

CONDITIONS OF CREDIT & TRADE

These terms and conditions of credit and trade (**Conditions**) as varied or amended from time to time by Wengfu Australia apply to the sale and/or supply by Wengfu Australia of all Products to the Customer and apply to each Contract. The Conditions apply to the exclusion of all other terms and conditions adopted or used by the Customer from time to time unless Wengfu Australia otherwise agrees in writing.

1. Definitions

1.1 In the Conditions, unless the context requires otherwise:

- (a) **Application** means a completed credit account application as annexed to this document or provided separately;
- (b) **Contract** means a written agreement between Wengfu Australia and the Customer for the sale and purchase of Products and includes but is not limited to a Sales Contract;
- (c) **Customer** means the person(s) or entity specified in item 1 of the Application or any other person or entity specified as the "customer" in a Contract;
- (d) **Delivery** and **Delivered** have the meaning prescribed in clause 6.1 of the Conditions;
- (e) **Delivery Due Date** means the date specified under the heading 'Last Collection' in a Contract or such other date Wengfu Australia agrees in writing;
- (f) **Force Majeure** means an act of God (including lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide, or adverse weather conditions), an act of public enemy, war, sabotage, blockage, revolution, riot, insurrection or civil commotion, or disruption to the supply of power, gas or water, and in each case the event must not be caused by and must be beyond the control of the party affected by the act;
- (g) **Guarantor** means each guarantor specified in item 5 of the Application;
- (h) **Guarantee and Indemnity** means the guarantee and indemnity given to Wengfu Australia by each Guarantor;
- (i) **GST** has the meaning it does in *A New Tax System (Goods and Services Tax) Act 1999*;
- (j) **Offer** means an offer from Wengfu Australia to a Customer to enter into a Contract;
- (k) **PPSA** means the *Personal Property Securities Act 2009 (Cth)*;
- (l) **Products** mean the goods and/or services supplied or to be supplied by Wengfu Australia to the Customer including as specified in a Contract;
- (m) **Price** means the price payable for the Products in accordance with clause 4 of the Conditions;
- (n) **Sales Contract** means the document headed "Sales Contract" (or any substantially similar or ancillary document) duly completed by an authorised person on behalf of Wengfu Australia and accepted by the Customer;
- (o) **Security Interest** means any:
 - (i) security interest under the PPSA or security for payment of money, performance of obligations or protection against default (including retention of title arrangement, charge, lien, right of set-off); and
 - (ii) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset, and includes any agreement to create any of them or allow them to exist; and
- (p) **Wengfu Australia** means Wengfu Australia Pty Ltd ABN 31 141 160 581.

2. Contract

- 2.1 A Customer may accept an Offer by sending and Wengfu Australia receiving electronic communication of acceptance (including by email or facsimile).
- 2.2 A Contract shall (as applicable) specify:

- (a) the quantity and, if applicable, quality or grade of Products;
- (b) the price of the Products; and
- (c) all necessary Delivery details.

2.3 An offer to sell Products will be open for acceptance in writing by the Customer until the end of the offer expiry date specified in the Contract. Wengfu Australia reserves the right to withdraw any Offer before acceptance.

3. Contract Cancellation

- 3.1 Subject to clause 14.1, a Contract may be cancelled only if Wengfu Australia consents in writing (which consent may be given or withheld in Wengfu Australia's absolute discretion).
- 3.2 If a Contract is cancelled, then unless otherwise agreed in writing the Customer indemnifies Wengfu Australia against all loss, damage and costs or expenses of any kind suffered or that may be suffered by Wengfu Australia arising directly or indirectly from the cancellation of a Contract.

4. Price of Products

- 4.1 The Price is as specified on the applicable Wengfu Australia invoice and shall be calculated by reference to the:
 - (a) price specified in the Contract; and
 - (b) quantity of Products Delivered (pursuant to a weighbridge weight record or receipt issued at or about the time of Delivery) or to be Delivered.
- 4.2 Wengfu Australia reserves the right, by notice to the Customer at any time before Delivery, to increase the Price on account of any costs or expenses incurred or to be incurred by Wengfu Australia relating to circumstances within the Customer's control including failing to take Delivery by the Delivery Due Date.
- 4.3 All prices quoted by Wengfu Australia are GST exclusive and ex warehouse unless otherwise specified by Wengfu Australia in writing.
- 4.4 At Wengfu Australia's sole discretion, Delivery shall be included in the Price, or in addition to the Price.

5. Terms of Payment

- 5.1 Payment terms are 30 days from the last day of the month the Products are Delivered unless otherwise agreed by Wengfu Australia in writing. The Customer agrees to pay Wengfu Australia:
 - (a) interest on all overdue amounts at a rate of 15% per annum (calculated daily) from the date payment is due to the date payment is made in full;
 - (b) all collection and legal costs (on an indemnity basis) incurred by Wengfu Australia on account of any unpaid and overdue debt owed by the Customer to Wengfu Australia;
 - (c) all amounts owed to Wengfu Australia as a liquidated debt irrespective of any claim or set-off the Customer has or may have against Wengfu Australia.
- 5.2 Wengfu Australia may set-off any amount owed by Wengfu Australia to the Customer against any liability the Customer has to Wengfu Australia.

6. Delivery

- 6.1 Delivery of the Products to the Customer occurs:
 - (a) when the Products are loaded at the place specified for delivery (being the place specified under the heading 'Location' or otherwise in the Contract or such other place specified by Wengfu Australia in writing); or
 - (b) when the Products are loaded onto the Customer's vehicle, or its agent or contractor's vehicle at the place specified for delivery (being the place specified under the heading 'Location' or otherwise in the Contract or such other place specified by Wengfu Australia in writing); or
 - (c) on the Delivery Due Date in situ if delivery did not occur under subparagraphs (a) or (b) before the Delivery Due Date.

- 6.2 The Customer must do everything necessary to take Delivery of the Products no later than the Delivery Due Date.
- 6.3 If the Customer does not take Delivery of the Products on or before the Delivery Due Date (Delivery Breach), then the Customer indemnifies Wengfu Australia against all loss, damage and costs or expenses of any kind suffered or that may be suffered by Wengfu Australia caused directly or indirectly by a Delivery Breach.
- 6.4 The Products may be delivered in one or more batch. The Customer agrees that each batch Delivered:
- (a) subject to clause 6.5, has a load tolerance of not more than 0.3 metric tonne (for example, if the Customer has arranged to collect 20 metric tonnes and not less than 19.7 or more than 20.3 metric tonnes are delivered, the Customer cannot object or reject the delivery of the batch in full or in part);
- (b) shall be invoiced and paid for in accordance with the Conditions.
- 6.5 Wengfu Australia has the option of delivering up to five percent (5%) or five (5) tonnes of Product, whichever is the lesser quantity, more or less than the quantity specified in the Contract, at the Price.
- 6.6 The Customer, its agent or contractor is liable for any Product spillage or contamination after Delivery.
- 6.7 Wengfu Australia will use its reasonable endeavours to make Product available for Delivery by the Delivery Due Date.
- 6.8 If Wengfu Australia used reasonable endeavours to make Product available for Delivery by the Delivery Due Date:
- (a) Wengfu Australia disclaims all liability arising directly or indirectly from any delay or failure to deliver Products at all or at the time and place agreed;
- (b) the Customer releases Wengfu Australia from any claim, loss or damage it suffers or may suffer arising directly or indirectly out of or relating to any delay or failure to deliver the Products at all or at the time and place agreed.
- 7. Title**
- 7.1 Title to the Products shall pass to the Customer when the Customer has paid Wengfu Australia the Price in full (in cleared funds) and the Customer is not otherwise indebted to Wengfu Australia.
- 7.2 Until title in the Products passes to the Customer, the Customer agrees to:
- (a) hold the Products as Wengfu Australia's fiduciary agent and bailee;
- (b) not commingle the Products with other goods;
- (c) keep the Products separate from all other goods;
- (d) insure with a reputable insurer the Products for the full replacement value of the Products; and
- (e) ensure the Products are properly stored, and identified as Wengfu Australia's property.
- 7.3 The Customer's right to possession of the Products where title has not passed to the Customer will end, at Wengfu Australia's election, if the Customer:
- (a) breaches the Conditions;
- (b) commits an act of bankruptcy; or
- (c) is insolvent or enters into any form of external administration pursuant to applicable law,

and the Customer agrees that Wengfu Australia is entitled to take such steps as may be required (including entering upon premises where the Products may be or are stored) to retake possession, remove and re-sell the Products. The Customer indemnifies Wengfu Australia against any claim, loss or damage Wengfu Australia suffers or may suffer arising directly or indirectly from the Customer's breach of its obligations under clause 7.2 and/or the exercise or attempted exercise of Wengfu Australia's rights under clause 7.3.

8. Risk

- 8.1 Risk in and to the Products passes to the Customer when the Products are Delivered.
- 8.2 The Customer agrees that:

- (a) Wengfu Australia is entitled to receive the full benefit of any applicable insurance policy where Products are damaged or destroyed after Delivery but before title passes to the Customer; and
- (b) the production of the Conditions shall be conclusive evidence of Wengfu Australia's right to receive the full benefit of any applicable insurance policy.

9. Personal Property Securities Act 2009 (Cth)

- 9.1 If Wengfu Australia determines that this document, a Sales Contract or a Contract (or any other transaction connected with any of them) is or contains a Security Interest for the purposes of the PPSA, the Customer agrees to do anything (including but not limited to obtaining consents, signing and producing documents, completing and signing documents and supplying information) which Wengfu Australia asks and considers necessary for the purposes of:
- (a) ensuring a Security Interest is enforceable, perfected and otherwise effective; or
- (b) enabling Wengfu Australia to apply for registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by Wengfu Australia; or
- (c) enabling Wengfu Australia to exercise rights in connection with the Security Interest.
- 9.2 The Customer and Wengfu Australia acknowledge and agree that neither Wengfu Australia nor the Customer is required to disclose information of the kind mentioned in section 275(1) of the PPSA.
- 9.3 The Customer acknowledges, agrees and authorises Wengfu Australia to commence and prosecute legal proceedings in the name of the Customer if required for the purpose of Wengfu Australia enforcing a Security Interest under Chapter 4 of the PPSA or otherwise.

10. Cleanliness and Storage

- 10.1 When the Customer, its agent or contractor takes Delivery of Products, the Customer must ensure that any vehicle used to transport Products is roadworthy, fit for purpose and complies with all applicable law. No vehicle may be cleaned on Wengfu Australia's premises.
- 10.2 The Customer must at all times store Products in accordance with the manufacturer's or Wengfu Australia's guidelines or instructions. Wengfu Australia disclaims any liability for any loss, damage, injury or death arising directly or indirectly out of or relating to the failure of any person to properly and safely store Products. Wengfu Australia recommends that fertiliser is not stored in a silo or similar storage container.

11. Defects

- 11.1 The Customer must:
- (a) inspect the Products immediately on Delivery;
- (b) notify Wengfu Australia in writing within twenty four (24) hours of Delivery (time being of the essence) of any alleged defect, shortage in quantity, damage or misdescription relating to the Products;
- (c) allow Wengfu Australia to inspect the Products within a reasonable time after Delivery if the Customer asserts the Products are defective or damaged in any way.
- 11.2 If the Customer fails to comply with clause 11.1, then the Products are deemed to be free from any defect or damage.
- 11.3 The Customer agrees that Wengfu Australia's liability for any damaged or defective Products is limited to (at Wengfu Australia's discretion) either:
- (a) replacing the damaged or defective Products; or
- (b) refunding or crediting the Price (in whole or in part) relating to the damaged or defective Products.

12. Returns

The Customer may not return any Products to Wengfu Australia without first obtaining Wengfu Australia's written consent.

13. Warranty

- 13.1 The Customer hereby warrants that it has relied solely on its own skill and judgment in selecting and purchasing Products and has not relied on any representation or warranty made by or on behalf of Wengfu Australia.

13.2 To the maximum extent permissible at law Wengfu Australia hereby disclaims all express and/or implied representations or warranties as to the quality, merchantability or fitness for purpose of the Products.

13.3 Nothing in the Conditions is intended to have the effect of contracting out of or excluding anything that cannot be lawfully contracted out of or excluded.

14. Default

14.1 Without prejudice to any of Wengfu Australia's rights, if at any time the Customer is in breach of the Conditions, Wengfu Australia may:

- (a) suspend or terminate the supply of Products to the Customer;
- (b) suspend or terminate the Customer's credit account;
- (c) cancel any Contract which remains unfulfilled,

in which case all amounts owing by the Customer to Wengfu Australia shall, whether or not due for payment, become immediately due and payable.

14.2 Termination or suspension of the Customer's credit account does not affect any of the Customer's obligations under these Conditions. Wengfu Australia disclaims any liability for any loss or damage the Customer suffers or may suffer arising directly or indirectly out of Wengfu Australia exercising or attempting to exercise any power, right or remedy under this document or otherwise.

15. Information and Reporting

If there is an unremedied breach of any of the Customer's obligations under a Contract or relating to a Contract, then the Customer agrees to:

15.1 deliver to Wengfu Australia within 14 days or such shorter period as Wengfu Australia reasonably requires, any information reasonably requested by Wengfu Australia, including information relating to:

- (a) the Customer's historical, current and projected/forecasted financial performance or state of affairs;
- (b) the Customer's compliance with its obligations under this Agreement;

15.2 permit Wengfu Australia, its agents or consultants, or both, to inspect and examine at reasonable times the Customer's books and financial records and to take copies of those books and financial records, and to co-operate fully with Wengfu Australia, or its agents or consultants, or both, in the conduct of such inspection and examination including giving full access to all its premises and employees.

16. Change of Ownership

The Customer undertakes to notify Wengfu Australia in writing within 7 days of the date of a change of ownership or control in the Customer.

17. Force Majeure

Neither party is liable for the failure to perform their obligations under the Contract to the extent and for so long as their performance is prevented or delayed because of an event of Force Majeure. However, a party claiming Force Majeure must give notice of Force Majeure as soon as practicable in the circumstances, and must do everything reasonable and commercial to remedy the Force Majeure promptly.

18. General

18.1 If any provision of the Conditions is illegal or unenforceable this does not affect the remaining provisions.

18.2 The Conditions and any Contract shall be construed and applied in accordance with the laws of Victoria and is subject to the exclusive jurisdiction of the courts of Victoria.

18.3 Wengfu Australia disclaims all liability whatsoever for:

- (a) any consequential or indirect loss and/or expense (including loss of profit) the Customer suffers or may suffer;
- (b) any unlawful conduct of Wengfu Australia's agents or contractors.

18.4 The Customer acknowledges and agrees:

- (a) that this document and its contents contain or may contain confidential and/or commercially sensitive information;
- (b) to not disclose this document or its contents to any person unless required by law or for the purpose of obtaining legal or

accounting advice without first obtaining Wengfu Australia's written consent (which consent may be given or withheld at Wengfu Australia's discretion).

18.5 The Customer agrees to the maximum extent lawfully permissible that if Wengfu Australia breaches the Conditions or any applicable law, then the Customer's remedy is limited to damages which shall be capped to the Price under the applicable Contract.

18.6 The Customer must not exceed the credit limit approved in writing by Wengfu Australia from time to time. Wengfu Australia in its absolute discretion may increase or reduce the credit limit at any time. Any variation of the credit limit has no effect on the Customer's obligations under the Conditions.

18.7 The Customer must not set off against or deduct from the Price any amount owed or claimed to be owed by Wengfu Australia to the Customer.

18.8 Wengfu Australia reserves the right to vary or amend the Conditions at any time, and the Customer agrees that any variation or amendment made by Wengfu Australia will take effect on the date the Customer is notified.

18.9 Notices

(a) Any communication to be made under or in connection with the Conditions shall be made in writing in English and, unless otherwise stated, may be made by fax or letter or by electronic transmission.

(b) The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with the Conditions is that notified in writing to Wengfu Australia or any substitute address, fax number, email address or department or officer as the party may notify to Wengfu Australia by not fewer than five business days' notice.

(c) Any communication or document made or delivered by one person to another under or in connection with the Conditions will only be effective:

- (i) if by way of fax, when received in legible form;
- (ii) if by way of letter, when it has been left at the relevant address or five business days after being deposited in the post postage prepaid in an envelope addressed to it at that address; or
- (iii) if by way of electronic transmission when received in legible form by the recipient, and, if a particular department or officer is specified as part of its address details, if addressed to that department or officer.

(d) Subject to clauses 18.9(c) and (e), all notices must be signed by an authorised representative of the sender.

(e) Any notice sent under this clause 18.9 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an authorised representative of the sender (without the need for further enquiry or confirmation). Each party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to another party.