

CONDITIONS OF SALE

INTERPRETATION

1. In these conditions
(1) "Vendor" means Optima Agriculture Pty. Ltd. ABN 50 009 152 158 of 43 Hector Street, Osborne Park which is the seller of the goods.
(2) "Purchaser" means the purchaser of the Goods.
(3) "Goods" means the products and, if any services agreed to be sold or supplied by the Vendor to the Purchaser.
(4) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any conditions, warranty guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted, or modified.

GENERAL

2. These conditions (which shall only be waived in writing signed by the Vendor) shall prevail over all conditions of the Purchaser's order to the extent of any inconsistency and shall form the terms of the contract between the Vendor and the Purchaser.

TERMS OF SALE

3. The Goods and all other products sold by Vendor are sold on these terms and conditions.

ACCEPTANCE OF ORDERS

4. No order shall be binding on the Vendor until accepted in writing by the Vendor.

VENDOR'S QUOTATIONS

5. Unless otherwise specifically agreed, Vendor's quotations are tentative only and based on price lists as at the date of quotation. The prices charged will be listed prices of the Vendor prevailing at the date of dispatch. The Purchaser accepts that prices are subject to fluctuation after the date of the contract and during the currency of the contract.

PACKING

6. The cost of any special packing and packing materials used in relation to the Goods shall be at the Purchaser's expense notwithstanding that such cost may have been omitted from any quotation.

SHORTAGE

7. The Purchaser waives any claim for shortage of any Goods delivered if a claim in respect thereof has not been lodged with Vendor within seven (7) days from the date of delivery by the Vendor.

DELIVERY

8. The delivery times made known to the Purchaser are estimates only and Vendor shall not be liable for late delivery or non-delivery and under no circumstances shall Vendor be liable for any loss, damage or delay occasioned to the Purchaser or its customers arising from late or non-delivery or late installation of the Goods.

ACCEPTANCE

9. The Purchaser or its consignee shall be deemed to have examined the Goods at the point of delivery and accepted the Goods on signing the receipt in respect of the Goods provided by the Vendor. The Vendor may refuse to deliver the Goods, or may deliver the Goods at the absolute risk of the Purchaser, if the Vendor is unable to obtain a receipt for the Goods at the point of delivery. Part deliveries are permitted and each installment of the Goods delivered constitutes a separate contract giving rise to a separate debt.

RISK

10. Notwithstanding that title to Goods shall not pass until all accounts owed by the Purchaser to the Vendor are paid in full, the Goods shall be at the risk of the Purchaser from the time of dispatch of the goods from the Vendor to the Purchaser.

LOSS OR DAMAGE IN TRANSIT

11. The Vendor is not responsible for any loss or damage to Goods in transit or in the delivery or discharge of the Goods at the point of delivery of the Goods.

WEIGHT

12. If the Goods are sold in bulk, weights recorded on the Vendor's nominated weighbridge or weigh cell equipment shall be binding on the Purchaser. If the Goods are sold in containers, the sale shall be on the basis that the weight or volume of the product is that indicated on the container.

EXCLUSION OF LIABILITY

13. Except as provide herein, all express and implied warranties, guarantees and conditions under statute law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation application, materials or workmanship or otherwise are hereby expressly excluded and Vendor shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the Vendor's negligence or in any way whatsoever.

14. The Vendor's liability for a breach of a condition or warranty implied by Div 2 of Pt V of the Trade Practices Act 1974 (other than s 69) is hereby limited to:
(1) in the case of the goods or the supply of equivalent goods;

- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing or of acquiring equivalent goods;
- (d) the payment of the cost of having the goods repaired; or

- (e) the supply of the services again, or
- (f) the payment of the cost of having the services supplied again.

15. The Vendor's liability under s 74H of the Trade Practices Act 1974 is expressly limited to a liability to pay to the Purchaser an amount equal to:

- (1) the cost of replacing the goods;
- (2) the cost of obtaining equivalent goods; or
- (3) the cost of having the goods repaired, Whichever is the lowest amount.

WARRANTIES

16. The Purchaser acknowledges that the Vendor is not aware of any unusual or particular purpose for which the Goods are being acquired and that the Purchaser has not relied on the skill or judgment of the Vendor with respect to any unusual or particular purpose for which the Purchaser may intend to use the Goods.

PAYMENT

17. Unless the Vendor permits the Purchaser to acquire goods on credit (and permission shall only be granted after an approved credit account in the name of the Purchaser has been opened by the Vendor). The Purchaser must pay for the Goods at the time of the Vendor's acceptance of the Purchaser's order. If the Vendor supplied Goods on credit, the purchase price in relation to the Goods shall

be payable on or before the 25th day of the month next following the delivery of the Goods (or earlier, if demanded) unless other terms of payment are expressly stated herein in writing. The Vendor may at any time cancel the credit of the Purchaser upon which amounts owed by the Purchaser to the Vendor shall be immediately payable. If the Purchaser is in default in paying its account with the Vendor, without prejudice to any other rights of the Vendor, the late payment shall attract interest at the rate of fifteen percent per annum, and the Vendor may cancel any uncompleted contracts between the Vendor and the Purchaser.

RIGHTS IN RELATION TO GOODS

18. The Vendor reserves the following rights in relation to the Goods until all accounts owed by the Purchaser to the Vendor are fully paid:

- (1) legal ownership of the Goods and the Purchaser shall hold the Goods as Bailee for the Vendor and store the Goods separately to the Purchaser's goods in a manner to show the Vendor's ownership;
- (2) without notice, to enter the Purchaser's premises (or the premises of any associated company or agent where the goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
- (3) to keep or resell any Goods repossessed pursuant to (2) above; If the Goods are resold, or products manufactured using the Goods are sold, by the Purchaser, the Purchaser shall hold such part of the proceeds of any such sale as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold in a separate identifiable account as the beneficial property of Vendor and Vendor shall be entitled to maintaining action against the Purchaser for the purchase price and the risk of the Goods shall pass to the Purchaser upon delivery.

PURCHASER'S PROPERTY

19. Any property of the Purchaser under the Vendor's custody or control shall be entirely at the Purchaser's risk as regards loss or damage caused to the property or by it.

STORAGE

20. The Vendor reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Purchaser within fourteen days of a request by Vendor for such information.

RETURNED GOODS

21. The Vendor shall not be under any obligation to accept Goods returned by the Purchaser and will do so only on the terms to be agreed in writing in each individual case.

GOODS SOLD

22. All goods to be supplied by Vendor shall be as described on the purchase order agreed by Vendor and Purchaser and the description on such purchase order modified as so agreed shall prevail over all other descriptions including any Purchaser's specification or inquiry.

CANCELLATION

23. No order may be cancelled except with consent in writing and on terms which will indemnify the Vendor against all losses.

PLACE OF CONTRACT

24. The contract for sale of the goods is made in the State of Western Australia and the parties agree to submit all disputes arising between them to the Courts of such State.

