

### 1. Definitions

**Customer** means the person or company identified as the customer in the Contract Form and referred to as "you" in these Terms and Conditions.

**Contract** means the Fixed Price Contract or Variable Price Contract, as applicable.

**Contract Form** means the Fixed Price Contract Form or the Variable Price Contract Form, as applicable.

**Fixed Price Contract** means a fully executed Fixed Price Contract Form, Fertiliser Supply Offer and these Terms and Conditions.

**Fixed Price Contract Form** means the form between the Customer and Summit listing the particulars of the Product to be purchased on a fixed price basis.

**Fertilizer Supply Offer** means the Offer made by Summit on or about August 2019 and open to be accepted before 31 October 2019

**Personal Property Securities Register** has the same meaning given to it under the Personal Property Securities Act 2009 (Cth) Product means fertilizer supplied or agreed to be supplied by Summit to Customer

**Purchase Price** has the same meaning given to it by clause 3. Security Interest has the same meaning given to it under the Personal Property Securities Act 2009 (Cth).

**Summit** means Summit Rural (WA) Pty Ltd ABN 49 058 794 737 trading as Summit Fertilizers

**Summit List Price** is the price for Product as published by Summit from time to time.

**Terms and Conditions** means these terms and conditions as varied by Summit from time to time and notified to you in writing. **Variable Priced Contract** means a fully executed Variable Priced Contract Form, Fertiliser Supply Offer and these Terms and Conditions. **Variable Priced Contract Form** means the form between the Customer and Summit listing the particulars of the Product to be purchased on a variable priced basis.

### 2. Formation of Contract

Summit agrees to supply, and the Customer agrees to purchase and collect, the Product in accordance with this Contract:

- a) on a fixed price basis by entering into a Fixed Price Contract; or
- b) on a variable price basis by entering into a Variable Price Contract.

### 3. Purchase Price

The Purchase Price by the Customer to Summit for Product is:

- a) in respect of Product purchased under a Fixed Price Contract, the price shown in relation to that Product on the Fixed Price Contract Form; or
- b) in respect of Product purchased under a Variable Priced Contract, the Summit List Price at the time the Customer is due to collect the Product (as adjusted in accordance with the applicable terms of the Fertilizer Supply Offer) in each case multiplied by the tonnes nominated for collection.

### 4. Payment

- a) Unless Summit has approved the Customer in writing for credit relating to this Contract:
  - i) The Customer must pay the Purchase Price on or before collection, or on the last business day of the month before the month nominated for collection for Easy Pay method.
  - ii) The Product cannot be collected until payment of the Purchase Price is made in full to Summit.
  - iii) Where payment is made by cheque, the Purchase Price is not considered paid until Summit has received cleared funds.
- b) Where the Customer has been approved for credit in accordance with the Contract Form, the Purchase Price is not considered paid until payment is received through Summit's Direct Debit function.

### 4. Payment (Cont'd)

- c) Where the Contract Form indicates payment through Easy Pay, the Customer must:
  - i) Make payment for the Product in full in the month immediately prior to the month nominated for collection, through Summit's Direct Debit function; and
  - ii) Collect the Product from Summit in the nominated month of collection.
- d) Summit's provision of credit to the Customer is subject to the Credit Trading Account Terms.

### 5. Collection and Loading

5.1 Unless otherwise specified in the Contract Form, the Customer is responsible for and must collect the nominated quantity of Product from Summit in the month nominated for collection, including making all the necessary arrangements, payments, and a loading appointment at the relevant Summit depot

5.2 The Product cannot be collected until payment of the Purchase Price is made in accordance with clause 4.

5.3 For Variable Price Contracts, if full collection of the Product is not made in the contracted month then storage charges may apply to any uncollected portion of the nominated quantity (at the sole discretion of Summit).

5.4 For Fixed Price Contracts, if full collection of the Product is not made in the contracted month then a storage charge of \$10/tonne plus GST will apply to any uncollected portion of the nominated quantity for each month the nominated quantity remains uncollected.

5.5 The Customer must inspect the Product on collection or delivery and immediately notify Summit in writing if the Product contains any defects. To the extent permitted by law, Summit shall not be responsible for any defects in the Product if not notified by the Customer on collection or delivery.

### 6. Variances in Quantity

Customer acknowledges and accepts that while all reasonable efforts will be made to load the exact quantity of Product ordered by a Customer, variances in quantity will sometimes occur. The Customer must pay for the quantity of Product actually collected, including any overloaded amount. Payment for any overloaded quantity is to be paid within seven (7) days of invoice by Summit

### 7. Customer's acknowledgements

7.1 The Customer acknowledges that Product consists of variable sized material that may segregate when unloaded into farm storage, particularly when belt conveyors and augers are used for discharge. Summit shall not be liable to the Customer in respect to Product quality changes as a result of segregation occurring during discharge or otherwise.

7.2 Summit takes no responsibility for any deterioration or alteration to the Product after loading at Summit's Depot.

7.3 The Customer acknowledges that blended Product requires particular storage conditions and application requirements, and that the Customer is solely responsible for the Product after collection from Summit, including for storage and application of such Product.

### 8. Blended Product

Summit may, at its discretion and on the written request of the Customer, blend Product supplied by it with other substances provided by the Customer or third parties at the Customer's request. The Customer agrees:

- a) that Summit does not warrant that the blended or treated product will be suitable, appropriate or effective for its intended use; and
- b) that Summit shall not be liable for, and the Customer indemnifies Summit against all loss and damage arising either directly or indirectly from the use, storage or transportation of the blended or treated products.

### **9. Taxes Ancillary Costs and GST**

Customer is responsible for and must pay all government duties, taxes and charges imposed by any relevant authority in respect of any sale, collection or delivery of Product.

In this clause:

“GST” means goods and services tax or similar value added tax levied or imposed in Australia, “GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (including any amendments and any replacement legislation) and

“GST Tax Invoice” includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Any amount referred to in this Contract is exclusive of GST unless it is expressly included. A party which makes a supply (or deemed supply) under or in connection with this Contract must provide to the recipient of that supply a GST Tax Invoice as required by the GST Act.

### **10. Title and Risk**

10.1 Title passes to the Customer at the later of:

- i) the time of collection of all the Product; and
- ii) full payment of the Purchase Price.

10.2 Risk passes to the Customer at the time of collection.

### **11. Warranty**

Except to the extent expressly required by law, Summit makes no representations or warranties other than as expressly agreed with the Customer in writing, and all terms, conditions, warranties and undertakings whether express, implied, statutory or otherwise, relating in any way to the Product or the Contract, are excluded.

### **12. Liability**

12.1 Summit shall not in any circumstances be liable to the Customer for indirect, consequential, special or penal damages or losses (including any loss of revenue, profit or other consequential loss or damage) however caused and the Customer irrevocably releases Summit and indemnifies Summit against any such claims for loss of damage.

12.2 To the maximum extent permitted by law, the liability of Summit under the Contract shall be limited to:

- a) in the case of Product supplied, to:
  - i) the replacement of the Product or the supply of a reasonably equivalent product;
  - ii) the payment of the cost of replacing the Product or of acquiring a reasonably equivalent product, in each case, at Summit's option.
- b) in the case of services supplied, to:
  - i) the resupply of the services; or
  - ii) the payment of the cost of having the services supplied, in each case, at Summit's option

### **13. Force Majeure**

Summit shall not be liable to the Customer in the event of nonfulfilment of any obligation under this Contract due to act of God, disease, strike, lock-outs, fire, unavailability, delay or restriction on supply, or any accident or incident of any nature whatever beyond the reasonable control of Summit. If the nonfulfilment continues for longer than two (2) months either party may terminate the Contract by notice in writing.

### **14. Termination**

Summit may terminate this contract by written notice to Customer if:

- a) The Customer is in default of any of its obligations in this Contract that is not capable of remedy, or if capable of remedy is not remedied within 7 days of written notice by Summit of such default;
- b) Summit believes that the Customer is ceasing to carry on business, entering into liquidation or having a controller or managing controller or liquidator or administrator appointed, or the Customer, being a natural person, is being declared bankrupt or has his or her estate assigned for the benefit of creditors.
- c) Summit provides the Customer with 21 days notice for any reason.

### **15. Security Interest**

Where Summit offers credit to the Customer, the Customer agrees to:

- a) promptly execute any documents and do any act required by Summit to register Summit's Security Interest in the Products on the Personal Property Securities Register;
- b) not register a financing change statement or change demand on the Personal Property Securities Register without Summit's prior written consent;
- c) waive its rights to receive any verification statement or financing change statement under the Personal Property Securities Act 2009 (Cth); and
- d) comply with all directions and do all acts reasonably required by Summit in order for Summit to exercise its rights as a secured party under the Personal Property Securities Act 2009 (Cth).

### **16. Commercial Purpose**

The Customer warrants that it is not a consumer as defined in the Competition and Consumer Act 2010 (Cth) and that it is acquiring the Product for commercial purposes.

### **17. Non-Performance**

Customer does not collect the nominated quantity of Product during the month nominated in the Contract Form (or otherwise agreed with Summit), the Customer remains fully liable for the Purchase Price, together with storage and other charges.

Summit reserves all rights to take such legal action to recover the Purchase Price and any other charges from the Customer.

### **18. Precedence**

In case of any inconsistency, discrepancy or ambiguity in the documents forming part of this Contract, the documents shall be read and interpreted in the following order of precedence:

- 18.1 Contract Form;
- 18.2 Fertiliser Supply Offer; and
- 18.3 These Terms and Conditions.

### **19. Entire Agreement**

This Contract is the whole agreement between the parties in relation to the supply of the Product and replaces any prior agreement, arrangement or understanding concerning the provision of the Product.

### **20. General**

- a) This contract is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.
- b) The customer must not assign its rights or obligations under this Contract without Summit's prior written consent.
- c) Waiver by Summit of any rights under this contract is effective only if in writing and executed by Summit.
- d) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it.
- e) A term or part of a term of this Contract that is illegal or unenforceable may be read down to the extent necessary or severed from this contract in order for the remaining terms of this Contract to continue in force.
- f) Clauses 12 (Liability) and 17 (Non-Performance) survive the termination of this Contract.