

GENERAL TERMS AND CONDITIONS – ADVANCE AGRICULTURE LIMITED

1. CLIENT'S ACKNOWLEDGEMENTS

- 1.1. The Seller transacts business solely in accordance with these terms and conditions. All Goods and Services are provided in accordance with the same.
- 1.2. No amendment of these terms and conditions will be of any force or effect, unless in writing signed by an authorised representative of the Seller.
- 1.3. Unless any representation, statement, condition, or agreement is **expressed** in writing, by the Seller, or its authorised representative, the Seller **shall not be bound** by the same.

2. ERROR AND OMISSIONS

- 2.1. The Seller shall be entitled to rectify any typographical, clerical, or other error, mistake or omission in any information, communication or other document or information issued by it.

3. PAYMENT TERMS

- 3.1. At the Seller's sole discretion, the Price shall be
 - (a) As indicated on any invoice/s furnished by the Seller to the Client; or
 - (b) As quoted. The Seller's quoted Price (subject to clause 4) will **only be valid for the period stated in the quotation**, if no date is stated, the period shall be **30 Days**.
- 3.2. Deposits may be required by the Seller, at its discretion. Any deposit required will be stated at the time of quoting and shall become immediately due and payable upon the Client's acceptance.
- 3.3. The purchase price or the balance of the purchase price (where a deposit has been paid) will be payable by the Client on the date determined by the Seller and advised to the Client at the time of the quotation or acceptance of the order, as the case may be.:
- 3.4. The Client shall not set off against, or deduct from the purchase price, any sums owed or claimed to be owed to the Client by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Where the Client believes that a mistake has been made, the Client must contact the Seller within 7 days of receipt of the invoice/statement, so that the Seller may investigate any alleged error. If a mistake has occurred, the Client's subsequent invoice/statement will be adjusted.
- 3.5. Unless otherwise stated, the Price will always be **plus** GST. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the price, except when expressly included in the price.

4. VARIATIONS

- 4.1. The Seller reserves the right to amend any quoted price (upon written notice to the Client):
 - (a) If a variation is requested by the Client after an order has been placed; or
 - (b) As a result of cost increases which are beyond the Seller's reasonable control, including but not limited to the cost prices of the Goods, labour costs and fluctuations with the currency exchange rate.
- 4.2. The Client may cancel any order upon being notified of a change to a quoted price, provided it does so within 48 hours of such notification.

5. DELIVERY

- 5.1. If the Seller is **only to supply Goods** (no installation) then delivery and/or return of any Goods occurs when:
 - (a) The Goods are picked-up at the Seller's address by the Client or the Client's representative; or
 - (b) When a signed delivery docket is obtained by the Seller's designated courier at the Client's given delivery address; or
 - (c) When the Goods are delivered in accordance with the Client's instructions, whether or not a delivery docket is able to be obtained; or
 - (d) The Seller signs a delivery docket if Goods are returned to the Seller's address by the Client.
- 5.2. The Seller may at its discretion charge travel costs to the Client.
- 5.3. If any notifiable disease is present at the delivery address, the Client must provide the Seller with the appropriate facilities to comply with local PSA decontamination regulations, before delivery can occur.
- 5.4. Delivery dates for the supply of the Goods and/or Services are estimates only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for Delivery. A fee for redelivery and/or storage may be charged if this does not occur. The Seller will **not be liable for any loss or damage incurred by the Client because of** late delivery.

6. RISK TO GOODS

- 6.1. All risks of loss or damage to the Goods pass to the Client on delivery.
- 6.2. Where Goods are damaged or destroyed following delivery but before ownership has passed to the Client, the Client shall remain liable to the Seller for the purchase price.
- 6.3. The Seller **does not accept any liability** in respect of any failed crops where the same is caused by or is the result of the Client's failure to follow any recommendations or instructions from the Seller.

7. DEFECTIVE GOODS RETURNS

- 7.1. The Client must examine the Goods on delivery and Services on completion and shall satisfy itself that they comply with the quote, description, purchase order or any other document applicable to this Contract, that the Goods are of merchantable quality and fit for purpose, and that Services have been properly and correctly completed.

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- 7.2. If the Client discovers a defect in the quality or quantity of Goods or Services, it must immediately notify the Seller. **If no notice** is received by the Seller within 7 Days from the time of delivery or completion, the Goods and Services shall be presumed to have been properly delivered or completed.
- 7.3. For defective Goods or Services, the Seller's liability (subject to clause 22.3 and the Consumer Guarantees Act 1993, where applicable) is limited to either (at the Seller's discretion) replacing the Goods, repairing the Goods, or rectifying the Services.
- 7.4. **Returned Goods will only be accepted by the Seller, if:**
- (a) The Client has complied with the provisions of clause 7.1;
 - (b) The Seller has **confirmed in writing**, that it is willing to accept the return of the Goods; and
 - (c) The Goods are returned at the Client's expense within 7 Days of the delivery date; and
 - (d) Returned Goods are still in as-new condition and include all the original packaging materials, brochures, and instructions.
- 7.5. If the Seller agrees in writing to accept the return (at the Client's cost) of Goods that are not defective, it will charge the Client a handling fee of ten percent (10%) of the value of the returned Goods.
- 7.6. All Goods made to the Client's designs, plans or specifications or any Goods that are not deemed stock standard items by the Seller will not under any circumstances be acceptable for credit or return, unless the Client is entitled to reject under clause 7.1.
- 8. WARRANTIES**
- 8.1. Where Goods are not manufactured by the Seller the sole warranty shall be that provided by the manufacturer of the Goods.
- 8.2. **No warranty** is given by the Seller in the case of second-hand/reconditioned Goods which shall be given and taken on an "as is where is" basis. The Seller shall not be liable for any loss or damage to the Goods or caused by the Goods that may arise post purchase.
- 9. COMPLIANCE WITH LAWS**
- 9.1. Both parties shall comply with all obligations imposed on them by law in relation to the Goods supplied or Services performed, including the Health and Safety at Work Act 2015 and the Resource Management Act 1991.
- 9.2. All permits, licenses, consents, or approvals required for the supply of Goods or Services by the Seller, shall always be the responsibility of the Client, unless agreed otherwise.
- 9.3. The Client shall indemnify the Seller against all claims, liability, losses, or costs imposed on or incurred by the Seller, which are caused by or are a result of the Client's breach of clause 10.1.
- 10. TITLE**
- 10.1. Title in Goods passes to the Client when payment for those Goods (including with any additional applicable interest or charges has been made in full.
- 10.2. Until title passes to the Client:
- (a) The Client holds the Goods as bailee on trust for the Seller, must return any uninstalled or unused Goods to the Seller on request and irrevocably authorises the Seller to enter any property where the Seller believes the Goods are kept and recover possession of them, without the Seller being liable for any loss or damage caused to the Client;
 - (b) The Client holds the benefit of the Client's insurance of the Goods on trust for the Seller, and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed;
 - (c) If the Client sells, disposes, parts with possession of the Goods or does anything to the Goods which changes their form, the Client must hold the proceeds of any such act on trust for the Seller, and must pay, or deliver the proceeds to the Seller on demand; and
 - (d) The Client shall not charge or grant any lien or other encumbrance over the Goods, nor grant nor otherwise give away any interest in the Goods.
- 11. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")**
- 11.1. The Client will provide such information and do such acts and execute such further documents as in the opinion of the Seller may be necessary or desirable to enable the Seller to perfect under the PPSA the security interest created by these terms and conditions.
- 11.2. The Seller may do all things which it thinks desirable to remedy any default by the Client or otherwise protect all Goods or the security interest created by these terms and conditions.
- 11.3. The Client irrevocably appoints the Seller to be the Client's attorney to do anything which the Client agrees to do under these terms and conditions and anything which the attorney thinks desirable to protect the Seller's interests under these terms and conditions and the Client ratifies anything done by an attorney under this clause. Sections 114(1)(a), 133 and 134 of the PPSA shall not apply to these terms or the security under these terms and conditions.
- 11.4. The Client waives its right to receive a copy of any verification statement.
- 11.5. Sections 116, 119, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA shall not apply.
- 11.6. Where the Supplier has rights in addition to those in Part 9 of the PPSA, those rights will continue to apply.
- 11.7. The Client must not change its name without notifying the Seller of the new name not less than 7 Business Days before the change takes effect.

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12. SECURITY AND CHARGE

- 12.1. The Client agrees that by accepting these terms and conditions, it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of any money), owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions.
- 12.2. The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under these terms and conditions.
- 12.3. The Client irrevocably appoints the Seller and each director of the Seller as the Client's attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

13. INTELLECTUAL PROPERTY

- 13.1. All right, title, and interests in and to all Intellectual Property will remain the exclusive property of the Seller.
- 13.2. The Client shall indemnify the Seller against any claims by third parties for any breach of the Intellectual Property caused by the Client. Where the Client has supplied any Intellectual Property to the Seller, the Client warrants that the supply of such Intellectual Property does not breach any patent, trademark, design, or copyright.
- 13.3. The parties agree that the Seller shall have the right to use for its own benefit, any Intellectual Property created by the Seller for the Client.

14. DEFAULT

- 14.1. The Seller may charge the Client interest in respect of the late payment of any sums due to the Seller, at the rate of five percent (5%) per year above the Seller's bank overdraft rate calculated monthly from the due date until receipt of payment, whether before or after any judgment.
- 14.2. The Seller shall be entitled to suspend or cancel any orders for Goods or Services made by the Client and any credit terms, in addition to its other remedies:
 - (a) If any amounts payable by the Client to the Seller are overdue; or
 - (b) If the Client breaches, or fails to comply with or repudiates, any obligation owed to the Seller under these terms and conditions; or
 - (c) The Client intimates that it will not pay any sum by the due date; or
 - (d) Any Goods are seized by any other creditor of the Client or any other creditor intimates that it intends to seize Goods; or
 - (e) Any Goods in the possession of the Client are materially damaged while any sum due from the Client to Seller remains unpaid; or
 - (f) The Client dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, enters into an arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidators, administrators or any similar party is appointed in respect of the Client (or any asset of the Client), has any winding up petition presented against, or ceases to carry on business; or
 - (g) If the Client ceases or threatens to cease carrying on business; or
 - (h) if the ownership or effective control of the Client is transferred, or the nature of the Client's business is materially altered.
- 14.3. Upon cancellation of any orders or credit terms all sums owing by the Client to the Seller shall become immediately due and payable.
- 14.4. Where any event of default occurs, the Seller may appoint a receiver in respect of all Goods (including their proceeds) supplied to the Client and such receiver may take possession of the Goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
- 14.5. In addition to clause 14.1, if the Client owes the Seller any money, the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt, including legal costs on a solicitor and own client basis, internal administration costs and disbursements and collection fees charged by a debt collection agency.

15. CANCELLATION

15.1. By the Seller:

- (a) The Seller may, without giving any reasons, cancel an order for Goods or Services by giving at least 7 days' notice in writing; and
- (b) The Seller will repay to the Client any money paid by the Client for the Goods or Services, less any amounts for Goods purchased on the Client's behalf where credits or refunds cannot be obtained from the Seller's third-party suppliers; and
- (c) The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2. By the Client:

- (a) The Client may cancel any order for Goods and/or Services, by giving no less than 7 Business Days written notice, where such Goods have not been delivered or the Services not performed. The Client shall remain liable for any costs incurred by the Seller (including, but not limited to, loss of profit) up to the time of cancellation.
- (b) Where the Client cancels an order for Services that have commenced or for Goods that the Supplier has ordered from a third party, it must do so in writing, and:

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- (i) The Client shall be invoiced for all work completed up until the date of cancellation. Any deposit paid prior to the commencement of the Services will be forfeited in lieu of monies due, but the Client shall remain liable for any monies due over and above any deposit paid; or
- (ii) Where the Seller is unable to obtain a refund or credit for Goods ordered from a third party, cancellation will not be accepted and the Client will be required to pay the full purchase price.

16. PRIVACY POLICY

- 16.1. The Client authorises the Seller to collect, retain and use Personal Information about the Client for the following purposes:
 - (a) Assessing the Client's credit worthiness;
 - (b) Administering the Client's orders;
 - (c) Receiving information from credit reference agencies, concerning the Client's credit history;
 - (d) Disclosing credit-related information to, and using the credit services of, credit reference agencies to satisfy itself as to the Client's credit worthiness.
- 16.2. The Client, if an individual, has a right of access to Personal Information about the Client held by the Seller and may request correction of the information.
- 16.3. Personal Information has the meaning given to it in the Privacy Act 2020.

17. NOTICES

- 17.1. If either party gives or is required to give notice to the other party under these terms and conditions, it must be:
 - (a) In writing;
 - (b) Directed to the recipient's usual physical, postal or email address as advised from time to time; or
 - (c) Hand-delivered or sent by pre-paid post or by email to the recipient's statutory address for service.
- 17.2. **Notice is taken as received when:**
 - (a) If hand-delivered, on delivery; or
 - (b) If sent by prepaid post, 5 Business Days after the date of posting for local or regional mail and 10 Business Days after the date of posting for international mail; or
 - (c) If sent by registered mail, immediately upon signed receipt thereof; or
 - (d) If sent by email, at the time denoted in an automated receipt notification received by the sender (in the absence of manifest error or tampering) or, if that function is not enabled, upon acknowledgement of receipt by the other party by return email or otherwise).

18. DISPUTE RESOLUTION

- 18.1. If a dispute arises between the Seller and the Client, either party may send to the other party a notice of dispute in writing detailing the grounds of dispute. Within 14 days after service of a notice of dispute, the parties shall use their reasonable efforts to resolve the dispute. If the dispute cannot be resolved within 30 days of the service of the notice of dispute, either party may by further notice in writing require the dispute to be referred to arbitration in accordance with the Arbitration Act 1996 or its replacements.
- 18.2. Nothing in clause 18.1 prevents a party from applying to a Court for urgent interlocutory relief.

19. CONSUMER GUARANTEE ACT 1993

- 19.1. The Client agrees that both it and the Supplier are in trade, that these terms and conditions constitute an agreement in writing, that the Consumer Guarantees Act 1993 does not apply to this agreement and that it is fair and reasonable for the parties to be bound by this clause.

20. ASSIGNMENT

- 20.1. The Client shall not assign, sub-license or otherwise transfer its rights or obligations under these terms and conditions to any other person without the prior written consent of the Seller.
- 20.2. The Seller may assign, subcontract, encumber, declare a trust over or otherwise deal with its rights and obligations under this Contract without the Client's consent and the Client must do, and must ensure, that the Client's personnel do anything necessary (including execute any document), that the Seller may reasonably require to give full effect to this clause.
- 20.3. Any instruction to any of the Seller's sub-contractors/suppliers may be given only by the Seller. The Client may not direct the performance of the Services or make any changes with a sub-contractor/supplier.

21. FORCE MAJEURE

- 21.1. Neither party shall be liable to the other for any loss, damage or expense where caused by or resulting from a Force Majeure event:
 - (a) Should a Force Majeure event occur, the obligations of a party under these terms and conditions will be suspended to the extent that it is wholly or partially precluded from complying with its obligations; and
 - (b) A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure event and the extent to which that party is unable to comply with its obligations; and
 - (c) If a failure or delay in performance exceeds 60 Business Days, either party may immediately terminate any Goods or Services ordered by being supplied, by written notice to the other party.
- 21.2. Nothing in clause 21.1 shall excuse payment of any amount owing due or which becomes due by one party to the other.

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22. MISCELLANEOUS

- 22.1. If any term of these terms and conditions is time held to be void, invalid or unenforceable, such term shall be severed and the remainder shall continue in full force and effect.
- 22.2. These terms and conditions shall be governed by the laws of New Zealand.
- 22.3. Where the Seller has liability to the Client on any basis whatsoever in relation to the supply of Goods and/or Services, such liability shall be limited:
- (a) In the case of loss, damage or expense directly caused by or arising from the supply of Goods and/or Services, to five times the original sale price of the Goods and/or Services, to a maximum of \$25,000; and
 - (b) In the case of indirect and/or indirect loss, damage or expense, \$50,000 for all such loss, damage or expense caused by or arising from the same event or series of events arising from the same original event.
- 22.4. Notwithstanding anything in clause 22.3, the Seller shall have no liability whatsoever (including in relation to its own negligence) where claims are not notified to it within 14 days of the date when the Goods and/or Services are supplied to the Client.
- 22.5. The Seller may from time to time amend these terms and conditions a by notifying the Client in writing and/or by posting the updated terms and conditions on the Seller's website. The amended terms and conditions will apply to all orders of Goods and Services which are placed after notification by either of such methods.

23. DEFINITIONS AND INTERPRETATION

- 23.1. Capitalised terms have the meaning set out below:
- (a) "**Business Days**" means a day on which banks are physically open for business in New Zealand in the place where the Seller has its principal place of business...
 - (b) "**Client**" means the person or entity which orders Goods or Services from the Seller, whether as principal or agent for another, and includes that person or entity's executors, administrators, successors and permitted assigns
 - (c) "**Confidential Information**" means any information:
 - (i) Relating to these terms and conditions;
 - (ii) Relating to a quotation, order or proposal or its contents;
 - (iii) Relating to a client of the Seller;
 - (iv) Disclosed by either party to the other party on the express basis that such information is confidential; or
 - (v) Which might reasonably be expected by either party to be confidential in nature.
 - (d) "**Force Majeure**" means an event outside the reasonable control of either party, including an act of God, earthquake, adverse weather conditions, flood, storm, fire, explosion, war, rebellion, terrorism, strike, lock-out, industrial action, national or global epidemics or pandemic and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government quarantine restrictions for Goods or individuals.
 - (e) "**Goods**" means goods of any kind that the Seller provides to the Client.
 - (f) "**GST**" means goods and services tax, as defined in the Goods and Services Tax Act 1985.
 - (g) "**Intellectual Property**" includes all brands, symbols, names and images used in commerce, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents, and trademarks whether registered or not, software (and source and object code), business strategies and contracts, confidential business information including market and marketing strategies.
 - (h) "**Personal Information**" means any information about an identifiable individual.
 - (i) "**PPSA**" means Personal Property Securities Act 1999.
 - (j) "**Price**" means the price due from the Client for the supply of Goods and/or Services.
 - (k) "**Seller**" means **Advance Agriculture Limited** its successors, and assigns.
 - (l) "**Services**" includes all services (including any documentation, advice, consultancy, or recommendations) whether for a fee or otherwise.
- 23.2. **Neutral Interpretation** - nothing in these terms and conditions is to be interpreted against the Seller solely on the ground that the Seller prepared the same.