

FARMMARK – TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS

- 1.1 **Company** means Farmmark Pty Ltd A.C.N. 079 589 781.
- 1.2 **Goods** means goods supplied by Company to the Purchaser (and where the context so permits shall include any supply of services).
- 1.3 **Purchaser** means the purchaser noted on the tax invoice for the Goods and any officer of the Purchaser.
- 1.4 **Terms** means these Terms and Conditions as amended and restated from time to time.

2. GENERAL

- 2.1 These Terms apply to the sale of Goods manufactured or supplied by the Company.
- 2.2 Any instructions received by the Company from the Purchaser for the supply of Goods and/or the Purchaser's acceptance of Goods applied by the Company shall constitute acceptance of these Terms.
- 2.3 These Terms can only be rescinded in accordance with the provisions, or with the written consent of the Company.
- 2.4 Any order placed by Purchaser with Company constitutes a representation by Purchaser that Purchaser is solvent and able to pay all of its debts as and when they fall due.

3. ACCEPTANCE

Any quotation by Company shall not be construed as an offer or obligation to sell, and Company reserves the right to accept or reject any orders received.

4. PRICES

- 4.1 All prices charged shall be per the Company's price list current at the date of dispatch. Verbal quotations are subject to written confirmation which will be given when requested.
 - 4.2 The Company reserves the right at any time to make reasonable adjustments to prices due to any increase of cost of labour, material, goods or transport and also in relation to any changes in currency exchange rates or duties which affect the Company's costs for imported Goods.
 - 4.3 All prices quoted are exclusive of freight and/or delivery charges, and any such charges (including any GST on the charges) shall be payable by the Purchaser in addition to the purchase price noted on the tax invoice.
 - 4.4 Unless otherwise provided in these Terms, all prices charged and quoted are exclusive of GST. Company will provide Purchaser with a tax invoice including any GST component.
- ### 5. CANCELLATION OR VARIATION
- 5.1 An order may, at Company's options, be terminated in the event the Purchaser has a receiver and/or manager appointed, enters into any arrangement with its creditors or becomes insolvent. Company shall not be liable for any loss or damage arising from cancellation under this Clause 5.1.
 - 5.2 A Purchaser may only vary an order on terms acceptable to Company (acting reasonably).

6. PACKING

Unless otherwise indicated, prices indicate standard cases or packing.

7. DELIVERY

Unless otherwise stated in writing, the price quoted is ex the Company's business premises. Where delivery is requested beyond this point, Company may (at Company's discretion) agree to act as agent for Purchaser. Purchaser will be responsible for all costs associated with storage and insurance incurred by Company in this event. Company accepts no liability for the Goods during any period in which the Company agrees to act as agent for the Purchaser in accordance with this Clause, and the risk in the Goods remains with Purchaser at all times.

8. TERMS OF PAYMENT

- 8.1 Unless other arrangements are made, all Goods shall be paid for in full by the Purchaser at the time of collection or delivery of the Goods.
- 8.2 Company reserves the right to deliver and invoice any item or items comprising the whole or part of any order. Failure by Company to deliver any part of an order shall not entitle the Purchaser to refuse the Goods or to delay payment.
- 8.3 Interest on overdue or unpaid invoices shall accrue from the date when payment becomes due daily until the date of payment at the rate of 12.5% per annum compounding monthly.

9. CLAIMS

- 9.1 If Customer wishes to return any Goods, or:-
 - 9.1.1 Goods returned must be accompanied by a delivery docket stating the original invoice, return material authorised number, date of purchase and reason for return. Goods returned may attract a 25% restocking fee.
 - 9.1.2 Non-standard or custom Goods cannot be credited under any circumstances.
 - 9.1.3 Insurance, freight packing and delivery charges associated with the return of any Goods are the responsibility of the Purchaser.
 - 9.1.4 Goods will only be accepted for credit to the extent that they are wrongly or oversupplied.
- 9.2 All Goods returned must be in a good order and condition, unused and in original packaging.
- 9.3 No claims by the Purchaser will be recognized unless served on the Company in writing within ten (10) days after the collection or delivery of the Goods to the Purchaser. No claim for damage or direct or indirect loss associated with the Goods may exceed the invoice price of the Goods.

10. LIMITATION OF LIABILITY

- 10.1 Customer acknowledges that Company is not the manufacturer of the Goods. To the fullest extent permitted under the *Competition and Consumer Act 2010 (Cwlth)* (the "Act"), the Customer may only rely on any warranty provided by the manufacturer of the Goods. Nothing in these Terms shall be read or applied so as to purport to exclude, restrict or modify the provisions of the Act.
- 10.2 All express or implied warranties and condition in relation to the Goods are, to the fullest extent permitted by the Act, excluded, and the Company provides no warranty that the Goods are fit for the purpose which the Purchaser intends to use them for.

- 10.3 Purchaser acknowledges that neither Company nor any officer, employee or agent of Company has made any representation or given any promise or undertaking which is not expressly set out in these Terms as to the fitness of the Goods for any particular purpose.
- 10.4 The Purchaser acknowledges and agrees that the Purchaser has made its own investigations as to the quality and suitability of the Goods for the intended purpose, and has not relied on any representation made by Company or any officer, employee or agent of Company in purchasing the Goods.
- 10.5 Except as required by the Act, Company has no liability to Purchaser in relation to any loss howsoever arising from the supply and use of the Goods, and Purchaser agrees to indemnify and hold harmless the Company against any loss associated with claims in relation to the Goods howsoever arising.

11. TITLE TO GOODS

- 11.1 Title to the Goods remains with Company until the full payment has been received by Company from Purchaser. In the case of payment by cheque, title shall not pass to Purchaser until the same is honored.
- 11.2 In the event that any Goods are comingled with other goods or equipment by the Purchaser, then title to the composite goods shall remain with Company in accordance with clause 11.1.
- 11.3 The rights set out in this clause 11 are in addition to all other rights to Company may have under statute, common law or equity.

12. CONSIGNMENT

- 12.1 Company may agree to supply the Goods to the Customer on a consignment basis upon written request from the Customer and in accordance with the terms of this Clause 12;
- 12.2 Any agreement (the "Agreement") to supply the Goods in accordance with this Clause 12 must:-
 - 12.2.1 Commence on the first day of the month (Agreement Date); and
 - 12.2.2 Unless otherwise terminated, end on the last day of a month (End Date).
- 12.3 On the Agreement Date:-
 - 12.3.1 Company will make the Goods available for collection by the Customer from the Company's Premises;
 - 12.3.2 Company will issue a consignment note setting out the Goods supplied; and
 - 12.3.3 Representatives from both the Company and Customer must confirm the amount of Goods supplied.
- 12.4 During the term of the Agreement:-
 - 12.4.1 Customer must provide to Company a report (the "Sales Report") prior to 10:00am on each Monday and Thursday. The Sales Report must set out what Goods have been sold since the previous Sales Report was issued;
 - 12.4.2 Upon receipt of the Sales Report, the Company will issue an invoice to Customer for the Goods sold; and
 - 12.4.3 Company will supply further Goods to the Customer as required to ensure that the Customer's stock of the Goods to remain at the levels at the Agreement Date.
- 12.5 On the End Date or earlier termination:-
 - 12.5.1 Company will issue an invoice for the Goods currently held by Customer; and
 - 12.5.2 Representatives of the Company and Customer will confirm the Goods remaining on the Customer's Premises.
- 12.6 Customer agrees that the Company has the exclusive right to supply the Goods to the Customer. Customer may only source Goods from another supplier with the written consent of Company.
- 12.7 The Company must use its best endeavours to ensure that it is able to supply Goods to the Customer in accordance with this Clause 12;
- 12.8 If Company does not have sufficient Goods to replenish the Customer's stock, then Company will:
 - 12.8.1 Allow Customer to purchase stock from other suppliers; and
 - 12.8.2 Issue a credit note to Customer for the Goods purchased from the alternate supplier.

- 12.9 Once Company has sufficient levels of stock to continue resupplying Customer, Customer will cease ordering from the alternate supplier.
- 12.10 Purchaser acknowledges that, until full payment is received by Company, Purchaser holds the Goods under the Agreement as Company's bailee only. Company is entitled to register the Company's interest in any Goods so held by the Customer on the Personal Property Securities Register as a purchase money security interest (as that term is defined in the *Personal Property Securities Act 2009 (Cwlth)*) ("PPSA").
- 12.11 If payment for any Goods held in accordance with clause 11.3 is overdue, Company may enter onto Customer's premises for the purpose of removing the Goods, and the Customer acknowledges that in this event, any obligations in relation to service of notice by Company on Customer prior to entering under the PPSA are waived to the fullest extent permissible.
- 12.12 Until such time as Company receives full payment of any Goods held in accordance with clause 11.3, if Purchaser sells the Goods or receives any payment from a third party or insurer in respect of those Goods, the proceeds of any such sale or disposition or any insurance proceeds shall be held by Purchaser on trust for Company and paid into a separate account which shall not be accessed or otherwise dealt with without Company's prior written consent.

13. RISK

Risk in the Goods shall first pass to Purchaser upon collection by the Purchaser of the Goods from the Company premises, or on Company receiving instructions from Purchaser in accordance with Clause 7.

14. PERFORMANCE

Any figures or estimates in relation to the performance of any Goods are based on the estimates provided to Company by the manufacturer of the Goods, and Customer is not entitled to rely on any representations from Company, its officers, agents or employees in relation to the performance specifications of any goods, and confirms that it has relied on its own investigations when purchasing the Goods.