

# ULTRA GROW P/L t/as Fair Dinkum Fertilizers

## Terms & Conditions of Sale

### 1. Definitions

- 1.1 "Supplier" shall mean and include Ultra Grow P/L t/as Fair Dinkum Fertilizers, its employees and agents.
- 1.2 "Customer" shall mean and include the person herein and any servant, agent, partner, contractor or employee of that person and in the case of two or more persons shall refer to them jointly and severally.
- 1.3 Any notice in writing required to be given under any agreement with the Supplier shall be deemed to be duly given if posted to the last known address of the addressee by prepaid post.

### 2. General

- 2.1 All orders placed by the Customer will be subject to these Trading Terms unless expressly agreed to in writing by the Supplier.
- 2.2 The Customer waives any terms and conditions of purchase which are inconsistent with the Trading Terms.
- 2.3 The Customer agrees that all contracts made with the Supplier shall be deemed to be made in the State of Victoria and the Customer agrees to submit to the jurisdiction of the State of Victoria.
- 2.4 Any variation or cancellation of order must be approved in writing by the Supplier.

### 3. Pricing

- 3.1 All sales are made at the Supplier's ruling price at time of delivery, unless otherwise agreed in writing.

### 4. Acceptance or performance of orders

- 4.1 The Supplier may decline any order received from the customer or decline to fulfill any order where the Trading Terms have not been met by the Customer or where the Supplier is unable to do so for whatever reason.

### 5. Delivery of Goods

- 5.1 The Supplier may deliver each order to the agreed location on any day.
- 5.2 The Customer shall provide reasonable and proper access to the site specified for delivery.
- 5.3 The Customer shall be responsible for any damage whatsoever or howsoever caused in the course of delivery and shall indemnify the Supplier in relation to every such claim.
- 5.4 The Customer authorizes the Supplier to subcontract delivery in its absolute discretion.
- 5.5 The Supplier may unilaterally delay or suspend any delivery for any period or cancel any order without any liability whatsoever.

### 6. Collection of orders

- 6.1 Where the Supplier prepares each order for collection at the Supplier's premises by a nominated agent or courier of the Customer, the Supplier shall notify the Customer in writing prior to the collection date and as soon as each order is ready for collection. Within seven (7) days of receiving notification that an order is ready for collection pursuant to this clause the Customer shall remove the order from the Supplier's premises.

### 7. Payment

- 7.1 The Customer shall pay the price in relation to each order to the Supplier within seven (7) days of the date of the relevant invoice.
- 7.2 If payment is not made in accordance with the above terms, the Supplier shall be entitled to:
  - (a) require the payment of cash upon delivery of the supply of any further goods or services.
  - (b) Charge default interest at the rate of 1.5% per month calculated on a daily basis on any monies due but unpaid, such interest will be computed from the date of payment; and
  - (c) Cease supply of further goods or services if payment has not been made within seven (7) days of the due date.

### 8. Liability

- 8.1 The Supplier shall not be liable for any claim, loss or expense whatsoever or howsoever arising after three (3) days of the delivery of goods or service.
- 8.2 The Supplier will not be subject to any liability that exceeds the replacement value of goods or services. The Supplier will not be liable for any contingent, consequential or punitive damages arising in any way whatsoever. The Customer acknowledges this express limitation and agrees to limit any claim accordingly.
- 8.3 The Supplier shall not be liable for any claim, loss or expense sustained or incurred by any person arising in any way as a result of any delay in delivery of the goods or services or any part thereof of any failure to deliver the goods or services or part thereof.
- 8.4 Any advice, recommendation, information or representation provided by the Supplier as to the quality or performance of the goods or services their sustainability for a particular purpose of otherwise is given in good faith without any liability or responsibility on the part of the Supplier. The Customer acknowledges that it has not relied upon or been induced by any representation of the Supplier and the Customer has made its own enquiries.

### 9. Property of Title

- 9.1 Property of the goods remain with the Supplier until the price of any goods and services provided to the Customer has been paid in full.
- 9.2 The Customer may effect sale of the goods or part thereof in the usual course of business upon the following conditions:
  - (a) where the Customer holds all proceeds of sale relating to the Supplier's goods on trust for the Supplier; and
  - (b) where the Customer agrees (if required) to assign to the Supplier any rights to any outstanding moneys relating to the sale and disposal of the Customer's goods.
- 9.3 If the products manufactured using the goods are sold by the customer, the customer 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 the Company and shall pay such amount to the company upon request.
- 9.4 Where the Supplier demands in writing for payment and this is unsatisfied for a period of seven (7) days from the date of the demand, the Supplier shall be entitled to enter the premises owned or occupied by the Customer to recover any goods which are the property of the Supplier and which the Supplier reasonably believes to be on such premises

### 10. Passing of risk

- 10.1 Risk in each order shall pass to the Customer upon delivery of that order to Customer or collection of that order by Customer, or its nominated agent or courier as the case may be.

### 11. Returns

- 11.1 Goods will only be accepted for return if authorized in writing by a representative of the Supplier prior to the return.

### 12. Termination

- 12.1 If the Customer:
  - (a) fails to comply with any of these conditions; or
  - (b) being an individual commits an act of bankruptcy, or corporation passes a resolution for winding up or liquidation; or
  - (c) enters into any composition or arrangement with creditors or if a receiver or manager is appointed for any property or assets; or
  - (d) becomes liable to be wound up by reason of insolvency or if any petition for its winding up,the Supplier may, in addition to exercising any of its rights against the Customer, suspend any further deliveries and immediately recover possession of any products not paid in full and sell them.

### 13. Force Majeure

- 13.1 In the event of the suspension of production owing to breakdowns, strikes, blackouts, trade disputes, fires, accidents or other causes over which the Company has no reasonable control and to which stop, diminish or adversely affect production, deliveries may be wholly or partially suspended until normal production is resumed and the Company shall not be liable in respect of such suspension.