

# TERMS + CONDITIONS

## 1. GENERAL

1.1 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) default interest rate means the aggregate of the rates charged by the Inland Revenue Department on unpaid tax under the Tax Administration Act 1994 during the period for which default interest is payable, plus 10% per annum;

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

(f) 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;

(g) owner means, in relation to a property:

(1) the person who holds the fee simple estate in the property; and

(2) any person who is entitled to exclusive possession of the property by virtue of a lease or license in writing for a term of not less than three years; and

(3) where the property is Maori freehold land, the person or persons named as owner in the records of the Maori Land Court;

(h) property means the land to or in relation to which goods or services are applied;

(i) seller means Ballance Agri-Nutrients Limited;

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

(k) services means all services performed by the seller (or by a third party sub-contracted by the seller) for the buyer, including provision of technical advice;

(l) special mix or special mixture means goods which comprise a mixture of one or more products where the mixture is not listed as a product in the seller's price list, and where the recipe for the mixture is specified by the buyer.

1.2 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. When placing an order for goods or services with the seller, whether by phone, email, via a consignment store or service centre owned and operated by the seller, via the MyBallance online platform, or via any other application program, the buyer will be deemed to have accepted these conditions. Likewise, 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.

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

## 2. PRICE

2.1 Subject to any other arrangement between the seller, the seller's merchant agent (if any) and the buyer, the price payable by the buyer for any goods or services shall be the aggregate of:

(a) 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; and

(b) all additional charges specified or referred to by the seller, or otherwise agreed between the buyer and the seller in relation to the supply of the goods or services.

2.2 The price does not include any GST, which is to be paid by the buyer in addition to the price.

## 3. PAYMENT (SUPPLY THROUGH SELLER'S MERCHANT)

3.1 This clause 3 applies where the goods or services are supplied to the buyer through the agency of a seller's merchant agent.

3.2 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.

## 4. PAYMENT (SUPPLY BY SELLER)

4.1 This clause 4 applies where the goods or services are supplied otherwise than through the agency of the seller's merchant agent.

4.2 Payment of the price is due to the seller on the 20th day of the month following the date of invoice.

5. 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.

## 6. DEFAULT

6.1 The buyer will be in default if the buyer fails to pay any amount due to the seller under these Terms and Conditions, or under any other agreement between the buyer and the seller. If the buyer is in default, the seller may at its option do any one or more of the following:

(a) charge the buyer default interest at the default interest rate;

(b) require the buyer to remedy the default in the manner and within the period notified by the seller to the buyer;

(c) require the buyer to pay to the seller all amounts the buyer owes to the seller immediately;

(d) suspend or terminate the buyer's account with the seller;

(e) suspend or terminate the buyer's access to the MyBallance online platform;

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- (f) suspend or terminate the buyer's access to any other application program; and
- (g) exercise any rights that the seller has under these terms and conditions, or under any other agreement between the buyer and seller, or that are available to the seller at law.

## 7. TERMINATION OF ACCOUNT

7.1 The seller may suspend or terminate the buyer's account (if any) with the seller at any time in the seller's sole discretion. If the buyer's account is terminated, the buyer must immediately pay to the seller any amount owed by the buyer to the seller. Termination will not affect any of the seller's rights that have arisen before termination.

## 8. SUPPLY

8.1 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.

8.2 Unless otherwise agreed in writing by the seller, or the seller's merchant agent (if any), 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. SPECIAL MIXES

9.1 This clause 9 applies where the seller agrees to accept an order for a special mixture specified by the buyer.

9.2 An order for a special mixture cannot be withdrawn or cancelled at any time after the commencement of mixing of the product.

9.3 If the buyer has not uplifted a special mixture by the end of the 5th day after the date the seller has notified the buyer the product is available to be uplifted, the seller may at its option:

- (a) deliver the special mixture to the buyer, and clause 10 shall apply as if the seller had agreed to arrange carriage of the goods. Notwithstanding anything in clause 10, the buyer shall be entirely responsible for the goods from the time of delivery; or
- (b) forfeit the special mixture to the seller in which case:
  - (i) the seller shall notify the buyer that the special mixture has been forfeited;
  - (ii) the seller may dispose of or otherwise deal with the special mixture as it sees fit;
  - (iii) notwithstanding forfeiture, the buyer shall be liable to pay the seller in full for the forfeited special mixture as if delivery of the special mixture had been completed.

9.4 Without limiting anything in clause 13 the buyer agrees that all special mixtures are specified and purchased entirely at the buyer's risk and in reliance on the buyer's own judgement.

## 10. CARRIAGE BY SELLER

10.1 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 or in the absence of agreement, determined by the seller;
- (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 deliver;
- (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.

10.2 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.

## 11. RISK AND INSURANCE

11.1 Goods supplied by the seller to the buyer will be at the buyer's risk immediately on delivery in accordance with these terms and conditions.

11.2 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 12, against risk of loss or damage by hazards normally insured against.

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## 12. PROPERTY

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

## 13. WARRANTIES AND EXCLUSION OF LIABILITY

13.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986, and other statutes may impose warranties, conditions or obligations upon the seller which cannot by law (or which can only to an limited extent by law) be excluded. Other than as expressly provided for in these terms and conditions, all such imposed warranties, conditions or obligations are excluded to the extent permitted by law. All warranties, conditions or obligations imposed or implied under common law, equity or otherwise are also excluded. Without limitation, the seller and the buyer agree to contract out of each of sections 9, 12A, 13, and 14 (1) of the Fair Trading Act 1986 to the extent permitted by law.

13.2 Notwithstanding any other provision in these terms and conditions, the buyer agrees that it does not rely on any representation or skill or judgement of the seller when acquiring goods or services from the seller. The seller shall not be liable for any loss or damage or liability of any kind whatsoever (including consequential loss or lost profit or business) whether suffered or incurred by the buyer or another person and whether in contract or tort (including negligence) or otherwise and whether such loss or damage arises directly or indirectly from goods or services supplied by the seller to the buyer. Without limitation, 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 13, and any guarantees or warranties 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.

13.3 Notwithstanding any other provision in these terms and conditions, the buyer agrees that the seller gives no warranties or representations that any data or information which is accessed, collected, stored, accumulated, aggregated, used or disclosed by the seller about a property or about the supply of goods or services to a buyer is complete or accurate and such data and information cannot be relied upon by the buyer or any other person.

## 14. RECOMMENDATION

14.1 Livestock should not be grazed on recently top-dressed pasture until fertiliser has disappeared from the foliage.

## 15. CLAIMS

15.1 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.

## 16. USE OF INFORMATION

16.1 The buyer and seller agree that:

(i) the seller may in the course of its business access, collect, store, accumulate and aggregate any data and information about the sale, use and application of goods and services in relation to transactions with a buyer and in relation to the provision of goods and services to a property.

(ii) the seller is permitted to use any data and information about the sale, use and application of goods and services in relation to a property for its own purposes and for the purposes of its subsidiary companies.

(iii) the seller is permitted to disclose any data and information (excluding financial data and information) about the sale, use and application of goods and services in relation to a property to the owner or to any person the owner authorises or directs in writing. This clause also permits disclosure to a person who is a prior owner of a property of data and information in relation to the period up to the date that person ceased to be an owner of the property.

(iv) where the buyer has registered for a MyBallance account, the buyer acknowledges it has agreed to the further terms and conditions relating to the collection and use of data and information as contained in the MyBallance Terms and Conditions.

(v) where the buyer has downloaded any application program developed by or on behalf of the seller, the buyer acknowledges it has agreed to the further terms and conditions relating to the collection and use of data and information as contained in any such application program.

16.2 Information the seller collects from or about the buyer will be held in accordance with the Privacy Act 1993, the seller's Privacy Policy and this clause 16.

16.3 Under the Privacy Act 1993, the buyer has rights of access to, and correction of, its personal information.

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## 17. MISCELLANEOUS

17.1 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.

17.2 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.

17.3 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.

17.4 The parties acknowledge that these conditions constitute the entire agreement and understanding of the parties relating to the sale and purchase of goods and services, including any other agreed conditions in writing between the parties and where the seller has varied these conditions under clause 17.3.

17.5 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.