

Terms of Trade

1. INTERPRETATION

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended.

"**Agreement**" means this Agreement.

"**Advanced Ag**" means Advanced Ag Pty Ltd trading as Advanced Ag.

"**Customer**" means the party named in the schedule, or, if no party is named, the party to whom Advanced Ag provides this Agreement.

"**GST**" means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Act) 1999* (Cth) as amended.

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended.

"**Products**" means any Products which Advanced Ag sells or provides to the Customer from time to time.

"**Product and Service Price List**" means the list of Product and delivery prices kept and updated from time to time by Advanced Ag.

"**Schedule**" means the schedule on the front page of or attached to this Agreement.

"**Services**" means any services, including delivery services, which Advanced Ag sells or provides to the Customer from time to time.

"**Site**" means any location to which the Customer requests that Product be delivered.

2. ACCEPTANCE OF AGREEMENT

The Customer may enter into this Agreement with Advanced Ag by either-

- a) Signing a copy of the Agreement; or
- b) Requesting Products or Services from Advanced Ag after having received a copy of this Agreement at some prior time.

3. ENTIRE AGREEMENT

- a) These terms shall constitute a full and complete statement of the Agreement between Advanced Ag and the Customer and no variations or modifications of any term of the Agreement shall be binding unless agreed to in writing by Advanced Ag.
- b) Advanced Ag may vary or amend these terms by written notice to the Customer at any time. Any variations so made will only apply to orders placed by the Customer after the time that the variation has been bought to the Customer's attention.

4. TERM OF AGREEMENT

This Agreement shall cover all dealings between the parties until it is replaced by an alternate written Agreement or is terminated in accordance with its terms.

5. SUPPLY OF THE PRODUCTS AND SERVICES

- a) The Customer shall order from Advanced Ag from time to time such quantities of the Products and Services it requires, with orders to be in such format (whether written or otherwise) as Advanced Ag shall prescribe from time to time.
- b) Whilst Advanced Ag will use its best endeavours to ensure that it has Products available to supply to the Customer when required, it does not warrant or guarantee that Products will be available when required and will not be responsible for any losses alleged to have been suffered by the Customer as a result of failure to supply or delay in supplying the Products, regardless of the reason for the failure to supply. The Customer acknowledges in this regard that Advanced Ag is not the producer of the Products and therefore availability of supply of Products will on occasions be beyond its control.
- c) Advanced Ag retains the absolute discretion at all time to refuse to accept any order made by the Customer for Products or Services.
- d) Any period or date for delivery of Product or Services stated by or on behalf of Advanced Ag shall be regarded by the Customer as an estimate only and not a contractual commitment.
- e) The Customer acknowledges that Advanced Ag may engage agents or subcontractors in the provision of Products and Services to the Customer.

- f) The Customer shall, upon entering into this Agreement, and at any reasonable intervals as requested by Advanced Ag, provide Advanced Ag with Product requirement forecasts so as to enable Advanced Ag to plan its Product sourcing based on estimated demand.

6. DELIVERY OF PRODUCTS

- a) Advanced Ag may agree, at its sole discretion, to provide delivery of Product, with the price of such delivery to be charged in accordance with this Agreement.
- b) Advanced Ag is not a common carrier and reserves at all times absolute discretion as to whether it will provide delivery services to the Customer and, if so, as to what Products it is willing to deliver. It will not in any way be a breach of this Agreement should Advanced Ag refuse to provide delivery services to the Customer.

7. SITE REQUIREMENTS

- a) The Customer shall provide suitable and practical means of access to the Site and ensure that the Site is suitable to allow the efficient and safe delivery of Product to the Customer.
- b) The Customer warrants that it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow for the Product to be delivered to the Site.
- c) At no time does Advanced Ag take or accept any responsibility for the Site and all risk and liability in and relating to the Site remains with the Customer at all times.

8. PRICING AND PAYMENT

- a) The Customer shall be charged for the Products and Services as set out in Advanced Ag's Product and Service Price List as it applies at the time of the Customer placing an order for Products and or Services.
- b) The Customer acknowledges that the Products and the prices in the Product and Services Price List may be modified by Advanced Ag from time to time without notice throughout the currency of this Agreement and it shall be the responsibility of the Customer to check with Advanced Ag as to the availability and price of any particular Product immediately prior to placing any order.
- c) The terms of payment shall be as set out in item 5 of the Schedule save that Advanced Ag shall be free at any time, at its sole discretion, to revoke payment terms in regard to any future orders and require payment in advance of supply of further Product or Services.
- d) Should the schedule be silent as to terms of payment then payment shall be made in advance of delivery of any Products or Services.
- e) Payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- f) Advanced Ag may at its discretion accept payment by credit card however should it do so it has the right to charge in addition to the amount otherwise payable an amount representing the estimated cost to Advanced Ag of accepting payment by credit card.
- g) Unless otherwise stated quotes for Products or delivery are exclusive of GST and any other applicable taxes or duties. In addition to the price for the Products and Services the Customer shall also pay any applicable GST, taxes or duties.
- h) Any quotation provided by Advanced Ag to the Customer shall be valid only for 48 hours from the time it was made and may be withdrawn at any time by Advanced Ag within that 48 hour period.
- i) In respect of payments required to be made by the Customer under this Agreement time shall be of the essence.

9. BREACH BY CUSTOMER

- a) Interest shall be payable on any amounts outstanding outside payment terms by the Customer to Advanced Ag at the rate of 2% over and above the rate applicable from time to time under the *Penalty Interest Rates Act 1983* (Vic).
- b) The Customer hereby indemnifies Advanced Ag in respect of any costs incurred by Advanced Ag (including legal costs on a solicitor/client basis) as a result of any breach of this Agreement by the Customer, including any breach of terms of payment for Products or Services. Such costs include but are not limited to the costs of any demands made of the Customer to remedy any breach, and any legal proceedings to recover unpaid money.

10. DIRECTOR'S GUARANTEE

In the event that the Customer is an incorporated entity-

- a) The person signing this Agreement on behalf of the Customer hereby guarantees to Advanced Ag the Customer's obligations under this Agreement, including the due and punctual payment of any money payable by the Customer to Advanced Ag, for any reason, at any time. The guarantee provided is a continuing guarantee. The obligation under the guarantee are principal obligations and may be enforced against the guarantor without

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Advanced Ag being first required to exhaust any remedy it may have against the Customer.

- b) The Customer agrees that it will, if called upon at any time by Advanced Ag to do so, procure from any one or more of its directors (as directed by Advanced Ag) a personal guarantee of the Customer's obligations pursuant to this Agreement in a form acceptable to Advanced Ag, with such guarantee to cover both future liabilities and any liabilities of the customer to Advanced Ag which predate the signing of the guarantee.

11. RETENTION OF TITLE TO PRODUCTS

Until Advanced Ag receives full payment (in the form of clear funds) for any Products or Services supplied by it to the Customer together with any other amounts owing by the Customer to Advanced Ag-

- a) Title and property in all of the Products yet to be paid for remains vested in Advanced Ag and does not pass to the Customer;
- b) The Customer must hold the goods as bailee for Advanced Ag;
- c) The Customer must hold the proceeds of any sale of the Products on trust for Advanced Ag; and
- d) In addition to its rights under the PPSA Advanced Ag may without notice, enter any premises where it suspects that the Products are and remove them, and for this purpose the Customer irrevocably licenses Advanced Ag or its agents to enter onto such premises and also indemnifies Advanced Ag from and against all costs, claims, demands or actions by any party arising from such action.
- e) For the purposes of the PPSA, by executing this Agreement the Customer agrees to grant to Advanced Ag a Security Interest in the Products and Advanced Ag shall be entitled to register the Security Interest on the relevant Security Register.

12. PERSONAL PROPERTY SECURITY ACT

- a) For the purposes of the PPSA –
- (i) Terms used in this clause have the corresponding meaning to their use in the PPSA;
- (ii) These Terms constitute a security Agreement between Advanced Ag and the Customer and Advanced Ag has a Purchase Money Security Interest in all present and future Products supplied by Advanced Ag to the Customer and the proceeds of those Products.
- (iii) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer to Advanced Ag at any particular point in time.
- b) The Customer must do whatever shall be necessary in order to give a valid security interest over the Products and their proceeds which is able to be registered by Advanced Ag on the Personal Property Securities Register. Without limiting the Customer's obligations under this clause, the Customer must immediately upon Advanced Ag's request –
- (i) Execute all documents and do any other things necessary to give effect to the security interest created under these terms; and
- (ii) Procure from any person considered by Advanced Ag to be relevant to its security position such Agreements and waivers as Advanced Ag may require at any time.
- c) The security interest arising under this clause attaches to the Products when the Products are collected from or dispatched from Advanced Ag's premises and not at any later time.
- d) Advanced Ag shall be free to allocate sums received from the Customer in any manner Advanced Ag determines, including in any manner required to preserve any Purchase Money Security Interest or any other security interest it has arising by virtue of supply of Products to the Customer.
- e)

13. RISK INSURANCE AND LIABILITY

- a) The risk in the Products and all insurance responsibility for theft, fire or damage of any other kind shall pass to the Customer immediately upon delivery of the Product to the Customer or upon collection by the Customer from the point of sale (whichever is applicable).
- b) The Customer warrants that it has and will have at the time of making any particular order for Products all necessary licenses or permits under all relevant laws and regulations to possess and use the Products.
- c) If Advanced Ag is liable for a breach of a guarantee implied by the ACL in respect to the provision of the Products or Services and those Products or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then, to the extent permitted by the ACL, its liability to the Customer will be limited to –
- (i) The replacement of the Products or the supply of equivalent Products;
- (ii) The payment of the costs of replacing the Products or acquiring equivalent Products;
- (iii) The supplying of the Services again; or
- (iv) The payment of the cost of having the services supplied again.

14. CANCELLATION OF ORDERS

No purported cancellation, variation or suspension of an order for Products or Services (or any part of an order for Products or Services) shall be binding upon Advanced Ag once the order has been placed with Advanced Ag.

15. FORCE MAJEURE

Advanced Ag shall not be liable in any manner whatsoever to the extent that it has been prevented from performing any obligation under this Agreement by reason of matters beyond its control, including without limitation-

- a) Inability to source Product;
- b) Acts of God, accidents or machinery breakdown;
- c) Acts or threats of terrorism or war; or
- d) Industrial disputes or strikes;

16. TERMINATION ON NOTICE

Either party may terminate this Agreement at by giving the other party 30 days' notice of its intention to do so.

17. IMMEDIATE TERMINATION OF AGREEMENT

Advanced Ag may terminate this Agreement immediately by giving written notice to the Customer if the Customer:

- a) goes into liquidation;
- b) has an administrator or a receiver to its property or assets appointed;
- c) is made bankrupt;
- d) materially breaches its obligations under this Agreement where such breach is either not capable of remedy or, if capable of remedy, the other party fails to remedy such breach within 14 days after receipt of written notice of such breach by the other party; or
- e) engages in any conduct (which includes any conduct by employees of the Customer) which in the opinion of Advanced Ag is or might be damaging to the reputation of Advanced Ag or any of the Products.

18. EFFECT OF TERMINATION

The termination of this Agreement for whatever reason shall not in any way effect any rights or responsibilities accruing prior to the termination taking effect and Advanced Ag's rights in the event of default (including the ongoing accrual of interest and the right to indemnity for costs) shall continue beyond any termination.

19. RELATIONSHIP OF PARTIES

Nothing in this Agreement shall give rise to a partnership or relationship of employment between the parties.

20. WAIVER

Any failure or delay by Advanced Ag to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future of the exercise of any other power or right. A waiver is not effective unless it is in writing.

21. READING DOWN OF AGREEMENT

If a clause in this Agreement is unenforceable it must be read down so as to be unenforceable or, if it cannot be so read down, it must be severed from this Agreement without affecting the enforceability of the remaining terms of the Agreement.

22. JURISDICTION

This Agreement shall be governed by the laws of Victoria.