interpretation

In this document:

Agreement means this Variety Licence and Royalty Agreement.

Authorised Distributor means a distributor properly authorised by Pacific Seeds to sell Seed.

Business Day means a day that is not a weekend, public holiday or bank holiday in the place the notice is received.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Crop Year, in relation to a quantity of Seed, means the year in which the bag of Seed was purchased by the Grower.

End Point Royalty (EPR) means the fee or other levy imposed on a Grower by Pacific Seeds calculated by reference to the quantity of Product of the Licensed Variety produced by the Grower.

EPR Collector means a person properly authorised by Pacific Seeds to collect EPR on its behalf.

Grower means a person that purchases Seed from an Authorised Distributor.

Licensed Variety means a variety listed in Schedule 1.

Pacific Seeds means Pacific Seeds Pty Ltd ACN 010 933 061.

Product means grain produced from Seed.

Product Purchase Agreement means an agreement between the Grower and Cargill Australia Limited ACN 004 684 173 (**Product Purchaser**) for the sale by the Grower to the Product Purchaser of all Product produced from a specified number of hectares of land.

Seed means seed of the Licensed Variety that is suitable for planting.

Variety Owner means the owner of the Licensed Variety.

2. Grant of licence

Upon the Grower purchasing Seed from an Authorised Distributor:

- (a) Pacific Seeds licences the Grower to plant and grow purchased Seed and produce Product from the Seed in accordance with the terms of this Agreement;
- (b) the Grower agrees to comply with the terms of this Agreement; and

- (c) the Grower will register its name, address and contact information (telephone, fax, email and contact person details) with the Authorised Distributor.

3. Use of Seed

- 3.1 The licence provided under clause 2(a) is a non-exclusive licence and applies only within Australia.
- 3.2 The Grower must:
 - (a) in relation to Seed in bags that the Grower opens after purchase, plant that Seed during the current Crop Year or destroy the Seed; and
 - (b) in relation to bags of Seed that have remained unopened since purchase, by 30 June each year return all such bags to an Authorised Distributor in exchange for full credit for those bags, provided that the bags of Seed are in saleable order and have been stored by the Grower away from direct heat, sunlight and moisture.

4. Use of Product

The Grower must:

- (a) sell all Product to the Product Purchaser;
- (b) not sell or dispose of Product other than in accordance with clause 4(a); and
- (c) not retain any Product.

5. Identity preservation

The Grower must ensure that all Seed and Product remains uncontaminated from other grain, seed or product, including by:

- (a) prior to planting Seed, thoroughly cleaning any equipment to be used for planting;
- (b) maintaining a buffer zone around the paddock in which Seed is planted;
- (c) prior to harvesting Product, thoroughly cleaning all equipment and bins to be used for harvesting;
- (d) attaching variety identification tags to bins used to store Product; and
- (e) ensuring that trucks to be used to transport Product are thoroughly cleaned before Product is transported.

6. End Point Royalties

- 6.1 The Grower must pay an EPR to Pacific Seeds in relation to all Product that the Grower sells to the Product Purchaser, calculated as follows:

$$\text{EPR} = \text{EPR Rate} \times \text{Product Quantity}$$

where:

EPR Rate = the price (in Australian dollars) (including GST) per metric tonne listed in Schedule 1 in respect of the Licensed Variety; and

Product Quantity = the quantity (in metric tonnes) of Product sold by the Grower to the Product Purchaser.

- 6.2 The Grower must pay the EPR as follows:
- (a) if the Product Purchaser is an EPR Collector, the Product Purchaser will deduct from the purchase monies payable for the Product the amount of EPR payable by the Grower; or
 - (b) otherwise, the Grower must pay the EPR directly to Pacific Seeds.
- 6.3 A tax invoice in respect of the EPR paid by a Grower will be issued:
- (a) if the Product Purchaser is an EPR Collector, by the Product Purchaser on behalf of Pacific Seeds; or
 - (b) otherwise, by Pacific Seeds directly to the Grower.
- 6.4 Pacific Seeds may vary the EPR Rate by written notice to the Grower. Variations to the EPR Rate notified in a particular calendar year will apply from the commencement of the subsequent year's harvest.

7. Information and record keeping

- 7.1 The Grower must, at the time of making an EPR payment due under clause 6, and at any other time that the EPR Collector or Pacific Seeds requests such information in writing, provide following details to the EPR Collector or Pacific Seeds:
- (a) the Grower's name, address and contact information (telephone, fax, email and contact person details); and
 - (b) in respect of each Seed purchase:
 - (i) the name of the seller of the Seed;
 - (ii) the batch number of the Seed;
 - (iii) the quantity (in kilograms) of Seed purchased;
 - (iv) the date of purchase; and
 - (v) the quantity (in metric tonnes) of Product produced from the Seed purchased;
 - (c) the quantities (in metric tonnes) of Product sold to the Product Purchaser and the dates of sale of the Product; and
 - (d) any other details reasonably required by the EPR Collector or Pacific Seeds in order to verify the Grower's compliance with the requirements of this Agreement.
- 7.2 The Grower must:
- (a) keep appropriate records to enable it to comply with clause 7.1;
 - (b) maintain the records referred to in clause 7.2(a) for at least 5 years after the date of the purchase of Seed to which the records relate; and
 - (c) during the period referred to in clause 7.2(b), permit Pacific Seeds or its nominee to inspect and audit the records to verify the information provided by the Grower under clause 7.1, including by:
 - (i) copying or taking extracts of the records and accounts; or
 - (ii) contacting and obtaining information from any person from whom the Grower purchased Seed or to whom Grower sells Product.
- 7.3 The Grower warrants that all information and records provided by or on behalf of the Grower under clause 7 are true, complete and not misleading in any way, and must indemnify Pacific

Seeds for any EPR or other monies owed to it and any costs Pacific Seeds incurs as a result of any inspection under clause 7.2(c) where it is found that the Grower has underpaid any amount.

8. Sale of property

If the Grower wishes to sell a property that includes Product, the Grower must:

- (a) notify Pacific Seeds of the intended sale and the identity of the purchaser; and
- (b) make it an express condition of the sale that the purchaser assume the rights and obligations imposed under this Agreement in respect of:
 - (i) any Product crop currently growing on the property; and
 - (ii) any existing Product that is transferred to the purchaser as part of the sale,

and the Grower will remain liable to Pacific Seeds under this Agreement in respect of those matters if the purchaser defaults on its obligations under this Agreement.

9. Liability

- 9.1 To the extent permitted by law, Pacific Seeds and the Variety Owner exclude any representation, warranty and liability, whether express or implied and whether statutory or otherwise, in relation to the Seed and the Licensed Variety, including but not limited to any representation or warranty regarding merchantability or fitness for a particular purpose.
- 9.2 Where any term, condition, warranty or liability cannot be excluded by Pacific Seeds, Pacific Seeds limits its liability for breach of such term, condition, warranty, liability or other claim related to the Seed, to the extent legally permissible, to either replacement of the Seed or a refund of the price paid by the Grower for the Seed.
- 9.3 In no event shall Pacific Seeds be responsible for any economic loss or indirect, incidental or consequential damages or loss of any kind for breach of warranty or breach of any other of its obligations under this Agreement.

10. Indemnity

The Grower hereby indemnifies and will keep indemnified Pacific Seeds and the Variety Owner in respect of any loss or damage, howsoever arising, which Pacific Seeds or the Variety Owner may suffer or incur as a result of or in connection with any act or omission made or done by the Grower or its employees or agents in the course of exercising its rights and performing its obligations under and in connection with this Agreement, except where that loss or damage is caused by the negligence of Pacific Seeds or the Variety Owner.

11. Infringement

The Grower must promptly notify Pacific Seeds upon becoming aware of any unauthorised propagation, production, sale or use of the Licensed Variety.

12. Termination

12.1 Pacific Seeds may terminate this Agreement with immediate effect by giving written notice to the Grower if:

- (a) the Grower breaches any provision of this Agreement and fails to remedy the breach within 30 days after receiving notice requiring it to do so, or the Grower breaches a material provision of this Agreement where that breach is not capable of remedy;
- (b) the Grower ceases to carry on business, or ceases to be able to pay its debts as they become due, or any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Grower's assets, operations or business, or any step is taken to enter into any arrangement between the Grower and its creditors, or 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 of the whole or any part of its assets or business, or where the Grower is a partnership, any step is taken to dissolve that partnership; or
- (c) the Variety Owner or Pacific Seeds terminates the rights granted to a licence in respect of the Licensed Variety.

12.2 On termination of this Agreement in accordance with clause 12.1 or for any other reason, the licence granted to the Grower under clause 2(a) immediately terminates and the Grower must pay to Pacific Seeds all amounts due to Pacific Seeds under this Agreement.

12.3 In relation to Product or Seed which the Grower has in its possession at the time of termination, the Grower shall immediately, to the extent possible:

- (a) sell all Product to the Product Purchaser and pay any applicable EPR in accordance with clause 6; and
- (b) sell all Seed to Pacific Seeds or an Authorised Distributor.

To the extent that it is not possible to sell the Product or Seed in this way, the Grower shall destroy any Product or Seed in its possession. The Grower must not retain any Product or Seed.

12.4 If, at the time of termination, the Grower has a current crop of Seed growing, the Grower may continue to grow out that crop and dispose of the Product from that crop in accordance with clause 12.3. For the sake of certainty, on termination of this Agreement, the Grower has no further rights to plant or grow any subsequent crop of the Licensed Variety.

12.5 Termination of this Agreement does not affect any accrued rights or remedies of either party, which without limiting the generality of this clause includes the right to receive, and the obligation to pay, EPR.

13. GST

13.1 In clause 13, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

13.2 If a party makes a supply under or in connection with this Agreement in respect of which GST is payable, the consideration for the supply but for the application of clause 13 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

13.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.2.

14. General

- 14.1 **Variation:** Pacific Seeds may amend this Agreement at any time by giving the Grower not less than 14 days notice in writing, and any such amendments will apply from the date specified in the notice. Without limiting the generality of this provision, Pacific Seeds may amend or vary this Agreement to reflect the terms of any head licence it holds in respect of the Licensed Variety. The Grower acknowledges that no person (including the person from whom Seed is purchased) other than Pacific Seeds has the authority to amend this Agreement.
- 14.2 **Notices:** Pacific Seeds may provide any notices to the Grower using the contact details provided under clauses 2(c) or 7.1(a). Notices are taken to be received, if sent by mail, within 2 Business Days after posting, and, if sent by facsimile, immediately upon Pacific Seeds' facsimile system generating a message confirming successful transmission of the entire Notice unless, within 8 Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice.
- 14.3 **Retention and use of information:** The Grower acknowledges that Pacific Seeds may collect information about the Grower of the type referred to in clauses 2(c) and 7.1(a) and may use that information for the purposes of the administration of this Agreement and to inform the Grower about goods and services that Pacific Seeds considers to be of interest to the Grower. If the Grower does not wish to receive information of this type from Pacific Seeds the Grower must notify Pacific Seeds of this fact by way of written notice or by contacting Pacific Seeds' Privacy Coordinator at privacyinfo@pacseeds.com.au or by mail to Human Resources Division, Pacific Seeds Pty Ltd, PO Box 337, Toowoomba Queensland 4350.
- 14.4 **Compliance with laws:** In doing any act or thing in relation to this Agreement, the Seed or any Product, the Grower will comply with all applicable laws.
- 14.5 **Relationship of the parties:** Nothing in this Agreement or any circumstances associated with it or its performance give rise to any relationship of partnership, joint venture, agency or employment between Pacific Seeds and the Grower.
- 14.6 **Severability:** If part or all of any clause of this Agreement is illegal or unenforceable, it will be severed from this Agreement and will not affect the continued operation of the remaining provisions of this Agreement. The parties will attempt to replace that severed part with a legally acceptable alternative clause that meets the parties' commercial objectives.
- 14.7 **Waiver:** The failure of Pacific Seeds at any time to insist on performance by the Grower of any obligation under this Agreement is not a waiver of its right to insist on performance of that obligation or to claim damages for breach of that obligation, or at any other time to insist on performance of that or any other obligation of the Grower under this Agreement.
- 14.8 **Governing law:** This Agreement is governed by the law applicable in Queensland and each party submits to the exclusive jurisdiction of the courts of that State.
- 14.9 **Entire agreement:** This Agreement constitutes the entire agreement between the parties as to its subject matter, and in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by Pacific Seeds.
- 14.10 **Assignment:** The Grower must not assign or attempt to assign this Agreement, any rights arising out of this Agreement, or title to any Product crop without the prior written approval of Pacific Seeds. Pacific Seeds may assign or novate its rights and obligations under this Agreement to any person and the Grower agrees to such assignment or novation.
- 14.11 **Force majeure:** Neither party is liable for any failure to perform or delay in performing its obligations under this Agreement (other than any obligation to pay money) if that failure or delay is due to anything beyond that party's reasonable control including fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage and epidemic. If that failure or delay exceeds 30

days, the other party may terminate this Agreement with immediate effect by giving notice to the other party.

- 14.12 **Joint and several liability:** If the Grower comprises two or more persons, the provisions of this Agreement binding that party bind those persons jointly and severally.
- 14.13 **Stamp duty:** The Grower will pay any stamp duty payable on this Agreement and any document executed to give effect to any provision of this Agreement.

Schedule 1

Item	Licensed Variety	EPR Rate (\$/MT)
1.	The variety of canola quality Brassica juncea called Dune.	5.00

Signing page

EXECUTED as an agreement on the _____ day of _____ 2007.

Signed for Pacific Seeds Pty Ltd by an authorised officer in the presence of:

Signature of officer ←

Signature of witness

Name of officer (print) ←

Name of witness (print)

Office held

Signed by the Grower in the presence of:

Signature of Grower ←

Signature of witness

Name of Grower (print) ←

Name of witness (print)

To the Grower:

If you would like to receive additional information about Pacific Seeds' products, please indicate your agreement by ticking this box.