

## Browns Fertilisers Conditions of Sale

### 1. Interpretation

#### 1.1 In these Conditions:

a reference to the singular includes the plural and vice versa and if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;

**Business Day** means any day except a bank or public holiday in Victoria or a Saturday or Sunday;

**Contract** means the contract for the sale and purchase of the Products comprising any verbal or written order confirmation or quotation issued by the Company to the Customer and these Conditions;

**Customer** means the purchaser of the Products;

**Delivery** is defined in clause 5;

**Company** means Ameropa Australia Pty Ltd ABN 21 009 504 394 trading as Browns Fertilisers and its successors and assigns;

**Customer Order** means any order whether oral or written for the purchase of Product by the Customer which is accepted by the Company and includes where applicable any valid quotation by the Company to the Customer which is accepted by the Customer;

**GST** has the same meaning as it does in Section 195-1 of the GST Act;

**Products** means all products and services sold by the Company to the Customer;

**Supply** has the same meaning it does in Section 9-10 of the GST Act and excludes any "GST – free supplies" and "input tax supplies" as those terms are defined in Section 195-1 of the GST Act.

### 2. Application of Conditions of Sale

2.1 These conditions of sale apply to all supplies and sales of Product by the Company to the Customer unless otherwise agreed.

2.2 The Customer is responsible to the Company for ensuring the accuracy of any Customer Order submitted by the Customer.

2.3 The quantity, quality, nature and description of the Products shall be those set out in the order submitted by the Customer.

2.4 No Customer Order which has been confirmed by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall compensate the Company in full in accordance with the formula in clause 2.5 against all losses reasonably incurred by the Company (**Losses**) as a result of the cancellation.

2.5 In the case of any breach or cancellation of a Customer Order by the Customer, the Customer is liable for the following Losses:

(a) If the Fair Market Price has fallen below the Price, the Customer must pay within 7 Business Days of demand by the Company, an amount equal to the undelivered quantity of the Product multiplied by the difference between the Price and the Fair Market Price of the Product.

(b) In addition to any Losses recoverable under clause 2.5(a), the Company will also be entitled to claim any of the following losses: costs for extended storage; handling costs; transport costs and interest costs (**Other Losses**).

2.6 For the purposes of this clause, **Fair Market Price** means:

The price per tonne, ascertained by bona fide transactions for products the same as or similar to the Products (in specification and in quantity) which is actively trading on the Delivery date; or

(a) where there is no active trade at the relevant time, the bona fide price being offered by other sellers in the market place for products the same as or similar to the Products on the Delivery date; or

(b) where there is no active trade at the relevant time, the price being offered by other sellers in the market place for products the same as or similar to the Products on the Business Day following the Customer's default or cancellation of the Contract, if that day is within the Delivery date or (where there are a series of Delivery dates) the last applicable Delivery date.

2.7 Where either party is dissatisfied with the ascertained Fair Market Price calculated in accordance with clause 2.6 and an alternative price cannot be mutually agreed, then the determination of the Fair Market Price may be referred by either party for determination under clause 10.

### 3. Price of Products

3.1 Subject to clause 3.2, the price of the Products shall be the price appearing on the Sales Contract/Purchase Order. All prices quoted are valid for 24 hours or such other period specified by the Company.

3.2 The Company reserves the right, by notice to the Customer at any time before Delivery, to increase the price of the Products to reflect any increase in costs to the Company due to any circumstance listed in paragraph (a) below or to cancel the Contract if the Company is unable to supply the Products due to any factor beyond the reasonable control of the Company including, but not limited to;

- (a) any change in Delivery dates, quantities or specifications for the Products which is requested by the Customer, or any delay caused by instructions of the Customer or failure of the Customer to give the Company adequate information or instructions;
  - (b) any act of war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation, or requisition or destruction;
  - (c) events resulting in the non-supply of product by manufacturers or sellers of fertiliser product to the Company or non-availability of Product for any other reasons beyond the Company's control;
  - (d) any events resulting in the non-supply of product due to the actions of any Government or regulatory authorities.
- 3.3 Except as otherwise stated on the Sales Contract/Purchase Order or as otherwise agreed between the parties in writing all prices given by the Company are ex warehouse.
- 3.4 The amount shown as "Total Payable" on the Sales Contract/Purchase Order is exclusive of GST unless otherwise stated.
- 4. Terms of Payment**
- 4.1 Subject to any special payment terms shown on the Sales Contract/Purchase Order or otherwise agreed in writing between the Customer and Company, the Company shall be entitled to invoice the Customer for the price of the Products on or at any time after the parties entering into a Contract and the Customer must pay the price of the Products within 30 days from end of month of despatch.
- 4.2 If the Customer fails to make any payment on the due date or if the Customer's credit limit will be exceeded by a supply, then without prejudice to any other right or remedy available to the Company, the Company may do all or any of the following:
- (a) cancel the Sales Contract/Purchase Order and suspend any further Deliveries to the Customer;
  - (b) appropriate any payment made by the Customer to such of the Products as the Company may determine;
  - (c) charge the Customer interest on the unpaid amount at a rate of 15% per annum until payment is made in full;
  - (d) charge the Customer for any costs of collection of any debt owing by the Customer to the Company (including legal costs on a full indemnity or solicitor client basis at the Company's election)
  - (e) refuse to pay any applicable rebate (if any) on a product supplied under the invoice the subject of the default.
- 5. Delivery**
- 5.1 Delivery of the Products shall be made by either:
- (a) the Company or its Dealer delivering the Products to the Customer's premises; or
  - (b) the Customer collecting the Products from the Company's premises after the Company has notified the Customer that the Products are ready for collection.
- 5.2 Any dates quoted for Delivery of the Products are approximate only and the Company shall use its best endeavours to deliver the Products during the agreed Delivery period however the Company does not accept liability for any delay in Delivery of the Products caused by any factor beyond the Company's control. The Customer is entitled to cancel the contract if Delivery is delayed by more than 14 days from the end of any agreed Delivery period but the Company shall have no other liability to the Customer in respect of a delay in delivery however caused.
- 5.3 Other than for Products that are in liquid form, the Customer acknowledges that the Product consists of variable sized material and may segregate when unloaded into storage, particularly when belt conveyors and augers are used during Delivery.
- 5.4 The Company will not be liable to the Customer in respect of Product quality changes as a result of segregation, whether occurring during Delivery or otherwise.
- 6. Title and Risk**
- 6.1 Risk of damage to or loss of the Products shall pass to the Customer:
- (a) in the case of Products delivered at the Customer's premises, at the time the Products are unloaded from the Company's delivery vehicle.
  - (b) in the case of Products collected by the Customer from the Company's premises, at the time when the Products have been loaded onto the Customer's vehicle.
- 6.2 Notwithstanding Delivery and the passing of risk in the Products, the property and ownership of the Products shall not pass to the Customer until the Company has received in cleared funds, payment in full for all indebtedness including the price of the Products delivered and any other sums which are or may become outstanding under these Conditions or otherwise.
- 6.3 Until such time as full property and ownership in the Products passes to the Customer in accordance with clause 6.2:

- (a) the Customer must keep the Products separate from all other goods except as is expressly consented to by the Company in writing from time to time;
- (b) the Customer must keep the Products properly stored, protected and identified as the Company's property;
- (c) the Company may at any time require the Customer to deliver up the unpaid Products to the Company and, if the Customer fails to do so immediately, to enter the premises of the Customer or any third party where the Products are stored and repossess the Products; and
- (d) the Customer agrees that the Company is authorised to enter any premises where the Products are located and the Customer will indemnify the Company against all claims, damages or other losses of whatever nature suffered by the Company as a consequence of recovering or attempting to recover the Products.

## 7. Application of the PPSA

- 7.1 In this clause, "PPSA" means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 7.2 This clause applies to the extent that the Company's interest in any Products is a security interest.
- 7.3 The Customer agrees that the security interest is over the Products, any proceeds of the Products, and any product or mass that the Products may be or become part of. The Products, proceeds and product or mass are referred to in this clause collectively as the "**Collateral**".
- 7.4 The Customer acknowledges that the Company may register a financing statement in relation to its security interest. The Customer waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- 7.5 The Customer undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Company's security interest. If such a security interest does arise despite the previous sentence, the Customer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral, and must immediately pay those proceeds to the Company in reduction of all amounts owing by the Customer to the Company.
- 7.6 The Company can apply amounts it receives from the Customer, including under clause 7.5, towards amounts owing by the Customer to the Company in such order as the Company chooses.
- 7.7 The Company and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7) (c) or request information under section 275(7) (d) of the PPSA if the Company approves. Nothing in this clause will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA.
- 7.8 To the extent that it is not inconsistent with clause 7.7 constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that the Company may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Company is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 7.9 If the Customer defaults in the timely performance of any obligation owed to the Company, the Company may enforce its security interest by repossessing and reselling the Collateral, or by exercising all or any of its rights under these Conditions, the general law and the PPSA. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Company of its security interest, the Customer and the Company agree that the following provisions of the PPSA do not apply:
  - (a) to the extent that s 115(1) of the PPSA allows them to be excluded: ss 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
  - (b) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.
- 7.10 The Customer must promptly do anything the Company requires to ensure that the Company's security interest is perfected and has priority over all other security interests.
- 7.11 Nothing in this clause is limited by any other provision of these Conditions or any other agreement between the Company and the Customer. Nothing in this clause limits the Company's rights or the Customer's obligations apart from under this clause.

## 8. No Warranty

- 8.1 The Company makes no express warranties to the Customer, except those expressly set out in these Conditions.
- 8.2 Subject to any implied condition or warranty the exclusion of which would contravene any statute or cause this clause to be void ("**Non Excludable Condition**"), the Company excludes:
  - (a) all conditions, warranties and terms implied by statute or general law or custom;
  - (b) all liability to the Customer in contract for any indirect loss, loss of business, goodwill or reputation or consequential loss, loss of revenues, loss of profits, business interruption, unauthorised access to or loss of data, crop loss or reduction and loss or damage arising in connection with claims by third parties arising

out of or in connection with these Conditions even the Company knew they were possible or they were otherwise foreseeable, including, without limitation, lost profits and damages suffered as a result of claims by any third party. The parties agree that indirect and consequential loss does not include any loss that arises naturally (that is, the usual course of things) from the relevant act or omission.

- 8.3 The Company's liability for breach of any express provision of these Conditions or any Non Excludable Condition (except a Non Excludable Condition referred to above or one implied by section 51, 52 or 53 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) is limited at the Company's option resupplying, replacing or repairing the Products in respect of which the breach occurred.
- 8.4 The Company may at its discretion, refund any amount paid for the Products in respect of which the breach occurred, rather than the remedy referred to above.
- 8.5 It is the responsibility of the Customer to verify for itself at the time of supply that the quantity and type of Products supplied is in accordance with the Customer's order. Any claim for short or wrongful supply of goods must be notified by the Customer to the Company at the time of supply of the goods. Within 14 days thereafter full particulars and substantiation of the claim shall be made by the Customer in writing to the Company. Any claim which the Customer does not notify or substantiate within the time aforesaid (time being of the essence) shall be deemed to have been absolutely waived.
9. **General**
- 9.1 The Contract must be governed and construed in accordance with the laws applicable in Victoria. The parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria.
10. **Disputes and Arbitration**
- 10.1 The IAMA Provisions for Arbitration in the Australian Fertilizer Industry form part of these Conditions of Sale.
- 10.2 If any dispute arises out of or relates to the Contract (**Dispute**), the Dispute shall be submitted to and settled by arbitration in accordance with the IAMA Provisions for Arbitration in the Australian Fertilizer Industry.
- 10.3 Except in relation to any applications for urgent injunctive relief, neither party will bring any action or other legal proceedings against the other in respect of a Dispute until arbitrated in accordance with the IAMA Provisions for Arbitration in the Australia Fertilizer Industry.
11. **Orders**
- 11.1 The Company may in its absolute discretion decline for any reason to accept an order transmitted to it by the Dealer, and will not incur any liability to the Dealer in declining to accept an order.
12. **Important Safety Information**
- 12.1 Silos should not be used for storage of fertilisers. Silos used to store fertilisers have been known to collapse. This poses a risk to human safety and may lead to loss and damage of product. The Company does not recommend storage of fertiliser in silos. All goods are handled and stored at the risk of the Customer and Company accepts no liability in this regard. The Customer must take all appropriate safety precautions with respect to the goods including referencing all safety data sheets provided with the goods or available from the Company.
13. **Trusts**
- 13.1 If a party enters into a Contract as a trustee of a trust, that party and its successors as trustee of the trust will be liable under the Contract in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of the Contract:
- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
  - (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by the Contract on behalf of the trust and that this Contract is executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
  - (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
14. **Confidentiality**
- 14.1 The information and terms contained in the Contract (including price and any applicable rebates) (**Contract Information**) are confidential and must not be disclosed to any third party except where:
- (a) the Contract Information is in, or acquired from, the public domain or, without fault of the Customer its agents or employees, it becomes within the public domain;
  - (b) the Contract Information is required to be disclosed pursuant to the order of a court or by operation of law; or
  - (c) necessary to perform or enforce a party's rights and functions under the Contract.