

Agri-feeds Terms of Trade

Terms of Trade

The following Terms of Trade apply to all purchases of Goods or services by the Purchaser from the Company (including purchases on credit) whether such purchases are completed by written, electronic or oral communication.

1 Definitions

- 1.1 *Purchaser* means any purchaser of Goods or services from the Company.
- 1.2 *Company* means Agri-Feeds Limited and for the avoidance of doubt, does not include PGG Wrightson Limited.
- 1.3 *Event of Default* means any of the following occurs without the written consent of the Company:
 - (a) Purchaser fails to comply with these Terms of Trade;
The Purchaser is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;
 - (b) An event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Purchaser's creditworthiness, the value of the goods, or the Purchaser's ability or willingness to comply with its obligations under these Terms of Trade.
 - (c) Anything the Purchaser has told or tells the Company or any information the Purchaser has given or gives the Company, or which is given to the Company on behalf of the Purchaser, is untrue, misleading or deceptive in a material respect.
- 1.4 *Goods* means all goods and services purchased from the Company from time to time, provided that:
 - (a) (But solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Purchaser, then all references to Goods shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
 - (b) References to Goods shall mean the goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) or statement or record is deemed to be assented to by the Purchaser; and
 - (c) Unless the context requires otherwise, Goods shall include any objects, products or mass which the Goods subsequently become a part of (and any other Goods, which the Goods become an accession to).

2 Application

- 2.1 The Purchaser acknowledges that these Terms of Trade shall apply to every purchase of Goods from the Company (or its agent).
- 2.2 The Purchaser cannot cancel any purchase order for Goods accepted by the Company and is bound to pay the quoted price.
- 2.3 These Terms of Trade supplement any Order Confirmation sent to the Purchaser by the Company. In the event of any inconsistency between these Terms of Trade and any Order Confirmation, the Order Confirmation shall prevail.

3 Terms of payment

- 3.1 Unless the Company specifies otherwise, the purchase price for any Goods and any associated charges, plus GST, must be paid by the Purchaser to the Company or its agent (subject to clause 3.4) by the 20th day of the month following purchase, or such other period agreed between the Company or agent and the Purchaser.
- 3.2 Interest on overdue payments will be charged on a daily basis at the rate then charged by the Company.
- 3.3 All amounts payable to the Company shall be paid to the Company or its agent in full without any set-off or deduction.
- 3.4 The Company acknowledges that the Purchaser may pay for Goods or services through a retailer or merchant, acting as agent for the Company.
- 3.5 The Company acknowledges that the Purchaser may pay for Goods through their formal credit arrangements with PGG Wrightson Limited (as agent for the Company). Except for clauses 3, 5.2, 5.3 and 6, these Terms of Trade supplement the terms of any formal credit arrangement with PGG Wrightson Limited.

4 Freight Charges

- 4.1 Unless otherwise agreed, the Purchaser will be charged freight where orders are for less than:
- (a) 5 tonne of Bulk Liquid Supplements;
 - (b) 1 tonne of Dry Goods and/or Drummed Liquids delivered into a rural retail store (may be mixed pallets up to a maximum of four products);
 - (c) 4 Pails delivered into store (may be mixed product);
 - (d) 6 boxes of Time Capsules (may be mixed product);
- 4.2 All Dry Goods, Drummed Liquids and Pails delivered onto farm will be charged freight at the prevailing rate.

5 Title, risk and delivery

- 5.1 All Goods are at the Purchaser's risk from the point of being made available for uplifting by the Purchaser or upon delivery to the Purchaser's premises.
- 5.2 Ownership of and title to all Goods shall remain with the Company and not pass to the Purchaser until they are paid for in full.
- 5.3 Until title passes to the Purchaser:
- (a) the Purchaser shall hold the Goods as bailee of the Company; and
 - (b) regardless of s109 of the PPSA, the Company (or its agent) may repossess the Goods and dispose of them for its own benefit. For that purpose the Company (and its agents) may at any time without notice enter any place where it believes the Goods may be kept and take whatever action may be required to repossess the Goods. The Purchaser indemnifies the Company and its agents for all costs and liabilities in connection with the repossession, storage and/or resale of the Goods (including any shortfall arising from resale at a lower price).
 - (c) The Purchaser must store the Goods in a manner which will protect them from damage or deterioration.
 - (d) The Purchaser must store the Goods separately from the Purchaser's own goods or otherwise ensure that the Goods are separately identified or identifiable. The Company authorises the Purchaser, in the ordinary course of the Purchaser's business, to use the Goods or sell them for full consideration. This authority is revoked immediately if:
 - (i) An Event of Default occurs; or
 - (ii) The Company notifies the Purchaser in writing that this authority is revoked.
- 5.4 The Company shall be in no way liable for any delay in the date of delivery of any Goods. Where the Purchaser does not take delivery of the Goods by the delivery date specified, the Purchaser shall pay reasonable storage costs until such time as the Purchaser accepts the Goods.
- 5.5 If the Purchaser sells or uses any Goods before payment of the amount owing in full, the proceeds of such sale or use (in whatever form) shall be the property of the Company and the Purchaser must pay all such proceeds to the Company or otherwise deal with such proceeds as the Company directs. Nothing in this Clause 5.5 shall be construed as authorising any dealing by the Purchaser with the Goods, otherwise than as expressly permitted by the Company. The Company may sue for the purchase price even where ownership of the Goods has not passed to the Purchaser.
- 5.6 If the Goods subsequently become part of some other product or mass, then nothing in these Terms of Trade shall be construed as limiting the application of sections 82 to 86 (inclusive) of the PPSA.
- 5.7 Damage or loss in transit must be reported to the Company within 7 days of the Purchaser receiving the Goods.

6 Personal Property Securities Act 1999

- 6.1 The Purchaser grants to the Company a security interest in all Goods supplied or to be supplied by the Company to secure all payments under these Terms of Trade. The Purchaser grants to the Company a security interest in any and all livestock (Livestock) that consume any part of the Goods supplied or to be supplied by the Company to secure all payments under these Terms of Trade. The Purchaser will do all things necessary for the Company to register a financing statement and to ensure the security interest is a first ranking perfected security interest over the Goods, the Livestock and each of their proceeds. The Company may at its sole discretion register a security interest on behalf of the Company (where it is acting as agent).
- 6.2 Nothing in sections 114(1)(a), 117(1)(c), 133 or 134 of the Personal Property Securities Act 1999 ("PPSA") applies. The Purchaser's rights in sections 116, 119, 120(2), 121, 125 to 127, 129, 131 and 132 of the PPSA do not apply unless the Company is the Purchaser.
- 6.3 The Purchaser waives its right to be given a copy of any verification statement in relation to any financing statement or financing change statement that the Company may register.

- 6.4 The security interest granted by the Purchaser to the Company takes effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Goods.
- 6.5 The security interest granted by the Purchaser to the Company takes effect as a transfer of any accounts receivable or chattel paper, which are the proceeds of Goods or Livestock.

7 Events of Default

- 7.1 If an Event of Default occurs, and without prejudice to any other rights, powers or remedies, the Company may have:
- (a) The Company may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under these Terms of Trade;
 - (b) All amounts owing shall immediately become due and payable, notwithstanding that the due date for payment has not otherwise arisen;
 - (c) The Company may enforce any security interest granted to it by the Purchaser; and
 - (d) The Company may (without the consent of the Purchaser) appoint a receiver in respect of any Goods and any receiver is authorised to do anything referred to in these Terms and otherwise to exercise all rights and powers conferred on a receiver by law.

The Company will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Purchaser exercises any rights, powers or remedies after the occurrence of an Event of Default, including under this clause.

- 7.2 The Purchaser agrees that, at any time after an Event of Default has occurred or at any time if any Goods are at risk, the Company may:
- (a) Take possession of any Goods; and / or
 - (b) Sell or dispose of any Goods in such a manner and generally on such terms and conditions as it thinks fit, and in each case, otherwise do anything the Purchaser could do in relation to those Goods, the Company and the Purchaser agree that section 109(1) of the PPSA is contracted out of in respect of particular Goods if and only for so long as the Company is not the secured party with priority over all other secured parties in respect of those Goods. As the Purchaser's agent, the Company (and its employees and agents) may, without prior notice, enter any land or premises where the Company believes the Goods are kept in order to take possession of and/or remove them and the Purchaser agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking the possession and removal.
- 7.3 The rights, powers and remedies provided for in these Terms are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.

8 Supply for business purposes

- 8.1 The Purchaser agrees that where Goods are acquired for the purposes of a business the Consumer Guarantees Act 1993 will not apply.

9 Privacy

- 9.1 The Purchaser acknowledges that the Company is the collector and holder of information provided by the Purchaser ("the Purchaser's Information").
- 9.2 The Company may use and disclose the Purchaser's Information and any other information collected by the Company about the Purchaser for any purpose relating to:
- (a) the provision of credit by the Company to the Purchaser including the administration and management of the Purchaser's accounts with the Company;
 - (b) market research conducted by or on behalf of the Company, and
 - (c) direct marketing and the offering to the Purchaser of additional credit facilities or the Goods of the Company.

- 9.3 Both parties will keep completely confidential all information regarding the customers, business strategies, business affairs, accounts, finance or contractual arrangements of the other.**

10 Purchaser's right to compensation

- 10.1 Subject to clause 11, if the Company (and not any vendor, manufacturer or other person) is responsible for any Goods being defective or not materially conforming to the Company's description, the Company will at its option:
- (a) repair or replace the defective Goods or re-perform the service; or
 - (b) pay compensation not exceeding the purchase price for the Goods.
- This is the Purchaser's sole right for compensation from the Company.

11 Warranties and the Company's liability

- 11.1 All statutory and other implied warranties (other than title to the Goods) are excluded to the extent lawful.
- 11.2 Other than as required by law, the Company gives no representation or warranty concerning any Goods' condition, quality or fitness for any purpose.
- 11.3 Except as set out in this clause 11, the Company (and its agents) shall not be liable in any way (including negligence, tort and equity) to the Purchaser or any other person in connection with Goods supplied or not supplied or the purported exercise of the Company's rights under these Terms of Trade.
- 11.4 Notwithstanding anything in these Terms of Trade, the Company (and its agents) will never be liable in connection with any Goods supplied or not supplied or the purported exercise of the Company's rights under these terms for any:
- (a) loss of income, profits, savings or goodwill or for any indirect or consequential loss or special or exemplary damages;
 - (b) amount exceeding the purchase price paid for those Goods; or
 - (c) amount not claimed within 7 days of the liability arising.
- 11.5 If the Company cannot provide the agreed quantity of Goods for any reason outside its reasonable control, the Company is not liable for that shortfall and the Purchaser must take delivery of and pay for such lesser quantity as the Company is able to supply.

12 Authority to transfer moneys

- 12.1 The Purchaser authorises the Company to apply (without prior notice) any moneys:
- (a) held by the Company or any of its agents for or on behalf of the Purchaser on any account in or towards payment of any amount owing to the Company; and
 - (b) received by the Company from or on account of the Purchaser in payment of any amount owing to the Company.
- 12.2 Without limiting clause 12.1, the Company may at any time (including when amounts are owing in respect of more than one transaction) apply or appropriate any moneys received from the Purchaser in any manner (and in any order and to any amounts owing to the Company or any Vendor) the Company thinks fit (despite any direction to the contrary and whether before or after any default by the Purchaser).

13 Purchaser's Liability

- 13.1 The Purchaser is deemed to be bound by all transactions undertaken with the Company, whether or not any person undertaking a transaction has actual or ostensible authority to do so. This Clause 13.1 does not apply if the Purchaser has notified the Company in writing that only named persons may undertake transactions for the Purchaser.
- 13.2 If the Purchaser includes two or more persons, those persons' liability is joint and several.
- 13.3 For the avoidance of doubt, nothing in these Terms of Trade shall have the effect of contracting out of any provision of the Credit (Repossession) Act 1997.
- 13.4 The **Purchaser** indemnifies the Company from and against any liabilities, losses, damages, costs (including legal costs) or claims which the Company incurs under these Terms of Trade except if the Company is fraudulent or negligent.

14 The Company as principal

- 14.1 The Purchaser acknowledges that the Company is the principal in the supply of Goods. Any involvement of a merchant or retailer is as agent for the Company.
- 14.2 The Purchaser agrees that these Terms of Trade prevail over any terms and conditions included on any invoice received from a merchant or retailer (as agent for the Company) for supply of Goods.

15 Miscellaneous

- 15.1 *Assignment:* The Purchaser may not transfer any right or benefit under these Terms. The Company may transfer its rights and obligations under these Terms by notifying the Purchaser in writing.
- 15.2 *Enforcement:* The Purchaser will pay the Company (or its agent) on demand all costs (including legal costs on a solicitor/client basis) incurred by the Company (or its agent) in connection with any default by the Purchaser or enforcement action taken by the Company.
- 15.3 *Entire agreement:* These Terms of Trade (and any incorporated document, including any Order Confirmation) are the entire agreement between the Company and the Purchaser, and supersede all representations, agreements and other communications made by the Company.

- 15.4 *No waiver:* The Company shall not be deemed to have waived any right to do anything unless the waiver is in writing and signed by an authorised manager of the Company.
- 15.5 *Severability:* If any part of these Terms of Trade is illegal, unenforceable or invalid, that part is to be treated as modified or removed to the extent required to make it effective. The rest of these Terms of Trade are not affected.
- 15.6 *Variation:* The Company may in its absolute discretion change these Terms of Trade at any time by sending notice of the change to the Purchaser or by publication on the website www.agrifeds.co.nz/index.php?act=legal. The change will take effect from the earlier of, the time specified in any notice to the Purchaser, or the time the new terms are available on the website.
- 15.7 *Typographical errors:* The Company reserves the right to correct any typographical or clerical errors in any prices quoted or contained in an order or quotation.
- 15.8 *Security Interest:* The Company may use the benefit of any security interest, security agreement, charge or mortgage given in favour of the Company (including any of its associates) to secure payment and performance of the Purchaser's obligations under these Terms of Trade.
- 15.9 *Disputes:* Any dispute between the Company and the Purchaser will be discussed between them in the spirit of goodwill.
- 15.10 *Governing Law:* New Zealand law governs this agreement and the parties submit to the exclusive jurisdiction of the New Zealand courts.