



TERMS AND CONDITIONS OF TRADE

BEC Feed Solutions (NZ) Limited

1. Definitions

- 1.1 **Agreement** means the agreement between the Purchaser and the Supplier for the provision of Goods by the Supplier of which these Terms and Conditions form part.
- 1.2 **Goods** means all goods and services supplied by the Supplier to the Purchaser.
- 1.3 **GST** means goods and services tax payable in accordance with the Good and Services Tax Act 1985.
- 1.4 **Guarantor(s)** means that person (or persons), or entity who has agreed to be liable for the Purchaser's debts.
- 1.5 **Payment Period** means the period for payment agreed between the Supplier and the Purchaser.
- 1.6 **PPSR** means the Personal Property Securities Register established under the PPSA.
- 1.7 **PPSA** means the Personal Property Securities Act 1999.
- 1.8 **Price** means the cost of the Goods.
- 1.9 **Purchaser** means the purchaser, or any person acting on behalf of and with the authority of the purchaser. Where more than one purchaser has entered into this agreement, the purchasers shall be jointly and severally liable for all obligations.
- 1.10 **Services** means all services supplied by the Supplier to the Purchaser and includes any advice or recommendations provided to the Purchaser.
- 1.11 **Supplier** means BEC Feed Solutions (NZ) Limited and its successors and assigns.

2. Acceptance

- 2.1 Any instructions given by the Supplier for the supply of Goods and/or the Purchasers acceptance of Goods shall constitute acceptance of these Terms and Conditions.
- 2.2 These Terms and Conditions can only be amended by the written consent of the Supplier.
- 2.3 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Supplier in writing, nor is the Supplier bound by any unauthorised statements.

3. Price and Payments

- 3.1 The Supplier may require the Purchaser to pay a deposit for Goods, the amount being stipulated at the time the Goods are ordered. The deposit shall be payable immediately.
- 3.2 Payment for Goods shall be made within the Payment Period, time being of the essence. If no time is stated, payment shall be due on delivery of the Goods.
- 3.3 Payment must be made by cash, cheque, bank cheque, or credit card (plus any charges that may be applicable), direct credit, or such other method that may be agreed.
- 3.4 Unless otherwise stated, the Price is exclusive of freight delivery charges, taxes, insurance and other charges in relation to the transfer of the Goods from the Supplier's premises to the delivery location.

- 3.5 Unless otherwise stated, GST and any other applicable taxes and duties shall be paid in addition to the Price.

4. Delivery of Goods/Services

- 4.1 The Goods shall be delivered to the address nominated by the Purchaser. The Purchaser shall take delivery of the Goods when they are tendered for delivery.
- 4.2 The Purchaser shall bear the costs of delivering the Goods from the Supplier's premises to the location specified by the Purchaser unless otherwise agreed.
- 4.3 The Purchaser shall take delivery of the Goods tendered notwithstanding that the quantity tendered is either greater or less than the quantity purchase provided that:
- 5.3.1 such discrepancy in quantity shall not exceed 5%; and
- 5.3.2 the Price shall be adjusted pro rata in respect of the amount of the discrepancy.
- 4.4 Any date or time specified by the Supplier for delivery of the Goods is an estimate. Failure by the Supplier to deliver by such date or time shall not entitle the Purchaser to treat this Agreement as repudiated.
- 4.5 The Supplier shall not be liable for any loss or damage whatsoever due to any failure to meet any estimated time for delivery or to deliver the Goods (or any of them) promptly or at all.

5. Risk

- 5.1 Notwithstanding the Supplier may retain ownership to the Goods pursuant to clause 13 of these Terms and Conditions, the risk in the Goods passes to the Purchaser on delivery.
- 5.2 If any of the Goods are damaged or destroyed prior to ownership in the Goods passing to the Purchaser, the Supplier is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions, to receive all insurance proceeds in relation to the Goods, whether or not the Price has become payable. This clause evidences if the deemed assignment by the Purchaser of their interest or entitlement to the insurance proceeds to the Supplier.

6. Defects/Returns

- 6.1 The Purchaser shall inspect the Goods on delivery and shall within three (3) business days of delivery notify the Supplier of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Purchaser shall afford the Supplier an opportunity to inspect the Goods within a reasonable time following the delivery if the Purchaser believes the Goods are defective. If the Purchaser fails to comply with these provisions the Goods shall be deemed free from any defect or damage.
- 6.2 For defective Goods which the Supplier has agreed in writing that the Purchaser is entitled to reject, the Supplier's liability is limited to either (at the Supplier's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Purchaser has complied with the provisions of clause 7.1;
- (b) the Supplier will not be liable for Goods which have been damaged or not been stored or used in a proper manner by the Purchaser.

7. Benefit of Manufacturer's Warranty

7.1 To the extent possible, the Supplier shall assign any manufacturing warranties in respect of any Goods supplied to the Purchaser. No other warranty express or implied is given by the Supplier or its agents in respect of any Goods supplied.

8 Purchaser's Disclaimer

8.1 The Purchaser acknowledges that it buys the Goods relying solely upon its own skill and judgment, and that the Supplier shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the manufacturer which shall be personal to the Purchaser and shall not be transferrable to any subsequent purchaser.

9 Consumer Guarantees Act 1993 (CGA)

9.1 Where the Supplier is supplying Goods to the Purchaser for business purposes, the provisions of the Consumer Guarantees Act 1993 shall not apply to such supply.

9.2 The parties agree that these Terms and Conditions constitute an agreement in writing, that they are both in trade, that they agree to contract out of the Consumer Guarantees Act and that this provision is fair and reasonable.

10. Intellectual Property

10.1 Where the Supplier has designed or drawn Goods for the Purchaser, the copyright and other intellectual property rights in those designs and drawings shall remain vested in the Supplier, and shall only be used by the Purchaser for the purpose agreed with the Supplier.

10.2 Where any designs or specifications have been supplied by the Purchaser for manufacture by or to the order of the Supplier, the Purchaser warrants that the use of those designs or specifications for the manufacture, proceeding, assembly or supply of the Goods shall not infringe the rights of any third party.

10.3 The Purchaser indemnifies the Supplier against any action, losses, costs or claims arising from an infringement of any third party intellectual property rights from the use of any designs or specifications provided by the Purchaser.

11. Default and Consequences of Default

11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a per month rate of 3% above the overdraft business rate offered by the Supplier's nominated financial institution on the 1st day of the month, and shall accrue at such a rate after as well as before any judgment.

11.2 The Purchaser shall indemnify the Supplier from any and against all the Supplier's costs and disbursements (on a full indemnity basis) incurred as a result of the Purchaser's default in payment.

11.3 Without prejudice to any other remedies the Supplier may have, if at any time the Purchaser is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the supply of Goods to the Purchaser and any of its other obligations under these Terms and Conditions. The Supplier will not be liable to the Purchaser for any loss or damage the Purchaser suffers because the Supplier exercises its rights under this clause.

11.4 In the event that:

- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Purchaser will be unable to meet its payments as they fall due; or
- (b) the Purchaser becomes insolvent, commits an act of bankruptcy, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or
- (c) a receiver, manager, liquidator (provisional or otherwise) or statutory manager is appointed in respect of the Purchaser or any assets of the Purchaser, then without prejudice to the Supplier's other remedies at law:

- (d) the Supplier shall be entitled to terminate this Agreement (including any part of any order of the Purchaser which remains unperformed) in addition to and without prejudice to any other remedies; and
- (e) all amounts owing to Supplier shall, whether or not due for payment, immediately become payable.

12. Title

12.1 Property in any Goods shall not pass until:

- (a) the Purchaser has paid all amounts owing for the Goods, and
- (b) the Purchaser has met all other obligations owed to the Supplier in respect of all agreements with the Supplier. The Goods, or proceeds of the sale of the Goods, shall be kept separate until the Supplier has received payment for the Goods and all other obligations of the Purchaser are met.

12.2 Until the Supplier receives payment in full the Purchaser shall hold or deal with the Goods for and on behalf of the Supplier and in every respect as a fiduciary and agent.

12.3 If the Goods and Services or any part of them are sold by the Purchaser prior to payment having been made to the Supplier, the proceeds of sale shall be held by the Purchaser on trust for and on behalf of the Supplier whether or not in a separate account:

- (a) until such time as ownership of the Goods passes from the Supplier to the Purchaser, the Supplier may give notice in writing requiring the Purchaser to return the Goods or any of them to the Supplier. Upon such notice, the right of the Purchaser to obtain ownership or any other interest in the Goods shall cease.
- (b) If the Purchaser fails to return the Goods to the Supplier, the Supplier or the Supplier's agent may enter upon and into the land and premises owned, occupied or used by the Purchaser, or any other premises as the invitee of the Purchaser, where the Goods are situated for the purposes of repossession of the Goods. The Supplier will not be liable for any costs, expenses, damage, or loss of any kind suffered by the Purchaser as a result of repossession.

13. Security and Charge

13.1 The Purchaser charges in favour of the Supplier all of its estate and interest in any real or personal property that the Purchaser owns at present and in the future with the amount of its indebtedness under this Agreement until discharged. This clause 14.1 constitutes an agreement to mortgage.

13.2 The Purchaser appoints the Supplier as its attorney to execute in the Purchaser's name all documents the Supplier may choose to lodge against any property owned by the Purchaser to give effect to this clause 14, even though the Purchaser may not have defaulted in carrying out its obligations under this Agreement.

14. PPSA

14.1 Capitalised expressions in this clause 15 have same \ meanings as in the PPSA.

14.2 The Purchaser acknowledges that these Terms and Conditions:

- (a) constitute a Security Agreement for the purposes of the PPSA; and
- (b) create a Security Interest in:
 - (i) any Goods previously supplied by the Supplier to the Purchaser;
 - (ii) all Goods that will be supplied in the future by the Supplier to the Purchaser;
 - (iii) the proceeds of sale of all Goods previously supplied or to be supplied; and
 - (iv) all present and after acquired personal property of the Purchaser, to secure payment of all monies (including but not limited to the Price and any interest) owing by the Purchaser to the Supplier from time to time under these Terms and Conditions and under any other agreement

- between the Purchaser and the Supplier.
- 14.3 The Purchaser undertakes to:
- (a) promptly sign any documents and/or provide any information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR and otherwise do all things necessary and required by the Supplier to ensure that any Security Interest registered by the Supplier is a Perfected Security Interest under the PPSA;
 - (ii) register any document on any Register reasonably necessary to secure the Supplier's interest under these Terms and Conditions;
 - (iii) register any other document required to be registered under the PPSA; or
 - (iv) correct a defect in a statement referred to in clauses 15.3(a)(i), (ii) or (iii);
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods that are the subject of a Security Interest;
 - (c) not make an amendment demand in respect of a Security Interest, apply to the Registrar to register a Financing Change Statement in respect of a Security Interest, without the prior written consent of the Supplier; and
 - (d) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
 - (e) immediately advise the Supplier of any material change in its business practices of selling the Goods which may result in a change in the use of the Goods by the Purchaser or in the nature of proceeds derived from the sale of the Goods.
- 14.4 The Supplier and the Purchaser agree that sections 114(1)(a), 133 and 134 of the PPSA do not apply to the Security Interest created by these Terms and Conditions.
- 14.5 The Purchaser hereby waives its rights under sections 121, 125, 129 and 131 and of the PPSA;
- 14.6 The Purchaser unconditionally ratifies any actions taken by the Supplier under clauses 15.3 to 15.5.
- 14.7 The Purchaser irrevocably appoints the Supplier to be its attorney to do such acts and execute such documents as the Purchaser could personally do or execute (including the appointment of a substitute attorney) which in the opinion of the Supplier (acting reasonably) are necessary or expedient to give effect to any right, power or remedy conferred on the Supplier by these Terms and Conditions or the PPSA and to give effect to the matters contemplated by these Terms and Conditions.
- 14.8 The provisions of this clause 15 will survive termination of these Terms and Conditions or any other agreement between the Supplier and the Purchaser for the sale of Goods, for whatever reason.
- 15. Cancellation**
- 15.1 The Supplier may by written notice terminate this Agreement or cancel delivery of Goods at any time before the Goods are delivered. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 16. Information and Privacy Act**
- 16.1 The Purchaser and the Guarantor each authorise the Supplier to obtain from a credit-reporting agency a credit report containing personal credit information about the Purchaser and the Guarantor in relation to credit provided by the Supplier and to collect all information the Supplier may require about the Purchaser from any third parties and authorizes those third parties to release that information to the Supplier.
- 16.2 The Purchaser and the Guarantor each authorise the Supplier to exchange information about the Purchaser and Guarantor with credit providers named in this credit application and credit providers that may be named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) to assess this credit application by the Purchaser;
 - (b) to notify other credit providers of a default by the Purchaser;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Purchaser is in default with other credit providers; and
 - (d) to assess the credit worthiness of the Purchaser and the Guarantor.
- 16.3 The Supplier may give personal or commercial information about the Purchaser to a credit reporting agency for the following purpose:
- (a) to obtain a consumer credit report about the Purchaser; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser.
- 17. General**
- 17.1 This agreement constitutes the entire agreement between the parties.
- 17.2 If any provisions of this Agreement shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.3 Failure by the Supplier to enforce any of the Terms and Conditions shall not be construed as a waiver of any of the Supplier's rights hereunder or a waiver of continuing breach.
- 17.4 The supply of all Goods and Services shall be governed by, the laws of New Zealand and the Purchaser submits to the non-exclusive jurisdiction of the Courts of New Zealand.
- 17.5 The Supplier shall be under no liability whatever to the Purchaser for any direct, consequential or indirect loss or expense (including loss of profit) suffered by the Purchaser arising out of a breach by the Supplier of these Terms and Conditions.
- 17.6 In the event of any breach of this Agreement by the Supplier, the remedies of the Purchaser shall be limited to damages. Under no circumstances shall the liability of the Supplier exceed the Price in relation to the Goods.
- 17.7 All payments required to be made by the Purchaser under this Agreement must be made in full with no set-off, deduction or counterclaim.
- 17.8 The Supplier may amend these Terms and Conditions at any time on written notice to the Purchaser.