

# NUTRIEN AG SOLUTIONS

## GENERAL TERMS & CONDITIONS OF PURCHASE

Subject to any written agreement of the parties to the contrary, all Goods and Services purchased by Nutrien Ag Solutions Limited (ABN 73 008 743 217) and/or its Related Bodies Corporate (each a "**Company**") from any third party ("**Supplier**") are purchased on the following terms and conditions ("**Terms**").

### 1. When is a Contract formed?

- 1.1 The Company will may request or order Goods and/or Services from the Supplier from time to time by issuing a written order ("**Purchase Order**") to the Supplier.
- 1.2 The Supplier is deemed to have accepted a Purchase Order issued by the Company under clause 1.1, if the Supplier:
  - (a) notifies the Company of the Supplier's acceptance of the Purchase Order; or
  - (b) commences the supply of the Goods and/or Services.
- 1.3 Upon acceptance by the Supplier under clause 1.2, a binding contract comes into existence between the Company and the Supplier incorporating the following documents (together the "**Contract**"):
  - (a) the Purchase Order issued by the Company, whether attaching these Terms or not;
  - (b) these Terms;
  - (c) any document attached or annexed to these Terms by the Company;
  - (d) any quotation, invoice or other document provided by the Supplier; and
  - (e) any notice of acceptance provided by the Supplier in accordance with clause 1.2.
- 1.4 If any provision(s) in two or more documents listed in clause 1.3 dealing with the same subject are inconsistent, then the provisions of the document earlier listed shall have priority and will prevail over the provisions of a document that is later mentioned, to the extent of that inconsistency.
- 1.5 The Company may amend these Terms at any time. By continuing to accept the Company's Purchase Orders, the Supplier agrees to the Terms applicable at the time that each Purchase Order is accepted. It is the responsibility of the Supplier to regularly check these Terms for any variations.

### 2. What is included in the Price?

- 2.1 The price for the Goods and/or Services will be contained in the Purchase Order issued by the Company to the Supplier ("**Price**").
- 2.2 Unless otherwise stated, the Price is inclusive of:
  - (a) GST, all packaging, transport, customs duty (and any other duties, taxes or levies), insurance, loading, unloading and storage costs, up to the point of delivery;
  - (b) all amounts payable for the use of any intellectual property; and
  - (c) all charges for the supply of the Goods or the performance of the Services.
- 2.3 The Price may not be increased without the parties' prior written consent.
- 2.4 Unless otherwise agreed in writing, the Supplier must supply at its own cost everything necessary to supply the Goods and/or Services to the Company.

### 3. When is payment due?

- 3.1 Unless otherwise agreed expressly in writing, terms of payment will be contained in the Purchase Order issued by the Company to the Supplier.
- 3.2 Unless otherwise agreed in writing, the Supplier must provide a correctly rendered invoice upon delivery of the Goods and/or upon completion of the Services.
- 3.3 An invoice will be correctly rendered if it is:
  - (a) addressed in accordance with the Purchase Order and identifies the Purchase Order number;
  - (b) where explanation is necessary, accompanied by information sufficient to document the amount claimed; and
  - (c) where required by Australia law, a valid tax invoice within the meaning of the GST Act.
- 3.4 The Company will pay each correctly rendered invoice within the trading terms specified in the Purchase Order and agreed with the Supplier except where:
  - (a) it retains part of the Price as provided in the Contract; or
  - (b) it disputes the invoice; in which case the Company will withhold payment of the full invoice amount until the dispute is resolved.
- 3.5 The Company may set off, or otherwise account for, amounts paid by the Company against other amounts owed by the Supplier to the Company or claimed to be so owed whether arising under or in connection with the Contract or otherwise.

### 4. Can the Contract be terminated?

- 4.1 Without limiting any other rights or remedies the Company may have against the Supplier arising out of or in connection with the Contract, the Company may terminate the Contract effective immediately by giving notice to the Supplier if:
  - (a) the Supplier breaches a provision of the Contract where that breach is not capable of remedy; or
  - (b) the Supplier breaches any provision of the Contract where that breach is capable of remedy and fails to remedy the breach within 7 days after receiving notice from the Company requiring it to do so.
- 4.2 If the Contract is terminated by the Company pursuant to clause 4.1:
  - (a) the parties are relieved from future performance, without prejudice to any right of action that has accrued at the date of termination;
  - (b) rights to recover damages are not affected; and
  - (c) the Supplier indemnifies the Company in respect of any loss it incurs in purchasing similar Goods and/or Services from other suppliers.
- 4.3 The Company may at any time by giving notice in writing to the Supplier terminate the Contract or any part without cause and, on receipt of such notice, the Supplier must cease or reduce work as specified in the notice and take all steps possible to mitigate losses.
- 4.4 If the Contract is terminated or partially terminated in accordance with clause 4.3, the Company will be liable only for:
  - (a) payment for any Goods already delivered and Services (or part thereof) already completed; and
  - (b) reasonable costs incurred by the Supplier and directly attributable to the termination or partial termination of the Contract.

### 5. What are the general obligations of the Supplier?

- 5.1 The Supplier must supply the Goods and/or Services:
  - (a) to the reasonable satisfaction of the Company;
  - (b) in accordance with the Contract, including achieving the timeframes, milestones and deliverables specified in the Contract;
  - (c) with due skill, care and diligence, to a high professional standard; and
  - (d) in accordance with all applicable laws (including but not limited to laws in relation to work health and safety and the environment), relevant Australian standards and best practice guidelines.
- 5.2 Where the Contract relates to the supply of Goods, the Supplier must:
  - (a) ensure that the Goods are free of any Security Interest and that no Security Interest is registered on the Personal Property Securities Register;
  - (b) deliver the Goods to the place specified by the Company and provide a delivery receipt;
- 5.3 The Supplier:
  - (a) must ensure when performing its obligations under the Contract that it complies with all applicable Anti-Slavery Laws and relevant Company policies, procedures or statements relating to anti-slavery;
  - (b) must provide, at its cost, all reasonable assistance (including the provision of information and access to documents, personnel and contracts) that the Company may require to enable the Company to comply with its obligations under the Anti-Slavery Laws; and
  - (c) must immediately notify and provide full particulars to the Company upon becoming aware that the Supplier has or may have breached this clause 5.3, or that it or any of its personnel or subcontractors have been found guilty by a court of, or have admitted guilt or accepted liability in relation to, a contravention of any Anti-Slavery Laws.

### 6. What are the terms of Delivery / completion?

- 6.1 The Supplier will deliver the Goods, or supply the Services, to the Company on the date or dates agreed between the parties and as set out in the Purchase Order.
- 6.2 The delivery of any Goods ("**Delivery**") is deemed to have occurred:
  - (a) if the Goods are to be collected by the Company or its carrier from the Supplier, when loading of the Goods commences by the Supplier or its carrier; or
  - (b) if the Goods are to be delivered by the Supplier or its carrier to the Company, when the Goods are unloaded at the delivery location specified in the Contract.
- 6.3 The Supplier will notify the Company promptly in writing, when it considers (acting reasonably) that the Services have been completed ("**Completion**").
- 6.4 Following Delivery and/or Completion, the Company may inspect the Goods and/or Services and, acting reasonably, may reject any Goods and/or Services that have not been supplied in accordance with the Contract.

- 6.5 The Company will not be liable to pay for any rejected Goods and/or Services or for any damage or costs arising from inspection or rejection of Goods and/or Services.
- 6.6 If the Company rejects any Goods, the Supplier must, without prejudice to the Company's rights otherwise arising under the Contract or at law, comply with a requirement of the Company to:
- replace, without cost to the Company, the rejected Goods with Goods complying in all respects with the Contract;
  - refund any payment for the rejected Goods; or
  - repair the Goods, on site or otherwise, to the satisfaction of the Company and  
in the case of (a) or (b), remove the rejected Goods at the Supplier's expense.
- 6.7 If the Company rejects any Services, the Supplier must, without prejudice to the Company's rights otherwise arising under the Contract or at law, comply with a requirement of the Company to:
- promptly rectify or re-supply the rejected Services; or
  - refund to the Company all money paid in respect of the rejected Services.
- 7. When do title and risk transfer?**
- 7.1 Risk of, damage to, or loss of, the Goods shall pass to the Company at the time of Delivery.
- 7.2 Title and ownership of the Goods passes to the Company at the time of Delivery or payment of the Price, whichever is earlier.
- 8. What are the warranties provided by the Supplier?**
- 8.1 Without limiting any other warranty given by the Supplier, the Supplier represents and warrants that:
- the Goods are of merchantable quality;
  - the Goods are free from defects;
  - the Goods are fit for the specified purpose, if no purpose is specified, the Goods are fit for the purpose for which goods similar to the Goods are normally acquired;
  - the Supplier has all necessary approvals of any Authority or Professional body to supply the Goods;
  - the Company's purchase of the Goods will not infringe the rights (including, without limitation, intellectual property rights) of any third party;
  - it is the legal and beneficial owner of the Goods;
  - the Goods meet all relevant Australian standards; and
  - use of the Goods will not cause the Company to be in breach of any law.
- 8.2 In addition to the warranties set out in clause 8.1 and without limiting any other warranty given by the Supplier, if the Company gives notice of any defect or omission discovered in the Goods and/or Service, at any time, the Supplier must correct that defect or omission without delay and at no cost to the Company.
- 8.3 The Supplier warrants that it will, always during the term of the Contract, maintain:
- all insurances required by any law; and
  - insurance cover sufficient to cover any loss or costs that may be incurred and for which the Supplier is liable in connection with the supply of Goods and/or Services, including, as applicable, product liability insurance, public liability insurance and professional indemnity insurance,  
and will provide evidence of such insurance in the form of a certificate of currency upon request by the Company.
- 9. What are the parties liable for under the Contract?**
- 9.1 The Supplier is liable for and indemnifies the Company against:
- all losses, damage, expenses, costs and liabilities incurred in connection with any breach by the Supplier of the Contract or any negligent act, omissions, willful misconduct or violation of any law by the Supplier, its employees, agents or contractors;
  - all loss or damage to any property caused by Goods and/or Services supplied by the Supplier to the Company;
  - all losses suffered by, or claims against, the Company in respect of personal injury or death of any person arising out of, in connection with, or because of:
    - the supply of the Goods and/or Services to the Company by the Supplier;
    - a failure by the Supplier to carry out the supply of the Goods and/or Services; and/or
    - the Supplier's breach of the Contract; and
  - any willful misconduct or negligent act or omission by the Supplier or any of the Supplier's employees, agents or subcontractors;  
except to the extent that any liability, loss or damage is solely and directly caused by the willful misconduct or negligence of the Company or any of the Company's employees, agents or subcontractors.
- 9.2 Neither party will be liable to the other for any consequential, indirect or incidental loss, loss of profits, lost production or revenue, loss of anticipated savings, loss of opportunity, business reputation or damage to goodwill arising from or in connection with the performance of its obligations under the Contract.
- 10. What if a dispute arises?**
- 10.1 In this clause "Dispute" means any dispute between two or more parties that is in any way connected with the Contract.
- 10.2 No party may commence any court proceedings (except proceedings seeking interlocutory relief) against the other party in respect of any Dispute unless it has first complied with this clause.
- 10.3 Any party claiming that a Dispute has arisen must notify the other parties in writing.
- 10.4 Within 7 Business Days after such notice is given, each party must nominate in writing to the other parties a representative who is authorised to settle the Dispute on its behalf.
- 10.5 During the 20-day period after the nomination of representatives authorised to settle the Dispute has been made (or, if the parties agree on a longer period, that longer period) each party's nominee must use their best efforts to resolve the Dispute.
- 10.6 If the Dispute is not resolved within that time, the Dispute must be referred:
- for mediation in Melbourne, Victoria conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (the "Guidelines"), in accordance with the Australian Disputes Centre (ADC) Mediation Guidelines; and
  - to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator appointed in accordance with the Guidelines.
- 10.7 If the Dispute is not resolved by mediation, any party may commence court proceedings.
- 11. Confidentiality and Intellectual Property**
- 11.1 The parties acknowledge that the existence and the terms of the Contract and any oral or written information exchanged between the parties in connection with the preparation and performances of the Contract are regarded as confidential information.
- 11.2 Each party shall maintain confidentiality of all such confidential information, and without obtaining the written consent of the other party, it will not disclose any relevant confidential information to any third parties, except for information that:
- is or will be in the public domain (other than through the receiving party's unauthorised disclosure);
  - must be disclosed pursuant to the applicable laws and regulations, rules of any stock exchange or orders of the court or other government authorities; or
  - is required to be disclosed by any Party to its shareholders, investors, legal counsels or financial advisors regarding the transaction contemplated hereunder, provided that such shareholders, investors, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this clause 11.
  - Disclosure of any confidential information by the employees, agents or sub-contractors of any party shall be deemed disclosure of such confidential information by such party, which party shall be held liable for breach of the Contract.
  - This clause 11 will survive the termination of the Contract for any reason.
- 11.3 All Intellectual Property Rights in the Contract Material will vest in the Company and to the extent that the Company needs to use any of the Background Material or Third Party Material provided by the Supplier to receive the benefit any Goods and/or Services, the Supplier grants to, or must obtain for, the Company and perpetual, world-wide, royalty free, non-exclusive licence (including the right to sublicense) to use, reproduce, adapt, modify, distribute and communicate that Material.
- 12. Privacy**
- 12.1 In this clause, "Privacy Act" means the Privacy Act 1988 (Cth) and the terms defined in the Privacy Act have the same meaning in this clause (unless otherwise defined in this clause).

12.2 The Supplier must always comply with the Privacy Act in relation to its handling of Personal Information in connection with the Contract including Personal Information disclosed to it by the Company, regardless of whether the Supplier is an organisation bound by the Privacy Act. In particular, the Supplier:

- (a) will not do, or omit to do, anything in respect of the Personal Information which results, or could reasonably result, in the Company being in breach of the Privacy Act;
- (b) will not use or disclose the Personal Information other than for purposes connected with the Contract, unless with the prior written consent of the Company or otherwise in accordance with law;
- (c) will immediately notify the Company if it becomes aware of a breach, or potential breach, of the Privacy Act regarding the Personal Information;
- (d) will co-operate with any reasonable requests or directions of the Company; and
- (e) will provide to the Company or destroy the Personal Information upon the Company's request or otherwise upon the termination of the Contract.

### 13. Governing Law

13.1 The Contract is governed by the laws of the State of Victoria in Australia. The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect to the Contract.

13.2 The parties agree to submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the courts of appeal from them.

### 14. Miscellaneous

14.1 The Contract is the entire agreement between the parties in relation to the supply of the Goods and/or Services and supersedes all other contracts, arrangements and understandings relating to the supply, delivery or performance of the Goods/Services.

14.2 The parties to the Contract are only the Company and the Supplier. There is no relationship of agency, partnership or joint venture between the parties and this is not an exclusive supply arrangement.

14.3 Unless expressly set out in the Contract, a party shall not waive a right, power or remedy if it fails to exercise or delays in exercise the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another power or remedy. A Waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

14.4 Neither party may assign or sub-contract its obligations under the Contract without the prior written consent of the other party.

14.5 A rule of construction does not apply to the disadvantage of a party simply because that party was responsible for the preparation of the Contract or any part thereof.

14.6 If any party of the Contract is void or unenforceable, that part is severable from the Contract and the balance remains enforceable.

### 15. Definitions

In these Terms:

**Anti-Slavery Laws** means:

- a) Division 270 and 271 of the Criminal Code Act 1995 (Cth)
- b) the *Modern Slavery Act 2018* (Cth)
- c) any other Relevant Law which prohibits exploitation of a worker, human trafficking, slavery, slavery-like behaviour, servitude, forced labour, child labour, debt bondage or deceptive recruiting for labour or services (or similar), and is applicable in the jurisdiction in which the Company and the Supplier are registered or conduct business or in which activities relevant to this Contract are to be performed;

**Authority** means any government, statutory, public or other authority, body or department of any kind;

**Background Material** means Material owned by the Supplier that is, or was, created independently of the Contract;

**Intellectual Property Rights** means all intellectual property rights, including:

- a) copyright, rights in relation to inventions, patents, trademarks (including goodwill in those marks), designs, domain names, trade secrets, know how, rights in relation to circuit layouts and any right to have confidential information kept confidential;
- b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
- c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist in Australia or elsewhere, whether or not such rights are registered or capable of being registered;

**Goods** means a product sold by the Supplier and purchased by the Company in accordance with these Terms;

**Government Authority** means any international, federal, state or local government, semi-government, quasi-government or other department, body or authority (statutory or otherwise) which has relevant jurisdiction.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Material** includes property, information, documentation, or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, trading materials and instructions and the subject matter of any category of Intellectual Property Rights;

**Personal Property Securities Register** means the register established under the PPSA;

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**Relevant Law** includes orders and awards of any Government Authority, legislation, ordinances, rules, guidelines, regulations, by-laws and proclamations that may be applicable in connection with the performance of any work under the Contract;

**Security Interest** means a security interest as defined in the PPSA;

**Services** means services provided by the Supplier and purchased by the Company in accordance with these Terms; and

**Third Party Material** means Material owned by a third party that is included, embodied in or attached to the Contract Material or Goods or used as party of the performance of the Services.