



AUSTRALIAN FODDER SUPPLY (ACN 636 615 006)

Terms & Conditions of Sale

1. INTERPRETATION

Unless otherwise inconsistent with the context:

“Act” means the *Competition and Consumer Act 2010* (“Cth”) as amended.

“authorised person” means a person duly authorised by either the Supplier or the Customer as the case maybe to have the required authority to do all things necessary under these Terms of Trade..

“Customer” means and includes any person or corporation purchasing Goods from the Supplier pursuant to these terms and conditions, including the person’s successors and assigns.

“Goods” includes services.

“GST” means any tax or imposition on the supply of Services and services covered by A *New Tax System (Goods and Services Tax) Act 1999* (“Cth”) (“the GST Act”) as amended from time to time;

“Law” means the Australian Consumer Las, being Schedule 2 of the Act.

“Order” means an order to purchase Goods placed by the Customer and accepted by the Supplier;

“Person” includes corporation.

“PPSA” means the *Personal Property Securities Act 2009* (*Cth”).

“PPSR” means the Personal Property Securities Register.

“Supplier” where the context permits or requires, means and includes Australian Fodder Supply Pty Ltd (ACN 636 615 006) and/or any related corporations, including any assignee, transferee, division or trading name.

“Terms of Trade” means these Terms and Conditions of Sale (including the Commercial Credit Application) as varied from time to time by notification in writing by the Supplier to the Customer

Words importing the singular number shall be deemed to include the plural and vice versa.

2. CREDIT SUPPLY TERMS

- a) The Terms of Trade only apply upon the Supplier accepting the Credit Application for Credit Account and approving such Credit.
- b) All Orders and any other agreement between the Customer and the Supplier regarding the sale of Goods by the Supplier are deemed to incorporate these Terms of Trade. If there is any inconsistency between these Terms of Trade and any Order submitted by the Customer (whether in writing, verbally or by Electronic Data Interchange) or any other arrangement between the parties, these Terms of Trade prevail unless agreed in writing by the Supplier and signed by an authorised person of the Supplier.
- c) The granting of credit terms for new or existing accounts is entirely at the Supplier's discretion and the Supplier may withdraw or vary credit terms at any time without consent.

3. PAYMENT

- a) Payment for all Goods must be made within fifteen (15) days of month end that invoice was rendered.
- b) Payment must be by Electronic Funds Transfer ("EFT") or bank deposit unless otherwise agreed in writing by the Supplier. Payment is not deemed to have been received until the Supplier has verified the payment has been made by clear funds.
- c) Time is of the essence regarding the making of all payments and where payment is not made by the due date interest will be payable by the Customer on all amounts overdue from the due date until the date that payment is received at rate prescribed by the *Penalty Interest Rate Act 1983 (Vic)* calculated daily and compounded monthly.
- d) Any payments made by credit card or by any means other than bank deposit or EFT are subject to approval by the Supplier and may attract additional charges of 1.5% of the total amount payable.
- e) The Supplier may apply any payments received from or on behalf of the Customer (where the Customer has not specified the purpose of the payment) in reduction of the Customer's indebtedness as the Supplier thinks fit.

4. STOP SUPPLY AND CANCELLATION OF A TRADING ACCOUNT

An account will be subject to Stop Supply if not paid in accordance with these Terms of Trade. Where any part has not been paid within the time specified for payment in these Terms of Trade and has fallen into arrears then the totality of the account whether or not in arrears shall become immediately due and payable.

The following will apply to accounts subject to suspension of supply:

- (i) No further orders can be processed and will not be held by the Supplier;
- (ii) Credit facilities will be subject to consideration of immediate and permanent closure; and

- (ii) Engagement of a Mercantile Agent and/or Legal action to recoup debt. Both processes will automatically invoke permanent closure of the account.

Without prejudice to the Supplier's right above, an account may be subject to immediate and permanent closure if:

- a) payment is not received by the Supplier by the relevant due date.
- b) the Customer breaches any Supplier terms or other guidelines or policies issued from time to time.
- c) the Customer in deceptive or illegal conduct that has an adverse effect on the Supplier; or
- d) any person who has a financial interest in two or more of the Supplier's accounts ("inter-related accounts") and any one of these inter-related accounts defaults in any event described in Clause 4 then all inter-related accounts shall be on stop supply and all monies owed become immediately due and payable.

5. PAYMENT VALIDITY

The Customer acknowledges that the Supplier continues to supply the Customer on condition that, and accepts payments from the Customer on the understanding that, all payments by the Customer are made validly and in the ordinary course of business, and are received by the Supplier:

- (i) in the ordinary course of business;
- (ii) in good faith; and
- (iii) without having any reasonable grounds for suspecting that the Customer might be or might become insolvent; unless before making the payment the Customer gives notice in writing to the Supplier of the Customer's then inability to pay its debts as and when they become due and payable.

6. PRICE

- a) The price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Supplier.
- b) The price may be increased or decreased by the amount of any increase or decrease in the cost of any items (including any change in currency exchange rates) affecting the cost of supply, production and/or delivery of the Goods between the date of these Terms of Trade, Order confirmation and the date of delivery.
- c) An extra charge may be made where additional work results from lack of precision in the Customer's specifications or the Customer alters the specifications after the date of these Terms of Trade.
- d) The Customer is bound to pay the price from the time the Order is placed with the Supplier, with there being no obligation on the Supplier to inquire as to the authority of any person placing an Order on behalf of the Customer. No Order

may be cancelled without the Supplier's prior approval, and then only upon such terms as the Supplier may specify in writing.

7. DELIVERY AND STORAGE

- a) The Customer will be charged for delivery fee due for all locations.
- b) Any time stated for delivery is an estimate only. The Supplier is not liable for any delay in delivery.
- c) If the Customer refuses to accept delivery of any of the Goods or sign the Supplier's Proof of Delivery docket then the Supplier may charge the Customer for any additional costs incurred as a result, including a 25% restocking fee and any transportation costs.
- d) The stock must be stored correctly and can only be stored for forty five (45) days in a fully enclosed shed or seven (7) days in an uncovered outdoor haystack.

8. RETURN OF PRODUCT

- a) The Customer acknowledges that the Goods supplied by the Supplier are produce and therefore the limitations imposed by this Clause are necessary for the safety of the Consumer.
- b) The Supplier will only accept returns / claims for product provided that any claim is made provided that the Goods have been stored in accordance with clause 7(d).
- c) Customers in all states must return goods only by the Supplier's nominated carriers, otherwise freight will not be paid by the Supplier.
- d) A Customer generated return under this Clause will incur a 25% restocking fee.

9. CLAIMS (NO RETURN OF PRODUCT)

- a) In respect to the following claims:
 - (i) Short delivery, being where Goods are short to the invoiced quantity;
 - (ii) Non Delivery, being when a full or partial consignment has not been delivered to the invoiced quantity; and
 - (iii) Incorrect pricing, relating to price, the Customer must advise the Supplier of any such claims within five (5) working days of the delivery date in order for these claims to be considered.
- b) All claims must be fully documented quoting the Supplier's invoice number or order number and must be forwarded to the Customer Services Department, failure to quote these details may result in the Supplier (in its discretion) not assessing claims.
- c) No claim will be allowed where the Goods have not been stored in accordance with Clause 7d.

10. PERSONAL PROPERTY SECURITIES ACT 2009 (“PPSA”)

- a) In placing any order the Customer expressly represents that the Customer:
 - (i) Is solvent; and
 - (ii) Has not committed an act of bankruptcy; and
 - (iii) Knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a receiver or which would entitle any creditor or shareholder to apply to the Court to liquidate the Company or exercise any other rights over or against the Customer’s assets.
- b) In this clause the terms defined in the PPSA have the same meaning in this clause (unless otherwise defined in this clause).
- c) The Customer agrees that this Agreement constitutes a security agreement for the purposes of the PPSA.
- d) The title or property in any Goods delivered by the Supplier to the Customer shall pass to the Customer only upon payment in full by the Customer to the Supplier in relation to all Goods that have been delivered to the Customer pursuant to these Terms of Trade as well as any other sums of money that may be due and payable pursuant to these Terms of Trade. The Supplier holds a Security Interest in all goods supplied to the Customer for payment of those moneys.
- e) Until all moneys due to the Supplier are paid by the Customer, the Customer agrees to act as a fiduciary of the Supplier and that the Customer will:
 - (i) Not sell, charge or part with possession of the Goods, otherwise than for their full values in the ordinary course of business;
 - (ii) Not alter, obliterate, or deface the Goods and will not alter, obliterate, deface, cover up, or remove any identity mark indicating that the Goods are the Supplier’s property.
 - (iii) Store the Goods in such manner that they are clearly identifiable as the Supplier’s property and must keep separate records of the Goods;
 - (iv) Hold the proceeds of the resale of the Goods in trust for the Supplier, in a separate and identifiable manner;
- f) At the Supplier’s request, the Customer will promptly deliver, execute or do (or cause to be executed, delivered or done) any documents, contracts, agreements, deeds or other action that the Supplier may require from time to time to give effect to these Terms of Trade, including without limitation doing all such things as the Supplier may require to ensure that the Security Interest created under these Terms of Trade constitutes a perfected Security Interest over the Goods. This includes, but is not limited to, providing any information the Supplier requests to complete a financing statement or a financing change statement for the PPSR.

- g) The Customer waives any right to receive a verification statement under the PPSA.
- h) Nothing in sections 130(1)(a), 143(1) and 143(2) of the PPSA shall apply to these Terms of Trade. The Customer's rights as a debtor in sections 92, 95, 97, 132 and 134(2) of the PPSA shall not apply to these Terms of Trade.
- i) The Customer's right to sell Goods will terminate forthwith on written notice of such termination being delivered by the Supplier to the Customer's place of business.
- j) The Customer's right to possession of the Goods shall cease if:
 - (i) The Customer commits an available act of bankruptcy; or
 - (ii) The Customer does anything or fails to do anything in circumstances where such act or omission operates to entitle a receiver or liquidator to take possession of any assets or which would entitle any person to apply to the Court to liquidate the Customer; or
 - (iii) The Customer is overdue in making payment of any sum due to the Supplier and the Supplier makes demand. Demand may be made upon the Customer or any employee or authorised agent of the Customer by the Supplier or any employee or authorised agent of the Supplier either in writing at any time prior to repossession or verbally or in writing at the time of repossession; or
 - (iv) Notice is given terminating the Customer's right to sell goods; or
 - (v) This agreement is terminated.
- k) For the purpose of recovery of the Goods, the Supplier may by the Supplier's employee(s) or agent(s) enter upon any premises where the Goods are stored or where they are reasonably thought to be stored and may repossess the same. This permission is irrevocable and the Customer agrees that the employees, servants or agents of the Supplier so entering are not trespassing. The Customer irrevocably agrees the Customer will not seek to invoke the provisions of any Acts to warn such persons to leave the Customer's premises, nor will the Customer procure any other person to take such action.
- l) Any Goods held by the Customer which meet the description of Goods on an invoice in respect of which either payment has not been made in full or in respect of which title to Goods has not transferred from the Supplier hereunder shall, in the absence of separate storage of Goods in terms of Clause 10(e)(iii) herein and in the absence of evidence to the contrary, be deemed to be Goods to which the Supplier has retained title so that the Supplier shall be entitled to exercise any of the Supplier's remedies hereunder against such Goods.
- m) If the Customer has not received the proceeds of sale of the Goods subject to this clause then the Customer will within seven (7) days of being called upon so to do by the Supplier assign to the Supplier all rights which the Customer may

have against the person or persons to whom the Customer has supplied any Goods.

- n) Following repossession of the Goods the Supplier shall sell the goods in whatever manner the Supplier deems appropriate whether wholesale or retail, and shall credit the account of the Customer with the net proceeds of sale. The net proceeds of sale shall be the actual price received for the goods less all costs of sale including if incurred, rental of premises, staff wages, transport costs, advertising costs and all out of pocket expenses. the Supplier shall be obliged to list all Goods repossessed but shall not be obliged to record or account for the sale of Goods on an item by item basis. Proceeds of sale may be accounted for globally.
- o) The debt owing by the Customer to the Supplier at the date of repossession of Goods shall, as between the parties, be deemed to include any payment previously received by the Supplier which might be claimed to be void under any law relating to bankruptcy, liquidation or the protection of creditors – irrespective of whether such a claim shall have been made at that date.

11. FURTHER SECURITY

- a) To secure payment of all monies which may become payable by the Customer to the Supplier the Customer hereby charges with the due payment of those monies all of the Customer's interest in real property both present and future and the Customer consents to the Supplier lodging a caveat or caveats noting the Supplier's interests in that land. Any applicable Stamp Duties, fees and/or charges incurred by the Supplier in doing so will be charged to the Customer's account.

12. LIMITATION OF LIABILITY

- a) Except as expressly provided to the contrary in these Terms of Trade all terms, conditions, undertakings, inducements, or representations whether express, implied, statutory or otherwise in relation to the Goods are excluded to the maximum extent permitted by law.
- b) To the extent permitted by law, including any provisions of the Act, and the Law. The Supplier will not be liable to the Customer or any person in tort or otherwise for any loss or damage (direct or indirect) suffered or incurred by any person in relation to or arising out of the use of Goods, including but not limited to loss or damage caused by or resulting directly or indirectly from any defect or deficiency of any kind of or in the Goods.
- c) In any event the Supplier's liability shall not exceed the price paid by the Customer for the Goods.
- d) The Customer agrees to indemnify the Supplier, its employees and agents against all actions, proceedings and claims (including consequential loss and loss of profits) whatsoever brought against the Supplier, its servant, agents or contractors in relation any action in tort or otherwise for any loss or damage

(direct or indirect) suffered or incurred by any person in relation to or arising out of the use of Goods, including but not limited to loss or damage caused by or resulting directly or indirectly from any defect or deficiency of any kind of or in the Goods.

- e) The Customer must inspect the Goods immediately on their arrival and must within five (5) working days from such arrival, give written notice to the Supplier of any matter or thing pursuant to which the Customer may allege that the Goods are not in accordance with these Terms of Trade.

13. DEFAULT

If the Customer fails to comply with these Terms of Trade or any other agreement with the Supplier including payment under these Terms of Trade;

- (i) Execution is levied upon the assets of the Customer for an amount in excess of \$500.00 and is not satisfied within seven (7) days;
- (ii) the Customer commits an act of bankruptcy;
- (iii) the Customer enters into any composition or arrangement with its creditors;
- (iv) the Customer does anything which would make it liable to be put into liquidation;
- (iv) a resolution is passed or an application is made for the liquidation of the Customer; or
- (v) a receiver, other form of insolvency administrator or statutory or official manager is appointed over all or any of the Customers' assets,

then, and in such event, the Customer will be deemed in default under this agreement and the Supplier may at its option withhold further deliveries or cancel the agreement without notice and without prejudice to its rights hereunder.

If an event described in Clause 14 (i - vi) occurs then:

- (i) all amounts payable by the Customer to the Supplier will immediately become due and payable notwithstanding that the due date has not arisen;
- (ii) The Supplier has the right to place the Customer on stop supply immediately upon default, until such time as the Customer has bought its account within the Supplier's terms of payment and within these Terms of Trade; and
- (iii) The Supplier has the right to immediately and permanently close the account of the Customer. If the Supplier permanently closes the account then the Supplier may immediately reclaim any advertising or point of sale material incorporating the Supplier's Trade Marks or the Supplier's intellectual property that has previously been supplied and the Customer irrevocably grants permission for the Supplier's servants or agents to enter upon the Customers premise to reclaim such material.

14. FORCE MAJEURE

- a) Every effort will be made to carry out any agreement in accordance with the relevant Order but the Supplier may suspend, vary or cancel the provision of Goods owing to an act of god, war, strikes, lock-outs, fire, flood, drought, or any

other cause beyond the Supplier's reasonable control or an inability to procure materials or articles except at increased prices due to any of the foregoing causes. The Supplier will take all reasonable steps to mitigate the effect of such events but will not be required to settle a dispute or otherwise submit to the demands of other parties, in a manner contrary to the Supplier's judgment.

- b) The Supplier will not be liable for any loss or damage (including direct or consequential loss or damage) arising from the exercise of its rights under Clause 14.
- c) Nothing contained in this clause excuses non-payment of any money due or which becomes due under these Terms of Trade.

15. RECOVERY COSTS

The Customer shall pay all legal, mercantile and administrative costs and expenses incurred by the Supplier on an indemnity basis in respect of any default under these Terms of Trade by the Customer.

16. USE OF INFORMATION

The Customer agrees that the Supplier may obtain information about the Customer from the Customer or any other person (including other members of the Supplier and any credit or debt collection agencies) in the course of the Supplier's business, including credit assessment, debt collecting and direct marketing activities, and the Customer consents to any person providing the Supplier with such information.

The Customer agrees that the Supplier may use any information it has about the Customer relating to the Customer's credit worthiness and, subject to any confidentiality agreement between the Customer and the Supplier, give that information to any other person, including any credit or debt collection agency and other members of the Supplier, for credit assessment and debt collection purposes. The Customer agrees that any other information collected by the Supplier about the Customer is accessed or collected for the use of any member of the Supplier in the course of its business, including direct marketing activities.

The Customer must notify the Supplier of any change in circumstances that may affect the accuracy of the information provided by the Customer to the Supplier.

Notwithstanding anything else contained in these terms, where the Customer is a natural person, the Customer specifically agrees for the purposes of privacy legislation including the *Privacy Act 1988* (Cth) as amended to the Supplier:

- a) being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under this agreement; and
- b) disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her credit worthiness, credit history or credit capacity; and

- c) the Supplier advises the Customer and the Customer acknowledges that the Supplier may disclose the information it acquires about the Customer to a credit reporting agency. The Customer may gain access to the information obtained by the Supplier under this Clause.

If the Customer or any other person fails to provide to the Supplier any or all of the information requested by the Supplier, the Supplier may determine not to provide credit to the Customer or not to contract with the Customer.

17. WAIVER

If the Supplier exercises or fails to exercise any right or remedy available to it, this will not prejudice its rights to exercise that or any other right or remedy. Waiver of any term of these Terms of Trade will only be effective if specified in writing and signed by an authorised representative of the Supplier.

18. JURISDICTION

The Customer agrees that all contracts made with the Supplier shall be governed by the laws of the State of Victoria and the parties shall submit to the non-exclusive jurisdiction of the Courts of the State of Victoria. These Terms of Trade apply notwithstanding any agreement, whether subject to these Terms of Trade or not, under which the Customer obtains credit terms from the Supplier.

CONTACT JACK SORENSEN - 0400 719 620 or PETER MORRIS - 0419 876 493

T & C's CURRENT as at FEBRUARY 2024