



## Terms and Conditions for Supply of Fixed Price Product

### 1. TERMS OF SUPPLY

- 1.1. Acceptance: By submitting a Fixed Price Application, the Buyer is deemed to have accepted, and will be bound by these Terms. If the Seller accepts a Fixed Price Application, a binding agreement will be formed in relation to the relevant Buyer Account for the Contract Volume on the date of such acceptance.
- 1.2. Ballance Terms: The Ballance Terms apply to the supply of the Product to the Buyer in addition to these Terms. To the extent that there is any inconsistency between the Ballance Terms and these Terms, these Terms shall prevail.
- 1.3. The Buyer: The Buyer must be a shareholder of the Seller to purchase the Product for the Term.
- 1.4. Time of the essence: Time is of the essence in the performance of these Terms.
- 1.5. Variation: The Seller reserves the right to amend or replace these Terms from time to time. Amendments will be effective 1 month following the Seller notifying the Buyer of the amendment. Such amendment or replacement will be deemed accepted unless the Buyer provides the Seller with written notice that it rejects the amendment/replacement Terms. In the case of rejection, the Terms will continue under their original provisions until the End Date or upon the parties agreeing on a new Fixed Price (whichever is earlier), following which, any future Fixed Price Application will be deemed to be accepted under the amended Terms.
- 1.6. Other offers: A breach of these Terms by the Buyer may affect the Buyer's eligibility to take part in or be offered the opportunity to take part in future offers from the Seller or the Seller's merchant agent.
- 1.7. Authority: Each person submitting the Fixed Price Application on behalf of the Buyer warrants that he/she has the actual authority of the Buyer to bind the Buyer to these Terms. If the Buyer should subsequently assert in writing that submitted the Fixed Price Application did not have the Buyer's authority to enter into these Terms, such assertion shall be deemed to constitute a breach of warranty of authority by that person rendering that person liable to pay liquidated damages to the Seller notwithstanding that the Buyer shall also remain liable under these Terms. The quantum of such liquidated damages shall be equal to the amount or amounts payable but not paid by the Buyer under these Terms on the assumption that the Buyer is bound by these Terms.
- 1.8. Freight: Where the Seller has agreed to procure freight for or on behalf of the Buyer and has provided quoted freight rates, these are based on ruling freight rates at the time of quoting. Any increase in the same prior to shipment and any other charges or expenses imposed or payable or arising in respect of the shipment or delivery of the Product shall be payable by the Buyer.



- 1.9. Weights: Unless otherwise agreed in writing between the Buyer and the Seller, delivery weights shall be at weights specified in the weighbridge docket of the seller in respect of each delivery.
- 1.10. Seller's rights on default by Buyer: If the Buyer fails to pay the Fixed Price on the due date for payment then, without limiting in any way any other rights of the Seller under these Terms, any other agreement between the Buyer and the Seller, at law or in equity, the Seller may sell the Product at such price and on such terms as the Seller shall determine in its sole discretion, and the Buyer shall immediately pay to the Seller on demand on a full indemnity basis the amount of any deficit between the amount actually received by the Seller from such sale and the Fixed Price payable under these Terms.

## **2. BUYER'S OBLIGATIONS**

- 2.1. Buyer Account: The Buyer must have a current account with the Seller, or with the Seller's merchant agent who will place orders on the Buyer's behalf. All orders placed by the Buyer or the Seller's merchant agent must be placed in the manner required by the Seller at the time the order is placed (e.g. purchase order).
- 2.2. Agreement to take Contract Volume: Subject to clause 1.4 of these Terms (Time of the essence), the Buyer shall over the Term request and take delivery of no less than the Contract Volume of the Product.
- 2.3. Fixed Price and Payment: The Buyer shall pay the Fixed Price for the Product ordered irrespective of any increase or decrease in the market price of the Product. The Seller may apply different pricing to Product exceeding the Contract Volume, or to Product taken by the Buyer outside the Term.
- 2.4. Expression of quantities: Unless otherwise agreed in writing between the Buyer and the Seller, all quantities expressed in or in connection with these Terms shall be expressed metrically and to the nearest one/one hundredth (1/100) of a metric tonne.

## **3. FORCE MAJEURE**

- 3.1. If an event of Force Majeure occurs the obligations of a party under these Terms will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under these Terms by Force Majeure.
- 3.2. A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure and the extent to which that party is unable to comply with its obligations.

## **4. TERMINATION**

- 4.1. If by the End Date the Buyer has not requested and taken delivery of the Contract Volume in full, the Seller may invoice the Buyer the Break Fee. The Break Fee will be payable by the Buyer in accordance with the payment terms under the Ballance Terms and any other directions given by the Seller.



4.2. If a failure or delay in performance exceeds 60 days, either party may immediately terminate these Terms by written notice to the other party.

## 5. INTERPRETATION

5.1. Definitions: Terms defined in the Ballance Terms and used in these Terms shall have the same meanings as in the Ballance Terms. Otherwise, terms defined in these Terms shall have the following meanings:

“**Ballance Terms**” means the [Ballance Terms and Conditions](#) as updated and made available at ballance.co.nz from time to time.

“**Break Fee**” means  $C \times F$ , where:

$C = A - B$ , where A is the Fixed Price and B is the trade price set and published by the Seller as at the End Date (Trade Price), provided that where  $C$  is  $< \$50$  (including where it is a negative amount), C becomes \$50; and

$F = D - E$ , where D is the Contract Volume and E is the volume requested and taken by the buyer as at the End Date (Consumed Volume).

### EXAMPLE:

**Fixed Price (A):** \$1,000 per metric tonne

**Trade Price (B):** \$895 per metric tonne

**Contract Volume (D):** 100 metric tonnes

**Consumed Volume (E):** 80 metric tonnes

$(\$1,000 - \$895) \times (100 - 80)$

$\$105 \times 20$

**= \$2,100**

### EXAMPLE:

**Fixed Price (A):** \$1,000 per metric tonne

**Trade Price (B):** \$1,200 per metric tonne

**Contract Volume (D):** 100 metric tonnes

**Consumed Volume (E):** 80 metric tonnes

$(\$1,000 - \$1,200) \times (100 - 80)$

$A - B = < \$50$ , therefore  $C = \$50$

$\$50 \times (100 - 80)$

$\$50 \times 20$

**= \$1,000**

“**Buyer**” means a shareholder of the Seller that has submitted a Fixed Price Application for the Product, and that Fixed Price Application has been accepted by the Seller.

“**Buyer Account**” means a current account held with the Seller, or with the Seller’s merchant agent who will place orders on the Buyer’s behalf for the Product.



**“Contract Volume”** means the volume of Product in metric tonnes as submitted in the Fixed Price Application that the Buyer commits to purchasing at the Fixed Price for the Term, pursuant to these Terms.

**“End Date”** means the day after the last day of the Term.

**“Force Majeure”** means any of the following events or occurrences and the effects thereof: act of God or public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargo, riot or civil disturbance, strike or other labour dispute (other than involving the relevant party, any related or associated company of the relevant party, any sub-contractor, agent, supplier or any contractor who has contracted (directly or indirectly) with the relevant party or any related or associated company of the relevant party to provide plant, materials, labour or equipment in connection with the supply of the Services), sabotage, expropriation, confiscation or requisitioning of facilities, orders or temporary or permanent injunctions of any duly constituted court of competent jurisdiction and any other matter or event which is beyond the control of the relevant party and which the relevant party could not take reasonable measures to prevent or mitigate the effects of.

**“Fixed Price”** means the price applicable to the Product for the Term as published on the Ballance website and the Fixed Price Application when applications open.

**“Fixed Price Application”** means an application submitted through the Ballance website by an applicant organisation on behalf of a Buyer for the purchase of the Product at a Fixed Price.

**“Product”** means bulk and bulk bags of straight-line nitrogen-rich Urea and Sustain (but excludes blended or mixed products in which Urea or Sustain are a component e.g. Sustain Ammo 30N/36N, N-rich Ammo 30N/36N, Sustain 15K/20K/25K, Pasturemag range, Pasturesure range, etc.), and for the purposes of the Ballance Terms is “goods”.

**“Seller”** means Ballance Agri-Nutrients Limited, company number 178492 of 161 Hewletts Road, Mount Maunganui.

**“Terms”** means these Fixed Price Product Terms and Conditions.

**“the Term”** means the period commencing on the date that the Seller accepts the Fixed Price Application and ending on the date notified by the Seller to the Buyer in writing, as extended by agreement in writing between the Buyer and the Seller. In the event that no end date of the Term is provided, it will be deemed to be 1 year from the date that the Seller accepts the Fixed Price Application.

5.2. **Interpretation:** In these Terms, unless the context otherwise requires:

- 5.2.1.1. a reference to a statute includes all regulations under and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;



- 5.2.1.2. headings are inserted for convenience only and are to be ignored in construing these Terms;
- 5.2.1.3. all amounts are in New Zealand dollars unless expressly stated otherwise;
- 5.2.1.4. the singular includes the plural and vice versa;
- 5.2.1.5. the word "person" includes a natural person and any body or entity whether incorporated or not; and
- 5.2.1.6. a reference to "party" includes the Buyer and the Seller.

