

TERMS AND CONDITIONS OF SUPPLY

1 GENERAL

1.1 Definitions

1.1.1 - In these **Terms of Supply**:

“Contract” means the legally binding contract between FLT and the Customer for the sale and purchase of the Products, including these Terms of Supply as amended from time to time.

“Customer” means the person agreeing to purchase the Products from FLT in accordance with these Terms of Supply.

“FLT” means the supplier Fert Logistics Limited.

“Order” means an order for the Products issued by the Customer to FLT.

“Product” means the fertilizer and/or related products that the FLT agrees to sell and the Customer agrees to purchase, as set out in the Contract.

1.1.2. In these Terms of Supply the following apply unless the context requires otherwise:

- (a). the singular includes the plural and vice versa;
- (b). a reference to “dollar” or “\$” means New Zealand dollars.

1.2 Terms and Conditions of Supply:

1.2.1 These terms and conditions of supply (“**Terms of Supply**”) and the security interest created in these Terms of Supply apply to any and all Products supplied by FLT to the Customer. All other terms and conditions are expressly excluded.

1.2.2 FLT’s agents, contractors and representatives do not have any authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms of Supply.

1.2.3 FLT will be under no obligation to supply Products to the Customer on credit until the Customer has signed and returned to the Terms of Supply to FLT and until FLT is satisfied as to the credit worthiness of the Customer.

1.2.4 From time to time FLT may vary these Terms of Supply without notice. Any change to the Terms of Supply will be effective from the date FLT supplies them to the Customer (for example on an order confirmation) or the new Terms of Supply are available on FLT’s website. Any Orders made by the Customer after the Terms of Supply have been changed will be deemed acceptance of those changes.

2 SUPPLY OF PRODUCTS AND SERVICES

2.1 – FLT will use its reasonable skill, care and effort in supplying all products and services to you, using resources reasonably available to FLT, and will use its reasonable efforts to supply all Products by any agreed delivery date(s) in a timely and efficient manner. However, FLT will not be liable for any delay or non-performance in supplying Products to you. Any time or date provided by FLT for availability and delivery of Products is an estimate only and FLT shall not be liable for any loss or damage, however arising, as a result or consequence of any failure to supply all or part of the Products on a particular date or at a particular time.

2.2 - You must satisfy yourself as to the suitability for your intended purposes of all products and services supplied by FLT to you.

2.3 - FLT may deliver up to 3% more or less than the amount of any product ordered by you (subject to an appropriate adjustment to the price payable).

2.4 - Delivery of all products is deemed to be completed when FLT has delivered the products to you directly or to a carrier nominated by or acceptable to you.

2.5 - Within 7 days from delivery of any products or the performance of any services being completed, you must inspect the products and performance of the services and notify FLT of any damage to or defect in the products or performance of the services.

2.6 - Risk in respect of all products supplied to you by FLT will pass to you when delivery of the products is deemed to have been completed in accordance with clause 2.4.

2.7 - Title to all products supplied to you by FLT will not pass on delivery, but will remain with FLT until full payment of all monies owing in respect of such products pursuant to clause 4 has been made, and until title passes you will hold such products as FLT's bailee and so that the products can be separately identified from all other products held by you.

2.8.1 The delivery weight used to calculate the price will be determined by FLT. If these are not available, loading point or registered weighbridge weights will be accepted.

2.9 - Products supplied to you may only be returned to FLT with FLT's prior written consent (and provided you have notified FLT within 7 days of delivery of the products to you). FLT may charge you a fee for delivery, return and handling. No return will be accepted where there is no material defect in the Product.

3 ORDERS AND QUOTES

3.1. The Customer must submit an Order in writing (which includes an order made by way of email). The Order will not be legally binding until a Contract is formed in accordance with this Clause 3.

3.2. If FLT accepts the Order, FLT will send confirmation to the Customer by email or Xero invoice notification, within five (5) Business Days from the date FLT received the Order.

3.3. A Contract will be formed on the confirmation of an Order by email or Xero by FLT.

3.4 - You may not cancel any Order for Products or services (whether fully or in part) without FLT's consent in its sole discretion.

3.5 - FLT may withdraw any quote before it is accepted by you, and in any event any quote will lapse without notice at the end of the day on which the quote is given.

4 PRICE

4.1 - The price for all Products and services will be either as quoted by FLT to you or at FLT's standard charges for products and services applying at the time of despatch or performance.

4.2 - Fixed Price: All orders for Products will be at the price current for the Products at the date of acceptance of an order. The Customer must pay for the Products in accordance with these Terms of Supply based on the price of the Products fixed at the date of acceptance of the order irrespective of any subsequent changes in the market price of the Products.

4.3 - All prices are exclusive of GST. GST will be payable by the Customer at the applicable rate.

4.4 Other taxes and charges: The Customer is responsible for and must pay all government duties, taxes and charges imposed by any relevant authority in respect of any sale, collection or delivery of the Product.

5 PAYMENT

5.1 - Payment for all Products and services is due on a cash before delivery (CBD), unless other payment terms have been arranged with FLT in writing.

5.2 - Without prejudice to any of FLT's other rights or remedies, in the event of late payment or non-payment or any other breach of these Terms of Supply by you, FLT may:

- (a) suspend or terminate any credit made available to you (at which time all amounts owed by you to FLT will become immediately due and payable);
 - (b) recover from you all costs incurred by FLT arising from such breach (including legal costs, collection agency costs, and costs of recovery of unpaid amounts); and/or
 - (c) charge interest to you at a rate equal to 2% per month on any monies outstanding, both before and after judgment, from the due date until the date of payment. Interest will be payable on demand.
- 5.3 - You agree that FLT reserves the right to withdraw credit at any time.
- 5.4 - You agree that FLT reserves the right to make immediate formal demand of all monies owing to FLT on any account whatsoever should there be any default in payment of any monies owing to FLT.

6 WARRANTIES AND LIABILITY

- 6.1 - Because FLT does not have knowledge of your specific use of all Products and services provided by FLT to you, except for any written warranties given by FLT to you, all warranties and representations (including those expressed or implied by law) in respect of Products and services provided are excluded to the extent permitted by law.
- 6.2 - Notwithstanding any other provision of these Terms of Supply, FLT not be liable in any event, whether in contract, tort or otherwise:
- (a) where you have altered or modified any products, mis-applied any Products or subjected any Products to any unusual or non-recommended use, service or handling;
 - (b) where any Products are not transported, stored, handled or used in accordance with any directions given by FLT to you;
 - (c) where the terms of any written warranty have not been complied with;
 - (d) for loss or damage caused by any factors beyond FLT's control; or
 - (e) for any loss of profit or revenue, or for any special, indirect, incidental or consequential damage, loss or injury of any kind suffered by you.
- 6.3 - Notwithstanding any other provision of these Terms of Supply, FLT's maximum liability to you (in the event that such liability exists) in respect of any breach of warranty, any breach of these Terms of Supply or for defective Products provided is limited at FLT's option to:
- (a) replacing the Products;
 - (b) re-performing the services; or
 - (c) refunding the price for the Products or services paid by you.
- Where FLT elects to replace any Products or re-perform any services it will use reasonable endeavours to do so as soon as practicable but will not be liable for any delay in such replacement or re-performance.
- 6.4 - FLT and you agree that all Products and services supplied pursuant to these Terms of Supply are for the purposes of a business and the statutory guarantees of the Consumer Guarantees Act 1993 do not apply.

7 LIEN / SECURITY INTEREST

- 7.1 - By virtue of the retention of title held by FLT under clause 2.7 FLT holds a security interest in all Products supplied by FLT to you, for the purposes of the Personal Property Securities Act 1999 (PPSA).
- 7.2 - You agree (to the maximum extent permitted by law) with FLT:
- (a) to provide all information and provide such assistance necessary to allow FLT to register, maintain and enforce its security interest;
 - (b) to waive your right to receive a verification statement in respect of any financing statement or financing change statement relating to FLT's security interest;
 - (c) to contract out of your rights under the sections referred to in section 107(2)(a) and (c) to (i) of the PPSA; and
 - (d) that nothing in sections 114(1)(a), 133 and 134 of the PPSA applies to these Terms of Supply, and accordingly to contract out of these sections.
- 7.4 - FLT's security interest continues in any Products into which those Products are incorporated, and in any proceeds arising from the sale of the Products.
- 7.5 - FLT may enter any premises occupied by you or on which Products are situated at any time after a

default by you occurs (or before any such event if FLT believes its occurrence is likely) to remove and repossess any Products and any other property in which Products are incorporated. To the extent permitted by law, FLT will not be liable for, and you indemnify FLT against, any damage or loss you or any third party incurs as a result of FLT's actions under this clause.

8. Non-Circumvention

8.1 The Customer agrees that all suppliers of fertiliser and/or associate products introduced to them by FLT represent significant efforts and working relationships that are unique to, and part of, the work product and intellectual property of FLT. Therefore, without the prior specific written consent of FLT, the Customer agrees to refrain from conducting direct or indirect business dealings of any kind with any supplier introduced by FLT at any time during the term of this agreement and for a period of two (2) years from termination of this Agreement.

9. Information

9.1 - Information: You authorise FLT to collect and hold personal information from any source FLT considers appropriate for determining creditworthiness, debt collection purposes or for any other purpose related to these Terms of Supply. You further authorise FLT to disclose personal information held by FLT for the purposes set out above to any other person. You have a right of access and may request correction of personal information held by FLT about you.

10 Authority to Sign

10.1 - The person(s) signing the Terms of Supply on behalf of the Customer:

10.1.1 personally warrants that he/she has the actual authority of the Customer to agree to these Terms of Supply on its behalf (warranty of authority). If the Customer should subsequently assert in writing that the person who signed the Terms of Supply did not have the Customer's authority to agree the Terms of Supply such assertion shall be deemed to constitute a breach of warranty of authority by the person signing the Terms of Supply rendering that person liable to pay liquidated damages to FLT notwithstanding that the Customer may also remain liable under the Terms of Supply. The quantum of such liquidated damages shall equal the amount or amounts payable but not paid by the Customer under the Terms of Supply, on the assumption that the Customer is bound by the Terms of Supply; and

10.1.2 - in accordance with clause 11 personally guarantees the obligations of the Customer, and for the purposes of clause 11 shall be deemed a Guarantor.

11. Guarantee

11.1.1- In consideration of FLT entering into these Terms of Supply at the Guarantor's request, the Guarantor:

(a) guarantees the due and punctual payment of all moneys payable and the performance of all obligations of the Customer, under these Terms of Supply; and

(bi) indemnifies FLT against any liability, loss or damage FLT might incur by reason of any breach by the Customer of any of the Customer's obligations under these Terms of Supply.

11.1.2 As between the Guarantor and FLT, the Guarantor will be deemed to be a principal debtor and not merely a surety.

11.1.3 The guarantee in these Terms of Supply continues until all of the obligations of the Customer to FLT (whether under these Terms of Supply or otherwise) have been fully discharged.

11.1.4 When the Guarantor is two or more persons, the obligations and agreements of this guarantee shall bind them jointly and severally.

12 Force Majeure

12.1. FLT shall not be responsible for delay in delivery of Products or any part thereof occasioned by any matter not within FLT's reasonable control, including without limitation, any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/ or shipping strike), lock-out, combination of workers, or civil commotion (a Force Majeure Event).

13 Variation

13.1 A Contract may only be varied in writing signed by both parties.

14 Waiver

14.1 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising 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.

13 No Assignment: The Customer must not assign any of its rights or obligations under these Terms of Supply without the written consent of FLT.

14 Entire Agreement: The Customer, the person signing on behalf of the Customer, and the Guarantor(s) acknowledge that they have not relied on any statement or representation made by or on behalf of FLT in entering these Terms of Supply and that the content of these Terms of Supply constitutes the entire agreement between the parties.