

Fertco 2016 Ltd - Terms of Trade

These terms of trade apply between you (as the Customer) and Fertco 2016 Limited for the sale of goods and services ("**goods**") to you. Unless otherwise agreed in writing, all orders are made and accepted subject to these terms of trade.

Pricing

- Goods supplied will be invoiced at prices effective on the day of delivery. Prices are exclusive of GST. Prices are quoted on an 'ex-factory, at owners risk basis'.

Placing and Acceptance of Orders

- No order received by us may be cancelled by you where the manufacture of goods for that order has commenced unless agreed in writing by us. Where so agreed, we will attempt to resell or reuse the goods comprising the order but if unsuccessful, you shall remain liable to us for all costs and/or losses incurred.

Place and Manner of Delivery

- Delivery of the goods ordered ("**delivery**") shall be at our place of business. It is your responsibility to arrange for transportation of the goods to you. The costs of transit insurance (it is your obligation to insure), transportation and storage of the goods shall be your responsibility.
- Any transport company engaged by you must give us a minimum of 24 hours notice prior to collection of goods.
- We accept no responsibility where the delivery of goods is prevented or hindered by reason of delays in manufacture or transportation or other circumstances beyond our reasonable control.
- We reserve the right to deliver up to 5% more or less of the amount of goods ordered subject only to an appropriate adjustment to the price payable.

Return of Defective Goods

- You are deemed to have accepted any goods delivered unless you notify us in writing within 5 working days of delivery ("**rejection notice**") that the goods are defective either in quality or quantity. No goods may be returned to us without our prior written consent. We shall be entitled to take all necessary steps to remedy such defects prior to return of the goods.
- We shall only be liable for the costs of return where it is proven that the goods delivered are in fact defective. Where a rejection notice has been wrongly issued, then you shall be remain liable for the invoiced amount of such goods delivered and all costs incurred by us in relation to the return of such goods.
- Where goods delivered are stored pending return, you agree to store such goods in such a manner so as to prevent any deterioration or contamination of them.

Time and Manner of Payment

- Payment for goods delivered will be due and payable without deduction or set-off on the 20th day of the month following the month in which the date of delivery occurred.

Late Payment

- If you fail to pay any monies on the due date for payment, you are liable to pay interest on the amount due at the rate of 2% per month calculated on a daily basis from the due date until the date payment is received in full by us. You are also liable to reimburse us for any costs (including legal costs as between solicitor and client) incurred by us in recovering monies due to us or enforcing any rights available to us pursuant to these terms of trade. We reserve the right to withdraw credit from you at any time.

Passing of Risk and Title to Goods

- Risk in the goods passes to you at 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.
- Title in any goods delivered only passes to you when payment of the purchase price for such goods (including any additional interest or charges as set out in these terms of trade) is made to us in full by way of cleared funds.

Retention of Title and Security Interest in the Goods

- Until such time as title passes to you: (i) you will hold the goods delivered on trust as our bailee, (ii) you will store the goods delivered separately from other goods in your possession in a manner so as to prevent any deterioration or contamination, (iii) if you fail to return such goods to us when requested, we or our agent shall have the necessary authority to enter upon your land and/or premises and to take possession of such goods for removal and return.
- You shall have no authority to resell any goods subject to this clause to any other person whatsoever.
- Where we have not received the full amount owing in respect of goods delivered, or where payment has been dishonoured, we shall have: (i) a lien on the goods delivered; (ii) the right to retain goods ordered while we are in possession of them; (iii) a right of stopping goods in transit whether or not delivery has been made; and (iv) a right of resale of the goods.
- You acknowledge that the above clauses create "Security Interests" in the goods delivered and in all "Proceeds" of those goods as security for the repayment of all moneys owing by you to us, and for the performance of all of your obligations to us, pursuant to these terms of trade.

Limitation of Liability and Warranties

- We 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 incorrect application of the goods and whether attributable to natural causes, environmental variances or influences, contract, tort (including negligence), equity or otherwise. Your remedies under these terms of trade shall be limited to damages only but under no circumstances shall our liability exceed the purchase price of the goods delivered.
- Where goods are delivered 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.
- 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.
- These terms of trade do not and do not purport to restrict or otherwise limit the application of relevant statutes to this subject matter other than to the extent that such restriction or limitation is lawfully permissible and is contained in these terms of trade.
- We do not undertake or warrant as to the quality or fitness for any particular purpose of the goods delivered except for a warranty that the goods delivered shall within reasonable industry tolerances match the chemical composition of our product specifications for the particular order.