

## MOLLOY AGRICULTURE LIMITED

### TERMS OF TRADE

#### Interpretation

1. These Terms of Trade are entered into by the Buyer and are intended to bind and be for the benefit of the Supplier and the Supplier's successors and assigns.

- 1.1. In these conditions:

<b>"Supplier"</b>	means <b>Molloy Agriculture Limited</b> .
<b>"Buyer"</b>	means the person or company buying the Products from the Supplier.
<b>"Contract"</b>	means the contract between the Supplier and the Buyer for the purchase of the Products.
<b>"Contract Price"</b>	means the price of the Products as agreed between the Supplier and the Buyer, subject to any variation in accordance with clauses 2 and 3.
<b>"Delivery Date"</b>	means the date the Products are estimated to be delivered or are to be provided under the Contract.
<b>"Products"</b>	means all products, merchandise and services supplied or to be supplied by or through the Supplier to the Buyer from time to time.

2. **Order**

- 2.1. A contract will come into existence and will be governed by these Terms of Trade once you have accepted a quotation from us. Any additional terms we include in the quotation will form part of the contract between us for the relevant Product. You cannot cancel an order for a Product once you have accepted the quotation.

- 2.2. We will use our reasonable endeavours to complete all orders by you and quoted by us within a reasonable time.

3. **Price**

- 3.1. This price contained in the Contract is based upon rates and costs as at the date of the Contract or where the Contract arises from a quotation or estimated price including materials, transport, labour, customs duty, insurance, other rates and costs.

- 3.2. The price may be increased by the amount of any increase in the cost of the Product or any other factors that may arise between the above-mentioned date and the Delivery Date.

4. **Taxes and Duties**

- 4.1. Unless expressly included in any quotation given by the Supplier, GST is not included in the price and is the responsibility of the Buyer.

5. **Payment**

- 5.1. Subject to any provision to the contrary in the contract, all payments for Products are due (without deduction) within 30 days of the date the Supplier invoices the Buyer for the Products (time being of the essence).

- 5.2. Any additional payments due by the Buyer pursuant to any of the provisions of the Contract must be paid at the time provided in the Contract or, if no time is provided, within 30 days of the date the Supplier invoices the Buyer (time being of the essence).

- 5.3. If the Supplier at any time deems the credit of the Buyer to be unsatisfactory, it may require security for payment and may suspend performance of its obligations under the Contract, until the provision of sufficient security. All costs and expenses of or incurred by the Supplier as a result of such suspension and any re-commencement are payable by the Buyer upon demand.

- 5.4. The Buyer is not entitled to withhold payment, set off counterclaim or to make any deductions from the Contract Price without the prior written consent of the Supplier.

- 5.5. Receipt of a cheque, bill of exchange or other negotiable instrument by the Supplier whether before or after judgement will not constitute payment and the Buyer

remains liable for the full Contract Price until such cheque, bill of exchange, or negotiable instrument is paid in full.

6. **Interest for Late Payment**

- 6.1. Interest at 2% per month, calculated on a daily basis, is payable on any monies outstanding under the Contract from the date payment was due, until the date payment is received by the Supplier whether before or after judgement but without prejudice to the Supplier's other rights in respect of non-payment or late payment.

7. **Delivery**

- 7.1. Delivery of the Products is to be made at the place indicated in the Contract by the Buyer.

8. **Inspection**

- 8.1. In respect of any damage to the Products, the Supplier's liability to the Buyer is limited to the value of the Products.

9. **Risk**

- 9.1. Risk of any loss, damage or deterioration of or to the Products is to be borne by the Buyer from the date of delivery of the Products.

10. **Retention of Title**

- 10.1. The legal and equitable ownership of the Products supplied will remain with the Supplier until payment has been made in full of the Contract Price for the Products, and of all monies for the time being due and owing to the Supplier.

- 10.2. If the Products have been mixed with or incorporated into another Product or Products so that it is impossible or impracticable to remove the Products supplied, then the Supplier will be co-owner of the mixed products or new products in proportion to the contribution calculated by reference to the price of the Supplier's Products to the mixed products or new products.

- 10.3. If default is made in the payment of the Contract Price of the Products, or of the other money referred to, the Supplier may repossess the Products and dispose of them as it sees fit, may stop any further deliveries, and/or may cancel any contract with the Buyer. For the purposes of repossession, the Supplier and its agents are irrevocably authorised to enter any premises of the Buyer or any third party and the Buyer agrees to indemnify the Supplier and its agent, for any liability arising from any act or trespass committed by such entry. If before or after default the Products are incorporated in other products, but in either case remain identifiable and can be removed (with or without damage to the products or other things) the Supplier's right of removal shall not be extinguished by their being so incorporated or attached.

- 10.4. The Buyer will store the Products until payment, in such a way as clearly to indicate that they are the Supplier's products.

- 10.5. Until title in the Products passes to the Buyer, the Buyer must:

- a. Hold the products as Bailee;
- b. Store the Products in a manner which will protect them from damage or deterioration; and
- c. Insure the Products for their full insurable value.

11. **Delay**

- 11.1. If the supply or delivery of the Products is delayed by reason of or as a result of any act, omission, default or request by or on behalf of the Buyer, the Supplier may, without prejudice to its other right and remedies, require payment by the Buyer of such portion of the Contract as represents the extent to which the Supplier has performed the Contract up to the date such payment is required together with any expenses or additional costs incurred by the Supplier as a result of such delay. In the event of such delay continuing beyond a reasonable time, the Supplier may, without prejudice to its other remedies, terminate the contract.

12. **Exclusion of Warranty & Liability**

- 12.1. Except as expressly set out in this document, all representations, conditions and warranties (express or implied) applying between the Supplier and the Buyer, whether statutory or otherwise are excluded as far as the law allows.

- 12.2. The entire liability of the Supplier to the Buyer, or any other person, whether statutory, contractual, tortious or otherwise, is limited to \$250,000.00 (including GST).
- 12.3. Clause 12.2 sets out the Buyer's sole rights to compensation/remedies from the Supplier for any matter involving these Terms of Trade, the Contract or any other matter. The Supplier will not be liable in any way (including negligence, tort and equity) to the Buyer or to any other person in connection with this or any other contract or the supply or failure of any Product or the purported exercise of the Supplier's rights under these Terms for any:
- a. Loss whatsoever including loss of income, profits, savings or goodwill or any indirect or consequential loss or special or exemplary damages;
  - b. In relation to any claim or series of related claims any amount exceeding \$250,000.00;
  - c. Amount not claimed within 90 days of the Buyer becoming aware of the circumstances giving rise to this claim;
  - d. Any loss the Buyer may suffer as a result of not supplying a flush pad for use by the Supplier;
  - e. Any opened or decanted chemicals are supplied by the Buyer or any party other than the Supplier;
  - f. Where the Buyer requires any "off label" rates of application; and/or
  - g. The Buyer not providing written instructions to the Supplier.

### **13. Default**

- 13.1. If the Buyer defaults in the due payment of any monies payable to the Supplier under the contract, or if the Buyer commits any act of bankruptcy or insolvency, or enters into any composition or arrangement with its creditors or (in the case of a company) does any act which would render it liable to be wound up or have a receiver appointed over its property or the Supplier reasonably believes that the Buyer is unlikely to be able to immediately pay any sums due or owing, or supply information to the Supplier. The Supplier, without prejudice to any other right it has at law or in equity, may, at its option, suspend or terminate the Contract, and payment for the Products delivered and work performed up to the date of such suspension or termination and any other monies payable hereunder will immediately become due and payable.
- 13.2. The Supplier shall be under no obligation to complete any Contract or to deal with the Buyer until they are entirely satisfied all defaults have been remedied and the Supplier is confident the Buyer will be able to perform their obligations under the Contract.
- 13.3. The Buyer acknowledges and agrees to pay all the Suppliers' costs (including legal costs on a solicitor/ client basis) incurred by the Supplier in connection with any default by the Buyer or enforcement action taken by the Supplier.
- 13.4. In consideration of the Supplier agreeing to supply the Products, the Buyer charges all its right, title and interest (whether joint or several) in any land owned by the Buyer, either now or in the future, to secure the performance by the Buyer of its obligations under the Contract.
- 13.5. The Buyer indemnifies the Supplier from and against all the Suppliers costs and disbursements including legal costs, incurred by the Supplier in enforcing its rights under the Contract.

### **14. Contract**

- 14.1. The items contained in the Supplier's quotation, any supply contract made between the parties together with these Terms OF Trade are the conditions of the Contract.
- 14.2. The Buyer acknowledges and agrees that in the case of any conflict between an order submitted by the Buyer and the Supplier's quotation, Contract and these Terms of Trade, the Supplier's quotation, supply contract or order and these Terms of Trade prevail.

### **15. No Assignment**

- 15.1. The Buyer may not assign all or any of the Buyer's rights or obligations under the Contract without the prior written consent of the Supplier.

### **16. Law and Jurisdiction**

- 16.1. The Contract in all respects is deemed to be a contract made in New Zealand and is governed exclusively by New Zealand law.
- 16.2. The Contract and these Terms of Trade are the entire Agreement between the Buyer and the Supplier, and supersede all representations, agreements and other communication.

### **17. Consumer Guarantees Act 1993 and Credit (Repossession) Act 1997**

- 17.1. The Buyer acknowledges that the purchase of the Products is for the purposes of a Business (unless otherwise stated), and the provisions of the Consumer Guarantees Act 1993 will not apply. The Buyer agrees that the Credit (Repossession) Act 1997 will not apply.

### **18. Personal Property Securities Act 1999 ("PPSA")**

- 18.1. The Buyer and the Guarantors acknowledge that these terms of trade create a security interest ("Security Interest") (as that term is defined in the PPSA) in the Products and all present and after acquired property of the Buyer and the Guarantor.
- 18.2. The Buyer and each Guarantor hereby charge, in favour of the Supplier, all their present and other acquired property on terms contained in the Auckland District Law Society Form of General Security Agreement. The Buyer also grants to the Buyer a specific Security Interest in all Products supplied and to be supplied by the Supplier and in any objects, products or mass which the Products subsequently become a part of or an accession or accessory to, so as to secure all payments under these Terms of Trade and all monies owing by the Buyer to the Seller from time to time.
- 18.3. The Buyer acknowledges and agrees (or is deemed to acknowledge and agree) that where Title in products passes to the Buyer, for any reason whatsoever, these Terms of Trade constitute a security agreement providing for both future advances and a security in favour of the Supplier, in all the Buyer's present and after acquired property.
- 18.4. The Buyer:
- a. Must upon request, promptly give the Supplier all assistance and information (which the Buyer warrants is complete, accurate and up to date in all respects) as is necessary to register a financing statement and to meet all other requirements under the PPSA, in respect of the personal property to ensure that the Security Interest constitutes a Perfected Security Interest (as that term is defined in the PPSA) including executing any variations to these terms and conditions of sale reasonably requested by the Supplier;
  - b. Agrees to the Supplier registering a financing statement to protect its security interest under these terms and conditions;
  - c. Must not register a financing change statement or a change demand in respect of the personal property (as those terms are defined in the PPSA);
  - d. Must give the Supplier not less than 14 days prior written notice of any change or proposed change in the Buyer's name, or any other details including but not limited to changes in the Buyer's address, trading name, type of business or contact phone or facsimile numbers;
  - e. Must pay to the Supplier promptly on request the cost of registering or subsequently amending the financing statement, and the costs of enforcing or attempting to enforce the contract evidenced by these terms and conditions;

- f. Agrees that Sections 114(1)(a), 120(1), 122, 133, and 134 of the PPSA will not apply to the Security Interests created by these terms and conditions, and agrees to contract of the Buyer's rights referred to in sections 116, 120(2), 121, 125, 126, 127, 129 and 131 of the PPSA;
- g. Waives its right to receive a verification statement under Section 148 of the PPSA.

**19. Privacy Act 1993**

- 19.1. The Buyer or Guarantor (if any) authorise any person or company to provide the Supplier with information, in response to its credit enquiries. The Buyer and Guarantor (if any) further authorise the Supplier to furnish to any third-party details of the application of which these conditions of sale form part and any subsequent dealings that the Buyer and/or Guarantor may have with the Supplier.

**20. Force Majeure**

- 20.1. The Supplier shall not be liable for failure or delay to perform its obligations if the delay or failure is beyond its control, or as a result of an Act of God, war, terrorism, strike, lockout, fire, flood, storm, earthquake or any Local or Central Government requirement.

**21. Waiver**

- 21.1. All the rights, exemptions and remedies of the Supplier remain in full force notwithstanding any neglect, forbearance or delay in their enforcement.
- 21.2. The Supplier is not deemed to have waived any condition unless such waiver is in writing.

**22. Security and Charge**

- 22.1. In consideration of the Supplier agreeing to supply the Products, the Buyer charges all of its right, title and interest (whether joint or several) in any land, realty or other assets capable of being charged owned by the Buyer either now or in the future to secure the performance by the Buyer of its obligations under these Terms of Trade (including but not limited to the payment of any money).
- 22.2. The Buyer indemnifies the Supplier from and against all the Suppliers costs and disbursements including legal costs incurred in exercising of the Suppliers rights under this clause.
- 22.3. The Buyer irrevocably appoints the Supplier, and each director of the Supplier, the Buyers true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Buyers behalf.