

# Simplot AB Retail, Inc., dba Simplot Grower Solutions

## CREDIT TERMS & CONDITIONS OF SALE

These CREDIT TERMS & CONDITIONS OF SALE (the “**Agreement**”) govern the sale of goods and/or services (a “**Product**” or collectively “**Products**”) by Simplot AB Retail, Inc., dba Simplot Grower Solutions (referred to as “**we**,” “**us**,” or “**our**”) to our customer, who is an individual, organization or entity that purchases Product from us under approved credit through a Credit Application (“**CA**”) or an authorized agent for applicant and those signing the CA in their individual capacities (collectively referred to as “**you**” or “**your**”), and by this reference are incorporated into and made a part of any invoice or customer statement provided to you (collectively referred to as an “**Invoice**”). By placing an order for any Product, or making a purchase, return or other transaction with us, or by owing money to us, you agree to the terms of this Agreement.

### 1. DELIVERY; PAYMENT; CREDIT TERMS.

a. We will deliver Products to you (and title and risk of loss shall pass) as set forth in the applicable Invoice. Our prices are exclusive of shipping and sales, use and other taxes. You promise to pay us all amounts due under each Invoice, this Agreement and each Related Document. We will apply your payments and credits to fees and costs, finance charges, and other amounts you owe in our discretion, subject to applicable law.

b. We may in our sole discretion assign you a maximum credit amount (“**Credit Limit**”). You agree to sign any other documents or consent forms necessary for us to obtain credit reports or financial information about you. You also agree (i) to provide personal and/or business financial information that may be required or necessary to facilitate or administer the sale of goods and/or services to you and/or credit facilities or agreements with you, and to manage our relationship with you, and you hereby consent to our collection, use and disclosure of this information to enable us to determine your creditworthiness to establish, maintain and manage a relationship with you, in accordance with any court order, law or regulation and in response to credit inquiries concerning you, and (ii) to provide us with updated financial ownership and other business information so that any such information previously provided to us remains correct and complete.

c. Except as otherwise required by law, we may reduce the Credit Limit and/or withdraw credit at any time in our sole discretion without prior notice for any reason including if you do not make payment when due, approach or exceed any Credit Limit, or if we in good faith determine that we are insecure or that you may not be able to perform your obligations. In that event, we may refuse to sell or deliver additional Products or suspend our performance until you deliver to us adequate financial assurance (“**Financial Assurance**”), which may include advance cash payment, a security agreement granting us a lien on your assets, an unconditional guaranty from a person or entity we determine in our sole discretion to be creditworthy, or a letter of credit from a nationally recognized financial institution. The CA, Invoice, Financial Assurance documents, and any other documents we require are collectively referred to as the “**Related Documents**.” We may delay or stop deliveries or performance until you have executed any Related Document(s) that we request.

**2. YOUR REPRESENTATIONS/OBLIGATIONS.** You represent, warrant and agree that (a) you will load, handle, store, sell, transport, use and/or dispose of Products in compliance with all applicable federal, state, local and other laws and regulations, and in compliance with any applicable product specification sheet or similar document; (b) all transactions under this Agreement and Related Documents are for business and commercial purposes (not for personal, family or household purposes); (c) the individual entering into this Agreement and each Related Document has full authority to do so on your behalf and to provide information to us, and this Agreement and each Related Document is a legal, valid, binding and enforceable obligation against you; (d) you are familiar with the characteristics, qualities and uses of any Product you purchase and you are not relying on us to select the Product suitable for any particular purpose or to achieve a particular result; (e) you are not relying on any representation, statement or promise from us except as expressly stated herein and the Related Documents; (f) you assume all risk and liability for the use of Products, whether alone or in combination with other materials; and (g) you will carry and maintain insurance appropriate for your business and reasonably similar to those carried and maintained in similar businesses. You are responsible for all financial and other obligations to us under this Agreement and each Related Document, even if there is a change in the ownership, structure or type of entity that you are; and you will notify us promptly in writing if any of those changes occur.

### 3. LIMITED WARRANTY; LIMITATION OF REMEDIES.

a. We only warrant that when delivered, (i) goods we manufacture will conform in material respects to our applicable product specification sheet, subject to industry recognized tolerances, and (ii) services (which may include recommendations or advice) we provide will conform in material respects to generally accepted practices for the industry. **HOWEVER, YOU ARE RESPONSIBLE FOR DECIDING IN YOUR OWN DISCRETION WHETHER TO ACCEPT AND/OR IMPLEMENT OUR RECOMMENDATIONS OR ADVICE, AND YOU ACCEPT ALL RISK AND**

**LIABILITY FROM ACCEPTING, REJECTING, AND/OR IMPLEMENTING ANY RECOMMENDATION OR ADVICE WE PROVIDE.** We provide no warranty or representation whatsoever about goods manufactured or services provided by others; but the other manufacturer or service provider may provide its own warranty. We do not represent or warrant the existence or scope of any other manufacturer’s or service provider’s warranty.

**EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, ALL GOODS AND SERVICES ARE SOLD “AS IS, WHERE IS” WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND; AND WE DISCLAIM ALL OTHER EXPRESS AND ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SAFETY OR INFRINGEMENT, ANY WARRANTY THAT MAY ARISE FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE, AND ANY WARRANTY REGARDING THE USE OR RESULTS FROM USING OUR GOODS OR SERVICES.** We may measure, sample and test Product at the loading location to determine the quantity and quality of Product delivered and unless there is obvious error the results will be treated as conclusive and binding as to the quantity and quality of Product loaded.

b. If we breach our limited warranty for goods we manufacture or services we provide, your exclusive remedy is to receive a refund of the purchase price, or to receive a replacement of the nonconforming goods or services, whichever we select in our sole discretion. Our limited warranty is subject to the following conditions: (i) you must submit a warranty claim to us in writing within 30 days after the date you knew or could reasonably have determined that the applicable goods or services did not conform to the limited warranty, (ii) you must preserve and make available to us for inspection all physical and documentary evidence supporting your warranty claim, (iii) you must have paid for the goods or services in full, and (iv) you must have complied with Section 2(a) above. **THIS IS YOUR SOLE REMEDY AND APPLIES EVEN IF IT FAILS OF ITS ESSENTIAL PURPOSE.**

**4. LIMITATION OF LIABILITY.** Neither we and our related persons nor you will be liable for (a) special, indirect, incidental, consequential, punitive or exemplary damages; (b) compensation, reimbursement or damages to cover or to obtain substitute performance, for business interruption, or because of any loss of anticipated business, sales or profit or prospective profits, or crop or property loss or damage; or (c) expenditures, investments, leases, property improvements or other matters related to business or goodwill. **TO THE GREATEST EXTENT PERMITTED BY LAW, OUR AND OUR RELATED PERSONS’ AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT AND EACH RELATED DOCUMENT FOR GOODS OR SERVICES SHALL NOT EXCEED THE PURCHASE PRICE YOU PAID FOR THE SPECIFIC GOOD OR SERVICE GIVING RISE TO THE CLAIM. THIS SECTION: (1) REFLECTS AN ALLOCATION OF RISK BETWEEN YOU AND US; AND (2) APPLIES EVEN IF YOU OR WE HAVE BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES DESCRIBED IN CLAUSES (a), (b) AND (c) OF THIS SECTION 4, AND REGARDLESS OF WHETHER THE CLAIM OR DAMAGES ARE BASED IN CONTRACT, WARRANTY, STRICT LIABILITY, NEGLIGENCE, TORT, OR OTHERWISE. IF THIS LIMITATION OF LIABILITY IS UNENFORCEABLE OR FAILS OF ITS ESSENTIAL PURPOSE, OUR SOLE LIABILITY FOR SUCH DAMAGES SHALL NOT EXCEED \$25,000 (USD).** The provisions of this Section survive expiration or termination of this Agreement and are for the benefit of us and each of our related persons (who will be included in the definition of “us” for these purposes). Our “**related persons**” are our affiliates (which are entities controlled by us, under common control with us, or controlling us), and our and our affiliates’ shareholders, officers, directors, employees, agents and representatives; but in all events exclude you (regardless of your relationship to us). You agree that the limitations of this Section apply to any other person or entity that acquires, uses or is involved with Products you purchase, and your indemnification obligations below include any claims and losses related to those other persons or entities.

**5. DEFAULT.** Any of the following is a default: if you (a) fail to pay any amount owed when due under this Agreement or any Related Document, or to provide Financial Assurance at our request; (b) admit in writing that you are unable to pay your debts as they become due, make a general

assignment for the benefit of creditors, if a receiver is appointed for you, or if you or someone else institutes proceedings in bankruptcy, insolvency, or similar laws, or you become the subject of a court order relating to bankruptcy or debt relief; (c) provide us false, incomplete or misleading information; (d) breach a representation, warranty or obligation in this Agreement or any Related Document; or (e) stop doing business in the ordinary course.

**6. REMEDIES.** If a default occurs, we may immediately exercise any rights available under this Agreement, any Related Document, and/or applicable law. You agree that we may (a) require you to immediately pay us all amounts outstanding under this Agreement or any Related Document; (b) without notice, set off and recoup any amounts we or any of our related persons may owe to you by amounts you owe to us or our related persons (regardless of whether such amounts are matured, liquidated or arising in connection with any other obligations); (c) stop further sales of Products, suspend credit, or require that you pay cash on delivery or in advance; and/or (d) add a finance charge each month at a periodic rate of 2.0% each month (24% per year) or the maximum rate allowed by law, whichever is less, on any unpaid amounts as specified in each Invoice accruing from the day after the applicable due date, unless otherwise approved by Simplot in writing. We are not obligated to restore your account and credit or provide you with any other account or credit terms, even if you pay the past due amounts in full. You will reimburse us for reasonable costs and expenses we incur to enforce this Agreement or any Related Document (including reasonable attorneys' fees, court costs and other costs of collection, whether incurred before, during or after litigation or bankruptcy proceedings, and collection agency fees). Our rights and remedies are cumulative and non-exclusive. This Agreement is a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Sections 362(b)(6), 546(e), 556, and 562 of the Bankruptcy Code apply.

**7. NO CUSTOMER TERMS; SEVERABILITY; EXECUTION.** This Agreement and the Related Documents contain all of the terms and agreements governing our sale of Products to you, and supersede all prior understandings, statements, or agreements about that subject (none of which are binding or may be relied on). This Agreement (and the Related Documents) prevails over any terms or conditions in any of your documentation including your purchase order, general terms and conditions or any other document you issue in connection with any purchase of Products, regardless whether or when submitted. Our fulfillment of your order does not constitute our acceptance of your terms and conditions (all of which are hereby rejected) and does not modify or amend this Agreement or any Related Document. We have not authorized anyone to make any representations, statements or promises in addition to or in any way different than those in this Agreement and the Related Documents. No person other than you and us (and your permitted successors and assigns and our respective related persons, successors and assigns) has any rights or remedies under this Agreement. If any provision of this Agreement is held to be illegal, invalid or unenforceable to any extent in any context, that provision shall be modified or restricted however necessary to render it valid, legal, and enforceable in that context. Modification or restriction may be accomplished by mutual agreement between you and us; or, alternatively, by disposition of a court or arbitrator under Section 11. If the provision cannot be modified or restricted, then: that provision will be fully severed, this Agreement will be construed and enforced as if the illegal, invalid or unenforceable provision was never a part of this Agreement, and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. A signed copy of this Agreement or any Related Document delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement or any Related Document. The word "including" (and its variants) in this Agreement or any Related Document will be deemed to be followed by "without limitation." The words "execution," "signed," "signature," and words of similar import in this Agreement or any Related Document shall be deemed to include electronic or digital signatures or the keeping of records in electronic form, each of which shall be of the same effect, validity and enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000 (15 USC § 7001 et seq.) and any similar state laws including those based on the Uniform Electronic Transactions Act. If there is an inconsistency between this Agreement and the terms and conditions in the Invoice, the terms and conditions in this Agreement will control.

The Agreement is binding upon and will enure to the benefit of us and you and our and your respective successors and permitted assigns. A waiver by us of any provision of this Agreement must be in writing and shall not prejudice or constitute a waiver of our right otherwise to demand strict

compliance with that provision or any other provision of this Agreement. Time is of the essence.

**8. DELAYS.** We are not responsible for any delay in our performance caused or affected by conditions or events beyond our reasonable control, including natural disasters or conditions, accidents, fires, strikes or slowdowns, industrial disturbances, actions by a government authority, war, terrorist threats or acts, civil unrest, shortage of products or labor, interference with transportation routes, carrier shortages, damage to carrier, damage to Product by carrier, any act of God, or failure of utilities or telecommunications.

**9. CHANGE IN TERMS.** We may change this Agreement at any time without notice to you. You may access a copy of the current Credit Terms and Conditions of Sale in the member area of our website located at [www.simplot.com/farmers](http://www.simplot.com/farmers). Changes will apply to all purchases, returns or other transactions that occur on or after the effective date of the change. Your agreement to the changed terms is expressed when you make purchases, returns or other transactions with us, or by continuing to owe money to us, on or after the effective date of the change. You must stop any further transactions with us and pay all balances due if you do not agree to the changes. To be effective, a waiver of any provision of this Agreement or any Related Document must be specifically stated in a signed document. No waiver will result from course of dealing, estoppel, waiver, or implied amendment (including our acceptance of any late or partial payment or our delay in exercising any right or remedy under this Agreement or any Related Document). This provision may NOT be orally modified.

**10. INDEMNITY.** You agree to defend, protect, indemnify and hold us and our related persons harmless from any loss, liability, damage, penalty, or expense (including attorneys' fees, settlement payments and costs to pursue insurance benefits) we incur directly or indirectly relating to or resulting from any claim, allegation, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or other, whether at law, in equity or otherwise, that we, you or any third party assert in any way directly or indirectly related to, resulting from or caused by your breach or failure to comply with this Agreement or any Related Document.

**11. ARBITRATION; LITIGATION; JURY WAIVER; GOVERNING LAW.**

a. **YOU AND WE AGREE THAT ALL CLAIMS AND DISPUTES RELATED TO THE USE AND/OR PERFORMANCE OF ANY PRODUCT OR ANY PRODUCT'S COMPLIANCE WITH ANY WARRANTY, CONTRACT OR STATUTE, MUST BE RESOLVED BY BINDING ARBITRATION.** The arbitration will be conducted with the American Arbitration Association (see [www.adr.org](http://www.adr.org) for information) under its Commercial Arbitration Rules by a single neutral arbitrator. As much as possible, the arbitrator will also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation (provided there is an opportunity to cross-examine witnesses). Before, during, or after arbitration you and we may seek interim equitable and injunctive relief, which does not waive the right to compel arbitration. We will reimburse you for your filing fee with the American Arbitration Association, hearing fees and arbitrator compensation. The dispute will not be consolidated with any other matters or joined with any other cases or parties. If, however, this waiver of class or consolidated actions is deemed invalid or unenforceable, neither you nor we are entitled to arbitrate the claims for which this waiver is not effective and instead all such claims and disputes will be resolved in any court having jurisdiction.

b. Any claims and disputes related to payment of amounts due under this or any Related Document, and any other claim or dispute that is not or cannot be arbitrated, will instead be litigated in any court having jurisdiction.

c. **TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, YOU AND WE WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND ANY RELATED AGREEMENT, AND THE OBLIGATIONS AND TRANSACTIONS ARISING UNDER OR CONNECTED TO THEM. YOU AND WE EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.**

d. This Agreement will be governed by Idaho law without regard to its conflict of laws provisions (and the portions of this Section 11 related to arbitration will be governed by the Federal Arbitration Act).

**12. ASSIGNMENT.** You may not assign or delegate your rights or obligations under this Agreement or any Related Document without our prior written consent which may be granted in our sole discretion. We may assign or delegate our rights or obligations under this Agreement without your consent.