

Terms and Conditions

GENERAL

1. In these conditions:
 - (a) **buyer** means the buyer of any goods or services from the seller;
 - (b) **CGA** means the Consumer Guarantees Act 1993;
 - (c) **conditions** means these terms and conditions and, as the context requires, each contract entered into between the buyer and the seller for the supply of goods or services and each invoice issued by the seller to the buyer for goods or services into which these conditions are incorporated;
 - (d) **event of default** has the meaning given to it in clause 21;
 - (e) **goods** means all goods supplied by the seller to the buyer under these conditions now and at any time in the future including (but not limited to) chemical and fertiliser products, animal nutrition products and lime.
 - (f) **seller** means Altum, a trading division of Ballance Agri-Nutrients Limited;
 - (g) **services** means all services performed by the seller for the buyer.
2. Unless otherwise required or agreed in writing by the seller, all goods or services supplied by the seller will be supplied on these conditions only and these conditions shall take precedence over any other terms of supply. If the buyer orders any goods or services from the seller, the buyer will be deemed to have accepted these conditions.
3. References to legislation include as amended, re-enacted or substituted and any statutory instruments, regulations and orders issued under such legislation.

PRICE

4. The price payable by the buyer for any goods or services shall be the price determined by the seller on the date of despatch of the relevant goods and set out on the invoice or similar document issued by the seller at or following that time. The price does not include any goods and services tax, which is to be paid by the buyer in addition to the price.

PAYMENT

5. Payment is due on terms agreed. In the absence of any other agreement, payment of any amount due to the seller will be made on the 20th day of the month following the date of the invoice. The seller may apply any payments received in reduction of the amount owing as the seller sees fit. The seller reserves the right to require payment in cash on delivery if the seller is concerned about the buyer's ability to pay or if any order placed would exceed any agreed credit limit.
6. The buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim, retention or otherwise) from any money owing to the seller.
7. The buyer's account with the seller must be current and payment of any amount due to the seller must be made on the due time before the buyer's account will be credited with any applicable discount.

SUPPLY

8. The seller will endeavour to meet agreed delivery dates, but will not be held liable, nor may the buyer cancel any order or any part of any order, for late delivery. The seller reserves the right to cancel or suspend unconditionally and without liability any contract and/or to reject any order.
9. Unless otherwise agreed in writing by the seller, the buyer will be responsible for arranging the carriage of goods, and delivery of any particular goods will be deemed to have been made when those goods are uplifted from the seller's premises or the seller's agent.

10. Where the seller agrees to arrange the carriage of goods:
 - (a) unless otherwise expressly stated in writing by the seller, prices estimated or quoted will not include the cost of delivery or insurance and the buyer will be invoiced for any charges incurred by the seller in carriage of goods;
 - (b) delivery will be deemed to have been made when the goods arrive at the delivery point agreed with the buyer;
 - (c) if the buyer or its authorised agent is not present at the delivery point when the goods are delivered, delivery will be deemed to have been effected in any event;
 - (d) the buyer is responsible for ensuring, at its own cost, that all agreed sites have unloading facilities together with labour and/or mechanical means to unload the goods promptly and suitable access and area for unloading and shall indemnify the seller against any loss, liability, costs or expenses incurred by the seller or its agents in unloading the goods;
 - (e) any claim for goods damaged during unloading or damaged or lost in transit must be made to the seller within 24 hours of delivery;
 - (f) where any quotation or estimate given to the buyer includes the cost of delivery, the price quoted or estimated will cover only the usual methods of transportation used by the seller;
 - (g) delivery may be by instalments and each instalment will be treated as a separate contract under these conditions; and
 - (h) if the buyer fails to take delivery of any goods at an agreed delivery time, the seller may (without limiting any other right the seller may have) charge the buyer for any waiting time for delays by the buyer in unloading goods, handling charges for any unloading work carried out by the seller, expenses for the storage, transportation or disposal of the goods and any other additional expenses incurred in relation to the goods.
11. The seller, in its absolute discretion, may deliver up to 5% more or less of the amount specified for delivery subject only to an equivalent adjustment to the price payable by the buyer.

RISK AND INSURANCE

12. Goods supplied by the seller to the buyer will be at the buyer's risk immediately on delivery to any carrier of the buyer or on delivery into the buyer's custody in accordance with clauses 10(b) or (c).

PROPERTY

13. Ownership of the goods supplied by the seller to the buyer will not pass to the buyer until the seller has received in cash or cleared funds all amounts owing in respect of the goods.

EXCLUSION OF LIABILITY

14. Any technical advice provided by the seller is given in good faith but without any liability or responsibility on the part of the seller and the seller is not liable for any loss, costs, expenses or other damages suffered by the buyer, whether direct or indirect, as a result of the buyer's reliance on any technical advice or any aspect of it provided by the seller. It is the buyer's obligation to test goods supplied by the seller as to their suitability for the intended purpose and use. The application and use of the goods is beyond the seller's control and therefore entirely the buyer's responsibility. Except for any express warranties or guarantees agreed in writing (but not by email) by the seller including (but not limited to) pursuant to this clause 14, and any guarantees that cannot be excluded by virtue of the CGA, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. The buyer declares it is acquiring goods or services for the purpose of a business, and accordingly it is agreed that the guarantees implied by the CGA are expressly excluded.

15. In any event, the total liability of the seller whether in tort (including negligence), contract or otherwise for any loss, damage or injury arising directly or indirectly from any defect in goods or services supplied by the seller, any other breach of the seller's obligations or otherwise under these conditions shall be limited, at the seller's option, except where statute expressly requires otherwise, to the lesser of the sale price of the goods or services complained of, the cost of replacing the defective goods or services or the actual loss or damage suffered by the buyer and in no circumstances will the seller be liable for any consequential, indirect or special damage, (including loss of profits), loss, costs or injury of any kind suffered by the buyer or any other person.

RECOMMENDATION

16. Livestock should not be grazed on recently topdressed pasture until fertiliser has disappeared from the foliage.

CLAIMS

17. Except where statute expressly requires otherwise:
- (a) any claim to reject the goods or to claim damages on the grounds that the goods do not conform to the description by which they were sold, must be notified in writing to the seller within seven days of delivery (pursuant to clause 12) of the goods to the buyer, failing which any such claim shall be deemed conclusively to have been waived by the buyer; and
 - (b) goods may only be returned to the seller with the seller's prior written consent. Should the seller discover that the goods comply with the description under which they were sold, the seller may in its absolute discretion charge the buyer a handling fee. All costs whatsoever for the return or delivery shall be payable by the buyer.

INTEREST AND EXPENSES

18. Without limiting any other right of the seller, the seller reserves the right to charge interest on any amount that is not paid by the buyer on the due date, at a rate of 1% per month, calculated on a daily basis from and including the date payment is due until the date the seller receives payment in full (including accrued interest) in cash or cleared funds. The charging of interest does not imply the granting of an extension of credit.
19. The buyer will be liable to pay all expenses and costs of the seller incurred in relation to seeking payment of any amount that is not paid by the buyer on the due date including (but not limited to) any amount charged by any debt collection agency instructed by the seller to recover the amount due, and all expenses and legal costs of the seller as between solicitor and client.

OTHER RIGHTS OF SUPPLIER

20. If any amount payable by the buyer to the seller is overdue, or the buyer fails to meet any other obligations to the seller, or in the seller's opinion the buyer is likely to be unable to meet its payment or other obligations to the seller, or the buyer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, or has a liquidator (provisional or otherwise) appointed, or is placed under statutory or official management, or an administrator is appointed to the buyer or the buyer, its board or shareholders is considering appointing an administrator or liquidator (each of the foregoing being an **event of default**), then without limiting any other right of the seller and:
- (a) the seller shall be entitled to cancel or suspend all or any part of any contract with the buyer which remains unperformed; and
 - (b) all amounts outstanding under any contract with the seller shall

whether or not due for payment immediately become due and payable.

21. The seller is entitled to recover from the buyer all costs that the seller incurs in connection with the exercise, protection or enforcement of the seller's rights under these conditions or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).
22. Subject to any mandatory law, the seller will not be liable in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the seller of its rights under these conditions or conferred by law.

USE OF INFORMATION

23. The buyer agrees that the seller may obtain information about the buyer from the buyer or any other person in the course of the seller's business, including credit assessment, debt collecting and direct marketing activities, and the buyer consents to any person providing the seller with such information.
24. The buyer agrees that the seller may use any information it has about the buyer relating to the buyer's creditworthiness and, subject to any confidentiality agreement between the buyer and the seller, give that information to any other person (including other companies in the seller's group) for credit assessment or debt collection purposes. The buyer agrees that any other information collected by the seller about the buyer is accessed or collected for the use of the seller and any company in its group in the course of its business, including direct marketing activities. Under the Privacy Act 1993, the buyer has rights of access to, and correction of, its personal information.

INDEPENDENT TRUSTEE LIMITATION

25. Where:
- (a) a person accepts these conditions in their capacity as trustee of a trust; and
 - (b) that person has no right to or interest in any of the assets of the trust except in their capacity as trustee of the trust; then, except as set out in the next sentence, the liabilities and obligations of that trustee in relation to these conditions will not be unlimited personal liabilities and obligations, but will be liabilities and obligations to pay the liabilities and meet the obligations out of the trust assets which are held by the trustees of the trust. To the extent that those trust assets have been reduced as a result of the dishonesty or wilful default of the trustee and are thereby not available to meet the obligations and liabilities of the trustee then, to that extent, the trustee's liabilities and obligations will be unlimited personal liabilities and obligations.

MISCELLANEOUS

26. If at any time the seller does not enforce any of these conditions or grants the buyer time or other indulgence, the seller shall not be construed as having waived that condition or its rights to later enforce that or any other condition.
27. The buyer must not transfer or assign its rights under these conditions to anyone else without the seller's prior consent in writing. The seller may assign or transfer any of its rights or obligations under these conditions without the buyer's consent.
28. The seller may vary these conditions from time to time by giving notice in writing to the buyer, such amendments to be of immediate effect unless stated otherwise. The buyer agrees to be bound by such amendments.
29. These conditions will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.