

NUTRIEN AG SOLUTIONS

GENERAL TERMS AND CONDITIONS OF SALE

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

1. When is a Contract formed?

- 1.1 Until the Company has accepted an Order from the Customer in accordance with clause 1.3 of these Terms any quotation, estimate or price prepared or represented by the Company ("**Quote**") is:
 - (a) indicative only;
 - (b) not an offer to contract;
 - (c) only valid for 14 days; and
 - (d) subject to withdrawal or variation by the Company prior to acceptance.
- 1.2 If the Customer requests or orders Goods and/or Services from the Company, whether in response to a Quote or otherwise, the Customer offers to contract with the Company ("**Order**").
- 1.3 The Company is deemed to have accepted an Order made by the Customer under clause 1.2, if the Company:
 - (a) notifies the Customer of the Company's acceptance of the Order; or
 - (b) commences the supply of the Goods and/or Services.
- 1.4 Upon acceptance by the Company under clause 1.3, a binding contract comes into existence between the Company and the Customer incorporating the following documents (together the "**Contract**"):
 - (a) any Quote, invoice or other document of the Company, whether attaching these Terms or not;
 - (b) any notice of acceptance provided by the Company in accordance with clause 1.3;
 - (c) these Terms;
 - (d) any document attached or annexed to these Terms by the Company; and
 - (e) the Order placed by the Customer including any attached or associated terms and conditions.
- 1.5 If any provision(s) in two or more documents listed in clause 1.4 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.
- 1.6 The Company may amend these Terms at any time. By continuing to request the supply of Goods and/or Services, the Customer agrees to the Terms applicable at the time that such request is made. It is the responsibility of the Customer 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 Quote issued by the Company to the Customer ("**Price**").
- 2.2 All purchase prices published or quoted by the Company are in \$AUD and exclusive of GST (unless the Company advises the Customer otherwise).
- 2.3 Unless otherwise stated, all prices for Goods published or quoted by the Company are exclusive of freight and delivery costs, insurance and other charges in relation to the transfer of the product from the Company's premises.

3. When is payment due?

- 3.1 Unless otherwise agreed expressly in writing, terms of payment will be contained on the invoice provided by the Company to the Customer.
- 3.2 Time is of the essence in relation to payment for Goods and/or Services and if the Customer fails to make payment on the due date as set out in the invoice, the Company may:
 - (a) charge the Customer interest on overdue amounts at a rate of 18% per annum calculated per calendar month or part thereof;
 - (b) cancel the Contract and suspend any further deliveries to the Customer; and/or
 - (c) charge the Customer any costs of collection of any debt owing by the Customer to the Company (including legal costs on a full indemnity basis at the Company's election).
- 3.3 The Company may set off, or otherwise account for, amounts paid by the Customer against other amounts owed by the Customer to the Company or claimed to be so owed whether arising under or in connection with the Contract or otherwise.
- 3.4 In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the agreed payment terms.

4. Can the Contract be terminated?

- 4.1 Either party may, in its sole discretion and for any reason whatsoever, cancel or terminate the Contract, or any part of it, by giving the other party 14 days' prior written notice.

- 4.2 If the Customer terminates the Contract, or any part of it, under clause 4.1, the Customer must pay to the Company as compensation for termination:
 - (a) the price for any Goods already delivered and Services (or part thereof) already completed;
 - (b) the cost of any equipment, parts, components and materials ordered by the Company which it is liable to accept and cannot reasonably avoid or cancel; and
 - (c) any costs or losses arising due to the termination of third-party contracts.
- 4.3 The Company may terminate the Contract, or any part of it, immediately by giving written notice to the Customer, if the Customer commits a material breach of the Contract which is not remedied to the Company's satisfaction within seven (7) days of written notice from the Company.

5. What are the terms of delivery / completion?

- 5.1 The Company will make all reasonable efforts to have the Goods delivered, or the Services supplied, to the Customer on the date agreed between the parties but the Company shall not be liable for any failure or delay in delivery or supply for any reason.
- 5.2 The delivery of any Goods ("**Delivery**") is deemed to have occurred:
 - (a) if the Goods are to be collected by the Customer or its carrier from the Company, when loading of the Goods commences by the Customer or its carrier; or
 - (b) if the Goods are to be delivered by the Company or its carrier to the Customer, when the Goods are unloaded at the delivery location specified in the Contract.
- 5.3 The Company will notify the Customer, orally or in writing, promptly when it considers (acting reasonably) that the Services have been completed.
- 5.4 The Customer must:
 - (a) promptly inspect the Goods on Delivery in accordance with clause 5.2 and any Services following the notice given under clause 5.3; and
 - (b) notify the Company of any non-compliance with the Contract in writing within seven (7) days of delivery or from the notice of completion as applicable.
- 5.5 Unless the Company receives a written notice from the Customer under clause 5.4(b) within the timeframe required by that clause, the Customer is deemed, to the extent relevant, to have:
 - (a) accepted that the Goods comply with, and have been delivered in accordance with, the Contract; and
 - (b) certified that the Services are complete, and have been completed in accordance with, the Contract.

6. When do title and risk transfer?

- 6.1 Risk of, damage to, or loss of, the Goods shall pass to the Customer at the time of Delivery.
- 6.2 Title and ownership of the Goods shall not pass to the Customer until the Company has received in cleared funds, payment in full for all indebtedness including the price of the Goods delivered and any other sums which are or may become outstanding under the Contract or otherwise.
- 6.3 Until title to the Good(s) passes to the Customer in accordance with clause 6.2, the Customer has no right or interest to, or in, any of the Goods and holds the Goods as fiduciary, bailee and agent for the Company. The Customer must:
 - (a) keep the Goods separate from all other goods except as is expressly consented to by the Company in writing from time to time; and
 - (b) keep the Goods properly stored, protected and identified as the Company's property.

7. What are the parties liable for under the Contract?

- 7.1 Each party indemnifies the other, its employees and agents against losses for physical destruction of or damage to property, death, injury, illness or disease and any act or omission or breach of these Terms, arising out of or in connection with the performance of its obligations under the Contract, except to the extent caused or contributed to by the other party.
- 7.2 To the extent permitted by law, the liability of the Company, if any, arising out of or in connection with the supply of Goods or Services under this Contract, including for negligence, is limited:
 - (a) in the case of Goods to which a manufacturer's warranty applies or has applied but expired, to that warranty;
 - (b) for any other Goods, at the option and at the reasonable discretion of the Company:
 - (i) to the replacement of the Goods or the supply of equivalent Goods;
 - (ii) to the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or

- (iii) to the repair of the Goods by the Company or to the payment of the cost of having the Goods repaired, and
 - (c) in the case of Services, at the option and at the reasonable discretion of the Company:
 - (i) to a refund of the amount paid for the Services; or
 - (ii) to the supply of the Services again or payment for the cost of having the Services Supplied again,
- and in any event and notwithstanding any other provision of the Contract, to an amount in aggregate of all claims up to 100% of the purchase price under the Contract.

7.3 Except to the extent expressly required by law, the Company makes no warranties or representations in relation to any Goods or Services supplied by the Company other than those expressly agreed with the Customer in writing, and all terms conditions, warranties and undertakings whether express, implied, statutory or otherwise relating in any way to the Goods, Services or the Contract are excluded.

7.4 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.

8. What if there is a delay to supply?

- 8.1 To the extent that the Company is, or is likely to be, delayed or disrupted in the supply of any Goods or Services, and that is due to:
- (a) any fact, event, matter or circumstance beyond the Company's reasonable control; or
 - (b) any breach, act or omission of the Customer, its agents or contracts,
- the Company is entitled to a reasonable extension of time to supply those Goods or Services.
- 8.2 If a delay or delays under clause 8.1 exceed a single or aggregated period of 90 days, the Company may terminate the relevant Order or part thereof for convenience in its sole discretion by written notice to the Customer, in which case, the Company will be entitled to compensation in accordance with clause 4.2 as if the Customer had cancelled or terminated for convenience.

9. What if a Dispute arises?

- 9.1 In this clause "Dispute" means any dispute between two or more parties that is in any way connected with the Contract.
- 9.2 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.
- 9.3 Any party claiming that a Dispute has arisen must notify the other parties in writing.
- 9.4 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.
- 9.5 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.
- 9.6 If the Dispute is not resolved within that time, the Dispute must be referred:
- (a) for mediation in Melbourne, Victoria in accordance with the Australian Commercial Disputes Centre (ACDC) Mediation Guidelines; and
 - (b) to a mediator agreed by the parties, or if the parties do not agree on a mediator, a mediator nominated by the then current Chief Executive Officer of ACDC or that person's nominee (or if no such person is available or willing to nominate a mediator, by the then President of the Law Society or equivalent body of Victoria).
- 9.7 If the Dispute is not resolved by mediation, any party may commence court proceedings.

10. How does the PPSA apply to the Contract?

- 10.1 The Customer acknowledges that this agreement constitutes a Security Agreement for the purposes of the Personal Property Securities Act 2009 (PPSA) and that the Customer grants a Security Interest and Purchase Money Security Interest (as defined in the PPSA) in all Goods (and their proceeds) delivered to the Customer.
- 10.2 The Customer agrees to execute documents and do such further acts as may be required by the Company to have the Security Interest registered under the PPSA.
- 10.3 Until title in the Goods passes, the Customer waives the Customer'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 Company 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 Company 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 Customer to retain Goods (section 135);
- (i) to reinstate the security agreement (section 143); and
- (j) to receive a notice of any verification statement (section 157(1) and section 157(3));

10.4 The Customer further agrees that where the Company has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

10.5 The Customer 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 Company under the Contract.

10.6 The Customer irrevocably grants to the Company the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Company has cause to exercise any of the Company's rights under sections 123 or 128 of the PPSA or otherwise provided at law and the Customer shall indemnify the Company from any claims made by any third party as a result of such exercise.

11. Confidentiality

- 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:
- (a) is or will be in the public domain (other than through the receiving party's unauthorised disclosure);
 - (b) 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
 - (c) 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.
 - (d) 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.
 - (e) This clause 11 will survive the termination of the Contract for any reason.

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 Customer must at all times 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 Customer is an organisation bound by the Privacy Act. In particular, the Customer:
- (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. GST

13.1 If GST is payable on a Taxable Supply made under the Contract:

- (a) the Customer shall pay as additional consideration an amount equal to the amount of GST payable on that Taxable Supply; and
- (b) the Company shall provide the Customer with a GST Invoice before the Customer is required to pay any amount to the Company in relation to the Taxable Supply.

13.2 Where any indemnity or reimbursement under the Contract is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement in relation to the relevant cost, expense or other liability.

14. Governing law

14.1 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.

14.2 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.

15. Miscellaneous

15.1 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.

15.2 The parties to the Contract are only the Company and the Customer. There is no relationship of agency, partnership or joint venture between the parties.

15.3 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.

15.4 Neither party may assign the Contract without the prior written consent of the other party.

15.5 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.

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

16. Definitions

In these Terms, the following definitions apply:

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

GST has the same meaning within Section 195-1 of the GST Act;

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

GST Invoice has the meaning set out in the GST Act;

Related Bodies Corporate has the meaning set out in section 50 of the *Corporations Act 2001* (Cth);

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

Taxable Supply has the meaning set out in the GST Act.