

# TERMS AND CONDITIONS MERCHANT CUSTOMERS



## GENERAL

1. In these conditions:

(a) buyer means the buyer of any goods or services from the seller and includes any executor, administrator or permitted assign;

(b) CGA means the Consumer Guarantees Act 1993;

(c) conditions means these terms and conditions and, as the context requires, each contract entered into between the buyer and the seller for the supply of goods or services and each invoice issued by the seller to the buyer for goods or services into which these conditions are incorporated;

(d) GST means goods and services tax chargeable or for which a person is liable under the Goods and Services Tax Act 1985.

(e) goods means all goods supplied by the seller to the buyer under these conditions now and at any time in the future including (but not limited to) chemical and fertiliser products, raw materials, animal health products and lime;

(f) seller means Ballance Agri-Nutrients Limited.

(g) seller's merchant agent means any merchant appointed by the seller as an agent for the sale and distribution of the goods.

(h) services means all services performed by the seller for the buyer.

2. Unless otherwise required or agreed in writing by the seller, all goods or services supplied by the seller will be supplied on these conditions only and these conditions shall take precedence over any other terms of supply. If the buyer orders any goods or services through the agency of the seller's merchant agent, the buyer will be deemed to have accepted these conditions.

3. References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

## PRICE

4. Subject to any other arrangement between the seller, the seller's merchant agent and the buyer, the price payable by the buyer for any goods or services shall be the price determined by the seller on the date of despatch of the relevant goods and set out on the order confirmation,

invoice or similar document

issued by the seller at or following that time. The price does not include any GST, which is to be paid by the buyer in addition to the price.

## PAYMENT

5. Payment of the price and GST is due to the seller's merchant agent on terms agreed between the seller's merchant agent and the buyer. In the absence of any such agreement, payment of any amount due to the seller's merchant agent will be made on the 20th day of the month following the date of the invoice.

6. The buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim, retention or otherwise) from any money owing to the seller's merchant agent or to the seller.

## SUPPLY

7. The seller will endeavour to meet agreed delivery dates, but will not be held liable, nor may the buyer cancel any order or any part of any order, for late delivery. The seller reserves the right to cancel or suspend unconditionally and without liability any contract and/or to reject any order.

8. Unless otherwise agreed in writing by the seller, or the seller's merchant agent, the buyer will be responsible for arranging the carriage of goods, and delivery of any particular goods will be deemed to have been made when those goods are available for collection from the collection point as agreed with the buyer, or in the absence of agreement, as specified by the seller.

9. Where the seller agrees to arrange the carriage of goods:

(a) unless otherwise expressly stated in writing by the seller, prices estimated or quoted will not include the cost of delivery or insurance and the buyer will be invoiced for any charges incurred by the seller in carriage of goods;

(b) delivery will be deemed to have been made when the goods arrive at the delivery point agreed with the buyer;

(c) if the buyer or its authorised agent is not present at the delivery point when the goods are delivered, delivery will be deemed to have been effected in any event;

(d) the buyer is responsible for ensuring, at its own cost, that all agreed delivery sites have unloading facilities together

with labour and/or mechanical means to unload the goods promptly and suitable access and area for unloading and shall indemnify the seller against any loss, liability, costs or expenses incurred by the seller or its agents in unloading the goods;

(e) any claim for goods damaged during unloading or damaged or lost in transit must be made to the seller within 24 hours of delivery;

(f) where any quotation or estimate given to the buyer includes the cost of delivery, the price quoted or estimated will cover only the usual methods of transportation used by the seller;

(g) delivery may be by instalments and each instalment will be treated as a separate contract under these conditions; and

(h) if the buyer fails to take delivery of any goods at an agreed delivery time, the seller may (without limiting any other right the seller may have) charge the buyer for any waiting time for delays by the buyer in unloading goods, handling charges for any unloading work carried out by the seller, expenses for the storage, transportation or disposal of the goods and any other additional expenses incurred in relation to the goods.

10. The seller, in its absolute discretion, may deliver up to 5% more or less of the amount specified for delivery subject only to an equivalent adjustment to the price payable by the buyer.

## **RISK AND INSURANCE**

11. Goods supplied by the seller to the buyer will be at the buyer's risk immediately on delivery in accordance with clauses 8, 9(b) or (c).

12. The buyer must insure and keep insured with a reputable insurance company all goods in its possession or control for their full replacement value from the time of delivery until ownership passes to the buyer, in accordance with clause 13, against risk of loss or damage by hazards normally insured against.

## **PROPERTY**

13. Ownership of the goods supplied by the seller to the buyer will not pass to the buyer until the seller's merchant agent has received in cash or cleared funds all amounts owing in respect of the goods.

## **EXCLUSION OF LIABILITY**

14. Any technical advice provided by the seller is given in good faith but without any liability or responsibility on the

part of the seller and the seller is not liable for any loss, costs, expenses or other damages suffered by the buyer, whether direct or indirect, as a result of the buyer's reliance on any technical advice or any aspect of it provided by the seller. It is the buyer's obligation to test goods supplied by the seller as to their suitability for the intended purpose and use. The application and use of the goods is beyond the seller's control and therefore entirely the buyer's responsibility. Except for any express warranties or guarantees agreed in writing (but not by email) by the seller, including (but not limited to) pursuant to this clause 14, and any guarantees that cannot be excluded by virtue of law, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. The buyer declares that it is acquiring goods or services for the purpose of a business, and accordingly it is agreed that the guarantees implied by the CGA are expressly excluded.

15. In any event, the total liability of the seller whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in goods or services supplied by the seller, any other breach of the seller's obligations or otherwise under these conditions shall be limited, at the seller's option, except where statute expressly requires otherwise, to the lesser of the sale price of the goods or services complained of, the cost of replacing the defective goods or services or the actual loss or damage suffered by the buyer and in no circumstances will the seller be liable for any consequential, indirect or special damage, (including loss of profits), loss, costs or injury of any kind suffered by the buyer or any other person.

## **RECOMMENDATION**

16. Livestock should not be grazed on recently topdressed pasture until fertiliser has disappeared from the foliage.

## **CLAIMS**

17. Except where statute expressly requires otherwise:

(a) any claim to reject the goods or to claim damages on the grounds that the goods do not conform to the description by which they were sold, must be notified in writing to the seller within seven days of delivery of the goods to the buyer, failing which any such claim shall be deemed conclusively to have been waived by the buyer; and  
(b) goods may only be returned to the seller with the seller's prior written consent. Should the seller discover that the

goods comply with the description under which they were sold, the seller may in its absolute discretion charge the buyer a handling fee. All costs whatsoever for the return or delivery shall be payable by the buyer.

#### **USE OF INFORMATION**

**18.** The buyer agrees that any other information collected by the seller about the buyer may be accessed or collected for the use of the seller and any company in its group in the course of its business, including direct marketing activities. Under the Privacy Act 1993, the buyer has rights of access to, and correction of, its personal information.

#### **MISCELLANEOUS**

**19.** If at any time the seller does not enforce any of these conditions or grants the buyer time or other indulgence, the seller shall not be construed as having waived that condition or its rights to later enforce that or any other condition.

**20.** The buyer must not transfer or assign its rights under these conditions to anyone else without the seller's prior consent in writing. The seller may assign or transfer any of its rights or obligations under these conditions without the buyer's consent.

**21.** The seller may vary these conditions from time to time by giving notice in writing to the buyer, or the seller's merchant agent, or by posting such amendments on the seller's website, such amendments to be of immediate effect unless stated otherwise. The buyer agrees to be bound by such amendments.

**22.** These conditions will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.