

BARKLEY SEED, INC. TERMS AND CONDITIONS

General. These terms and conditions are expressly incorporated into any contract, invoice, bill of lading, purchase order, receipt, confirmation or similar document (each, a “Contract”) between Barkley Seed, Inc. (“BSI”) and the counterparty set forth therein (“Counterparty”).

The following provisions are applicable to any Contract contemplating the sale or transfer of any planting seed (“Seed”):

1. Payment. Unless otherwise set forth in the Contract, Counterparty agrees to pay all amounts set forth in the Contract within 30 days of receipt of the Seed. Any amount not timely paid in accordance with the immediately preceding sentence shall accrue interest at the lesser of (a) 18% per annum and (b) the highest rate permissible by law. COUNTERPARTY HEREBY ACKNOWLEDGES ITS ABSOLUTE, UNCONDITIONAL AND IRREVOCABLE OBLIGATION TO PAY ALL AMOUNTS SET FORTH IN THE CONTRACT WITHOUT DEDUCTION OR OFFSET OF ANY KIND AND FURTHER ACKNOWLEDGES ITS OBLIGATION TO PAY ANY INTEREST ACCRUING PURSUANT TO THIS SECTION 1 AND ANY COLLECTION COSTS INCURRED BY BSI.

2. Security Interest. To secure Counterparty’s obligation to make payments pursuant to Section 1 and each and every debt, liability and obligation of every type and description which Counterparty or any of its affiliates may now or hereafter owe to BSI or any of its affiliates (including, without limitation, pursuant to Section 19), Counterparty hereby grants BSI a PMSI (as such terms is defined in the UCC (as defined below)) and Agricultural Lien (as such terms is defined in the UCC) in all Seed and any crop or other agricultural commodity derived from such Seed (collectively, “Products”), and all contract rights, accounts, rights to payment, insurance proceeds, or any other proceeds related (directly or indirectly) to the Products. Counterparty hereby acknowledges and agrees that BSI may file a financing statement or amendment under the UCC (or any other applicable law) in any jurisdiction with respect to the security interest created pursuant to the Contract (including these terms and conditions). To the extent the Products are sold in or transported to the state of California, Counterparty hereby acknowledges and agrees that the sale of such Products is subject to Chapter 128 of the California Agricultural Code. For the purposes of this Section 2, the term “UCC” shall mean the Uniform Commercial Code as from time to time in effect in the state of Arizona; *provided, however*, in the event that BSI’s security interest in any Product (or part thereof) is deemed to be governed by the Uniform Commercial Code of a jurisdiction other than the state of Arizona, “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction solely with respect to the security interest in that Product (or part thereof).

3. Product Location; Sale; Encumbrance. During the period of time beginning on Counterparty’s receipt of the Seed until all amounts owed to BSI pursuant to the Contract are paid full, Counterparty hereby covenants and agrees to provide BSI with the location of all Seed and Products and refrain from (a) removing the Seed or Products from the location(s) disclosed to BSI without providing BSI with at least ten days’ prior written notice (which notice shall set forth the precise address of any new location of the Seed and/or Products); (b) selling or otherwise transferring any Seed or Products without providing BSI with at least ten days’ prior written notice (which notice shall set forth the name and address of any buyer or transferee), and (c) except as provided in Section 2, permitting any Seed or Products to become subject to any mortgage, pledge, lien, charge, hypothecation, security interest, encumbrance, adverse right, interest or claim, option, right of first refusal or any other restriction or limitation of any nature whatsoever. Counterparty hereby grants BSI permission to contact any potential buyer or transferee to inform such person(s) of BSI’s security interest in the Seed and/or Products.

4. Warranty; Limitation of Liability. BSI warrants that all Seed shall be labeled in compliance with applicable law and that such Seed shall materially conform to the label description within recognized tolerances. Except for the warranties set forth in the immediately preceding sentence, BSI HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING (WITHOUT LIMITATION) THE WARRANTIES OF NON-INFRINGEMENT, PERFORMANCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF SUCH DAMAGES COULD HAVE BEEN FORESEEN OR IF BSI HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER SUCH DAMAGES ARE ARISING IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE, IN NO EVENT WILL BSI BE LIABLE FOR DAMAGES IN EXCESS OF THE PURCHASE PRICE OF THE SEED STATED IN THE CONTRACT.

5. Defect Claims; Returns. All claims for Seed defects must be made within 30 days of planting and Counterparty must provide BSI with an opportunity to physically inspect and sample all Seed, fields, plants, and plant parts for which any defect is claimed. BSI will not accept returns of bulk Seed or Seed in damaged or opened packaging. All other returns will be considered in BSI’s sole and absolute discretion.

6. Packaging. Absent BSI’s written consent, Counterparty shall not (a) package any Seed, (b) repackage any Seed, or (c) alter the packaging of any Seed.

The following provisions are applicable to any Contract contemplating the production or purchase of any cereal grain (“Grain”):

7. Field Maps; Origin; Weights and Quality. Counterparty shall provide accurate field maps (or canal and gate numbers, as applicable) depicting specific locations where Grain is grown within 15 days of final planting. Counterparty shall not grow any Grain outside of the continental United States. All weights and quality determinations (including grades, dockage and protein percentages) shall be determined by BSI or its designee. BSI’s calculations of quantities, times, dates and each other numerical amount under the Contract shall be deemed accurate for all purposes absent arithmetical error.

8. “Total Production” Contracts. Counterparty unconditionally agrees to deliver all Grain produced under any “total production” Contract to BSI immediately at harvest without substitution of any kind. In the event such “total production” Contract is also an “unpriced” Contract, upon delivery of all Grain to BSI, at Counterparty’s request BSI will make available for pickup common grain of the same quantity and similar quality as the Grain delivered to BSI under the “total production” Contract.

9. Risk of Loss. Counterparty acknowledges that title to the Grain and risk of loss pass from Counterparty to BSI upon acceptance by BSI at its designated facility; *provided, however*, at BSI’s option, Counterparty shall retain title and risk of loss in the event (a) the Grain is tagged, seized,

condemned or declared unfit by any governmental agency, or (b) BSI delivers to Counterparty a notice of rejection within 24 hours of receipt of the Grain.

10. Compliance with Law. Counterparty guarantees that the Grain (a) meets all minimum standards prescribed by local, state, or federal governmental agencies including the United States Food and Drug Administration, (b) complies with the pure food or drug laws or ordinances of any country, state or city in which the Grain is grown in or shipped from, including the Federal Food Drug and Cosmetic Act of 1938, as amended, (c) is free from all pesticide or herbicide residue which is illegal or in excess of generally acceptable tolerance levels, and (d) is not grown in or shipped from any area quarantined by the United States Department of Agriculture.

The following provisions are applicable to any Contract contemplating the production, purchase, storage, or handling of any Grain or Seed:

11. Storage and Handling Fees. Counterparty agrees to pay BSI the following storage and handling fees in accordance with the terms set forth on BSI’s invoice, but in any event no later than the termination of storage and handling pursuant to Section 13. Any amount not timely paid in accordance with the immediately preceding sentence shall accrue interest at the lesser of (a) 18% per annum and (b) the highest rate permissible by law.

Description	Fees	
Grain Storage (see harvest year breakdown)	Harvest years 2015, 2016, 2017	\$0.50 per short ton/month beginning February 1, 2019 \$0.80 per short ton/month beginning July 1, 2019
	Harvest year 2018	\$0.80 per short ton/month beginning July 1, 2019
	Harvest year 2019 and thereafter	\$0.80 per short ton/month No charge first 6 months
Handling Grain “In” Charge (all harvest years)		\$6.00/short ton
Handling Grain “Out” Charge (all harvest years)		\$6.00/short ton
Seed Storage (all harvest years)		\$0.0025 per pound/month No charge first 12 months

12. Method of Storage and Handling. All Grain and Seed stored and handled by BSI may be adjusted for “shrink” at a rate of 1% annually, prorated for any partial year of storage and handling. Grain and Seed stored and handled by BSI may be co-mingled with Grain or Seed of similar quality. Upon termination of storage and handling, BSI will use commercially reasonable efforts to make available Grain and/or Seed of a similar quality as the Grain and/or Seed received from Counterparty. Notwithstanding anything to the contrary in the Contract, with respect to durum Grain, upon termination of storage and handling BSI will make available durum Grain of the same FGIS grade and Comparable Protein Percentage (as defined below) as the durum Grain received from Counterparty. For the purposes of this Section 12, the term “Comparable Protein Percentage” shall mean, as applicable, (a) at least 13% protein percentage for durum Grain received from Counterparty with a 13% or greater protein percentage, or (b) 12% or less protein percentage for durum Grain received from Counterparty with a protein percentage less than 13%.

13. Termination of Storage and Handling. Counterparty may terminate storage and handling upon 48 hours’ notice to BSI and payment in full of all accrued but unpaid storage and handling fees. BSI may terminate storage and handling upon 30 days’ notice to Counterparty. Upon termination of storage and handling, BSI will make available Grain and/or Seed in accordance with Section 12 at the applicable storage and handling location for Counterparty’s receipt. In the event Counterparty fails to timely receive Grain and/or Seed, BSI may, at its option, (a) continue to store and handle Grain and/or Seed and charge Counterparty applicable storage and handling fees, or (b) deliver Grain and/or Seed to Counterparty (less Grain and/or Seed sufficient to cover delivery costs and any accrued but unpaid storage and handling fees in accordance with Section 17).

14. Transfers. Absent BSI’s prior written approval, Counterparty shall not transfer title to any stored Grain or Seed.

The following provisions are applicable to all Contracts:

15. Encumbrances. Absent BSI’s prior written approval, Counterparty shall deliver all Grain and Seed free of any mortgage, pledge, lien, charge, hypothecation, security interest, encumbrance, adverse right, interest or claim, option, right of first refusal or any other restriction or limitation of any nature whatsoever (each, an “Encumbrance”). In the event that all or any part of the Grain or Seed become subject to any Encumbrance not approved by BSI in writing, Counterparty acknowledges that BSI may at its option (a) pursue indemnification pursuant to Section 19, (b) cancel all or part of the Contract without liability to Counterparty, (c) deliver Grain and/or Seed to Counterparty or the holder of any Encumbrance (less Grain and/or Seed sufficient to cover delivery costs and any accrued but unpaid storage and handling fees in accordance with Section 17), and/or (d) issue a joint check to Counterparty and the holder of any Encumbrance in full satisfaction of BSI’s obligations under the Contract. In the event any person or entity (other than Counterparty) asserts any claim to any payment due to Counterparty pursuant to the Contract, BSI may hold such payment in escrow (without interest or liability to Counterparty) until a final determination as to the correct payee is made by a court of competent jurisdiction. Counterparty agrees to notify BSI in writing within five days of all or any part of the Grain or Seed becoming subject to any Encumbrance.

16. Limited Use. Counterparty shall strictly adhere to the Seed usage instructions set forth in the Contract and/or the Seed packaging. Under no circumstances shall Counterparty (a) use any Seed, Grain, or plant part derived therefrom for crossing of any kind, conducting selection, employing transformation techniques, conducting mutagenesis, tissue culture, or molecular or cellular techniques, or research of any kind, or (b) use, retain, or transfer any Grain for use as planting seed.

17. Set Off Right. Notwithstanding anything to the contrary in the Contract and without prejudice to any other right or remedy, BSI shall have the absolute right to set off any amounts now or hereafter owed to BSI or any of its affiliates by Counterparty or any of its affiliates (including, without

limitation, pursuant to Section 19) against any amounts now or hereafter owed to Counterparty or any of its affiliates by BSI or any of its affiliates. In the event Counterparty or any of its affiliates is party to a Contract that contemplates the sale or production of any Grain or such Counterparty or any of its affiliates stores Grain or Seed at a BSI facility, BSI may exercise its set off right pursuant to this Section 17 by taking title to Grain or Seed at the price set forth in the Contract or, in the case of an “unpriced” Contract or storage arrangement, at a price equal to BSI’s current bid for such Grain or Seed at the time BSI exercises its set off right.

18. Specific Performance. Counterparty acknowledges that any breach Section 8 or Section 16 may result in irreparable harm to BSI for which there may be no adequate remedy at law. Counterparty therefore agrees that in the event of any threatened or actual breach of Section 8 or Section 16, BSI shall be entitled to injunctive relief and that BSI will not be required to provide a bond or other security as a condition to or in connection therewith. This remedy will be in addition to any other remedy available at law or in equity.

19. Indemnification. To the fullest extent permitted by law, Counterparty shall defend, indemnify and hold harmless BSI, its former and present affiliates, and each of their respective former and present partners, owners, employees, agents, representatives, officers, directors, managers, lenders, successors and assigns (each, an “Indemnitee” and collectively, the “Indemnitees”) for, from and against any and all liabilities, obligations, losses, interest, amounts paid in settlement of claims, deficiencies or damages, including any out-of-pocket expenses and reasonable attorneys’ fees (collectively, “Losses”), whether or not involving a third party claim against any Indemnitee and regardless of whether or not such Loss is caused in part by any Indemnitee, resulting from or arising out of any breach, threatened breach, or inaccuracy with respect to any representation, warranty, covenant, obligation or agreement set forth in the Contract (including these terms and conditions) by Counterparty or any person or entity receiving Seed or Grain from Counterparty or any of Counterparty’s transferees. Counterparty acknowledges that (a) each Indemnitee is an intended beneficiary of the Contract, and (b) all representations, warranties, covenants and obligations of Counterparty contained in the Contract, including (without limitation) Counterparty’s indemnification obligations pursuant to this Section 19, shall survive any termination or expiration of the Contract.

20. Severability. Any provision of the Contract (including these terms and conditions) which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that provision only, be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the remaining provisions of the Contract (including these terms and conditions) in such jurisdiction or rendering that or any other provision of the Contract (including these terms and conditions) invalid or unenforceable in any other jurisdiction.

21. Miscellaneous. Counterparty represents and warrants that Counterparty’s legal name is exactly as listed on the Contract and the person executing the Contract on behalf of Counterparty is fully authorized to do so. Counterparty shall not assign the Contract, including (without limitation) an assignment by operation of law or by way of change of control of Counterparty, without the prior written consent of BSI, which may be withheld in its sole discretion. The Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their permitted successors and assigns. The rights and remedies of the parties under the Contract are cumulative and not alternative. The failure of any party at any time to require performance by any other party of any provision of the Contract shall not affect the rights of such party to require future performance of that provision or constitute a waiver of any other right under the Contract. Time is of the essence. The Contract (including these terms and conditions) shall be considered for all purposes as having been prepared through the joint efforts of the parties. The Contract (including these terms and conditions), together with any related license or agreement regarding Seed intellectual property (each, an “Intellectual Property Agreement”) to the extent applicable, constitutes the entire agreement and supersedes any previous agreement, whether written or oral, between the parties relating to the subject matter of the Contract. The Contract may only be modified, amended, or waived by a written agreement (expressly stating that it is an amendment to the Contract) signed by each of the parties. In the event of any action or proceeding at law or in equity between the parties to enforce any of the provisions of the Contract, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys’ fees, incurred by such prevailing party. The Contract shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the state of Arizona without regard to conflicts-of-laws principles that would require the application of any other law. Each party hereby agrees to the exclusive personal jurisdiction of the state or federal courts located within Yuma County, Arizona with respect to any claim or cause of action arising under or relating to the Contract, and waives personal service of any and all process upon it. Each party hereby waives any objection based on inconvenient forum and waives any objection to venue of any action instituted under the Contract. In the event of any conflict between these terms and conditions and the body of the Contract, the terms of the body of the Contract shall govern. In the event of any conflict between the Contract (including these terms and conditions) and any Intellectual Property Agreement, the terms of the Intellectual Property Agreement shall govern. In the event of any conflict between the Contract (including these terms and conditions) and any purchase order or other document issued by Counterparty (including any general terms and conditions contained in any purchase order), the Contract shall govern. The Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The exchange of copies of the Contract by electronic transmission (including electronic signatures) shall constitute effective execution and delivery of the Contract as to the parties and may be used in lieu of the original Contract for all purposes.