

insuring clauses

In consideration of the payment of the premium, in reliance on the written proposal and declaration (which shall be deemed to be the basis of this policy), and subject to its terms, conditions, exclusions, warranties and endorsements, Vero Liability Insurance Limited ("the Company") will indemnify the Insured against all claims for compensation (including claimants' costs and expenses) which the Insured shall become legally liable to pay as damages, up to the Limit of Indemnity stated in the Schedule in the aggregate in any one Policy Year, and which are first made against the Insured during the Policy Year and notified to the Company during the same period:

1. For failure of seed sold by the Insured to conform to the variety or quality specified or to be suitable for the purpose specified by reason of any negligent act, error or omission of the Insured or its employees in the conduct of the Insured's business;
2. For failure of seed sold by the Insured to conform to the variety specified by the Insured if purchased by the Insured in compliance with applicable seed laws, rules and regulations or from a recognized seed grower and/or dealer;
3. For failure of seed sold by the Insured to conform to the variety and quality specified when sold by the Insured in unopened packages received by the Insured from a supplier who is a recognized seed dealer;
4. By reason of any negligent act, error or omission of the Insured or its employees arising out of the processing of seed by the Insured for or on behalf of others where no sale of seed is made;
5. By reason of the Insured's contracting with others to grow seed for the Insured, or from the Insured's contracting to grow seed for others, or from the Insured's sale of any seed so grown.

PROVIDED ALWAYS THAT the Company shall not be liable for any claim unless the amount of Claim exceeds the amount stated in the Schedule as the Deductible, which amount shall be deducted from each Claim and borne by the Insured at their own risk and the Company shall only be liable for loss in excess of such stated amount.

definitions

"Claim" shall mean all claims made against the Insured resulting from a single incident, negligent act, error or omission affecting one or more lines of seed, or one or more lines of mixes of seed (PROVIDED THAT a repetition of the same incident or negligent act, error or omission shall be a separate claim) that results in:

- a) legal proceedings issued and served upon the Insured; or
- b) any threat or intimation that legal proceedings will be issued against the Insured.

"Seed" or "Seeds" shall include seeds, bulbs, plants, roots, tubers or other similar means of plant propagation.

"Insured" shall include any partner thereof, if the Insured is a firm, and any officer or director thereof, if the Insured is a corporation.

"Policy Year" shall mean the Period of Insurance stated in the Schedule.

"Loss Payment" shall mean payment made in satisfaction of any judgement or in settlement of any Claim.

exclusions

This insurance shall not indemnify the Insured in respect of any Claim:

- (a) brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the Insured or any employee of the Insured;
- (b) for, or which can be settled for, the purchase price of defective Seed sold by the Insured, or for replacement Seed;
- (c) brought about or contributed to by the sale by the Insured of any Seeds not harvested during the most recent harvest season of such Seeds, except Seeds which by custom of the trade are carried over to the following seasons and for which an analysis for purity and a germination test have been made prior to the sale of such Seed by the Insured;
- (d) for damages in consequence of bodily injuries to or death of any person;
- (e) for damage to or destruction of the property of any person;
- (f) brought about or contributed to by the transmission to plants other than those grown from such Seeds, of any disease, rust, wilt, fungus or insects or larvae or eggs thereof by Seeds sold by the Insured;
- (g) caused by or contributed to by or arising from:
 - (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - (ii) the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof;
- (h) by reason of any indemnification, hold harmless and/or contractual agreement, written or oral, entered into by the Insured with another person, firm or corporation other than the contract terms declared to the Company;

- (i) against them, alleging, involving, arising from (directly or indirectly) death, injury, illness, loss, damage cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:
- (i) war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, insurrection, riot, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property under the order of any government or public or local authority; or
 - (ii) any act of terrorism;
- Definition: "act of terrorism" means an act, including but not limited to the use of force or violence and/or threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or governments(s) which from its nature or context is done for, or in connection with, political, religious, ideological, ethnic, or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear;
- This exclusion also excludes death, injury, illness, loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to (i) and/or (ii) above;
- (j) resulting from any Seed sales, processing of seed or contract seed growing affected prior to the Retroactive Date stated in the Schedule;
- (k) for any legal liability of whatsoever nature, directly or indirectly, arising out of any incident, negligent act, error or omission committed outside the territorial limits of New Zealand or Australia. Furthermore this Policy shall not extend to any claims, suits, actions or demands brought outside those countries.
- (l) arising out of any litigation in existence at the commencement of the Period of Insurance.
- (m) for any liability arising directly or indirectly from, or is in any way connected with, the fact that the performance or functionality of any Computer Equipment has been or may be affected because that Computer Equipment does not meet Year 2000 Conformity.

For the purpose of this exclusion the following additional Definitions apply:

1. "Computer Equipment" includes but is not limited to any or any combination or part of data, computer hardware, operating system, application, software, and computer chip including microprocessor chip or embedded control logic, and irrespective of by whom it is owned or operated.
2. "Year 2000 Conformity" means that neither performance nor functionality is affected by dates prior to, during, or after the Year 2000 and, in particular but without limitation, that:
 - 2.1 No value for current date will cause any interruption in operation;
 - 2.2 Date-based functionality must behave consistently for dates prior to, during and after Year 2000;
 - 2.3 In all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithm, or inferencing rules;
 - 2.4 Year 2000 must be recognised as a leap year in terms of handling both 29 February and day 366;
 - 2.5 9 September 1999 must be recognised as that date.

The above definition of "Year 2000 Conformity" is based on a definition contained in a document published by Standards Australia and Standards New Zealand under reference no SAA/SNZ MP77:1998 and shall be interpreted in accordance with that document.

- (n) for any liability for, or fulfil any obligation in respect of any claim or defence costs, which are directly or indirectly caused by or contributed to, or arises directly or indirectly out of:
- (a) the action or effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or any similar or like forms, in any building or structure; or
 - (b) any cost or expense arising out to the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralising, remediating or disposal of, or in anyway responding to or assessing the effects of mould, fungi, mildew, rot, decay, gradual deterioration, micro-organisms, bacteria, protozoa or similar or like forms, in any building or structure; or
 - (c) the failure of any building or structure to meet or perform to the requirements of the New Zealand Building Code contained in the first schedule to the Building Regulations 1992 (or any amendment or substitution thereof) in relation to:
 - (i) external water or moisture; or
 - (ii) either durability or protection from external water or moisture entering that building or structure, or the effects thereof.
- (o) for any actual or alleged liability whatsoever for any claim or claims in respect of loss or losses directly or indirectly arising out of, resulting from or in consequence of, asbestos in whatever form or quantity.

conditions

1. The liability of the Company hereunder shall not exceed in the aggregate for any and all Claims made against the Insured in any one Policy Year the Limit of Indemnity stated in the Schedule. The Company will pay costs and expenses incurred with the Company's prior written consent in the defence of any Claim in excess of the Deductible and covered by this insurance, PROVIDED THAT such costs and expenses shall form part of and not be in addition to the Limit of Indemnity stated in the Schedule.. In the event that the Company has made Loss Payment or payments equal to the total amount of the Limit of Indemnity hereunder for Claims made against the Insured during any one Policy Year, the Company shall have no further liability in respect to other Claims made against the Insured during such Policy Year, either for costs and expenses incurred or otherwise.
2. The Insured shall not admit liability for or settle any Claim, or incur any costs or expenses, without the prior written consent of the Company which shall be entitled to take over and to conduct in the name of the Insured (which shall be a condition precedent to the Insured's right to be covered under this Policy) the defence or settlement of any Claim, including to compromise any counterclaim. Nevertheless neither the Insured nor the Company shall be required to contest any legal proceedings unless a Queen's Counsel (to be mutually agreed upon by the Insured and the Company) shall advise that such proceedings should be contested.
3. If the Insured shall refuse to consent to any settlement recommended by the Company, and shall elect to contest or continue any legal proceedings, the Company's liability for the Claim shall not exceed the amount for which the Claim could have been so settled (less the Deductible specified in the Schedule), plus the costs and expenses incurred up to the date of such refusal.

4. The Insured shall as a condition precedent to its right to be covered under this policy give to the Company immediate notice in writing of:
 - (a) any Claim made against the Insured;
 - (b) the receipt of notice from any person of any intention to hold the Insured responsible for the results of an alleged negligent act, error or omission;
 - (c) any circumstance which the Insured shall become aware which may give rise to a Claim or Claims under this Policy;irrespective of whether the Claim is considered justified and/or the quantum is likely to be within the Deductible stated in the Schedule.
5. The insurance provided by this policy ceases absolutely at the time and date stated in the Schedule. However, provided that notice referred to in Condition 4 above has been given to the Company prior to the expiration of the Period of Insurance, any Claim or loss arising from the circumstances thus notified which is subsequently made after the expiration of the Period of Insurance shall be deemed to have been made during the subsistence of this policy.
6. The Insured shall use due diligence, and do and concur in doing all things reasonably practicable, to avoid or diminish any claim and, on request, give to the Company or its authorised representatives all such information and assistance as they may reasonably require.
7. The Insured shall give immediate notice in writing to the Company should the statutory registration of an insured person be suspended, cancelled or terminated.
8. If the premium for this policy has been calculated on any estimates furnished by the Insured, the Insured shall keep an accurate record containing all relevant particulars, and shall at all times allow the Company to inspect such records. The Insured shall within one month from the expiry of the Period of Insurance furnish to the Company such particulars and information as the Company may require. The premium for such period shall then be adjusted and the difference paid by or allowed to the Insured, as the case may be, subject to a minimum premium which, unless otherwise stated, will be seventy-five percent (75%) of the Initial Premium.
9. This policy shall be governed by the law of New Zealand, the courts of which shall have exclusive jurisdiction over any dispute.
10. If any Claim under this policy shall be in any respect fraudulent, or if any fraudulent means or devices are used by the Insured or anyone acting on the Insured's behalf to obtain any benefit under this policy, all benefits under the policy shall be forfeited.
11. If any Loss Payment is made under this policy in respect of a Claim, the Company is subrogated to all the Insured's rights of recovery. The Company shall not exercise any such rights against any employee of the Insured, unless the Claim has been brought about or contributed to by the dishonest, fraudulent, criminal or malicious act or omission of the employee. The Insured shall give all such assistance in the exercise of rights of recovery as the Company may reasonably require.
12. This policy may be cancelled by the Company at any time by sending written notice to the last known address of the Insured. Such cancellation shall be effective from 4 pm on the 30th day after posting of such written notice. After such cancellation the Company will refund a pro rata of premium for the unexpired Period of Insurance.

The Insured may cancel this policy at any time by notice to the Company, and the Company shall refund premium for the unexpired Period of Insurance calculated pro rata from the date of receipt of such notice less 10%, subject always to the Company's minimum premium.

Notwithstanding the cancellation of the policy, or any extension, the Insured shall furnish to the Company such particulars as the Company may require for the adjustment of the premium.
13. To be valid this policy must have attached the Schedule signed by an authorised officer of Vero Liability Insurance Limited.
14. This insurance does not cover any liability of the Insured which is insured, or would, but for the existence of this insurance, be insured by any other insurance, except in respect of any excess beyond the amount which would have been payable under such other insurance had this insurance not been effected.
15. If the Company instructs any lawyer to investigate or defend any claim against the Insured, the Insured authorises the lawyer to provide to the Company any documents, information or advice in respect of the claim, including in relation to indemnity; and the Insured waives any privilege to the extent necessary to give full effect to the Company's entitlement in this respect.

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