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**From:** Laura Bowles [mailto:laura.agchall@hotmail.net.au]  
**Sent:** Monday, 7 May 2007 11:26 AM  
**To:** Clancy, Sharon  
**Subject:** Re: VPGC application for authorisation - questions [SEC=UNCLASSIFIED]

Hi Sharon,

Sorry for the delays, I have not been in the office for a few days.

To answer your questions;

1. As far as I am aware 99% of processing and crisping growers use standard contracts to supply their big buyers. Certified Seed Growers generally use contracts for larger buyers, but I believe a lot of smaller buyers only have verbal contracts. Fresh growers are probably only 40% contracted. Certified Seed Growers offer their buyers a terms of trade document, which I have attached. Crisping and processing growers are offered contracts by the companies. I have not seen one of those documents for years, so am not sure what is on them however I know they rarely change wording from year to year. Fresh growers who contract with big packers would need contracts, but again I am not sure what is on them. Large companies that buy and sell seed, like Elders, have standard contracts for their growers as well.

2. Growers who grow Crisping potatoes generally don't belong to other sub-groups. A lot of seed growers are fresh or processing growers, so there is a fair bit of overlap between the two groups. However if growers are levy paying members of one group and it covers their needs, then they will probably not be levy paying members of another sub-group. I know there are;

- only 5 seed growers who pay levies to SPV, and who are also members of the McCain growers group.
- only 10 seed growers who pay levies to the Gippsland Fresh potato group and who also pay levies to SPV.
- only 2 growers who are members of the Crisping group also pay levies to SPV

There may be a few more, but generally the sub-groups do not mix membership, unless its seed growers.

Hopefully that made things a little clearer!

Kindly,  
Laura.

----- Original Message -----

**From:** Clancy, Sharon  
**To:** [Laura Bowles](mailto:Laura.Bowles@vpc.com.au)  
**Sent:** Friday, May 04, 2007 1:55 PM  
**Subject:** VPGC application for authorisation - questions [SEC=UNCLASSIFIED]

Hi Laura

I have some further questions about the potato industry in Victoria. They are:

- To what extent are standard form contracts currently used between potato growers and buyers? Do buyers generally offer growers standard terms and conditions or do genuine negotiations between buyers and growers currently take place?

- To what extent do growers belong to more than one sub-group of the VPGC? For example, how many growers would belong to both the McCain Growers Group and the VFF Gippsland Potato Grower Group?

Regards

Sharon

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## TERMS AND CONDITIONS OF SALE AND ACCEPTANCE OF ORDERS

All certified seed supplied to the seed buyer by the seed grower listed in this Seed Buyers Directory is supplied strictly pursuant to these terms and conditions unless the seed grower and seed buyer jointly endorse alternative documentation. Acceptance of delivery is deemed acceptance thereof by the seed buyer.

The seed grower has taken all reasonable precautions to ensure that:-

- (i) These seed potatoes comply with all specifications of the ViCSPA Seed Potato Certification Scheme (the certification scheme) and are fit to be used as seed;
  - (ii) The materials supplied have been grown from seed supplied through the certification scheme and the seed crop has performed in a manner consistent with the attributes of each variety. The seed grower has not performed any tests as to the purity of each variety other than the visual observations and the taking of all reasonable care to maintain variety purity.
  - (iii) The soil in which the crop has been grown has been subject to the approved testing protocols developed by the ViCSPA for the prevention of potato cyst nematode. This includes soil testing specific areas on a statistically approved grid to confirm that there is no detectable presence of potato cyst nematode.
  - (iv) The seed has been graded to within the standard as set by the certification scheme but no claim is made or to be implied on behalf of the seed grower that the seed is free from all pests and/or disease and the seed grower shall not be liable for any defect or defects in the seed which exist notwithstanding such reasonable precautions.
3. The seed grower makes no warranty nor representation directly or otherwise that the seeds supplied will grow a crop that is fit for any particular end use or purpose and the seed buyer has made his own enquiry and assessment of the quality and suitability of the seed for the intended purpose.
  4. Unless stated to the contrary in these conditions, all previous conditions, warranties, undertakings, inducements or representations whether expressed or implied relating in anyway to the seed are excluded.
  5. Where any Act implies terms and conditions and prohibits provisions modifying any such implied terms and conditions then those terms and conditions are deemed included in these terms.
  6. The seed buyer shall inspect the delivered seed promptly upon arrival and must report any visual defects, problems or concerns to the seed grower in writing within 14 days of dispatch of the seed from the seed grower's property.
  7. The seed grower shall not be liable for or responsible to the seed buyer in respect of any loss or damage including consequential loss or loss of profits howsoever caused or arising, legal costs or administrative charges in respect of the sale of the seed or the failure or omission on the part of the seed grower to comply with his obligations under these conditions.
  8. Any liability of the seed grower pursuant to these terms and conditions shall be limited entirely at the option of the seed grower to either the replacement of the seed or a refund of any money paid pursuant to the sale.
  9. Prices stated are exclusive of GST and in the event of this sale being subject to a goods and services tax pursuant to a New Tax System (Goods and Services Tax) Act 1999 then the seed buyer shall, upon receipt of a valid Tax Invoice, also pay the amount of any GST payable in respect of such taxable supply at the same time and in the same manner as the agreed price or value of the taxable supply is otherwise payable.
  10. Payment for seed shall be made within 30 days of the date of invoice for the seed supplied.
  11. Failing payment within thirty (30) days of the invoice date interest will be payable to the seed grower calculated at a rate 4% higher than the prevailing rate pursuant to the provisions of the Penalty Interest Rate Act 1983.
  12. The seed buyer shall carry the risk for loss or damage to the seed as and from the point of its departure from the seed growers premises.
  13. The seed buyer agrees to indemnify and keep indemnified, the seed grower against all claims made against it by or on behalf of a Third Party for loss or damage of whatsoever kind as a consequence of having consumed, used, been affected by or come into contact with the seed or any product produced from it.
  14. These terms and conditions shall supercede and prevail over any previous terms and conditions and in the event of any perceived inconsistency these terms shall prevail.
  15. These terms shall be governed by the laws of the State of Victoria and the parties hereto irrevocably submit to the jurisdiction of the Victorian Courts and these terms may be pleaded as a bar to an action brought in Courts outside this jurisdiction.
  16. These terms may not be modified or amended unless by instrument in writing signed by all parties hereto. If any provision of these terms is void or voidable it shall be read down so as to give affect to the clause and if it cannot be so read down the provision shall be severed and the remaining provisions will continue in full force and effect.
  17. In these terms where the context permits reference to the singular shall include the plural and reference to one gender shall include the other gender and the neuter.
  18. Any party consisting of more than one person shall be bound to these terms jointly and severally and the term seed grower and seed buyer where the context permits shall be deemed to include transferees, executor, administrators and others deriving title under those respective parties and shall include successors and assigns.
  19. Any notices to be served will be sent in writing to the address of the parties given or as notified in writing from time to time. If served by prepaid post any notice of demand will be deemed to have been received on the day following the day of posting unless the contrary is established.
  20. No time or other indulgence granted to the seed buyer shall operate as a waiver of the seed grower's rights in respect of any continuing or recurring breach.
  21. Nothing contained in these terms shall in anyway constitute a relationship of partnership or employer and employee between the parties hereto and it is the expressed intention of the parties that any such relationships are denied.