

FERTDIRECT LIMITED

TERMS OF TRADE

Effective Date of these Terms of Trade: From 1 July 2016

These terms of trade (**Terms of Trade**) shall apply between FertDirect Limited (**FertDirect**) and you the customer (**Customer**), for the sale of goods (**Goods**) to you by FertDirect via the FertDirect website (**Website**). Unless otherwise agreed in writing, all prices offered and all orders accepted via the Website are subject to these Terms of Trade and "Terms and Conditions of Use of FertDirect's Website".

1. Agreement

Subject to these Terms of Trade, FertDirect agrees to sell and you agree to buy the quantity of Goods at the price for Delivery to the relevant port as recorded by you via FertDirect's Website.

2. Placing and Acceptance of Orders

- (a) All orders for Goods must be placed via the Website.
- (b) FertDirect shall not be obliged to accept or fulfil any order where the Customer's details recorded via the Website have not been completed correctly, or where information is misleading or incorrect.
- (c) An order shall only be deemed accepted by FertDirect at the time of Delivery of the order.
- (d) FertDirect reserves the right to refuse or cancel any order at any time prior to acceptance of that order.
- (e) No order placed by you via the Website may be cancelled unless agreed to in writing by FertDirect. Notwithstanding any cancellation, you shall remain liable to FertDirect for all costs incurred up to the date of cancellation and the certificate of FertDirect as to the amount of such costs shall be conclusive evidence and be binding on you.

3. Place and Manner of Delivery

- (a) It is your responsibility to take possession of the Goods ordered and not for FertDirect to send them to you. Delivery of the Goods to you shall be at the place of business of FertDirect (**Delivery**). If the Goods are in some place other than the place of business of FertDirect, then that other place as notified to you by FertDirect shall be the place of Delivery.
- (b) The expenses of and incidental to the transportation of Goods to you from the place of Delivery, including insurance, transit, storage and application of the Goods, shall be borne by you.
- (c) If you have not taken possession of the Goods from FertDirect within 3 working days from the time of Delivery, then FertDirect may at the Customer's cost and risk in all matters, arrange for insurance and transportation of the Goods to your last known address and shall add on such costs incurred to the Contract price.

4. Delivery of Goods

- (a) FertDirect will make all reasonable efforts to have the Goods Delivered to you on or about the date or within the timeframe forming part of this Contract.
- (b) The Customer will be contractually obligated to take possession of and pay for all Goods ordered by it from FertDirect, and which FertDirect supplies or makes available to the Customer, in accordance with this Contract.
- (c) FertDirect accepts no liability where Delivery of the Goods within any estimated timeframe is prevented or hindered by reason of delays in manufacture, shipping, transportation or other circumstances beyond the reasonable control of FertDirect.

5. Return of Defective Goods

- (a) You are deemed to have accepted all Goods Delivered unless you notify FertDirect within five working days of the time of Delivery that the Goods are materially defective either in quality or quantity. No Goods may be returned to FertDirect without FertDirect's prior written agreement. FertDirect shall be entitled to take all necessary steps to remedy such defects prior to return and you shall co-operate with FertDirect to enable it to bring such defective Goods up to specification.
- (b) Where you refuse to accept the Goods, you must give written notice of such refusal and immediately return the Goods to FertDirect, but without prejudice to the rights of FertDirect to claim against you for any breach of these Terms of Trade. FertDirect shall only be liable for

the reasonable costs of such return where it is proven that the Goods supplied are in fact materially defective.

- (c) Where the Goods are stored pending return or application, you agree to store the Goods in such a manner so as to prevent any deterioration or contamination of them.
- (d) Where Fertco takes a sample of the Goods for testing upon Delivery and sends that sample to a reputable lab for testing, then the test results relating to that sample shall be binding on both parties as to whether or not the Goods meet an acceptable quality standard for the purposes of any warranty given pursuant to these Terms of Trade.

6. **Time and Manner of Payment**

Payment for Goods delivered to you will be due and payable without deduction or set-off seven working days after the time of Delivery. The time within which you must pay for the Goods is an essential term of this Contract.

7. **Late Payment**

If you fail to pay any monies on the due date for payment, you shall also pay, at FertDirect's discretion, interest on the amount due at the rate of 1.5% per month calculated on a daily basis from the due date until the date payment is received in full by FertDirect but without prejudice to all or any of FertDirect's rights and remedies pursuant to these Terms of Trade or otherwise. Any payments received by FertDirect will be firstly applied against such additional interest. You shall further be liable to reimburse FertDirect for any costs (including legal costs as between solicitor and client) incurred by FertDirect in recovering monies due to it or enforcing any rights available to it pursuant to this Contract.

8. **Increase of Price due to Hardship**

- (a) For the purposes of this clause, a "**Hardship Event**" means:
 - (i) any changes in raw material inputs outside of the manufacturer's or supplier's control which leads to increased costs to FertDirect in sourcing the Goods from its manufacturer or supplier, including but not restricted to increases in fuel prices, energy costs, or freight and transport costs; and/or
 - (ii) policies in the relevant foreign country which lead to increased costs to FertDirect in sourcing the Goods from such manufacturer or supplier, including but not restricted to increases in government charges, taxes, excises or any other duties or charges, or any change or re-valuation in the medium or long term exchange rate between the NZ dollar and other relevant currencies.
- (b) If, at any time during the supply period to which this Contract relates, a Hardship Event occurs, FertDirect may notify the Customer of such occurrence and any adjustments to the pricing terms or Delivery dates in light of such Hardship Event (such notice, a **Hardship Notice**).
- (c) The Customer is not obliged to agree to any change to the terms of this Contract as a result of a Hardship Event, however, if the parties are unable to reach agreement on appropriate changes to the Contract price or other terms of this Contract within seven working days of the date of the Hardship Notice, and FertDirect is not prepared to continue to supply the Goods, then FertDirect may suspend or cancel the order for the Goods affected.

9. **Increase of Price due to Change of Laws**

Without limiting clause 22, if any of FertDirect's costs of:

- (a) manufacturing, importing, supplying or transporting the Goods; or
- (b) procuring raw materials, services or inputs directly related to the activities in (a) increase as a result of compliance by FertDirect, or by FertDirect's affiliates and agents, with:
 - (i) the introduction of or any change (including a change in interpretation) in any federal, state, local or other law or regulation or order, including any introduction of or a change in a tax, tax rebate, excise or duty; or
 - (ii) any introduction of or change in (including a change in interpretation in) a scheme for management or reduction of greenhouse gas emissions or concentrations, or water use conservation or management,

then FertDirect may, by notice to the Customer, increase the price for the Goods to the extent required to pass through such increased costs (which may include, without limitation costs of acquiring permits or credits or costs of required plant modifications or additions). Such cost increases shall take effect immediately from the date such notice is provided to the Customer.

10. **Passing of Risk and Title to the Goods**

The Goods remain at FertDirect's risk until the time of Delivery, but when title passes to you the Goods are at your risk whether Delivery has been made or not. Where Delivery has been delayed because of your fault, the Goods shall be at your risk as regards any loss which may occur due to such delay.

11. **Time of Transfer of Title in the Goods**

Title in the Goods passes to you when payment for those Goods (together with any additional interest or charges or increased costs as set out in these Terms of Trade or as agreed to between the parties from time to time) is made in full by way of cleared funds.

12. **Retention of Title in the Goods**

- (a) You agree that title in the Goods shall not pass to you until payment has been made in full. Until such time as title passes to you:
- (i) You will hold the Goods or any of them on trust for FertDirect as bailee of FertDirect and will not apply the Goods to your pasture;
 - (ii) You will store the Goods prior to application separately from other Goods in your possession in a manner so as to prevent any deterioration or contamination, and will clearly distinguish and identify the Goods as FertDirect's Goods;
 - (iii) FertDirect may give notice in writing to you to return the Goods to FertDirect. Upon receipt of such notice, your rights to obtain title or any other proprietary interest in the Goods shall cease;
 - (iv) If you fail to return the Goods to FertDirect, then FertDirect or FertDirect's agent shall have your authority and licence to enter upon and into buildings and premises owned, occupied or used by you where the Goods are situated and to take possession of the Goods for removal; and
 - (v) You agree that the foregoing provisions shall not entitle you to return the Goods without demand from FertDirect.
- (b) You shall have no authority to resell the Goods to any other person whatsoever.

13. **Lien**

Where FertDirect has not received or been tendered the whole of the Contract price, or where payment has been dishonoured, FertDirect shall have:

- (a) a lien on the Goods supplied;
 - (b) the right to retain them for the price while FertDirect is in possession of them;
 - (c) a right of stopping the Goods in transit whether or not Delivery has been made or ownership has passed; and
 - (d) a right of resale,
- provided that FertDirect's lien shall continue despite the commencement of proceedings or judgment for the Contract price having been obtained.

14. **Personal Property Securities Act 1999 ("PPSA")**

- (a) You acknowledge and agree that clauses 12 (Retention of Title in the Goods) and 13 (Lien) create "Security Interests" in the Goods supplied and in all "Proceeds" of those Goods as security for the repayment of all moneys owing from you to FertDirect, and for the performance of all of your obligations to FertDirect, pursuant to this Contract.
- (b) You agree at FertDirect's request to promptly sign any documents, provide all necessary information (which information you warrant to be complete, accurate and up-to-date in all respects) and do anything else reasonably required by FertDirect to ensure that any such Security Interest constitutes a "Perfected Security Interest".
- (c) If you fail to comply with any term of this Contract, FertDirect or its agent may exercise any and/or all remedies afforded to a secured party by Part 9 of the PPSA and enter any building or premises owned, occupied, or used by you to search for and re-take possession of any or all of the Goods. You further agree that where FertDirect has rights in addition to those under Part 9 of the PPSA, those rights shall continue to apply.
- (d) You (to the extent permitted by law) expressly waive, and agree that you shall have no rights under, the following provisions of Part 9 of the PPSA to:
 - (i) receive a notice under section 114(1)(a);
 - (ii) receive a statement of account under section 116;
 - (iii) receive any surplus distributed under section 117(1)(c);
 - (iv) recover any surplus under section 119;
 - (v) receive notice of any proposal of FertDirect to retain collateral under section 120(2);
 - (vi) object to any proposal of FertDirect to retain collateral under section 121;

- (vii) not have any Goods damaged in the event that FertDirect were to remove an accession under section 125;
 - (viii) receive notice of the removal of an accession under section 129;
 - (ix) apply to the Court for an order concerning the removal of an accession under section 131;
 - (x) redeem collateral under section 132; and
 - (xi) reinstate this Contract under sections 133 and 134.
- (e) You acknowledge, by ticking the appropriate box on the Website, that you have read and understood these Terms of Trade and waive any right to receive from FertDirect a copy of any financing statement, financing change statement or any verification statement that is registered, issued, or received at any time in relation to these Terms of Trade. You acknowledge that by placing an order for Goods with FertDirect via the Website, you are deemed to have assented to the provisions of these Terms of Trade.
- (f) You agree to immediately notify FertDirect in writing of any change of your legal or business name.
- (g) You expressly authorise FertDirect to allocate and apply in any proportions as it sees fit any moneys received from you towards part payment of the purchase price of the Goods and/or in part payment of the purchase price of any other Goods supplied to the intent that the Security Interests created by these Terms of Trade shall remain in full force and effect until all moneys owing, and/or all obligations due to be performed, by you to FertDirect have been paid or performed in full.
- (h) Unless the context otherwise requires, terms and expressions in this clause that are defined in the PPSA, shall have the same meaning in this clause as in the PPSA and references to the Goods include references to any one or more of them.

15. Containers and Cylinders

- (a) Containers, drums, cylinders and other storage vessels in which Goods are delivered and for which a deposit or rental charge is payable or which are otherwise made available by FertDirect on a returnable basis, remain the property of FertDirect and must not be used for the storage of any other commodity.
- (b) On their return in good order and condition by the Customer and at the Customer's expense to FertDirect's business premises or to such other place advised in writing by FertDirect, the amount of any deposit paid by the Customer will be repaid to it. Containers and other storage vessels will be deemed to be still in the Customer's possession until actually received by FertDirect or its agent. In the case of containers and storage vessels which are returned damaged, only such part of the deposit (if any) as in the opinion of FertDirect is reasonable, having regard to their actual condition, will be repayable to the Customer.
- (c) Containers and other storage vessels in which Goods are delivered and for which a separate charge, other than a deposit or rental charge, is shown on the invoice are, unless otherwise specified therein or agreed by the parties, sold with the Goods and their price as shown on the invoice must be paid with the price of the Goods.
- (d) The Customer acknowledges that FertDirect has a "Security Interest" (for the purposes of the PPSA) in any containers, drums, cylinders and storage vessels described in clause 15(a) and the "Proceeds" of these items. The Customer shall do anything required by FertDirect to enable FertDirect to register these Security Interests, with the priority FertDirect requires, and to maintain those registrations until returned or until the full replacement value of such containers and storage vessels has been paid to FertDirect in full.

16. Portable Magazines and Pallets

- (a) Unless otherwise agreed to in writing, all portable magazines and pallets on which Goods are delivered remain the property of FertDirect and must be returned to FertDirect at the Customer's expense in good order and condition to FertDirect's business premises or to such other place advised in writing by FertDirect. Portable magazines and pallets will be deemed to be still in the Customer's possession until received by FertDirect or its agent. All risks whatsoever associated with the portable magazines and pallets rest with the Customer absolutely and the Customer agrees to indemnify FertDirect in respect of any portable magazine or pallet that is not returned in good order and condition to FertDirect within one month of Delivery of the Goods.
- (b) The Customer acknowledges that FertDirect has a "Security Interest" (for the purposes of the PPSA) in any portable magazines and pallets described in clause 16(a) and the "Proceeds" of these items. The Customer shall do anything required by FertDirect to enable FertDirect to register these Security Interests, with the priority FertDirect requires, and to maintain those registrations.

17. Limitation of Product Warranty

- (a) FertDirect warrants that the Goods supplied pursuant to this Contract shall materially accord with any relevant quantity or specification contained or referenced in this Contract and are of acceptable quality.
- (b) Apart from the warranty contained in clause 17(a), to the maximum extent permitted by law, all other warranties and guarantees expressed or implied by statute, common law, equity, trade, custom or usage or otherwise, in relation to the supply of the Goods, are expressly excluded.
- (c) FertDirect's maximum liability for its breach of clause 17(a) is limited to any one of the following remedies as determined by FertDirect in its sole discretion:
 - (i) the prompt retrieval of the non-compliant Goods at FertDirect's cost and the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair at FertDirect's cost of the Goods or payment of the cost of having the Goods repaired; or
 - (iii) the payment by FertDirect of the cost of replacing the Goods or of acquiring equivalent Goods.
- (d) The Customer acknowledges that:
 - (i) It has not relied on any service involving the skill or judgement, or on any advice contained in the Website or otherwise, recommendation, information or assistance provided by FertDirect in relation to the Goods or their use or application; and
 - (ii) It is responsible for ensuring that the Goods that comply with the warranty in clause 17(a) are fit and suitable for its purposes, requirements, processes, plant and equipment.

18. Limitation of Liability and Indemnity

- (a) FertDirect shall not be liable to you (or any other person) for any indirect, special, incidental, consequential or exemplary damages or losses suffered by you (or any other person) arising out of the operation of these Terms of Trade and/or the storage, use or application of the Goods and whether attributable to contract, tort (including negligence), equity or otherwise. Your remedies under these Terms of Trade shall be limited to those set out in clause 17(c) only but under no circumstances shall the liability of FertDirect exceed the price of the Goods supplied pursuant to this Contract.
- (b) You agree to hold FertDirect harmless and hereby indemnify FertDirect for any liability or costs which FertDirect may incur due to your use or the application of the Goods including, but without limitation, any liability incurred for damage or degradation to the environment or to any other person's property.

19. Consumer Guarantees Act and Sale of Goods Act Excluded

- (a) Where Goods are supplied to you for a business purpose, then you agree that the statutory guarantees and implied terms, covenants and conditions contained in the Consumer Guarantees Act 1993 are hereby excluded and do not apply.
- (b) To the extent inconsistent with these Terms of Trade, the provisions of the Sale of Goods Act 1908 are hereby excluded and do not apply.

20. Relevant Statutes Paramount

These Terms of Trade do not and do not purport to restrict or otherwise limit the application of relevant statutes to the subject matter herein other than to the extent that such restriction or limitation is lawfully permissible and is contained herein.

21. Terms and Conditions to Prevail

- (a) These Terms of Trade shall prevail where there is any inconsistency or variance with:
 - (i) any previous Terms of Trade, invoice or document of FertDirect;
 - (ii) the terms of trade, invoice or document of any other business activities of FertDirect Limited;
 - (iii) any previous usage of trade or course of dealing between the parties; and
 - (iv) anything that may have been stated by either party (or their representatives) to the other party unless specifically agreed to in writing by FertDirect.
- (b) These Terms of Trade, as amended from time to time, and as posted on the Website will without further notice apply to each relevant transaction between the parties whether or not a copy of this document is delivered to you in the course of such a transaction.

22. **Goods & Services Tax and other Transaction Taxes**
- (a) You shall pay to FertDirect goods and services tax as defined in the Goods and Services Tax Act 1985 on the Goods at the rate applicable at the time of supply.
 - (b) Where any other transaction tax or duty, which comes into existence or effect after the date of these Terms of Trade applies to any supply made under these Terms of Trade, then FertDirect may, by notice in writing to the Customer, increase the price for the Goods supplied to the extent required to pass through such increased costs. Such cost increases shall take effect immediately from the date such notice is provided to the Customer.
23. **Severance**
- Should these Terms of Trade or any part of them be held by a Court to be ineffective by virtue of non-registration, illegality or otherwise, such term or part of it may in FertDirect's sole discretion be severed from the rest without affecting the validity or enforceability of the remaining terms.
24. **Waiver**
- The delay or failure by FertDirect to enforce its rights at any time or for any period in relation to any one or more of the provisions of these Terms of Trade shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of these Terms of Trade.
25. **Alternative Dispute Resolution**
- If any dispute shall arise touching the construction or interpretation of any provisions of these Terms of Trade or in regard to the rights and obligations of the parties generally pursuant to this Contract (save for where the default by you of this Contract is not in reasonable doubt), the same shall be settled by arbitration in accordance with the Arbitration Act 1996 (or any relevant substitute legislation).
26. **Notices**
- Any notice or communication required or permitted to be given under these Terms of Trade shall be valid and effective only if in writing. Any notice given and any payment made by any party to the other which is:
- (a) delivered by hand during the normal business hours of the addressee at the addressee's last known address shall be presumed to have been received by the addressee at the time of Delivery;
 - (b) posted by prepaid registered post to the addressee at the addressee's last known address shall be presumed to have been received by the addressee on the second day after the date of posting; and
 - (c) transmitted by email to the addressee at the addressee's last known email address shall be deemed to have been received by the addressee on the date of transmission thereof provided the sender has obtained an error free report of such transmission.
27. **Privacy Act**
- (a) You hereby authorise FertDirect to obtain from any credit reporting agency, a credit report concerning your credit information for the purpose of determining whether or not to supply Goods to you on credit. You acknowledge that by placing an order for Goods, you are authorising each such source to provide FertDirect with any information about you which it may require or request; and
 - (b) Unless FertDirect is notified in writing by you, promotional material of FertDirect may be sent to you from time to time.
28. **Entire Agreement**
- (a) Unless FertDirect otherwise agrees in writing, this Contract contains the only terms to which FertDirect will be bound in connection with the supply of Goods to the Customer.
 - (b) The Customer agrees that these Terms of Trade as contained in this Contract will in all circumstances prevail over the Customer's terms and conditions of purchase (if any).
 - (c) These Terms of Trade supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.
 - (d) Without limiting any other mode of acceptance of this Contract exercised by the Customer, the Customer acknowledges that by placing an order for Goods via the Website, the Customer by such conduct agrees to be bound by the Terms of Trade of this Contract to the exclusion of all other terms and conditions of purchase.
 - (e) FertDirect may change these Terms of Trade from time to time. Any changes to these Terms of Trade will be posted to the FertDirect Website , together with the date on which such new

Terms of Trade shall become effective. It is your obligation to check the FertDirect website at the time you enter into this Contract. By entering into a Contract after the date upon which such new Terms of Trade become effective, the Customer accepts and is bound by such changed Terms of Trade for that Contract and future Contracts. If the Customer does not accept such changes to the Terms of Trade, it must notify FertDirect immediately to close its account.

29. **Confidentiality**

The Customer and FertDirect agree that neither party will disclose to any other party any information associated with or arising out of this Contract.

30. **Governing Law**

The supply of Goods under this Contract is governed by the laws of New Zealand and FertDirect and the Customer submit to the non-exclusive jurisdiction of the courts of New Zealand.

31. **Additional Definitions**

- (a) The expressions **you, your** and **yours** are references to the Customer:
 - (i) whose personal and other contact details are recorded via the Website and if more than one person comprises the Customer, then they include references to those persons jointly and severally;
 - (ii) and includes any person who actually obtains possession or title to any of the Goods supplied whether or not their details are recorded via the Website in respect of any order for Goods; and
 - (iii) may include an individual, company or other body corporate.
- (b) **Goods** includes all equipment, products and services agreed to be supplied by FertDirect to the Customer under any contract, arrangement or understanding between FertDirect and the Customer which is ancillary to any order for Goods made pursuant to the Website.
- (c) **Contract** means the terms of any order for Goods placed through FertDirect's Website, including the "Terms and Conditions of Use of FertDirect's Website" and these Terms of Trade.