

# Conditions of Sale - Merchandise

## 1. DEFINITIONS

- 1.1 In these terms and conditions:
- "Agent" means Ruralco Holdings Limited A.C.N 009 660 879 and any subsidiary or associated entity and as trustee of any trust;
- "Buyer" means the person making a commercial credit account application and entering into a Contract with the Supplier and includes its authorised representatives;
- "Contract" means any contract for the sale or supply of Goods between the Supplier and the Buyer;
- "Goods" means all products and services agreed to be supplied by the Supplier or a supplier which has entered into an arrangement with the Supplier to supply products or services to the Buyer under any contract, arrangement or understanding between the Supplier and the Buyer including but not limited to any goods described in an invoice the Supplier issues to the Buyer, but excludes Livestock;
- "Supplier" means Ruralco Holdings Limited A.C.N 009 660 879 and any subsidiary or associated entity and as trustee of any trust.
- "Quoted Date" means the date of delivery as agreed between the Buyer and the Supplier.

## 2. APPLICATION

- 2.1 These terms and conditions govern every Contract for the supply of Goods between the Buyer and the Supplier. To the extent of any inconsistency between these terms and conditions and the General Credit Terms, the General Credit Terms will prevail.

## 3. STATUTORY PROVISIONS

- 3.1 These terms and conditions:
- (a) shall be subject to the provisions of the *Competition and Consumer Act 2010*, any statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth legislation ("the Statutory Provisions");
- (b) unless the Supplier otherwise agrees in writing, these are the only terms and conditions of sale to which the Supplier will be bound and the Buyer agrees that these terms and conditions will in all circumstances prevail over the Buyer's terms and conditions of purchase (if any); and
- (c) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

## 4. WARRANTIES

- 4.1 Subject to the Statutory Provisions:
- (a) the Supplier warrants that the Goods supplied are of merchantable quality and shall comply with the description and specifications as set out on the label or other product documentation published by the Supplier or its supplier;
- (b) the Supplier's liability for breach of sub-clause 4(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51, 52 or 53 of the *Australian Consumer Law, Competition and Consumer Act 2010*) is limited to any one of the following as determined by the Supplier:
- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of the Goods or payment of the cost of having the Goods repaired; or
- (iii) the refund of the price paid by the Buyer for the Goods.
- 4.2 The Buyer will examine the Goods for defects and shall notify the Supplier of any defects in writing within 30 days of delivery. If the Buyer does not notify the Supplier within 30 days of delivery the Buyer shall be deemed to have accepted the Goods.
- 4.3 To the extent the law permits and notwithstanding any other clause of these terms and conditions, the Supplier excludes all liability whatsoever to the Buyer arising out of or in any way connected with a Contract for any consequential or indirect losses of any kind howsoever arising and whether caused by breach of statute, breach of contract, negligence or other tort. Consequential or indirect losses will be taken to include but not be limited to:
- (a) any loss of income, profit or business;
- (b) any loss in the nature of overhead costs; and
- (c) any loss of goodwill or reputation.

## 5. ADVICE

- 5.1 Subject to Statutory rights, any advice, recommendation, information, assistance or service by the Supplier in relation to Goods sold or manufactured by it is given in good faith and is believed to be appropriate and reliable. However, any liability arising out of or in respect of such advice, recommendation, assistance or service provided by the Supplier is hereby excluded.

## 6. DELIVERY

- 6.1 The Supplier will make all reasonable efforts to have the Goods delivered to the Buyer on the date agreed between the parties as the Quoted Date, but the Supplier shall not be liable for any failure to deliver or delay in delivery for any reason.

## 7. RISK

- 7.1 Unless otherwise agreed in writing all risk in and to the Goods purchased shall pass to the Buyer upon delivery to the Buyer or its agent or to a carrier commissioned by the Buyer.
- 7.2 Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or its agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to the Supplier that, in the storage and handling of the Goods, the Buyer and its agents and carriers shall comply with all relevant environmental laws and regulations, and do comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.
- 7.3 If the Supplier does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall be liable for storage charges payable monthly on demand.

## 8. TITLE

- 8.1 Title to and property in the Goods shall not pass to the Buyer and is reserved to the Supplier until the total purchase price for the Goods and any other amounts outstanding to the Supplier from the Buyer have been paid in full.
- 8.2 The Buyer acknowledges that until title in and to the Goods passes to the Buyer in accordance with this clause, the Buyer holds the Goods as bailee of the Supplier and that a fiduciary relationship exists between the Buyer and the Supplier.
- 8.3 Until title in and to the Goods passes to the Buyer in accordance with this clause the Buyer shall store the Goods separately and in such a manner that they are clearly identified as the property of the Supplier and shall insure the Goods with a reputable insurer until title passes to the Buyer. The Supplier shall be entitled at any time until title in and to the Goods passes to the Buyer to demand evidence of such insurance and the return of the Goods and shall be entitled without notice to the Buyer and without liability to the Buyer to enter any premises occupied by the Buyer in order to search for and remove the Goods.
- 8.4 The Buyer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Buyer in accordance with this clause, it sells the Goods as a fiduciary agent of the Supplier provided that such sales shall not give rise to any obligations on the part of the Supplier. The Buyer shall hold the proceeds of sale on trust for the Supplier in a separate account.
- 8.5 If title in and to the Goods has not passed to the Buyer in accordance with this clause, the Buyer's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 12.3 (a)-(e) hereof.

## 9. PERSONAL PROPERTY SECURITIES ACT 2009

- 9.1 The Buyer acknowledges that this agreement constitutes a Security Agreement for the purposes of the *Personal Property Securities Act 2009* ("PPSA") and that the Buyer grants a Security

Interest and Purchase Money Security Interest (as defined in the PPSA) In all Goods (and their proceeds) delivered to the Buyer.

- 9.2 Any Security Interests granted under the agreement will be held by Ruralco Holdings Limited A.C.N 009 660 879 for the benefit of the Supplier. The Buyer agrees to execute documents and do such further acts as may be required by the Supplier to have the Security Interest registered under the PPSA.
- 9.3 Until title in the Goods passes, the Buyer waives the Buyer's rights under the following provisions of Part 4 of the PPSA:
- (a) to receive a notice of intention of removal of an accession (section 95);
- (b) to receive a notice that the Supplier decides to enforce its security interest in accordance with land law (section 118);
- (c) to receive a notice of enforcement action against liquid assets (section 121(4));
- (d) to receive a notice of disposal of goods by the Supplier purchasing the Goods (section 129);
- (e) to receive a notice to dispose of Goods (section 130);
- (f) to receive a statement of account following disposal of Goods (section 132(3)(d));
- (g) to receive a statement of account if no disposal of Goods for each 6 month period (section 132(4));
- (h) to receive notice of any proposal of the Supplier to retain Goods (section 135);
- (i) to reinstate the security agreement (section 143);
- (j) to receive a notice of any verification statement (section 157(1) and section 157(3);
- 9.4 The Buyer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- 9.5 The Buyer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to the Supplier under these Conditions of Sale.
- 9.6 The Buyer irrevocably grants to the Supplier the right to enter upon the Buyer's property or premises, without notice, and without being in any way liable to the Buyer or to any third party, if the Supplier has cause to exercise any of the Supplier's rights under sections 123 or 128 of the PPSA or otherwise provided at law and the Buyer shall indemnify the Supplier from any claims made by any third party as a result of such exercise.

## 10. PRICE

- 10.1 Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by the Supplier at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

## 11. FORCE MAJEURE

- 11.1 Deliveries may be totally or partially suspended by the Supplier during any period in which the Supplier may be prevented or hindered from manufacture, delivery or supply through any circumstances outside the Supplier's reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery software, hardware or communication network. The Supplier shall not incur any liability to the Buyer in respect of such suspension.

## 12. PAYMENT AND DEFAULT

- 12.1 Unless otherwise agreed expressly in writing, terms of payment shall be contained on the invoice. The Buyer is not entitled to withhold any payments or to refuse payment on the grounds of counter claims which are disputed by the Supplier.
- 12.2 Should the Buyer not pay within the time stipulated on the invoice or as otherwise agreed, the Supplier shall be entitled to charge an overdue account fee on the amount outstanding as liquidated damages at the rate shown on the front of the invoice.
- 12.3 If any of the events set out in (a) to (e) below occur, the Supplier may at its option withhold further deliveries or cancel the Contract without notice to the Buyer and without prejudice to any other action or remedy which the Supplier has or might otherwise have had, and all monies owing and outstanding to the Supplier on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable:
- (a) the Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
- (b) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;
- (c) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
- (d) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;
- (e) the Buyer experiences any analogous events having substantially similar effects to any of the events specified above.
- 12.4 Notwithstanding sub-clause 12.1 hereof the Supplier may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons therefore review, alter or terminate the Buyer's credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of the Supplier shall be final and accepts no liability or responsibility for any loss, howsoever arising, incurred by the Buyer due to the operation of this condition.

## 13. LAWFUL USE OF THE GOODS

- 13.1 The Buyer undertakes with the Supplier:
- (a) that it will acquaint itself with the requirements of all relevant Government and Statutory or other authorities, bodies or corporations relating to the Goods and to the application to which the Goods are put;
- (b) that at all times whilst the Goods are in the Buyer's possession or under its control it will comply with such requirements;
- (c) that it will procure that any Buyer of the Goods from them will also acquaint themselves with and comply with such requirements;
- (d) that it will indemnify the Supplier against any liability resulting from a breach of such requirements.
- 13.2 The Buyer undertakes that it will comply with the Supplier safety instructions as notified from time to time by the Supplier relating to the Goods.

## 14. PALLETS

- 14.1 Unless otherwise agreed to in writing all pallets on which Goods are delivered remain the property of the Supplier and must be returned at the Buyer's expense in good order and condition to the store of the Supplier from which they were delivered. Pallets will be deemed to be still in the Buyer's hands until received at such store. To the extent the law permits, all risks whatsoever associated with the pallets rest with the Buyer absolutely and the Buyer agrees to indemnify the Supplier in respect of any pallet that is not returned in good order and condition to the Supplier within one month of delivery of the Goods.

## 15. BULK CONTAINERS

- 15.1 It is the Buyer's responsibility to return empty returnable bulk containers (including bulk bags and bulk bins) in the same condition as they were supplied (fair wear and tear excepted) to the location from which they were supplied or other location nominated by the Supplier. At all times bulk containers supplied by the Supplier will remain the property of the Supplier and must not be used for any commodity other than that contained in the bulk containers at the time of delivery.
- 15.2 The period of use for bulk containers shall be such reasonable time as determined by the Supplier, having regard to the circumstances in which the bulk containers are supplied. The Buyer will pay rental charges as determined by the Supplier from time to time on all containers which are not returned within the time determined by the Supplier pursuant to this clause.
- 15.3 The Buyer will be liable for bulk containers not returned in the same condition as they were supplied (fair wear and tear excepted) and will be charged replacement value or repair cost,

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whichever is applicable.

**16. GENERAL LIEN**

- 16.1 In addition to any right of lien to which the Supplier may be entitled under the common law, the Supplier shall be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by the Supplier to the Buyer. The Supplier may in its sole discretion sell any item that is subject to the said lien, provided that the Supplier shall pay to the Buyer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to the Supplier in respect of Goods that have been delivered by it to the Buyer and all reasonable costs of sale incurred by the Supplier.
- 16.2 The Buyer acknowledges that the Supplier has a security interest (for the purposes of the PPSA) in these items, and the proceeds of these items, until the Buyer has paid in full for all Goods supplied by the Supplier in accordance with clause 11. The Buyer will do anything required by the Supplier to enable the Supplier to register this security interest, with the priority the Supplier requires, and maintaining that registration. Despite this requirement for registration of this security interest, and regardless of whether or not it is actually registered, the Supplier may perfect this security interest by possession of the relevant items.

**17. SEVERANCE**

- 17.1 If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

**18. GOVERNING LAW**

- 18.1 This Contract shall be governed and construed in accordance with the law in force in the State in which the application is received by the Supplier. The Buyer and the Supplier hereto irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of any of the courts of that State as the Supplier may elect with respect to any legal action or proceedings which may be brought at any time relating in any way to this Contract.

**19. TRANSACTION TAX**

- 19.1 Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, the Supplier may recover from the Buyer an additional amount on account of that transaction tax in accordance with clause 11.

**20. PATENTS**

- 20.1 No right or licence is granted to the Buyer under any patent, copyright, registered design or other industrial or intellectual property right except the right to resell to Goods.

**21. SET-OFF**

- 21.1 The Supplier in its sole and unfettered discretion may at any time set-off any amount owing by the Supplier to the Buyer on any account whatsoever, including any monies held by the Supplier for or on account of the Buyer, against any amount owing by the Buyer to the Supplier in respect of the Goods supplied by the Supplier whether or not that amount has become due and payable.

**22. FURTHER SECURITY**

- 22.1 The Supplier in its sole and unfettered discretion may at any time require the Buyer to provide further security to secure payment of the Goods being purchased. Further security under this clause may include providing a Security Interest over crops or livestock of the Buyer sufficient to constitute a "Priority Interest" under sections 85 and 86 of the PPSA.

**23. CONFIDENTIALITY**

- 23.1 Except as required by law, the Supplier and the Buyer agree to treat the terms of the Contract as confidential. The Supplier and the Buyer acknowledge and agree that this clause constitutes a confidentiality agreement pursuant to Section 275(6) of the PPSA.
- 23.2 Neither the Supplier nor the Buyer will disclose, send or make available any of the information referred to in Section 275(1) of the PPSA to any person except as required by law.

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