

TERMS

1. Terms and Conditions:

- (a) These terms and conditions (**Terms**) and the security interest created in these Terms apply to any and all goods supplied by the Seller to the Purchaser (**Goods**). All other terms and conditions are expressly excluded.
 - (b) The Seller's agents, contractors and representatives do not have any authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms.
 - (c) The Seller will be under no obligation to supply Goods to the Purchaser on credit until these Terms are signed and returned to the Seller and until the Seller is satisfied as to the credit worthiness of the Purchaser.
 - (d) From time to time the Seller may vary these Terms without notice. Any change to the Terms will be effective from the date the Seller publishes the new Terms on the Seller's website. Any orders for Goods made by the Purchaser after the Terms have been changed will be deemed acceptance of those changes.
2. **Orders:** The Purchaser shall order Goods by contacting the Seller or its representatives. If the Seller accepts the Purchaser's order, a confirmation email will be sent to the Purchaser's email address specified in the Purchaser's credit application. A binding contract for the sale and purchase of the Goods shall be deemed to be made when the Purchaser and the Seller agree upon the contract terms either orally or in writing or at the time the confirmation email leaves the information system of the Seller, whichever is earlier. The parties agree that the confirmation email will be determinative of the contract terms between the parties save for manifest error. The Seller has the right to change the ordering procedure at any time. The Purchaser must comply with any change to ordering procedures notified to it by the Seller. The Purchaser must immediately inform the Seller if the Purchaser changes its email address.
 3. **Fixed Price:** All orders for Goods will be at the price current for the Goods at the date of acceptance of an order. The Purchaser must pay for the Goods in accordance with these Terms based on the price of the Goods fixed at the date of acceptance of the order irrespective of any subsequent changes in the market price of the Goods. All prices are exclusive of GST. GST will be payable by the Purchaser at the applicable rate.
 4. **Forward Sale Contracts:** The parties agree that from time to time they may enter into Forward Sale Contract agreements by telephone. Such agreements are immediately binding on the parties. The Seller will email the Forward Sale Contract to the Purchaser. The Purchaser shall have until the close of business (6pm) on that same day to reply to the email cancelling the Contract. If no such reply is received by the Seller then the Purchaser is deemed to have accepted the Forward Sale Contract terms and conditions.
 5. **Payment:** All payments are to be made by the Purchaser to the Seller on the 20th day of the month following the month in which the Seller issues the Purchaser an invoice, without deduction, set off or counterclaim of any kind. If the Purchaser fails to make payment to the Seller by the due date, default interest of 2.5% per month compounding will be charged from the due date for payment until actual payment is made.
 6. **Split Account:** If a Split Account has been applied for, each party authorises the other and may bind the other to the proportion of an order as stated in the application form, and all parties agree that the Seller is entitled to rely upon an order from either party to the Split Account for this purpose. Under a Split Account the liability of each party will be several.
 7. **Collection Costs:** The Purchaser will indemnify the Seller against all costs and disbursements incurred by the Seller directly or indirectly in recovering or in attempting to recover any monies payable in accordance with the Terms including any solicitors' fees or debt collection fees incurred by the Seller.
 8. **Quality:** The Purchaser shall be deemed to have accepted the quality or condition of the Goods delivered unless an objection as to quality or condition is made by the Purchaser in writing to the Seller within 5 business days of a delivery. No claim for compensation based on any alleged defect in quality or condition may be made thereafter unless the nature of the defect in quality or condition was not able to be ascertained by reasonable inspection at the time the Goods were delivered.
 9. **Quantity:** Unless otherwise agreed by the Seller, all quantities shall be expressed metrically and to the nearest one/one hundredth (1/100) of a metric tonne.
 10. **Weights:** Unless specifically agreed in writing otherwise, delivery weights shall be at weights specified in the weighbridge dockets of the Seller in respect of each delivery.
 11. **Conveyance And Delivery Instructions:** The Seller shall have the right of access to the designated point of delivery at the Purchaser's premises for the purposes of delivering, inspecting or removing the Goods.
 12. **Notices:** All notices given shall be given in writing and delivered by hand, facsimile, email or by ordinary post. Notice which is given by email shall be deemed received at the time the notices leaves the information system of the Seller. Any notices received after 4.00 pm in a business day shall be deemed to have been received on the business day following..
 13. **Force Majeure:** The Seller shall not be responsible for delay in delivery of Goods or any part thereof occasioned by an act of god, calamity at sea (including, damage to a ship, the sinking of a ship, or delay for any reason in shipment), fire, flood, wind, explosion, power failure, war, act of piracy, embargo, act of government, strike (including dock and/or shipping strike), lock-out, combination of workers, or civil commotion which is not due to said party's own acts or negligence.
 14. **Risk and Title:** Risk in the Goods shall pass to the Purchaser upon delivery. The Purchaser will insure the Goods and keep them in good order and condition. Title to and ownership of any Goods supplied by the Seller shall remain with the Seller until the price of the Goods and all other monies owing by the Purchaser to the Seller have been paid in full. The Purchaser acknowledges that these Terms constitute a security agreement for the purposes of the Personal Property Securities Act 1999 (**PPSA**) and the Purchaser must provide the Seller with all information required for the Seller to register a financing statement pursuant to the PPSA.
 15. **Verification Certificate:** The Purchaser waives its rights under section 148 of the PPSA to receive a copy of any verification statement.
 16. **Fiduciary and Bailee:** Until payment for the Goods is made in full, the Purchaser hold the Goods as fiduciary and bailee and any sale of the Goods by the Purchaser shall be as agent for and on behalf of the Seller. The proceeds of any such sale shall be held by the Purchaser on trust for the Seller, separate from the Purchaser's other monies notwithstanding that any period of credit extended to the Purchaser may not have expired.

17. **Seller's Rights:** Without limiting any other rights the Seller may have, in the event the Purchaser breaches any of its obligations under these Terms, the Seller reserves the right to with or without vehicles and machinery enter upon and if necessary break into any real property or building occupied by the Purchaser where the Goods may be or may supposed to be, to search for and take possession of the Goods and remove them without being in any way liable to the Purchaser or any other party. The Seller is under no obligation to give any notice of its intention to exercise its right contained in this clause.
18. **The Privacy Act 1993**
- (a) The Purchaser acknowledges that personal information collected or held by the Seller is provided and may be held, used or otherwise disclosed for the following purposes:
- (i) administering, whether directly or indirectly, the Purchaser's contracts and enforcing the Seller's rights and remedies under such contracts;
 - (ii) ascertaining at anytime the Purchaser's creditworthiness and obtaining at any time credit reports, character references and or credit statements;
 - (iii) enabling the Seller to notify any credit agency of any application for credit or default on any obligation of the Purchaser to the Seller and enabling the Seller to provide such personal information to any credit agency to maintain effective accounting records; and
 - (iv) enabling the Seller to communicate with the Purchaser for any purpose.
- (b) The Purchaser authorises the Seller to obtain at any time from any person or entity, any information the Seller may require to process and/or accept any application for credit the Purchaser may make to the Seller or to perform or complete any of the other purposes for which the Purchaser has provided personal information. The Purchaser authorises any such person to release to the Seller any personal information that that person holds concerning the Purchaser.
19. **Authority to Sign:** The person(s) signing the Terms on behalf of the Purchaser:
- (a) personally warrants that he/she has the actual authority of the Purchaser to agree to these Terms on its behalf (**warranty of authority**). If the Purchaser should subsequently assert in writing that the person who signed the Terms did not have the Purchaser's authority to agree the Terms such assertion shall be deemed to constitute a breach of warranty of authority by the person signing the Terms rendering that person liable to pay liquidated damages to the Seller notwithstanding that the Purchaser may also remain liable under the Terms. The quantum of such liquidated damages shall equal the amount or amounts payable but not paid by the Purchaser under the Terms, on the assumption that the Purchaser is bound by the Terms; and
- (b) in accordance with clause 21 personally guarantees the obligations of the Purchaser, and for the purposes of clause 21 shall be deemed a Guarantor.
20. **Guarantee:**
- (a) In consideration of the Seller entering into these Terms at the Guarantor's request, the Guarantor:
- (i) guarantees the due and punctual payment of all moneys payable and the performance of all obligations of the Purchaser, under these Terms; and
 - (ii) indemnifies the Seller against any liability, loss or damage the Seller might incur by reason of any breach by the Purchaser of any of the Purchaser's obligations under these Terms.
- (b) As between the Guarantor and the Seller, the Guarantor will be deemed to be a principal debtor and not merely a surety.
- (c) The guarantee in these Terms continues until all of the obligations of the Purchaser to the Seller (whether under these Terms or otherwise) have been fully discharged.
- (d) When the Guarantor is two or more persons, the obligations and agreements of this guarantee shall bind them jointly and severally.
21. **Liability:** The Seller's total liability and that of its directors, agents and employees, under these Terms and in connection with the Goods will be limited in the following manner:
- (a) Where a claim is accepted subject to the terms and conditions of the Seller's insurance Liability Policy, the limit of liability including defence costs and associated costs shall not exceed \$500,000;
 - (b) Where loss or damage occurs and a claim does not come within the scope of the Seller's Liability Insurance Programme then the Seller's liability is limited to the price actually paid by the Purchaser to the Seller for the Goods under these Terms.
22. **No Assignment:** The Purchaser must not assign any of its rights or obligations under these Terms without the written consent of the Seller.
23. **Entire Agreement:** The Purchaser, the person signing on behalf of the Purchaser, and the Guarantor(s) acknowledge that they have not relied on any statement or representation made by or on behalf of the Seller in entering these Terms and that the content of these Terms constitutes the entire agreement between the parties. Where the Purchaser has also entered into a Forward Sale Contract with the Seller for supply of Stockfood then the terms and conditions contained within that Forward Sale Contract are to be read in conjunction with this agreement. Where there is conflicting meaning between this agreement and the Forward Sale Contract, then the meaning set out in the Forward Sale Contract will prevail.
24. **Severance:** If any provision of the Terms is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable that provision will be severed from the Terms and the remaining provisions will remain in full force and effect.
25. **Consumer Guarantees Act 1993:** The Purchaser agrees and acknowledges that all supplies of Goods from the Seller to the Purchaser are/will be acquired for the Purchaser's business purposes and accordingly the provisions of the Consumer Guarantees Act 1993 will not apply as between the Purchaser and the Seller.