

## 1. Definitions

- 1.1 "Terms" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to these Terms.
- 1.2 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting FertPro to provide the Goods and Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Default" means, without limitation, any of the following:
  - (a) the Client fails to pay for any Goods and Services as and when an invoice is due;
  - (b) the Customer breaches these Terms;
- 1.4 "FertPro" means FertPro Manufacturing Pty Ltd ACN 601 926 569, its successors and assigns or any person acting on behalf of and with the authority of FertPro.
- 1.5 "Goods and Services" means all Goods and Services (including consultation, material handling & processing, manufacturing, Product Blending, Bagging & logistics) or Materials supplied by FertPro to the Client at the Client's request from time to time (where the context so permits the terms 'Goods and Services' or 'Materials' shall be interchangeable for the other).
- 1.6 "Worksite" means the address nominated by the Client to which the Materials and/or Goods and Services are to be supplied by FertPro.
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods and Services as agreed between FertPro and the Client in accordance with clause 3 below.
- 1.8 "GST" means Goods and Services Tax as defined within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Goods and Services.
- 2.2 In the event of any inconsistency between these Terms and:
  - (a) any Credit Application Terms, the Credit Application Terms prevail;
  - (b) subject to clause 2.2(a), any other prior document or schedule that the parties have entered into, these Terms shall prevail.
- 2.3 Any amendment to these Terms may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges and accepts that the supply of:
  - (a) Goods and Services on credit shall not take effect until the Client has completed a credit application with FertPro and it has been approved with a credit limit established for the account. In the event that the supply of Goods and Services requested exceeds the Client's credit limit and/or the account exceeds the payment terms, FertPro reserves the right to refuse delivery; and
  - (b) Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, FertPro reserves the right to vary the Price with alternative Materials as per clause 3.2. FertPro reserves the right to halt all Goods and Services until such time as FertPro and the Client agree to such changes. FertPro shall

- not be liable to the Client for any loss or damage the Client suffers due to FertPro exercising their rights under this clause.
- 2.5 Where FertPro gives any advice, recommendation, information, assistance or service provided by FertPro in relation to Materials or Goods and Services supplied which is given in good faith to the Client, or the Client's agent and is based on FertPro's own knowledge and experience, it shall be accepted without liability on the part of FertPro. Where such advice or recommendations are not acted upon then FertPro shall require the Client or their agent to authorise commencement of the provision of the Goods and Services in writing. FertPro shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the provision of the Goods and Services.
- 2.6 The Client shall give FertPro not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by FertPro as a result of the Client's failure to comply with this clause.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the *Electronic Transactions (Queensland) Act 2001 (Qld)* or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **3. Price and Payment**

- 3.1 At FertPro's sole discretion the Price shall be either:
- (a) As indicated on invoices provided by FertPro to the Client in respect of Goods and Services performed or Materials supplied; or
  - (b) The Price as at the date of delivery of the Goods and Services according to FertPro's current price list; or
  - (c) FertPro's quoted Price (subject to clause 3.2) which shall be binding upon FertPro provided that the Client shall accept FertPro's quotation in writing in seven (7) days.
- 3.2 FertPro reserves the right to change the Price:
- (a) If a variation to the Materials which are to be supplied is requested; or
  - (b) If a variation to the Goods and Services originally scheduled is requested; or
  - (c) Increases to Fertpro in the cost of taxes, levies, disposal costs with excess slurry (including but not limited to an environmental fee), materials and labour, any fees, fines, infringements or penalties, which is beyond FertPro's control.
- 3.3 Variations will be charged for on the basis of FertPro's quotation, and will be detailed in writing, and shown as variations on FertPro's invoice. The Client shall be required to respond to any variation submitted by FertPro within ten (10) days. Failure to do so will entitle FertPro to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 3.4 At FertPro's sole discretion a non-refundable deposit may be required.
- 3.5 Time for payment for the Goods and Services being of the essence, the Price will be payable by the Client on the date/s determined by FertPro, which may be:
- (a) on completion of the Goods and Services; or
  - (b) by way of progress payments in accordance with FertPro's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials and/or Goods and Services delivered to the Worksite but not yet installed; or
  - (c) three (3) days following the date of any invoice given to the Client by FertPro; or
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by FertPro.

- 3.6 Payment may be made by cash, electronic/on-line banking, or by any other method as agreed to between the Client and FertPro.
- 3.7 FertPro may in its discretion allocate any payment received from the Client towards any invoice that FertPro determines and may do so at the time of receipt or at any time afterwards. On any default by the Client FertPro may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FertPro, payment will be deemed to be allocated in such manner as preserves the maximum value of FertPro's Purchase Money Security Interest (as defined in the PPSA) in the Materials and/or Goods and Services.
- 3.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by FertPro nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to FertPro an amount equal to any GST FertPro must pay for any supply by FertPro under this or any other contract for the sale of the Materials and/or Goods and Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

#### **4. Delivery of the Materials and/or Goods and Services**

- 4.1 It is the intention of FertPro, and agreed by the Client, that it is the responsibility of the Client to:
  - (a) ensure that FertPro has clear and free access to the Worksite at all times to deliver the Materials and/or the Goods and Services. FertPro shall not be liable for any loss or damage to the Worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of FertPro; and
  - (b) ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by FertPro.
- 4.2 The Client agrees to indemnify FertPro against all costs incurred by FertPro in recovering any of FertPro's vehicles and/or equipment in the event they become bogged or otherwise immovable.
- 4.3 At FertPro's sole discretion, the cost of the delivery is either included in the Price or is in addition to the Price.
- 4.4 It is the intention of FertPro and agreed by the Client that:
  - (a) FertPro will deliver the Materials and/or Goods and Services at the kerb alignment;
  - (b) If the discharge of the Materials and/or Goods and Services is not completed within forty-five (45) minutes after arrival on the Worksite, stand down time in excess thereof shall be charged at FertPro's normal hourly rate; and
  - (c) The Client shall be responsible for:
    - (i) Maintenance, cleaning and the repair of entry and exit points from the Worksite, over any third-party property or public roadway. FertPro will accept no liability for any maintenance, cleaning or repair of entry and exit point from the Worksite, including any local or state/government charges or fines relating to mud or debris on the roadway; and
    - (ii) Any parking fees, penalties, fines or infringements (whether imposed by Police, Council Traffic Officers or any Court) incurred by FertPro as a result of the Client's failure to receive delivery of the Materials and/or Goods and Services at the kerb alignment.
- 4.5 The Client shall take delivery of the Materials and/or Goods and Services tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed five percent (5%); and

(b) the Price shall be adjusted pro rata to the discrepancy or to the value that has been delivered.

## **5. Provision of the Goods and Services**

- 5.1 Subject to clause 5.2 it is FertPro's responsibility to ensure that the Goods and Services are provided as soon as it is reasonably possible.
- 5.2 FertPro may deliver the Goods and Services by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms.
- 5.3 Any time specified by FertPro for delivery of the Goods and Services is an estimate only and FertPro will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods and Services to be supplied at the time and place as was arranged between both parties. In the event that FertPro is unable to supply the Goods and Services as agreed solely due to any action or inaction of the Client, then FertPro shall be entitled to charge a reasonable fee for re-supplying the Goods and Services at a later time and date, and/or for storage of the Materials.

## **6. Risk**

- 6.1 If FertPro retains ownership of the Materials and/or Goods and Services under clause 8 then:
- (a) where FertPro is supplying Materials and/or Goods and Services only, all risk for the Materials and/or Goods and Services shall immediately pass to the Client on delivery and the Client must insure the Materials and/or Goods and Services on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
- (i) the Client or the Client's nominated carrier takes possession of the Material and/or Goods and Services at FertPro's address; or
  - (ii) the Materials and/or Goods and Services are delivered by FertPro or FertPro's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where FertPro is to both supply and install Materials then FertPro shall maintain a contract works insurance policy until the Goods and Services are completed. Upon completion of the Goods and Services all risk for the Goods and Services shall immediately pass to the Client.
- 6.2 Notwithstanding the provisions of clause 6.1 if the Client specifically requests FertPro to leave Materials or Goods and Services outside FertPro's premises for collection or to deliver the Materials or Goods and Services to an unattended location then such items shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure they are insured adequately or at all. In the event that such Materials or Goods and Services are lost, damaged or destroyed then replacement of the Materials or Goods and Services shall be at the Client's expense.
- 6.3 FertPro shall be entitled to rely on the accuracy of any information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, FertPro accepts no responsibility for any loss, damages, or costs however resulting from the inaccurate information.
- 6.4 Where FertPro gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the Worksite for the Goods and Services and such advice or recommendations are not acted upon then FertPro shall require the Client or their agent to authorise provision of the Goods and Service in writing. FertPro shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent application of the Goods and Services.

- 6.5 Whilst all due care will be taken no liability will be accepted by FertPro for damage to the Goods.
- 6.6 FertPro shall not be liable for any defect in the Goods and Services if the Client does not follow FertPro's recommendations.
- 6.7 The Client acknowledges and accepts that:
- (a) FertPro shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product;
  - (b) FertPro can only visually check the Goods and Services and cannot guarantee the mix is free of foreign objects. If the Goods are divided into more than one truck FertPro cannot guarantee the texture is consistent between trucks; and
  - (c) Goods supplied may:
    - (i) expand, contract or distort as a result of exposure to moisture, heat, cold, weather;
    - (ii) mark or stain if exposed to certain substances; and
    - (iii) be damaged or disfigured by impact.

## **7. Compliance with Laws**

- 7.1 The Client and FertPro shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and Services, and any other relevant safety standards or legislation.
- 7.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Goods and Services.
- 7.3 Both parties acknowledge and agree:
- (a) to comply with the National Standard for Organic and Bio-dynamic Produce, in respect of the Goods and Services; and
  - (b) that Goods and Services will be provided in accordance with any current relevant Australian/New Zealand Standards, such as the Australian Certified Organic Standard, including national and international organic production standards, as applicable.
- 7.4 Where the Client has supplied materials for FertPro to complete the Goods and Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and is for their intended use, quality and any faults inherent in those materials.

## **8. Title**

- 8.1 FertPro and the Client agree that ownership of the Materials and Goods shall not pass until:
- (a) the Client has paid FertPro all amounts owing to FertPro; and
  - (b) the Client has met all of its other obligations to FertPro.
- 8.2 Receipt by FertPro of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that until ownership of the Materials and Goods passes to the Client in accordance with clause 8.1:
- (a) the Client is only a bailee of the Materials and Goods and must return the Materials to FertPro on request;
  - (b) the Client holds the benefit of the Client's insurance of the Materials and Goods on trust for FertPro and must pay to FertPro the proceeds of any insurance in the event of the Materials and Goods being lost, damaged or destroyed;
  - (c) the production of these Terms by FertPro shall be sufficient evidence of FertPro's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with FertPro to make further enquiries;
  - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials and Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials and Goods then the Client must

- hold the proceeds of any such act on trust for FertPro and must pay or deliver the proceeds to FertPro on demand;
- (e) the Client should not convert or process the Materials and Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of FertPro and must sell, dispose of or return the resulting product to FertPro as it so directs;
  - (f) the Client irrevocably authorises FertPro to enter any premises where FertPro believes the Materials and Goods are kept and recover possession of the Materials and Goods;
  - (g) FertPro may recover possession of any Materials and Goods in transit whether or not delivery has occurred;
  - (h) the Client shall not charge or grant an encumbrance over the Materials and Goods nor grant nor otherwise give away any interest in the Materials and Goods while they remain the property of FertPro;
  - (i) FertPro may commence proceedings to recover the Price of the Materials and Goods sold notwithstanding that ownership of the Materials and Goods has not passed to the Client.

## **9. Personal Property Securities Act 2009 (“PPSA”)**

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these Terms in writing the Client acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or Goods and Services and/or collateral (account) – being a monetary obligation of the Client to FertPro for Goods and Services – that have previously been supplied and that will be supplied in the future by FertPro to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FertPro may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, FertPro for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials and/or Goods and Services charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of FertPro;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or Goods and Services and/or collateral (account) in favour of a third party without the prior written consent of FertPro;
  - (e) immediately advise FertPro of any material change in its business practices of selling the Materials and/or Goods and Services which would result in a change in the nature of proceeds derived from such sales.
- 9.4 FertPro and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 9.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

- 9.7 Unless otherwise agreed to in writing by FertPro, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client shall unconditionally ratify any actions taken by FertPro under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary (including those contained in this clause 9), nothing in these Terms is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **10. Security and Charge**

- 10.1 In consideration of FertPro agreeing to supply the Materials and/or Goods and Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these Terms (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies FertPro from and against all FertPro's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FertPro's rights under this clause.
- 10.3 The Client irrevocably appoints FertPro and each director of FertPro as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

## **11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 11.1 The Client must inspect all Material, in addition to the Goods and Services, on delivery and must within seven (7) days of delivery notify FertPro in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Goods and Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow FertPro to inspect the Materials or to review the Goods and Services provided.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms (Non-Excluded Guarantees).
- 11.3 FertPro acknowledges that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, FertPro makes no warranties or other representations under these Terms including but not limited to the quality or suitability of the Materials/Goods and Services. FertPro's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, FertPro's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If FertPro is required to replace any Materials and/or Goods and Services under this clause or the CCA, but is unable to do so, FertPro may refund any money the Client has paid for the Materials and/or Goods and Services.
- 11.7 If FertPro is required to rectify, re-supply, or pay the cost of re-supplying the Goods and Services under this clause or the CCA, but is unable to do so, then FertPro may refund any money the Client has paid for the Goods and Services but only to the extent that such refund shall take into account the value of Goods and Services and Materials which have been provided to the Client which were not defective.
- 11.8 If the Client is not a consumer within the meaning of the CCA, FertPro's liability for any defect or damage in the Materials and/or Goods and Services is, to the extent permitted by law:

- (a) limited to the value of any express warranty or warranty card provided to the Client by FertPro at FertPro's sole discretion;
  - (b) limited to any warranty to which FertPro is entitled, if FertPro did not manufacture the Materials and/or Goods and Services;
  - (c) otherwise negated absolutely.
- 11.9 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
  - (b) FertPro has agreed that the Materials and/or Goods and Services are defective; and
  - (c) the Materials and/or Goods and Services are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Materials and/or Goods and Services are returned in as close a condition to that in which they were delivered as is possible.
- 11.10 Notwithstanding clauses 11.1 to 11.9 but subject to the CCA, FertPro shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Materials and/or Goods and Services;
  - (b) the Client using the Materials and/or Goods and Services for any purpose other than that for which they were designed;
  - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) interference with the Materials and/or Goods and Services by the Client or any third party without FertPro's prior approval;
  - (e) the Client failing to follow any instructions or guidelines provided by FertPro;
  - (f) fair wear and tear, any accident, or act of God.
- 11.11 In the case of second hand Material and/or Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials and/or Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by FertPro as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that FertPro has agreed to provide the Client with the second-hand Materials and calculated the Price of the second-hand Materials in reliance of this clause 11.11.
- 11.12 FertPro may in its absolute discretion accept non-defective Materials and/or Goods and Services for return in which case FertPro may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Materials and/or Goods and Services plus any freight costs.
- 11.13 Notwithstanding anything contained in this clause if FertPro is required by a law to accept a return then FertPro will only accept a return on the conditions imposed by that law.
- 11.14 Subject to clause 11.1, customised, or non-stocklist items or Materials and/or Goods and Services made or ordered to the Client's specifications are not acceptable for credit or return.

## **12. Intellectual Property**

- 12.1 Where FertPro has designed, drawn, or created any Goods for the Client, then the copyright in all such designs, drawings, documents, and products shall remain vested in FertPro, and shall only be used by the Client at FertPro's discretion. Under no circumstances may such designs and documents be used without the express written approval of FertPro.
- 12.2 The Client warrants that all designs, specifications or instructions given to FertPro will not cause FertPro to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify FertPro against any action taken by a third party against FertPro in respect of any such infringement.

- 12.3 The Client agrees that FertPro may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, or products which FertPro has created for the Client.
- 12.4 For the removal of doubt, these Terms supplement any Product Use Agreement signed by the Client, whereby the Product Use Agreement takes precedence in the event of any ambiguity or inconsistency.

### **13. Default and Consequences of Default**

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FertPro's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes FertPro any money the Client shall indemnify FertPro from and against all costs and disbursements incurred by FertPro in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, FertPro's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies FertPro may have under these Terms, if a Client has made payment to FertPro, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by FertPro under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under these Terms.
- 13.4 Without prejudice to FertPro's other remedies at law FertPro shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to FertPro shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to FertPro becomes overdue, or in FertPro's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by FertPro;
  - (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### **14. Cancellation**

- 14.1 Without prejudice to any other remedies FertPro may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these Terms FertPro may suspend or terminate the supply of Goods and Services to the Client. FertPro will not be liable to the Client for any loss or damage the Client suffers because FertPro has exercised its rights under this clause.
- 14.2 FertPro may cancel any contract to which these Terms apply or cancel delivery of Goods and Services at any time before the Goods and Services are commenced, or provided, as the case may be, by giving written notice to the Client. On giving such notice FertPro shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to FertPro for Goods and Services already performed. FertPro shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Client cancels the delivery of Goods and Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by FertPro as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## 15. Privacy Policy

- 15.1 All emails, documents, images or other recorded information held or used by FertPro is personal information, as defined and referred to in clause 15.3, and therefore considered confidential information. FertPro acknowledges its obligation in relation to the handling, use, disclosure and processing of personal information pursuant to the *Privacy Act 1988* (“the Act”) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). FertPro acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s personal information, held by FertPro that may result in serious harm to the Client, FertPro will notify the Client in accordance with the Act and/or the GDPR. Any release of such personal information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 15.2 Notwithstanding clause 15.1, privacy limitations will extend to FertPro in respect of cookies where the Client utilises FertPro’s website to make enquiries. FertPro agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of personal information such as the Client’s:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to FertPro when FertPro sends an email to the Client, so FertPro may collect and review that information (“collectively personal information”).
- If the Client consents to FertPro’s use of cookies on FertPro’s website and later wish to withdraw that consent, the Client may manage and control FertPro’s privacy controls via the Client’s web browser, including removing cookies by deleting them from the browser history when exiting the site.
- 15.3 The Client agrees for FertPro to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by FertPro.
- 15.4 The Client agrees that FertPro may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client’s repayment history in the preceding two (2) years.
- 15.5 The Client consents to FertPro being given a consumer credit report to collect overdue payment on commercial credit.
- 15.6 The Client agrees that personal credit information provided may be used and retained by FertPro for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods and Services; and/or
  - (b) analysing, verifying and/or checking the Client’s credit, payment and/or status in relation to the provision of Goods and Services; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods and Services.

- 15.7 FertPro may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.8 The information given to the CRB may include:
- (a) personal information as outlined in 15.3 above;
  - (b) name of the credit provider and that FertPro is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and FertPro has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
  - (g) information that, in the opinion of FertPro, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.9 The Client shall have the right to request (by e-mail) from FertPro:
- (a) a copy of the personal information about the Client retained by FertPro and the right to request that FertPro correct any incorrect personal information; and
  - (b) that FertPro does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.10 FertPro will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of these Terms or is required to be maintained and/or stored in accordance with the law.
- 15.11 The Client can make a privacy complaint by contacting FertPro via e-mail. FertPro will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## **16. General**

- 16.1 Any dispute or difference arising as to the interpretation of these Terms or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 16.2 Any written notice given under these Terms shall be delivered by handing the notice to the other party, in person, leaving it at the address of the other party as stated in these Terms, or by sending it by registered post to the address of the other party as stated in these Terms.
- 16.3 The failure by either party to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these Terms shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.4 These Terms and any contract to which they apply shall be governed by the laws of Queensland, the state in which FertPro has its principal place of business and are subject to the jurisdiction of the courts in Queensland.

- 16.5 Subject to clause 11, FertPro shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by FertPro of these Terms (alternatively FertPro's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and Services).
- 16.6 FertPro may licence and/or assign all or any part of its rights and/or obligations under these Terms without the Client's consent.
- 16.7 The Client cannot licence or assign without the written approval of FertPro.
- 16.8 FertPro may elect to subcontract out any part of the Goods and Services but shall not be relieved from any liability or obligation under these Terms by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of FertPro's sub-contractors without the authority of FertPro.
- 16.9 The Client agrees that FertPro may amend these Terms for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for FertPro to provide Goods and Services to the Client.
- 16.10 No provision of these Terms will be construed adversely against a party solely because the party was responsible for drafting the provision.
- 16.11 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 16.12 Both parties warrant that they have the power to enter into these Terms and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that these Terms creates binding and valid legal obligations on them.



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