

## NUTRIEN AG SOLUTIONS GENERAL TERMS & CONDITIONS OF SALE

All Goods and Services sold or supplied by Nutrien Ag Solutions Limited (ABN 73 008 743 217) and/or its Associated Entities (each a "**Company**") to any third party ("**Customer**") are sold for the Price and on the following terms and conditions ("**Terms**" which includes the provisions of the Bulk Fertiliser Schedule). Where the Customer is an Associated Entity of the Company, the Company does not include that Customer/Associated Entity for the purposes of this Contract.

### 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**") on these Terms.
- 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/ issues a written confirmation 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 attached to these Terms or not;
  - (b) any notice of acceptance/written confirmation of Order 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) subject to clause 1.7, the Order placed by the Customer as modified by the Quote, invoice or other document of the Company, whether attached to these Terms or not.
- 1.5 Unless otherwise expressly stated, 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 the inconsistency.
- 1.6 The Company may amend these Terms at any time and any amendments made will not come into effect until 30 days after posting on the Company website. It is the responsibility of the Customer to regularly check the Company website at [www.nutrienagsolutions.com.au](http://www.nutrienagsolutions.com.au) for any amendments to these Terms prior to the Customer placing an Order to which the amended Terms apply. By continuing to order the supply of Goods and/or Services, the Customer agrees to the Terms applicable at the time that such request is made.
- 1.7 These Terms apply exclusively to all sales by the Company, notwithstanding anything to the contrary in the Customer's general conditions of purchase or in any other document issued by the Customer (including the Order) or which are otherwise implied by trade, custom, practice or course of dealing. No terms or conditions of the Customer, will be binding on the Company or have any legal effect unless expressly agreed to in writing by the Company.
- 1.8 In relation to Goods that are fertilisers, pesticides, herbicides, fungicides, insecticides, rodenticides; parasiticides and other agronomic Goods, any agronomic advice or services provided by the Company in connection with or leading up to the sale of the relevant Goods and post-sale advice on application, efficacy, inspections, remedial measures and re-applications (**Agronomy Services**) are provided under the Company's Terms and Conditions for the Supply of Farm Services (**Farm Services**)

(**Terms and Conditions**) a copy of which can be located at [www.nutrienagsolutions.com.au](http://www.nutrienagsolutions.com.au) on the Terms and Conditions page.

2. **Price**
  - 2.1 Subject to clause 2.4, the price for the Goods and/or Services will be contained in the Quote or written confirmation of the Order issued by the Company to the Customer ("**Price**") (whichever is issued later).
  - 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.
  - 2.4 Prior to the delivery of the relevant Goods or the supply of the Services the subject of an Order, the Customer acknowledges and agrees that the Company may increase the Price to the Customer to the extent that the Company's costs in providing the Goods and/or Services has increased by providing the Customer with a written notice of the proposed new Price (**Revised Price Notice**). Unless the Customer informs the Company in writing within 10 (ten) Business Days of the date of the Revised Price Notice that it does not accept the proposed new Price, the Customer is taken to have accepted the new Price contained in the Revised Price Notice.
3. **When is payment due?**
  - 3.1 Unless otherwise agreed expressly in writing, terms of payment will be contained on the invoice or other written document issued by the Company to the Customer. The due date for payment will be as set out in the Company issued document or in the absence of such terms, within 30 days of the date of sale as recorded in Nutrien's internal books and records or the date of delivery, whichever is earlier.
  - 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 clause 3.1 or above, 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) suspend any further deliveries of Goods or the supply of Services and if the payment is not received within 7 days of such suspension, terminate this Contract as it applies to the Order; 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 deduct from amounts due and payable by the Company to the Customer under or in connection with the Contract or otherwise, any amounts due and payable by the Customer to the Company in connection with this Contract or otherwise unless the Company has been notified that such amounts are in dispute.
  - 3.4 Where the Customer has a trading account with the Company:
    - (a) the Customer charges in favour of the Company all of its interest in all present and after acquired property, including real property and any property held by the Customer as trustee, as security for the due and punctual payment of all debts and monetary liabilities owed by the Customer to the Company on any account; and
    - (b) the Customer consents to the Company lodging a caveat to note its interest. Upon demand by the Company, the Customer agrees to immediately execute a mortgage on terms satisfactory to the Company to more particularly describe the security interest conferred by the clause. If the Customer fails, within a reasonable time of such demand to execute such mortgage then the Customer irrevocably appoints the Company as its attorney to do anything that it may lawfully authorise an attorney to do including, without limitation, to make sign, execute, seal and deliver any document and to take possession of, use sell or otherwise dispose of any property, including real property, of the Customer.

4. **Can the Contract be terminated?**
- 4.1 Subject to clause 4.2, 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 a party is in breach of this Contract (defaulting party), the other party may terminate this Contract by giving the defaulting party 7 days to remedy the breach and if the breach is still subsisting at the end of this time, the other party may terminate the Contract without providing any further notice and avail itself of all the remedies available to it under the law.
- 4.3 If the Customer terminates the Contract or any part of it under clause 4.1 or the Company terminates the Contract, or any part of it, under clause 4.2, the Customer must pay to the Company as compensation for termination (without limiting the Company's rights under clause 4.2):
- the price for any Goods already delivered and Services (or part thereof) already completed;
  - 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;
  - any loss incurred by the Company arising from fluctuation in the market price of the Goods including in relation to any consignment goods, any loss of revenue to the Company; and
  - any costs or losses payable by the Company to third parties arising from or in connection with the Customer's termination of the Contract.
- 4.4 In the event the Customer terminates the Contract the Company will use its reasonable endeavours to mitigate the costs and losses referred to in clause 4.3.
- 4.5 Termination of the Contract under this clause 4 or otherwise is without prejudice to the rights of either party which have accrued prior to or upon such termination (including rights under clause 7 of the Contract), and the obligations of the parties which are expressed or implied to continue after the termination of the Contract shall do so.
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 will not be liable for a failure or delay in delivery or supply where that failure or delay is an Event Beyond the Company's Reasonable Control.
- 5.2 The delivery of any Goods ("**Delivery**") is deemed to have occurred:
- 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
  - 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 Where Services are provided, 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:
- promptly inspect the Goods on Delivery in accordance with clause 5.2;
  - unless clause 5.4(c) applies in respect of the completed Services, notify the Company within seven (7) days of Delivery or from the notice of completion provided under clause 5.3 (as applicable) that it is satisfied with the Services; and
  - notify the Company of any non-compliance with the Contract, identified by the Customer acting reasonably in writing within seven (7) days of Delivery or from the notice of completion provided under clause 5.3 (as applicable).
- 5.5 Unless the Company receives a written notice from the Customer under clause 5.4(c) within the timeframe required by that clause, the Customer is deemed, to the extent relevant, to have:
- accepted that the Goods comply with, and have been delivered in accordance with, the Contract; and
  - certified that the Services are complete, and have been completed in accordance with, the Contract.
- 5.6 Where the Company delivers the Goods and/or supplies the Services at the Customer's site, the Customer warrants that it will provide safe access to its site and that the Customer's site complies with all applicable laws concerning health and safety. The Customer holds harmless and indemnifies the Company in respect of any loss suffered or incurred by the Company as a result of or in connection with the Customer not providing safe access to its site or the Customer failing to comply with all applicable laws concerning health and safety.
- 5.7 Where the Customer collects the Goods from the Company's site, the Customer warrants that it will follow all instructions from the Company in respect of taking the delivery of the Goods including any directions related to site safety and that it will comply with all laws regarding transportation of the Goods.
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 Subject to the following provisions of this clause 6, legal and beneficial ownership (**Ownership**) of the Goods remains with the Company and does not pass to the Customer until the Customer pays in full and in clear funds any amount it owes the Company on any account at which time title passes to the Customer.
- 6.3 While Ownership of the Goods remains with the Company:
- the Customer agrees to clearly designate the Goods as the Company's property and store the Goods in such a way that it is identified as the property of the Company;
  - the Customer agrees to maintain the Goods in good order and condition; and
  - the Customer agrees to the Company's representatives or agents, entering the premises where any Goods are or may be stored to remove them. The Company may resell any of the Goods and apply the proceeds of sale (as the Company sees fit) in reduction of the amounts owing by the Customer to the Company where the Customer has not complied with its payment obligations to the Company.
- 6.4 The Customer acknowledges and agrees that it must not resell the Goods unless the Goods are seed in respect of which resale is permitted by a third party licence between the grower/breeder and a third party.
- 6.5 If, contrary to the provisions set out in these Terms, the Customer resells or uses any Goods before Ownership of the Goods has passed to the Customer the proceeds of such sale or use will be received and held by the Customer (in whatever form) in trust for the Company to the extent of the amount owing.
7. **What are the parties liable for under the Contract?**
- 7.1 Subject to clauses 7.2, 7.3 and 7.4, each party holds harmless and indemnifies the other and its related bodies corporate, directors, officers, employees and agents against:
- losses for physical destruction of or damage to property, death, injury, illness or disease and any act or omission arising out of or in connection with the performance of its obligations under the Contract; and
  - any breach by it of the Contract,
- except to the extent caused or contributed to by the injured or non-defaulting party, as applicable.
- 7.2 To the extent permitted by law, the liability of the Company (including in respect of the indemnity given in clause 7.1), if any, arising out of or in connection with the Contract and the performance of its obligations (including in respect of the supply of Goods or Services under the Contract), including for negligence, is limited:
- in the case of Goods, at the option and at the reasonable discretion of the Company:
    - to the replacement of the Goods or the supply of equivalent Goods;
    - 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
  - (b) 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 (other than clauses 7.2 (a) and (b) above), the Company's liability in aggregate for all actions, proceedings, claims, demands, costs, expenses and liabilities arising out of or in connection with the Contract and the performance of its obligations under the Contract (including in respect of the supply of Goods or Services under the Contract) is capped at 100% of the purchase price payable by the Customer to the Company under the Contract.
- 7.3 Except to the extent expressly required by law, including the Australian Consumer 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 The Customer represents and warrants that:
- (a) it has made its own enquiries about the nature of the Goods and the suitability of the Goods for any use or purpose;
  - (b) it has not relied on any **oral** representation, warranty or recommendation by the Company in relation to the nature of the Goods and the suitability of the Goods for any use or purpose;
  - (c) it will store and use the Goods, either alone or on combination with other Goods, in accordance with the manufacturer's specifications and label directions and assumes all risks and liabilities for any loss, damage or injury resulting from the failure to comply with such specifications or directions;
  - (d) in respect of its use of the Goods, the Customer warrants to the Company that it will consult and comply with the safety data sheet (if any) for the Goods, all codes of practice, standard industry practice and laws relating to the handling of dangerous goods, stock feed and agricultural and veterinary chemicals including without limitation with respect to adequate hygiene, safety and environmental standards, the handling, processing, storing and use of the Goods, packaging of the Goods, by-products and wastes of any sort; and
  - (e) any storage, use or purpose for which the Customer applies the Goods will be in accordance with all applicable laws, industry practice, packaging and/or manufacturer's directions.
- 7.5 Subject to clause 11.3, 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) an Event Beyond the Company's Reasonable Control; or
  - (b) any breach, act or omission of the Customer, its agents or contractors,
- the Company is entitled to a reasonable extension of time to supply those Goods or Services.
- 8.2 If:
- (a) after expiration of a reasonable extension of time as set out in clause 8.1, a delay or delays under clause 8.1(a) exceed a single or aggregated period of 90 days, either party may terminate the relevant Order or part thereof by giving the other party 7 days' prior notice to complete the Contract and neither party will have any right and and/or remedies against the other party arising as a result of such termination; or
  - (b) a delay or delays under clause 8.1(b) 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 4.3 as if the Customer had cancelled or terminated for convenience.
- 8.3 In respect of clause 8.1(a), the Company is under no obligation to source an alternative supply of the Goods unless the Customer agrees in writing to pay the Company any increase in the costs of the Company in sourcing the alternative supply for the Goods.
9. **How does the PPSA apply to the Contract?**
- 9.1 If a term used in this clause has a particular meaning in the PPSA, the term has the same meaning in this clause.
- 9.2 The Customer acknowledges and agrees that the Company may apply to register one or more security interests in the personal property of the Customer, including the Goods supplied by the Company to the Customer or any product or mass that the Goods may be or become part of (collectively the **Collateral**) at any time.
- 9.3 The Customer agrees:
- (a) to promptly execute any documents and do such further acts as may be required by the Company to ensure that the Company's Security Interest is a perfected Security Interest and take all reasonable steps to ensure that it has priority over any other security interests granted by the Customer to other parties;
  - (b) to give at least 30 days' prior written notice to the Company before anything happens in respect of the Customer or any Collateral that would cause any information in a financing statement registered by the Company in relation to any Security Interest provided for by this Contract to be different if it were re-registered, including prior notice of any change to the name, ACN or ABN of the Customer together with details of the proposed new name, ACN or ABN and deregistration;
  - (c) to give to the Company all information that the Company needs in order to ensure that any registration of any Security Interest provided for by this Contract on the Personal Property Securities Register or any other register that the Company chooses is, and remains, fully effective or perfected (or both), and that those Security Interests have the priority required by the Company;
  - (d) that each transaction by the Customer with the Company constituting the Contract and associated invoice will constitute the entering into of a new Security Agreement by the Customer in respect of the transaction as at the date of the invoice for the purposes of this clause and the PPSA;
  - (e) until all monies owing to the Company under or in connection with (i) this Contract; and (ii) the Customer's trading account with the Company (terms and conditions as provided or made accessible to the Customer) (**Trading Account Terms and Conditions**) are paid in full, not to sell or grant any other security interest in the Goods and Services unless it is granted to the Company, or unless the Company has given its prior written consent;
  - (f) that the Company may, at its absolute discretion, apply any amounts received from the Customer or any other person on account of the Customer toward amounts owing to the Company under this clause in such order as the Company may determine. Amounts received by the Company may be applied first against interest, charges and expenses;
  - (g) the occurrence of an 'Event of Default' in respect of the Customer under the Trading Account Terms and Conditions entitles the Company to exercise all the rights granted or vested in the Company under the Trading Account Terms and Conditions and this Contract; and
  - (h) that if the Customer defaults in the payment of any monies owing to the Company under this Contract or any other agreement with the Company, the Company may:

- 9.4 To the extent that the law permits:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
    - (i) the Company need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4);
    - (ii) sections 142 and 143 are excluded;
  - (b) for the purposes of section 115(7) of the PPSA, the Company need not comply with sections 132 and 137(3);
  - (c) the Customer waives the Customer's rights to receive any notice that is required by:
    - (i) any provision of the PPSA including 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)); or
    - (ii) any other law before the Company exercises a power, right, discretion or remedy; and
  - (d) the Customer waives any time period that must otherwise lapse under any law before the Company exercises a power, right, discretion or remedy.

If the laws which require a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause 9.4 prohibits the Company from giving a notice under the PPSA or any other law.

- 9.5 To the maximum extent permitted by law, the Company need not comply with and the Customer may not exercise rights under, any provisions of chapter 4 of the PPSA that may be contracted out of.
- 9.6 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.
- 9.7 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.
- 9.8 The Customer undertakes, if it disposes (including without limitation through use and application on or for any produce or other mass) of any Collateral (as defined in clause 9.2 above) that it will receive proceeds at least equal to the market value of the Collateral, and that

it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Company's security interest. If such a security interest could rank ahead of the Company's security interest, the Customer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and agrees to hold such proceeds on trust for the Company and must immediately pay those proceeds to the Company in reduction of the amount owing.

- 9.9 If:
- (a) the Customer fails to make payment of monies due in accordance with the Contract;
  - (b) fails to perform any other obligation owed to the Company;
  - (c) becomes subject to an Insolvency Event; or
  - (d) the Company otherwise has cause to exercise any of the Company's rights under sections 123 or 128 of the PPSA or otherwise provided at law,

the Company may repossess the Collateral and otherwise enforce its Security Interest under this Contract. The Customer, for those purposes, irrevocably grants to the Company the right to, acting reasonably, 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, and remove the Collateral. The Customer shall hold harmless and indemnify the Company from any claims made by any third party as a result of such exercise. The Company may exercise any of its rights, privileges or powers by itself or through any agent. The fees charged by any agent of the Company in exercising the rights under this clause 9 must be paid by the Customer.

- 9.10 This clause 9 will survive the termination of the Contract for any reason.

## 10. Confidentiality

- 10.1 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 performance of the Contract are regarded as confidential information (excluding these Terms as they appear on the Company's website).

- 10.2 Each party shall maintain confidentiality of all such confidential information, and without obtaining the prior written consent of the other party (**Non-Disclosing Party**), it will not disclose any confidential information to any third parties, except for information that:

- (a) is disclosed by the Company in connection with the enforcement of this Contract, the recovery of an amount owing to it under this Contract or in any proceeding;
- (b) to any guarantor or other security provider in relation to any debt owing by the Customer to the Company on any account, including under this Contract;
- (c) is in the public domain (other than through the receiving party's unauthorised disclosure);
- (d) must be disclosed pursuant to the applicable laws and regulations, rules of any stock exchange or orders of the court or other government authorities (except this paragraph does not permit the disclosure of any information under section 275(4) of the PPSA unless section 275(7) of the PPSA applies);
- (e) is required to be disclosed by any Party (**Disclosing Party**) to its shareholders, investors, legal counsel or financial advisors regarding the transactions contemplated hereunder, provided that such shareholders, investors, legal counsel or financial advisors agree in writing to be bound by confidentiality obligations materially similar to those set forth in this clause 10; and
- (f) relates to the receivables and related securities associated with this Contract or any agreement formed between the Customer and the Company, to a purchaser or financier of such receivables.

- 10.3 Disclosure of any confidential information by the employees, agents or sub-contractors of the Disclosing Party shall be deemed disclosure of such confidential information by the Disclosing Party, who shall be held liable for breach of the Contract.

- 10.4 The Company and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by section 275(7)(b) to (e) of the PPSA. The

- Customer agrees not to exercise its rights to make any request of the Company under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section (but this does not limit the Customer's rights to request information other than under section 275).
- 10.5 This clause 10 will survive the termination of the Contract for any reason.
11. **Privacy**
- 11.1 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).
- 11.2 To the extent that the Customer is subject to the Privacy Act, 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.
- 11.3 Notwithstanding whether or not the Customer is subject the Privacy Act, 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) ensure that only personnel who have a need to deal with Personal Information in connection with this Contract are given access, only use the Personal Information for the purposes of the Contract and are aware of, and comply with, the Customer's obligations under this Contract;
  - (d) take reasonable steps to ensure that Personal Information held by it is protected against misuse, interference, loss, unauthorised access, unauthorised modification and unauthorised disclosure;
  - (e) will immediately notify the Company if it becomes aware of a complaint received in relation to its handling of Personal Information, or a breach, or potential breach, of its obligations in relation to Personal Information, under this Contract and immediately:
    - (i) take such steps as the Company requires to resolve or otherwise deal with the complaint, breach or possible breach;
    - (ii) follow any reasonable direction from the Company in relation to the complaint, breach or alleged breach;
  - (f) will co-operate with any reasonable requests or directions of the Company;
  - (g) will, except as otherwise required by applicable law, provide to the Company any Personal Information acquired from the Company under or in connection with this Contract upon the Company's request or otherwise upon the termination of the Contract; and
  - (h) subject to clause 11.3, hold harmless and indemnify the Company against any loss suffered by the Company as a result of a breach by the Customer of its obligations in relation to Personal Information under this Contract.
- 11.4 Clause 7.5 does not apply in respect of the indemnity provided in clause 11.2(h).
- 11.5 The Customer acknowledges and agrees to the Company's privacy policy located at [www.nutrienagsolutions.com.au](http://www.nutrienagsolutions.com.au) (**Privacy Policy**) and consents to the use to which the Company may use the Customer's Personal Data (as defined in the Privacy Policy).
- 11.6 This clause 11 will survive the termination of the Contract for any reason.
12. **GST**
- 12.1 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.
- 12.2 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.
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 Customer. There is no relationship of agency, partnership or joint venture between the parties and if there is the Customer enters into this Contract in its personal capacity.
- 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 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 part of the Contract is void or unenforceable, that part is severable from the Contract and the balance remains enforceable.
- In these Terms the following rules of interpretation apply unless the contrary intention appears:
- 14.7 headings are for convenience only and do not affect the interpretation of these Terms;
- 14.8 the singular includes the plural and vice versa;
- 14.9 words that are gender neutral or gender specific include each gender;
- 14.10 where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- 14.11 the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- 14.12 a reference to:
- (a) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (b) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
  - (c) a party includes its agents, successors and permitted assigns;
  - (d) a document includes all amendments or supplements to that document;
  - (e) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to these Terms;
  - (f) these Terms all schedules and attachments to them;
  - (g) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;

- (h) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (i) a monetary amount is in Australian dollars and all amounts payable under or in connection with these Terms are payable in Australian dollars;
- 14.13 an agreement on the part of two or more persons binds them jointly and each of them severally.

15. **Definitions**

In these Terms, the following definitions apply:

**Associated Entities** has the meaning set out in section 50AAA of the *Corporations Act 2001* (Cth);

**Bulk Fertiliser Schedule** means the schedule containing additional terms and conditions for the supply of unbagged or bulk fertiliser a copy of which can be located at [www.nutrienagsolutions.com.au](http://www.nutrienagsolutions.com.au) under the Terms and Conditions page.

**Event Beyond the Company's Reasonable Control** means any cause or event reasonably beyond the control of the Company including without limitation, any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, epidemics, pandemics, any government regulations decree or instruction regarding lockdown or restrictions on freedom of movement, strike, lock-out, civil commotion and/or refusal of, revocation of, or delay in obtaining any necessary consents or approvals of any government or regulatory authority, and/or any failure or breakdown of infrastructure, failure or breakdown of plant and equipment and includes any of the foregoing events in respect of a third party service provider or a party within the Company's supply chain.

**Goods** means a product sold by the Company and purchased by the Customer as reflected in the relevant invoice;

**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;

**Insolvency Event** means, in respect of a party, the occurrence of any one or more of the following events or circumstances:

- (a) its winding up, liquidation or provisional liquidation;
- (b) the appointment of an administrator under the Corporations Act;
- (c) the appointment of a Controller or analogous person to it or any of its property;
- (d) being deregistered as a company or other body corporate or otherwise dissolved;
- (e) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any law;
- (f) seeking protection from its creditors under any law or entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors;
- (g) it otherwise becomes a Chapter 5 body corporate, as defined in the Corporations Act;
- (h) if the party is an individual, they commit an act of bankruptcy within the meaning of section 40 of the Bankruptcy Act 1966 (Cth) or they are or become bankrupt within the meaning of section 5 of that Act;
- (i) an analogous event or circumstance to any listed above occurs in any jurisdiction; or
- (j) ceasing or threatening to cease to carry on business.

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

**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 acquired by the Customer; and

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