

NATIONAL CODE OF PRACTICE



LABELLING AND MARKETING OF SEED FOR SOWING

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September 2013

CODE OF PRACTICE LABELLING AND MARKETING OF SEED FOR SOWING

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Preface

This Code of Practice has been prepared by the Australian Seed Federation (ASF) following consultation with industry, consumer organisations, government and other interested parties.

It is intended to provide the basis for self-regulation of seed for sowing standards by the seed industry. The Code promotes industry self reliance within the seed industry and introduces a national perspective for the labelling and marketing of seed.

The development of this Code is attributed to significant legislative developments in the Federal and State arena, and a commitment by plant breeders and proprietary marketers to adopt high standards of conduct in the production and marketing of seed for sowing.

“Mutual Recognition” legislation was introduced in 1992, the principle objective being, that goods produced in or imported into the first state, that may be lawfully sold in that state either generally or in particular circumstances, may, because of the Act, be sold in the second state either generally or in particular circumstances, without the necessity for compliance with further requirements that the goods satisfy standards of the second state, for example, packaging, labelling, date stamping or age.

In response to Mutual Recognition, the Australian Seeds Committee (ASC) sought advice from the Federal Attorney General’s Department with respect to establishing the full extent of the impact of Mutual Recognition on state seed legislation. The response from the Attorney General’s office was that the provisions of state seed legislation governing the sale of seed for sowing purposes would be subject to Mutual Recognition.

The Australian Seed Committee’s response to this advice was the establishment of an ‘ASC Working Group on National Seed Legislation’ which includes representation from the Australian Seed Federation, the Grains Council of Australia, and the Australian Seeds Committee. Its task was to investigate and report on the following:

- the impact of Mutual Recognition on current State and Territory laws relating to the sale of seed;
- options available to achieve national uniformity in seed laws; and
- recommendations for legislative changes.

The Working Group agreed that a uniform national approach to seed regulation was imperative and considered three means of achieving this uniformity:

- uniform seed legislation
- repeal all seed legislation
- industry self regulation.

The Working Group supported industry self regulation, and accordingly the ASF has developed this Code of Practice to achieve national uniformity with respect to the labelling and marketing of seed for sowing.

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Definitions

'Adventitious Presence' refers to the unintended, incidental presence as an admixture of seed of biotechnology-derived (GM) plant material in seed of a non-GM variety, or the unintended, incidental presence of seed containing one, or more, approved events in the seedlot of another GM variety.

'Approved event' refers to a GM event approved by the Office of Gene Technology Regulator in Australia.

'Breeding' means the process of developing new plant genotypes by the application of scientific procedures to the generation of new genetic variability by intercrossing or other methods and/or the selection of new and novel plant genotypes.

'Code' means the Australian Seed Federation 'Code of Practice for Labelling and Marketing of Seed for Sowing' purposes.

'Event' refers to the product of the movement of a gene from a genome of one organism to that of another organism by biotechnology procedures.

'Examination' includes any analysis or test or any combination thereof which are conducted according to recognised industry practices and procedures.

'GM' means **genetically modified** and refers to plant genetic resource material modified by the application of recombinant DNA technology.

'Hybrid variety' means the first generation seed of cross fertilization produced by controlling pollination so as to combine-

- two or more inbred lines;
- two single cross of inbred lines;
- one inbred line with an open-pollinated variety;
- a single cross of inbred lines with an inbred line; or
- one inbred line or single cross with an open-pollinated variety.

'Label' includes any tag or sticker affixed to the tag or parcel.

'Label format' referred to in Section 6.12 of the Code which is to be printed on a parcel of seed or label attached thereto shall be in English, legible, indelible ink, and not less than eight point in size.

'Lot designation' means the code, brand, mark, lot or line number which distinguishes a lot of seed from any other lot.

'Lot of Seed' means a quantity of seed identified by the same lot designation every parcel of which is uniform within the tolerances specified in the Rules of the International Seed Testing Association.

'Name' for the purpose of any examination of seeds means the botanical name or preferred common name published in *A Checklist of Economic Plants in 1979* (or any revised publication) compiled by the Commonwealth Scientific and Industrial Research Organisation.

'Parcel' includes bag, barrel, case, container, package, packet or sack.

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'Proprietary variety' – a proprietary variety is one for which ownership can be proven, either through PBR, patents, breeding records, or ownership of the component parts (in the case of hybrids). The ownership may be transferred from the breeder to a marketer through an agreement. Marketers may claim exclusive distribution rights for a proprietary variety where written or verbal agreement between the breeder and the marketer grants such distribution rights.

'Rules of the Australian Seed Federation Dispute Resolution Scheme' means the rules set out in Appendix III of this Code, as amended by the Institute of Arbitrators & Mediators Australia from time to time.

'Rules of the International Seed Testing Association' means those rules set out in the journal 'Seed Science and Technology, Volume 24, Supplement 1996, published by the International Seed Testing Association', and as amended from time to time.

'Variety' means an assemblage of cultivated plants that is clearly distinguishable by any characters (morphological, physiological, cytological, chemical, or others) which when reproduced, (sexually or asexually) retains its distinguishing characters. In this Code of Practice variety includes hybrids.

1. Introduction

This Code will strive to ensure that consumers are provided with consistent and accurate information to enable them to make informed decisions about the suitability of seed for sowing. All ASF members have concurred in the promulgation of the Code and accept its provisions.

This Code also acknowledges intellectual property rights and obliges ASF members to adhere to the provisions of the Plant Breeders Rights Act (1994) and the Patents Act 1990 in respect to marketing of material covered by the legislation.

The ASF accepts the right of members to acquire exclusive rights to material from plant breeding organisations or other institutions from within Australia or overseas and have the right to market this material in Australia, acknowledging company's proprietorship over such material.

The ASF also acknowledges and recognises that companies, through their own entrepreneurial activities, may acquire trademarks or develop customised recognition for products which can be accepted as that company's intellectual property.

2. Application of the Code

2.1 Sales to which the Code Applies

This Code applies to seeds sold or supplied for the purpose of sowing. 'Sold' or 'sell' includes barter, exchange, and exposing, having in possession, or delivering for sale, in Australia and its Territories.

2.2 Applicability of the Code Relative to Other Laws

The standards set out in this Code shall be the minimum standards unless some higher standard is required by a law of a State, Territory or the Commonwealth.

3. Sales to Which the Code Does Not Apply

- To seeds used for experimental or breeding purposes;
- To seed sold for purposes other than for sowing, providing the buyer so declares in writing to the seller; and
- To seed sold as stockfeed or birdseed provided that it is so labelled.

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4. Responsibility for Label Information

In general, every written statement made regarding the contents of a parcel of seed by a vendor, despite any agreement to the contrary, constitutes a warranty by the vendor that all particulars contained in the statement are true and correct.

In determining whether a statement referring to the results of an examination of the seed is or is not true and correct, the statement shall be deemed to be true and correct if the results obtained by a further examination do not differ from those in the statement by more than the prescribed tolerances.

Any statement or agreement made which purports to exclude, limit or modify the operations of the preceding two paragraphs shall be void and have no effect.

5. Sampling and Examination of Seeds

The taking of any sample and the conduct of any examination, or assessment of seeds for any of the purposes of the Code shall be carried out in a manner consistent with the *'Rules of the International Seed Testing Association'*.

6. Minimum Details Required on Label or Parcel

This Code of Practice requires that a person shall not sell seeds contained in a parcel unless there is clearly written or printed thereon, or on a label securely attached thereto, a statement setting out the particulars referred to in sub-sections 6.1- 6.13 and Appendix II below:

6.1 Species (Mandatory)

The *COMMON* or *BOTANICAL* name of each species present in the seed lot in a proportion by mass or by count of:

- 1% or more in lawn or turf seed, or;
- 5% or more in other seed.

6.2 Pure Seed (Optional)

The proportion of each species named, (by mass or by count - if expressed by count then the words "by count" must be included in the statement);

- as the actual percentage, determined by examination, or;
- a minimum percentage. If stated as a minimum the word "minimum", or "min" must be included.

6.3 Germination (Optional)

The proportion of the seeds of each species named that are germinable: as a minimum percentage at the time of sale expressed as:

"Min. germination (%)";

or the actual germination as determined in an examination expressed as follows:

"Germination (%)"
Date of test
Month/Year

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6.4 Hard Seeds (Optional)

The inclusion of hard seed percentage on the label is optional but, when hard seeds are present, the percentage shall not be included in the germination percentage but may be stated in addition.

6.5 Other Seeds (Optional)

The total proportion of seeds, other than those named as per sub-section 6.1 above, present in the lot of seeds by mass as an actual or maximum percentage, or by number per kilogram, or by number per unit mass.

6.6 Chemical/Additive Treatment (Mandatory)

The statement on the parcel, or label attached thereto, to set out all chemical/additive treatment to which the seeds have been subjected and should be expressed as:-

"CAUTION - TREATED WITH (common or brand name of a Fungicidal/Insecticidal Seed Dressing), DO NOT USE FOR FOOD, FEED OR OIL."

For seed sold in small home garden size packs the following wording may be used:

"CAUTION TREATED WITH (common or brand name of a Fungicidal/Insecticidal Seed Dressing)" DO NOT EAT THESE SEEDS OR FEED TO ANIMALS".

All wording required by this sub-section should be shown in red, where chosen printing format permits, on a contrasting background. All chemical treatment applied to seed should include a distinctive colouring agent.

6.7. Biological Treatment (Mandatory)

The statement on the parcel, or label attached thereto, to set out any biological treatment to which seeds have been subjected and should be expressed as:-

"IMPORTANT - SEED TREATED WITH A LIVE MICROORGANISM" with accompanying information of:-

Date of application
Batch or Lot Number
By (name and address)

6.8 Mass of Parcel (Mandatory)

a) The net weight of the contents, or the number of seeds

b) For Single Species of coated or pelleted non Horticultural seed:

where the coating or pelleting process adds more than 5% to the weight of the bare seed *and* is packed in parcels of 10 kilograms or greater it is mandatory for one of the following to be present on the label:

- the % by weight of seed *or*
- the seed count expressed as seeds/pellets per kg or Thousand Seed Weight.

It is optional to include both on the label.

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moving in International Trade are specified in the Australian Seeds Authority technical standards for the accreditation of seed certification agencies implementing these schemes. Copies of the latest versions of the two standards are available on request from the Australian Seeds Authority.

7. Sales of Seed Not Requiring Full Labelling

7.1 Seed Sold in Large Quantities

Where seed from the one lot is sold in a quantity greater than two tonnes, the parcel or parcels must be marked with the number, code or brand identifying the lot of seeds and the vendor must provide the purchaser with a written statement containing the full labelling details.

7.2 Unpackaged Seed - Bulk Deliveries

For sales of unpackaged seed the vendor must provide the purchaser with a written statement identifying the lot of seeds and containing the full labelling details.

7.3 Seed Sold in Small Parcels

Seeds sold in parcels which are:

- less than 100 grams of vegetable seeds other than below;
- less than 1 kilogram of maize, bean, sweetcorn or pea sowing seeds, or;
- less than 10 kilograms of all other seed not defined above, shall require labelling as follows:

The name of the kind of seed, the name of the variety, a lot number code or brand relating to the source of the seeds, any chemical treatment of the seeds, and a "Sow before (Month/Year)".

Seeds sold in small parcels may be labelled in accordance with Section 6.

7.4. Seeds of Flowers, Ornamentals, Trees and Shrubs

Seeds of these classifications shall require labelling as follows: the name of the kind of seed, the name of the variety, a lot number code or brand relating to the source of seed, any chemical treatment of the seeds and a "Sow before (Month/Year)".

The package should clearly identify the name and address of the seller, distributor or packer of the seeds.

7.5 Sale of Seeds Drawn From a Larger Parcel

A parcel of seed of less than 20 kg extracted from a larger, fully labelled parcel, is exempt from the labelling requirements of the Code, but at the time of sale the purchaser is to be provided with a written statement identifying the lot of seed from which it was drawn.

7.6 Sales of Seed Mixtures

Where bare seed and/or coated or pelleted seed from two or more different species is mixed together to the purchaser's or vendors specifications, the vendor is required to advise the purchaser that the labelling information is available for each lot of seed to be used in the mixture; the vendor is to provide the purchaser with a written

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statement identifying the lots of seed used in the mixture and the statement to be endorsed with the words: “Details of the CUSTOM MIXTURE components available on request”, and the parcel is to be marked with the words ‘**CUSTOM MIXTURE**’.

Upon such request, the vendor will supply the purchaser details of component purity, germination, and for coated or pelleted seed the % by weight of seed and/or seed count (seeds/pellets per kg or Thousand Seed Weight) as applicable or as desired by the purchaser.

Seed mixtures below 25kgs of turf seeds shall be labelled as follows:

- lot number of the blend;
- species expressed by %weight or count;
- average minimum germination;
- name and address of vendor/packer;
- sow before (date).

8. Quality Assurance

All seed for sale must be supported by a seed testing analysis certificate which must be made available on request.

ASF supports the International Seed Health Initiative for Vegetables, established within the International Seed Federation. Vegetable seed companies are required to obtain from their suppliers or production department evidence of seed health management programs. Any testing for plant pathogens is to be carried out in accordance with internationally recognised protocols.

9. Use of Variety Names

If variety names are used it is the vendor’s warranty that the seed contained in the parcel is seed of the variety so named.

If the seed contained in a parcel is seed of a hybrid variety, the word HYBRID and the name, code or number of that variety must be included on the parcel or label attached to the parcel.

10. Seed Certification Schemes

This Code may recognise the various official seed certifying schemes for testing and certifying varieties of crop and pasture seeds, and/or the freedom of, or the resistance or immunity to, prescribed diseases or pests.

This Code recognises that outside of domestic and OECD seed schemes, seed lot sizes for cereals and pulses will be 50 tonnes.

11. Restrictions on the Use of Certain Words

Words such as 'certified', 'registered', 'verified', and 'approved' or any other words of similar implications must not be used in a written statement referring to seeds for sale unless the seeds have been certified, registered, verified or approved under a scheme recognised by the ASF.

Words such as 'disease-resistant', 'pest-tolerant', 'pest-immune', or any other words of similar implication, which suggest that the seeds are free from, or any plants grown from the seeds would be resistant, tolerant or immune to diseases or pests in general, must not be used in a statement relating to seeds for sale unless the pest or disease is specifically stated.

12. Prohibited Seeds/Noxious Weed Seeds Prohibited and Restricted Organisms

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Seed retailers should pay particular attention to seed which has been packed and labelled in one State and offered for sale in another with reference to the status of prohibited and noxious weed seeds, prohibited and restricted organisms.

This Code recognises that it is an offence to sell seed which is contaminated with seeds, bulbs, corms or tubers, prescribed as prohibited or noxious species under State Seed Acts and Noxious Weed legislation.

Details of State legislation which prescribes seed as either prohibited or noxious is provided in Appendix I. If you require a comprehensive list of prohibited seeds and noxious weeds for any one state you are encouraged to contact the relevant state Authority.

13. Adventitious Presence of Genetically Modified (GM) material

For species for which varieties are commercially available which contain approved events (“GM varieties”) this Code recognises the commercial reality of the possibility of Adventitious Presence in seedlots.

Adventitious Presence may occur through unintentional, incidental admixture of seed of a GM variety in the seedlot of a non-GM variety, or seed of a variety, or varieties, containing one or more events, in the seedlot of a variety containing another event. Labelling for marketing of either the GM or non-GM seedlot with information on Adventitious Presence, where this occurs, is required under this Code in accordance with specifications given in Appendix 2.

14. Marketing and Promotion

The advertising methods employed should be centred on the provision of accurate and complete information, should conform to standards of ethics, and should be in good taste. These precepts are embodied in the detailed provisions of the Code as set out hereunder.

14.1 Marketing

It is a breach of the Code to market, promote or pack a product in a way which is a breach of the law of Australia or of the State in which the marketing, promotion or packaging takes place.

Methods of advertising must conform to normally accepted good advertising practice of the Industry.

Variety information furnished must be accurate and balanced and must not be misleading, either directly or by implication.

The varieties or services of other companies should not be unfairly disparaged either directly or by implication.

14.2 Claims and Comparisons

Claims for the usefulness of varieties should be based on the most recent available evidence, which was or could by the exercise of reasonable diligence have been available to the person making the claim.

Comparisons of varieties must be factual, fair and capable of substantiation. In presenting a comparison, care must be taken to ensure that it does not mislead by distortion, by undue emphasis, or in any other way.

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Price or savings claims which are misleading, or which do not offer provable bargains or savings, must not be used.

Guidelines for comparative advertising in the seed industry and the presentation of trial data are provided in Appendix IV

14.3 Advertising and Promotion

There shall be no statement bearing on the performance of the variety which uses reprints, abstracts or quotation in such a way as to mislead the reader by omitting relevant parts or by quoting in such a way as to imply a meaning that was not reasonably open on the whole of the material from which the reprint, abstract or quotation was taken.

Advertisements must be clearly distinguishable from editorial matter. Where there could be doubt, the word “advertisement” is required. Promotional material, such as mailings and journal advertisements, must not be designed to disguise its real nature.

Promotional material should not imitate the devices, slogans or general layout adopted by other companies in a way that is likely to mislead or confuse.

Advertisements adopted from scientific data should be able to be fully substantiated. Advertisements must never be such as to bring discredit upon, or reduce confidence in the industry.

14.4 Public Relations

Information furnished on any aspect of the industry generally should be accurate.

14.5 Market Research

Methods used for market research must never be such as to bring discredit upon, or reduce confidence in, the industry.

The following provisions apply whether such research is carried out directly by the proprietary owner of seed or by an organisation acting on his/her behalf:

- interviews must not be gained by subterfuge;
- any incentives given should be kept to a minimum and be commensurate with the work involved;
- questions intended to solicit disparaging references to competing varieties must be avoided;
- market research must not be used as a form of disguised sales promotion.

14.6 Production

Those sections of the industry involved in importing, production and packaging will ensure that these activities are at all times carried out in accordance with the Code.

Labels must be so produced and fixed to containers as to remain legible and attached under all reasonable climatic, storage, transport and other conditions likely to be experienced.

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14.7 Distribution and Storage

Packaging must be suitable under all reasonable climatic, storage, transport and other conditions likely to be experienced.

15. Compliance with the Code of Practice

All members of the ASF are bound by the provisions of this Code of Practice and agree that compliance with the Code is a condition of ASF membership.

All members of the ASF to which the code applies (as outlined in Clause 2.1) will be audited biennially with respect to compliance with the labelling provisions of the Code as detailed in clauses 6 and 7. Only members who pass an audit will be entitled to use the Code of Practice logo. There will be guidance measures provided for those who do not apply or abide by the code. The ASF will charge a fee to process audits which will be in addition to annual membership fees.

16. Administration of the Code of Practice

16.1 Administration Committee

Administration of the Code will be vested in a Seed Industry Code Administration Committee comprising of:

- 1 Chairman who is the President of the Australian Seed Federation;
- 1 Secretary who is the Chief Executive Officer of the Australian Seed Federation;
- 2 Nominees as members of the Australian Seed Federation;
- 2 Nominees from the Grain Producers Australia (GPA).

(Note: Secretary does not have voting rights).

The Chairman may exercise a casting vote.

The office of the Seed Industry Code Administration Committee is located at:

Unit 1, 20 Napier Close
DEAKIN ACT 2603

Telephone: (02) 6282 6822
Facsimile: (02) 6282 6922
Email: enquiry@asf.asn.au

16.2 Term of Appointment

Apart from the position of Chairman and Secretary, appointments are to be made by office bearers of Grain Producers Australia and Australian Seed Federation.

16.3 Quorum

Three members of the Administration Committee will constitute a quorum, provided at least one member from the Australian Seed Federation and one member of Grain Producers Australia are present.

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16.4 Administration Committee Terms of Reference

The terms of reference for the Administration Committee include:-

- an annual review of the industry's performance in compliance with the Code
- an annual review of complaints and their status;
- promotion of the Code to industry; and
- conduct an annual review of the Code at the ASF annual convention by invitation through submission for change;
 - notice sent to industry stakeholders calling for submissions 90 days prior to the Code of Practice forum at the ASF Seed Business Convention;
 - submissions to be returned to the Secretary of the Administration Committee within 30 days of this notice;
 - the Secretary to compile and forward the submissions to the Administration Committee members no less than 25 days prior to the Administration Committee meeting date;
 - the Administration Committee to meet no less than 30 days prior to the Code of Practice forum to;
 - receive and consider submissions;
 - to develop the recommended changes to the Code of Practice;
 - within 5 working days of the Administration Committee meeting forward the recommendations and relevant explanatory notes to the industry stakeholders with an invitation to attend the Code of Practice Forum at the ASF Seed Business Convention.
 - The administration committee to present the recommendations to the Code of Practice forum for discussion, ratification or rejection.
 - At the request of the Administrative Committee, minor amendments to proposals can be discussed, ratified or rejected by the ASF membership via conference calls and electronic mail in the three months following the code of Practice Forum. No new proposals can be put forward in this manner.
 - changes to be become effective at the conclusion of the Convention and to be submitted to the Administration Committee for incorporation into the Code.

17. Complaint Handling Procedure

All complaints of an alleged breach of the Code must be made by the person or company making the complaint (the Complainant) lodging a written complaint with the person of company alleged to have breached the Code (the Respondent) in the manner set out in 17.1 below. The procedure for handling such complaints is set out in 17.2 and 17.3 below.

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17.1 Notification of Complaint

The Complainant shall provide written notice to the Respondent in writing within 21 days of the date of the Complainant becoming aware of the alleged breach;

- specifying the breach of the Code alleged;
- requiring that the breach be remedied;
- requiring that a reply in writing be given to the Complainant within 21 days from receipt of the notification by the Respondent; admitting the breach and setting out the steps taken or proposed to remedy the breach; or denying the breach.

17.2 Reference of dispute to Conciliation and/or Arbitration

If;

- there is no reply by the respondent within the time limited;
- the respondent denies the breach;
- the respondent while admitting the breach, does not remedy the breach or propose a remedy which is satisfactory to the complainant; or
- the complaint is not otherwise resolved,
- there is a dispute which may be referred by either party to the ASF Internal Conciliation Panel.

17.3 Reference of dispute to ASF Internal Conciliation Panel

If the complainant refers the dispute to the ASF Internal Conciliation Panel, the complainant must send to the Secretary of the ASF Ltd:

- i. a copy the notice given under;
- ii. a copy of the reply if any given by the respondent;
- iii. notice setting out the clauses of the Code alleged to have been breached;

Upon receipt by the Secretary of the documents referred to in i to iii above, from the complainant, the Secretary shall send copies of them to the respondent and require the respondent within 14 days to send to the Secretary:

- iv. an acknowledgment of receipt of the copies of the documents;
- v. any response the respondent desires to make; and

Upon receipt from the respondent of the documents iv to v above or upon this expiration of 21 days after sending the documents referred to in iv to v above to the respondent whichever first occurs, the Secretary shall refer the dispute with copies of any documents received by him under 17.3. to the ASF Internal Conciliation Panel.

The ASF Internal Conciliation Panel may as its option:

- vi. resolve the dispute;
- vii. call upon the complainant and/or the respondent to provide such further information as the ASF Internal Conciliation Panel may require;
- viii. recommend to the complainant and respondent that the matter be referred to the External Conciliation and Arbitration panel.

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17.4 Reference of dispute to External Conciliation and/or Arbitration

If the complaint is not otherwise resolved then the dispute shall be referred to Conciliation and/or Arbitration under the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

17.3 Determination of disputes by Conciliation and/or Arbitration

Any dispute referred to Conciliation and/or Arbitration under 17.2 shall be determined in accordance with the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

18. Reference of Other Disputes to Conciliation and/or Arbitration

18.1 Other Disputes which may be referred to Conciliation and/or Arbitration

Other disputes which may be referred to Conciliation and/or Arbitration shall be determined in accordance with the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property are:

- a) other disputes between ASF members, howsoever arising;
- b) disputes between ASF members and customers of ASF members, where the contract between those parties provides that disputes under or arising out of the contract shall be referred to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property;
- c) disputes between ASF members and customers of ASF members, where those parties otherwise expressly agree that disputes between them shall be referred to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

18.2 Determination of disputes by Conciliation and/or Arbitration

Any dispute referred to Conciliation and/or Arbitration under 18.1 shall be determined in accordance with the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

19. Remedial Action

The objectives of this Code of Practice are to assist and encourage vendors to provide meaningful information to consumers who purchase seed for sowing purposes. Matters which are determined to be outside the spirit of the Code and which are deemed of sufficient importance are to be followed through by the Australian Seed Federation.

19.1 Actions for Breaches of the Code

Where breaches of the Code have been established under Sections 17 or 18 above, the following actions may be taken by the Australian Seed Federation:

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- Notify the respondent in writing to give a written undertaking to discontinue, within a specified timeframe, any practice which has been determined to constitute a breach of the Code;
- Upon notification in writing, the respondent may be required to issue corrective statements as appropriate. The format, size, wording, mode of publication and method of distribution of such statements will be subject to the approval of the Australian Seed Federation prior to release/publication;
- A breach of the Code may be referred to an appropriate regulatory authority;
- Continued refusal by the offending party to undertake the required remedial action may lead to the suspension or expulsion of an ASF member from the Australian Seed Federation where permitted under its Articles of Association.

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**LEGISLATION PERTAINING TO PROHIBITED
SEEDS AND NOXIOUS WEEDS**

State	Relevant Acts	Authority
NT	Noxious Weed Act 1980	Department of Primary Industries and Fisheries Phone: (08) 9992270
QLD	Agricultural Standards Act 1994 Agricultural Standard 1996	Qld Department of Lands Phone: (07) 3406 2869
VIC	Plant Health & Plant Products Act 1995	Department of Primary Industries Catchment & Land Protection Act 1994 Phone: (03) 9412 4642
WA	Plant Diseases Act (1914-1981) Agricultural and Related Resources Protection Act 1976-83	Agriculture Western Australia Phone: (08) 9368 3679
SA	Animal & Plant Control Act 1986	Animal & Plant Control Commission (08) 8303 9500
TAS	Seed Act 1985 Noxious Weeds Act 1964 Noxious Weed Amendment Act 1987	Department of Primary Industry and Fisheries
ACT	Noxious Weeds Act 1919	ACT Parks & Wildlife and (Planning & Environment Act) 1991 Phone: (02) 6207 2269
NSW	Noxious Weeds Act 1993 Seeds Act 1991 Seeds Regulations 1983:	NSW Agriculture Phone (02) 6391 3159

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Appendix II

INFORMATION FOR SEED LABELLING UNDER CLAUSE 13-ADVENTITIOUS PRESENCE

All seed of the species listed in this Appendix being offered for sale must be labelled with information relating to the deliberate presence or unintentional, incidental Adventitious Presence of approved GM events.

Species	Company, product and OGTR approval reference number
Canola – <i>Brassica napus</i>	Monsanto Ltd, Roundup Ready® canola, DIR 020/2002
	Bayer CropScience Pty Ltd, InVigor® hybrid canola, DIR 021/2002

1. For seed of a non-GM variety

Where Adventitious Presence is less than the Industry approved threshold level* the seed is labelled only in accordance with the general provisions of Clauses 6-12 of this Code. Where Adventitious Presence is more than the Industry approved threshold level*, seed labelling must include a statement indicating Adventitious Presence.

* For the threshold levels for Adventitious Presence for the species shown above refer to the Adventitious Presence policy documents for the species listed on the ASF website. Note that the threshold figures may be amended from time to time.

2. For seed of a GM variety

Seed must be labelled as a GM variety. Refer to the appropriate Technology Provider's Technology User Agreement or Technology Contract for details relating to the implementation of specific variety Crop Management and /or Resistance Management Plans.

ASF recommends that marketers seek independent legal advice in relation to specific labelling information on Adventitious Presence. Some examples of alternative wording are given below as a guide:

- 1) Seeds supplied to you are from a variety bred from parent components that have not been genetically modified. The methods used in the development and maintenance of that variety are aimed at avoiding the presence of off-types, including genetically modified material, as defined by the applicable laws or regulations.
- 2) Seed production has been carried out in accordance with production rules including stipulated isolation distances. However, in open fields there is free circulation of pollen. As it cannot be excluded that in seed multiplication areas the growing of approved GM plants takes place, it is not possible to totally prevent the adventitious presence of GM material and to guarantee that the seed lots comprising this delivery are free from any traces derived from GM plants.
- 3) (Company name) has undertaken due diligence to avoid adventitious presence of GM material in this seed lot. However, (Company name) gives no guarantee that the seed is GM free and can accept no liability arising from the adventitious presence of GM material.

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Appendix III

Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property

The Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property has been introduced by the Institute of Arbitrators & Mediators Australia ('**IAMA**') and the Australian Seed Federation ('**ASF**') to provide fair, quick and cost-effective resolution of claims in those matters involving ASF members.

These Rules provide for two stages in the dispute resolution process, namely conciliation and arbitration.

Conciliation is a relatively informal process where an independent person (the Conciliator) assists the Parties to negotiate a settlement of their dispute. Conciliation differs from Mediation in that a Conciliator may provide a non-binding advisory opinion. Arbitration is a process which provides a final and binding determination of the dispute by an independent person (the Arbitrator), in the form of the Arbitrator's written Award.

IAMA recommends that Parties in dispute firstly attempt to resolve their differences by conciliation. Under these Rules, conciliation will be attempted first unless one or both of the parties expressly decide to proceed directly to arbitration.

PRELIMINARY.

1.1 This Scheme applies to:

- (a) Disputes between ASF members relating to alleged breaches of the ASF's Code of Practice that have not been resolved via the ASF's internal conciliation process outlined in 17.2 and 17.3 of the code.
- (b) disputes between ASF members in respect of the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property, howsoever arising;
- (c) disputes between ASF members and customers of ASF members in respect of the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property, where the contract between those Parties provides that disputes under or arising out of the contract shall be referred to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.
- (d) disputes between ASF members and customers of ASF members in respect of the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property, where the Parties otherwise expressly agree that disputes between them shall be referred to the Institute of Arbitrators & Mediators Australia, for resolution under the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

1.2 This Scheme does not apply to claims for physical injury, illness, nervous shock or

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- their consequences.
- 1.3 Registration Fees are payable when either an application for conciliation or arbitration is submitted. The fees payable are set out in the Application Form.
 - 1.4 If IAMA considers that a dispute is either not eligible under this Scheme or is not capable of proper resolution under these Rules, it shall notify the Parties accordingly and refund the registration fees.
 - 1.5 In referring their disputes for resolution under these Rules, the Parties to the dispute agree that IAMA its officers and employees, and any person appointed as Conciliator or Arbitrator, are not liable to any party for or in respect of any act or omission arising out of or in connection with these Rules unless such act or omission is shown to have been fraudulent.
 - 1.6 Appointment of Conciliators or Arbitrators under these Rules shall be made by the President of IAMA, or his or her nominee.

REFERENCE TO CONCILIATION

- 2.1 Where a written complaint has been made by a Party and the complaint has been rejected, or there has been no reply or the Parties have been unable to settle the dispute within two (2) weeks of the date of the written complaint, the matter can be referred for conciliation in accordance with these Rules.
- 2.2 Within ten (10) days after receipt of an Application Form (Annexure A) for conciliation completed by one or more of the Parties to the dispute, together with the Registration Fees payable, IAMA shall appoint a suitably qualified independent person as Conciliator, and will advise the Parties and the Conciliator accordingly.
- 2.3 Except as provided under Rules 3.6 and 3.7, if the Conciliator is unwilling or unable to act in accordance with these Rules, then IAMA shall appoint a substitute Conciliator as soon as reasonably practicable, and will advise the Parties and the Conciliators accordingly.

CONCILIATION PROCEDURE

- 3.1 The Conciliator shall:
 - (a) adopt procedures suitable for quick, cost-effective and fair resolution of the dispute, minimising formality as far as possible; and
 - (b) be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party.
- 3.2 The Parties shall:
 - (a) do all things reasonably necessary for the quick, cost-effective and fair resolution of the dispute;
 - (b) comply without delay with any direction or ruling by the Conciliator.
- 3.3 Subject to Rule 3.1, the conciliation procedure will be at the discretion of the Conciliator, but may include:
 - (a) convening meetings with the Parties, in person or by teleconferencing, to develop possible solutions to the dispute;
 - (b) provision by each party of copies of all relevant documents or other material to the Conciliator and all other Parties to the dispute.
- 3.4 If the Parties settle the dispute by conciliation, the Conciliator shall prepare a written agreement recording the settlement terms for signature by the Parties.
- 3.5 If the Parties do not settle the dispute within six (6) weeks of the Conciliator's appointment (or such other time agreed in writing by the Parties):
 - (a) the dispute may be referred to arbitration; and
 - (b) unless otherwise agreed by the Parties, the Conciliator shall within seven (7) days

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- provide a confidential written report to the Parties expressing the Conciliator's views of what would constitute a reasonable resolution of the dispute.
- 3.6 The documents previously submitted to the Conciliator shall be passed on to the Arbitrator, together with a report by the Conciliator on the facts, issues, claims and counterclaims. The Conciliator must not communicate to the Arbitrator any suggestions for settlement of the dispute nor any information given in confidence by either party nor any views expressed by the Conciliator.
- 3.7 If at any stage the Parties agree or the Conciliator considers that the dispute is inappropriate for continuation of the conciliation process, then the matter may be referred to arbitration under these Rules.
- 3.8 Unless jointly requested by the Parties, the Conciliator shall not be appointed as Arbitrator.
- 3.9 The Conciliator shall not act as an advocate, adviser or witness for a party in the arbitration, or be required to disclose any information about any matter arising during the conciliation procedure other than as provided under Rule 3.6.
- 3.10 Unless otherwise agreed by the Parties, each party shall bear its own costs of the conciliation regardless of the outcome, together with half the costs and disbursements of the conciliation, including the Registration Fee, the Conciliator's fees and expenses, cost of providing a venue for the conciliation etc.
- 3.11 Unless otherwise agreed by the parties, the IAMA Mediation and Conciliation Rules shall apply to any conciliation conducted under these Rules, unless:
- (a) inconsistent with Rules 3.1 to 3.10 above; or
 - (b) the Conciliator reasonably considers that any provision(s) of those Rules should not apply in the particular circumstances of the dispute, having regard to time and cost of compliance and the nature, size and complexity of the dispute; or
 - (c) otherwise required by law.
 - (d)

REFERENCE TO ARBITRATION

- 4.1 Sections 4 and 5 of these Rules apply if both Parties wish to proceed directly to arbitration, or if conciliation has not resolved the dispute.
- 4.2 An application must be submitted to IAMA on the Application Form together with the prescribed Registration Fee, which fee shall form part of the costs and expenses of the arbitration.
- 4.3 Within ten (10) days after receipt of an Application Form (Annexure A) for arbitration completed by one or more of the Parties to the dispute, together with the Registration Fees payable, IAMA shall appoint a suitably qualified independent person as Arbitrator, and will advise the Parties and the Arbitrator accordingly.
- 4.4 If the appointed Arbitrator is unwilling or unable to act in accordance with these Rules, then IAMA shall appoint a substitute Arbitrator as soon as reasonably practicable, and will advise the Parties and the Arbitrator accordingly.
- 4.4 Once the Arbitrator is appointed, all communications with the Arbitrator should be in writing and should be copied to all other Parties.

ARBITRATION PROCEDURE

- 5.1 The Arbitrator shall:
- (a) adopt procedures suitable for quick, cost-effective and fair determination of the dispute, minimising formality as far as possible; and
 - (b) be independent of, and act fairly and impartially as between the Parties, giving each party a reasonable opportunity of putting its case and dealing with that of any opposing party.
- 5.2 The Parties shall:
- (a) do all things reasonably necessary for the quick, cost-effective and fair determination of the dispute;
 - (b) comply without delay with any direction or ruling by the Arbitrator.

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- 5.3 Unless otherwise agreed in writing by the Parties or otherwise determined by the Arbitrator, the arbitration shall proceed in the following manner:
- (a) The Party making the claim (the Claimant) shall, within fourteen (14) days of the date on which the Arbitrator is appointed, provide to the other Party or Parties (the Respondent) and to the Arbitrator a document specifying the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and shall enclose copies of all documents and any witness statements or expert reports relied upon in support of the claim.
 - (b) Within a further fourteen (14) days, each Respondent shall serve its response to the Claimant's claim, setting out what it says as to the nature and basis of the claim, the amount claimed (and how it has been calculated) and any other remedy sought, and shall enclose copies of all documents and any witness statements or expert reports relied upon by the Respondent in response to the claim.
 - (c) If any Respondent wishes to make a counterclaim against the Claimant or any other Party, then it shall within the period specified in paragraph (b) serve a document setting out its counterclaim including what it says as to the nature and basis of the counterclaim, the amount of the counterclaim (and how it has been calculated) and any other remedy sought in the counterclaim, and shall enclose copies of all documents and any witness statements or expert reports relied upon in support of the counterclaim.
 - (d) If a counterclaim is served, then, within a further fourteen (14) days, any Respondent to the counterclaim shall serve its response to the counterclaim, including what it says as to the nature and basis of the counterclaim, the amount of the counterclaim (and how it has been calculated) and any other remedy sought in the counterclaim, and shall enclose copies of all documents and any witness statements or expert reports relied upon in response to the counterclaim.
 - (e) The Arbitrator may make such other directions or rulings as he or she considers reasonably appropriate in the circumstances.
 - (f) The Arbitrator shall determine the matter on the written material served or produced under this Rule unless:
 - (i) otherwise agreed by the parties; or
 - (ii) the Arbitrator considers that an oral hearing is necessary to explain or resolve conflicts in that written material in relation to any one or more of the issues in dispute.
 - (g) If an oral hearing is held on any one or more of the issues in dispute, then such oral hearing shall be conducted as soon as practicable at a time and in the manner directed by the Arbitrator, including any reasonable time limits on oral evidence and the provision of written opening addresses and final submissions.
 - (h) Any times fixed under this Rule may be varied by agreement of the Parties. In the absence of such agreement, on proper cause being shown by a party, the Arbitrator may vary the times fixed on such terms as to costs or otherwise as the Arbitrator, in his or her discretion, considers reasonable in the circumstances.
 - (i) Subject to sub-paragraph (i) above, if any party fails to deliver anything required under these Rules within five (5) days of the date on which it is due, then:
 - (i) where a claim or counterclaim is not delivered, it shall be deemed to be abandoned;
 - (ii) where a claim is abandoned, the arbitration will not proceed unless a counterclaim has been delivered (in which case the arbitration will proceed on the counterclaim only);
 - (iii) where a counterclaim is abandoned, the arbitration will proceed on the claim only;
 - (iv) otherwise, the arbitration shall proceed as the Arbitrator considers appropriate

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in the circumstances.

- 5.4 Unless the Parties otherwise agree, the law to be applied in the arbitration shall be the law of the place with the closest connection to the dispute. If the Parties cannot agree on the place with the closest connection to the dispute, then the law to be applied shall be the law of the State or Territory where the arbitrator ordinarily resides.
- 5.5 As soon as reasonably practicable after receiving all submissions and evidence, the Arbitrator shall make a final and binding award with reasons.
- 5.6 Unless otherwise directed, any amount awarded shall be paid to the party entitled to receive it within twenty one (21) days of the Arbitrator sending the award to the Parties.
- 5.7 The IAMA Expedited Arbitration Rules shall apply to any arbitration conducted under these Rules, unless:
 - (a) inconsistent with Rules 5.1 to 5.7 above; or
 - (b) the Arbitrator reasonably considers that any provision(s) of those Rules should not apply in the particular circumstances of the dispute, having regard to time and cost of compliance and the nature, size and complexity of the dispute; or
 - (c) otherwise required by law

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Appendix IV

Guidelines for comparative advertising in the seed industry and the presentation of trial data

PRELIMINARY.

What is misleading and deceptive conduct?

Australian Consumer Law (ACL), which is a schedule to the Competition and Consumer Act 2010, prohibits businesses from engaging in behaviour which:

- actually misleads or deceives, or
- is likely to mislead or deceive consumers (including other businesses) with whom it has any form of commercial contact.

Misleading someone may include:

- lying to them
- leading them to a wrong conclusion
- creating a false impression
- leaving out (or hiding) important information
- making false or inaccurate claims.

Conduct that actually misleads others may be easy to identify. Conduct that is likely to mislead is also illegal and may be more difficult to identify.

Guidelines for comparative advertising in the Seed Industry.

Care must be taken with advertising in the seed market, particularly with respect to comparative advertising. Ask for a second opinion about your advertisement. If you are still in doubt, seek legal advice.

Consider the reader

Look at your campaign from the consumer's point of view. Will the consumer get the correct overall impression about the products you are comparing?

Compare like with like

Check that you are comparing 'like' products, if you are not then this portrayal may result in the advertisement being misleading. Advertisers can only compare a particular aspect of their product with the same aspect of a competitor's product. In other words, accuracy requires comparing like with like.

Substantiate all comparisons

Get your facts right. Remember that your competitors know their products better than you do. Any claim that one product is better than another must be substantiated by science, which must be available to demonstrate the accuracy of the comparative statements at the time they are made (not at some stage after the advertisement is published). Further, the tests must provide a proper foundation for the claims made.

Beware of half-truths and omissions

Remember that silence can be misleading. Check whether there are any facts which are being kept hidden from the consumers. If so, then the campaign may be misleading. As a general rule, an advertiser should include information that the intended audience would reasonably expect the

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promoter to disclose. If vital information is omitted, vagueness in an advertisement will not be sufficient.

Exercise care in the use of disclaimers

A disclaimer, in whatever form, may not save a comparative advertisement from being found to be misleading or deceptive. If disclaimers are used, care must be taken to ensure they are sufficiently prominent.

Exercise care in the use of the word variety

The use of the word variety may be cause for complaint depending on how it is used. Refer definitions section of the code. Only general claims can be made for brand name/branded seed lots unless they are maintained under a demonstrable limited generation multiplication system. The Australian Seed Authority is a recognised organisation for limited generation maintenance systems.

Tables and Graphs

Trial data may be used for the promotion of cultivars (varieties) provided the guidelines for comparative advertising in the seed industry are observed and that the information below is included in the reporting of trial data. It is necessary however that a company releasing a cultivar (variety) to the market has done sufficient trials to ensure that the performance claims are supported by trial data.

Information that should be included whenever trial data is presented includes:

- Number of trials presented
- Species
- Trial Location/s
- Names of all commercial cultivars (varieties)
- Sowing date/s
- Harvest/measurement method
- Full scales used, starting at 0 and extending to just above maximum yields.
- Number of trials that data is derived from
- Statistics – including significance ($P \leq 0.05$), coefficient of variation and LSD values should be displayed and be directly related to the differences of varieties presented. Data where statistical analysis is not possible should be clearly labelled as such.

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**AUSTRALIAN SEED FEDERATION
DISPUTE RESOLUTION SCHEME
FOR THE DOMESTIC TRADE IN SEED FOR SOWING PURPOSES
AND FOR THE MANAGEMENT OF INTELLECTUAL PROPERTY**

Annexure A

APPLICATION FOR CONCILIATION / ARBITRATION

1. _____ Claimant
of _____

Tel: _____ Fax: _____ Email: _____

and/or

_____ Respondent
of _____

Tel: _____ Fax: _____ Email: _____

do hereby apply to The Institute of Arbitrators & Mediators Australia for the following dispute to be referred to Conciliation / Arbitration * and appointment of a Conciliator / Arbitrator * under the current Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property.

(*Delete as appropriate)

2. The dispute concerns the following issues (*list*)

Annexure A (continued)

3. The amount (if any) claimed is \$ _____
The amount (if any) counterclaimed is \$ _____ *

(*Delete as appropriate)

4. I / We, the Parties to this application have read the Rules of the Australian Seed Federation Dispute Resolution Scheme for the Domestic Trade in Seed for Sowing Purposes and for the Management of Intellectual Property. We agree to be bound by those Rules and by the Award of any Arbitrator appointed by The Institute of Arbitrators & Mediators Australia to determine the dispute.

(NB. Application to be signed by both parties if no prior written agreement to refer).

5. I / We require this dispute to be referred to conciliation and, if necessary, arbitration*

or

I / We require this dispute be referred directly to arbitration.*

(* Delete as appropriate)

6. A Registration Fee of \$550.00 (incl GST) is payable by the Parties to commence a Conciliation or an Arbitration. If that fee is paid by one Party, the other Party or Parties shall contribute in equal shares.

7. If the parties attempt Conciliation pursuant to these Rules but the Conciliation is unsuccessful in resolving the dispute, then the Parties shall be liable for a further Registration Fee of \$550.00 (incl GST), and the matter shall not proceed until that further Registration Fee has been paid to the Institute.

8. Payment of Registration Fee:

(a) I / We enclose cheque(s) made payable to The Institute of Arbitrators & Mediators

DISCLAIMER

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Australia, in payment of the Registration Fee of \$550.00 (incl GST).

Or

(b) I / We authorise payment of the Registration Fee of \$550.00 (incl GST) by credit card, as follows: *(please complete details)*

Bankcard	Visacard	Mastercard
Card Number	Expiry	
Date		
Cardholder's Name		
Signature.....		
Bankcard	Visacard	Mastercard
Card Number	Expiry	
Date		
Cardholder's Name		
Signature		

9. The fees of Conciliators and Arbitrators appointed under the Rules are determined by the Conciliator or the Arbitrator, as the case may be.

For the Claimant:

Signed..... Date.....

Name.....

For the respondent:

Signed..... Date.....

Name.....

For more information on the ASF's Code of Practice for Labelling and Marketing of Seed for Sowing, please contact the ASF on 02 6282 6822 or enquiry@asf.asn.au

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