

Terms of Trade

1. INTERPRETATION

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

"**Agreement**" means any agreement for sale of Products or Services by Advanced Ag to the Customer.

"**Advanced Ag**" means Advanced Ag Pty Ltd (ACN 130018996) t/a Advanced Ag.

"**Credit Account**" means a Credit Account in favor of the Customer for credit with Advanced Ag whether completed prior to or contemporaneously with acceptance of these Terms and Conditions.

"**Customer**" means where the acquiring party applies the purchase price to an approved credit account the person or entity named on the approved credit account and otherwise means the party to whom Advanced Ag provides the Products or Services.

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

"**Guarantor**" means any entity or person listed on an Account Application, Quote, purchase document or in these T&C as Guarantor

"**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.

"**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.

"**T&C**" means the current Terms of Trade by Advanced Ag in place at the time of purchase.

2. ACCEPTANCE OF AGREEMENT

a) The T&C shall apply to any purchase of Products or Services from Advanced Ag:

- in which the Customer uses its Credit Account with Advanced Ag; or
- by a Customer after becoming aware of the T&C.

b) Advanced Ag may vary or amend the T&C by written notice to the Customer at any time or by posting a new T&C on its website www.advancedag.com.au. Any variations so made will apply to orders placed by the Customer after the time that the variation has been brought to the Customer's attention.

c) These T&C constitute the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the purchase of Products or Services from Advanced Ag, unless varied in writing pursuant to these T&C.

d) Each separate purchase or charge to the Credit Account made by the Customer shall constitute a separate agreement to which the T&C shall apply.

3. CUSTOMER WARRANTIES

a) The Customer warrant and agree:

- That the Customer shall be deemed to have accepted the T&C if the Customer makes a purchase or uses its Credit Account after receipt of the T&C or if they have acknowledged the T&C;
- Upon acceptance of the T&C by the Customer the T&C are irrevocable by the Customer and can only be amended in accordance with the terms of the T&C;
- That all use of the Credit Account or future orders submitted by the Customer shall be deemed to be subject to the T&C;
- That any person listed on the Account Application is deemed to be appointed an appropriate nominee contact person who shall have the authority and power to make decisions or agree to variations on behalf of the Customer;
- To give Advanced Ag at least fourteen (14) days' notice of any change in the Customer's details as set out in the Account Application;
- To authorise Advanced Ag and its representatives to access any land at all times to inspect, repair or remove goods, Products and equipment supplied by Advanced Ag.
- To provide suitable and practical means of access to any Site and ensure that the Site is suitable to allow the efficient and safe delivery of Products or Services to the Customer.
- That it is the owner of the Site, or, if it is not, that it is authorised by the owner to allow for the Products or Services to be delivered to the Site.
- That 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.
- To pay the price of any Products or Services as calculated in accordance with the T&C, as set out on any Tax Invoice/Statement provided in respect of Products and/or Services supplied to the Customer.
- 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.
- That all information and details set out in the Customer's Account Application form is true and correct.

4. SUPPLY OF THE PRODUCTS AND SERVICES

- 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.
- 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.
- Advanced Ag retains the absolute discretion at all time to refuse to accept any order made by the Customer for Products or Services.
- 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.
- The Customer acknowledges that Advanced Ag may engage agents or subcontractors in the provision of Products and Services to the Customer.
- 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.
- Advanced Ag shall use reasonable care and skill to duly perform and discharge all its obligations in accordance with the T&C.

5. CREDIT ACCOUNT

- The terms of any Credit Account offered by Advanced Ag to the Customer shall be separate from the terms of the T&C.
- Any terms relating to the Credit Account may be varied by Advanced Ag, at its discretion and such changes shall not affect the validity of an Agreement.
- From the date of any change of terms of the Credit Account the parties shall be deemed to have agreed to vary the affected term of the Agreement accordingly.

6. DELIVERY OF PRODUCTS

- Advanced Ag may agree, at its sole discretion, to provide delivery of Products, with the price of such delivery to be charged in accordance with the terms of these T&C.
- 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. PRICING AND PAYMENT

- 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.
- 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.
- 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.
- Should the schedule be silent as to terms of payment then payment shall be made in advance of delivery of any Products or Services.
- Payment by cheque is not deemed to have been made unless and until the proceeds of the cheque have cleared.
- 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.
- 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.
- In respect of payments required to be made by the Customer under this Agreement time shall be of the essence.

8. CARD PAYMENTS AND PAYMENT CHARGES

- Advanced Ag does not impose a separate surcharge for domestic card payments made using eftpos, Visa or Mastercard debit, prepaid or credit cards, except to the extent permitted by applicable law, Reserve Bank of Australia standards, applicable card scheme rules and Advanced Ag's payment provider terms.

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- b) Advanced Ag may apply charges for other payment methods only where those charges are disclosed before payment and are permitted by applicable law, payment scheme rules and Advanced Ag's payment provider terms.
- c) Any fees or charges imposed by the Customer's own bank, card issuer or payment provider are the Customer's responsibility.
- d) Nothing in this clause permits Advanced Ag to impose a surcharge or payment charge that is prohibited by applicable law, Reserve Bank of Australia standards, card scheme rules or Advanced Ag's payment provider terms.

9. BREACH BY CUSTOMER

a) The failure by a Customer to pay the Price or Charges owing pursuant to the T&C by the due date or breaches of any of the Customer's warranties in the T&C, shall be a default.

b) In the event of a default Advanced Ag shall be entitled to any or all of the following agreed reasonable default charges, in addition to the Price and other Charges:

- interest at the rate of 2% over and above the rate applicable from time to time under the *Penalty Interest Rates Act 1983* (Vic) on any amount outstanding, such interest shall compound monthly at such a rate after as well as before any judgment;
- an Administration Charge of fifteen dollars (\$15.00) for each letter, Reminder or Re-Render Notice issued;
- a monthly Administration Charge for Account Keeping, of twenty five dollars (\$25.00) pr. month, for any accounts that remain outstanding or overdue (whether fully or partially) after the due date;
- the cost of lodging any caveat and registering or recording any *Security Interest* granted in the T&C.

c) Advanced Ag shall further be entitled to claim the cost of all cost or expenses (including legal cost) incurred by Advanced Ag on a full indemnity basis for any work associated with a default or collection of overdue Tax Invoice/Statements or any Price and/or Charges.

d) In the event of default Advanced Ag shall be entitled to cease all existing Credit Accounts, stop any further delivery and refuse any further orders.

10. TITLE, RISK AND CONFIDENTIALITY

a) Risk in and to any Products supplied will pass to the Customer upon delivery to the Customer.

b) 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-

- 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;
- The Customer must hold the goods as bailee for Advanced Ag;
- The Customer must hold the proceeds of any sale of the Products on trust for Advanced Ag; and

c) Each of the parties to the T&C, their employees, agents or contractors shall not disclose any information received in confidence and shall keep confidential all information, documents and material relating to the T&C, the price, any order, any Quote or the agreement unless permission is granted for the release or where required to do so by law.

11. SECURITY

a) *Charge*: The Customer and Guarantor, individually, charges all their interest in any Real Property, Water Rights, Intellectual Property, Goods or Chattels with the payment of the prices or any charges incurred pursuant to these T&C.

b) *PPSA*: The terms set out in *italic* in the T&C shall have the same meaning as in the PPSA.

The Customer and the Guarantor grants as security for the payment of any Tax Invoice/Statement, prices and/or Charges incurred pursuant to these T&C, a Security Interest in:

- all of the Customer's Present and After-Acquired Property in which the Customer has rights; and
- all the Products supplied pursuant to these T&C.

Where Products are provided for the Customer's own herd, it is agreed that the supply is the supply of Goods used to 'feed or develop livestock' and the Customer grants, as security for the price and/or charges associated with such supply, a *Security Interest* in:

- the Customer's *livestock* held on the date of purchase or acquired during the period of six (6) months from the date of purchase; and
- the proceeds of such livestock; and
- the progeny arising from the use of the goods.

Where Products are provided for the Customer to produce a *crop*, it is agreed that the supply is the supply of Goods used to 'enable the crops to be produced' and the Customer grants, as security for the price and/or charges associated with such supply, a *Security Interest* in:

- the *crop* planted during the period of six (6) months from the date of purchase of the Product; and
- the proceeds of such *crop*; and

The Customer agrees to sign, execute or complete any documents and provide any information or details necessary to complete a registration of a Security Interest, on request.

The Customer agrees to reimburse Advanced Ag for any cost associated with the registration of a Security Interest (including registration fee and legal cost) and waives its right to receive a copy of any financing statement, financing change statement or verification statement that is or may be registered, issued or received at any time.

The Customer hereby waives its rights under the following sections of the PPSA: section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession); section 128 (secured party may dispose of collateral); section 130 (notice of disposal) to the extent that it requires the secured party to give notice to the grantor; section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

c) *Guarantee*:

- The Guarantor in consideration of Advanced Ag agreeing to contract with the Customer, agree, guarantee and undertake to perform all the Customer's obligations and to pay any and all Tax Invoice/Statement or Credit Account amounts, prices and/or charges now or hereafter owed by the Customer to Advanced Ag pursuant to these T&C in the event the Customer defaults.
- The Guarantor agrees to indemnify Advanced Ag against any loss suffered by reason of the Customer's default.
- The obligation under the guarantee are principal obligations and may be enforced against the guarantor without Advanced Ag being first required to exhaust any remedy it may have against the Customer.
- 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

12. RISK INSURANCE AND LIABILITY

a) The parties agree that, except where expressly agreed in writing to the contrary, all terms, conditions, warranties, undertakings, inducements or representations, whether expressed, implied, statutory or otherwise, relating in any way to the work or services provided by Advanced Ag, are excluded and without limiting the generality of the foregoing, Advanced Ag shall not be under any liability to the Customer in respect of any loss or damage including consequential loss or damage however caused, which may be suffered or incurred or which may arise directly or indirectly in respect of the services or the failure or omission on the part of Advanced Ag to comply with its obligations under these T&C.

b) Advanced Ag expressly exclude any warranties or representations, whether express or implied, unless contrary agreement in writing has been signed by Advanced Ag, relating to:

- completion time of any delivery or services;
- the success rate of Products supplied; and

c) Where any act, statute, code or legislative enactment ("Act") implies any term, condition or warranty and the Act avoids or prohibits provisions in a contract excluding or modifying the application of, or liability under such term, condition or Act, the liability of Advanced Ag for any breach of any term, condition or warranty shall be limited, at the option of Advanced Ag to any one or more of the following:

(i) if the breach relates to supply of Products:

- (a) the provision of a refund; or
- (b) replacement of the goods; or
- (c) repair of the goods;

(d) the payment to the Customer of the reasonable cost of having the goods repaired or replaced.

(ii) if the breach relates to Services:

- (a) the provision of a refund; or
- (b) re-supply of the Service; or

(c) the payment to the Customer of the reasonable cost of having the Service re-supplied.

d) Advanced Ag shall not be liable to the Customer for any loss, damage, delay or failure to perform as a result or arising from any act of God, disease, strike, lockouts, war, fire, IT malfunctions or any accident or incident of any nature what so ever beyond the reasonable control of Advanced Ag.

e) The provision in this section in no way limits or reduces the statutory guarantee pursuant to the ACL.

f) 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;

(i) The payment of the costs of replacing the Products or acquiring equivalent Products;

(ii) The supplying of the Services again; or

(iii) The payment of the cost of having the Services supplied again.

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13. 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.

14. 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.

15. 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.

16. RELATIONSHIP OF PARTIES

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

17. 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.

18. NOTICE

Any notice provided under these T&C may be provided by hand delivery, ordinary mail, facsimile or email and shall be deemed to be given:

- where delivered by hand, on the day of delivery;
- where sent by post, two (2) business days after the day of posting; and
- where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained, but if in any case it is received on a day which is not a business day, or after 5.00pm, then it will be deemed to have been received on the next such business day.

19. SET OFF

The Customer shall not be entitled to set off against or deduct from any Tax Invoice/Statement or Credit Account amount or any prices or charge any sums owed or claimed to be owed to the Customer against Advanced Ag.

20. READING DOWN OF AGREEMENT

If a clause in the T&C 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 the T&C without affecting the enforceability of the remaining terms of the T&C.

21. VARIATION

No agreement or understanding varying or extending an Agreement, shall be legally binding upon either party unless in writing and signed by both Parties or permitted in these T&C.

22. JURISDICTION

- a) Any Agreement pursuant to these T&C shall be deemed to have been entered into at Advanced Ag's office in Shepparton.
- b) These T&C and anything arising out of them are governed by the laws in force in the State of Victoria, Australia and the Parties submit to the exclusive jurisdiction of courts of Victoria and for any matter in the Magistrates' Court to the Magistrates' court at Shepparton.

The Customer and Guarantor acknowledge having read and understood these Terms and Conditions prior to executing this acknowledgement. By executing this acknowledgement the Customer and Guarantor grants the Security Interest and warrants the accuracy of the acknowledgement, promises and warranties set out herein.

Customer: _____

Authorised representative:

Signature 1: _____

Print name: _____

Position/Title _____
(eg Director/Secretary)

Signature 2: _____

Print name: _____

Position/Title _____
(eg Director/Secretary)

Guarantor:

Signature: _____

Print name: _____

Signature: _____

Print name: _____