

Supplier Standard Conditions of Sale

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Additional Charges' means the extra costs detailed in clause 6.3(c)
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by Supplier;
- 1.3 'Delivery Date' means the approximate date agreed in writing by Supplier when the goods are to be delivered;
- 1.4 'Goods' means the material that You agree to buy from Supplier.
- 1.5 'Price' means the price for the Goods including delivery, packaging, off loading and insurance up to the point of delivery, unless clause 6.3 applies;
- 1.6 'Delivery Site' means the address identified on the Quotation given by Supplier, or otherwise agreed by Supplier in writing;
- 1.7 'Normal Delivery Hours' means any Monday to Friday 7am to 5pm excluding Bank Holidays;
- 1.8 'Quotation' means the quotation produced by the Supplier on request from the Customer;
- 1.9 'Supplier' is The Fertilizer Company Limited whose registered office is Gurney Slade, Radstock, Somerset BA3 4UU Company No. 3727061;
- 1.10 'You' means the individual who buys or agrees to buy the goods from Supplier.

2. Application of these Conditions

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by Supplier to You to the exclusion of all other terms and conditions including any terms or conditions which You may purport to apply under any purchase order, confirmation of order or similar document or which are implied by trade, custom, practice or course of dealing.
- 2.2 All orders for Goods shall be deemed to be an offer by You to purchase Goods pursuant to these Conditions. The order shall only be deemed to be accepted when the Supplier issues a written acceptance of the order, at which point the Contract shall come into existence.
- 2.3 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by Supplier.

3. Price and payment

- 3.1 The Price of the Goods shall be the price specified on Supplier's Quotation, which shall be binding on Supplier provided that You shall place your order with Supplier's within 30 days of the Quotation Date subject to this clause 3 or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 3.2 The Supplier in its absolute discretion to refuse to supply or apply special conditions as to payment in the event of Supplier receiving an unsatisfactory credit report on You.
- 3.3 The Price is exclusive of VAT, which shall be due at the rate ruling on the date of VAT invoice.
- 3.4 Supplier may give notice to You at any time up to 10 days before the Delivery Date of an increase in the Price of the Goods to reflect any increase in the cost to Supplier which is due only to factors occurring after the making of the contract of sale which are beyond the reasonable control of Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs) or any request by You to change the Delivery Date(s), quantities or types of Goods ordered, provided that You may cancel this contract within 5 days of any such notice from Supplier.
- 3.5 Additional Charges will be made in accordance with Supplier's rates prevailing from time to time where :-
 - (a) delivery or collection is required outside Supplier's Normal Delivery Hours; and/or
 - (b) delivery or collection is required in part loads rather than full loads of 30 tonnes, (or the carrying capacity of the vehicle if less); and/or
 - (c) for any reason, the delivery vehicle is unable to discharge its load in full within sixty minutes of arrival at the Delivery Site.
- 3.6 Supplier shall invoice You on or after delivery of the Goods. Payment of the Price and VAT shall be due within 28 days of the date of the invoice. Time for payment shall be of the essence.
- 3.7 All payments made by You under this agreement shall be made in full without any set-off or counter-claim, discount or otherwise.
- 3.8 Interest and Charges on overdue invoices will be claimed in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 or 4% above the Bank of England base rate from time to time. Interest shall be payable at this rate both before and after any judgment is made against You until the date on which payment in cleared funds is received in full, including all accrued interest.

4. The Goods

- 4.1 The quantity and description of the Goods shall be as set out in Supplier's Quotation.
- 4.2 Supplier may from time to time make changes in the specification of the Goods if required by any applicable statutory or regulatory requirements.

5. Warranties and liability

- 5.1 Supplier warrants that the Goods supplied will at the time of delivery correspond to the description given by Supplier and will be manufactured in accordance with all applicable British Standards which relate specifically to the Goods
- 5.2 No warranty is given that the Goods are suitable for any particular purpose [unless You shall first have advised Supplier of all relevant factors relating to the particular purpose in writing and Supplier has confirmed in writing that the goods are suitable for that purpose.]
- 5.3 All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law, provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of Supplier. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.4 You acknowledge and agree that you do not and will not place any Order under these Conditions on the basis of any statement or representation made, given or agreed by or on behalf of Supplier (whether negligently or innocently made) except where expressly included in the Quotation or otherwise confirmed in writing, except that nothing in this clause shall operate to limit or exclude liability for fraud.

6. Delivery of the Goods

- 6.1 Delivery of the Goods shall be made to Delivery Site on the Delivery Date. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to You. You shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery. Time shall not be of the essence for delivery and the Supplier shall have no liability for any failure to deliver the Goods on the Delivery Date.
- 6.2 Supplier may deliver the Goods in instalments. Supplier may raise a separate invoice and require payment for each instalment. The failure or refusal by You to take delivery or to pay for any one or more of the said instalments of the Goods on the due dates shall entitle Supplier (at the sole option of Supplier) to suspend further deliveries of the Goods pending payment by You, and/or to treat this contract as repudiated by You.
- 6.3 You must provide a safe and adequate access to the Delivery Site and the location within it at which You require discharge of goods, including adequate space to manoeuvre the delivery vehicle. If, in Supplier's opinion, the access is unsafe, inadequate or has insufficient manoeuvring space, then Supplier may, at its discretion, refuse to make delivery of goods. In that event You will pay:
 - (a) the original delivery costs to the Delivery Site, and
 - (b) two thirds of the initial rate of the delivery for returning the load to its point of origin, and
 - (c) additional handling costs for off loading the vehicle and putting the material back into store at £4.00 per tonne or the current charge then prevailing if higher.
- 6.4 You must provide at the Delivery Site a fully authorised employee or agent who must promptly:-
 - (a) accept delivery of the goods when they arrive at his site;
 - (b) inspect the goods prior to discharge;
 - (c) sign the Delivery Note; and
 - (d) sign to agree and authorise Additional Charges.
- 6.5 You are responsible for the security, health and safety of our vehicles and employees at the Delivery Site, and making them aware of all health and safety procedures. Supplier reserves the right to inspect and require prior sight of procedures before making any delivery. You agree to indemnify Supplier for any damage to the vehicles delivering goods and/or injury to the drivers of any such vehicles for any personal injury incurred by them whilst at the delivery site or on any access thereto not being a public highway, except to the extent that such damage or injury is due to the negligence of Supplier or the driver.

7. Acceptance of the Goods

- 7.1 You shall inspect the Goods on delivery and shall within 24 hours of delivery notify Supplier of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. Following which you shall afford Supplier an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If You fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and You shall be deemed to have accepted the Goods.

8. Title and risk

- 8.1 The title to the Goods shall not pass to You until Supplier has received payment of the Price in full, together with interest and any Additional Charges. Until then Supplier may at any time repossess the Goods, and for

this purpose You grant an irrevocable licence for Supplier's agents or employees to enter upon any premises where the Goods are stored or where they are reasonably thought to be stored.

- 8.2 Until payment is received in full, any unused packed Goods shall be stored separately from other goods held by You and shall be clearly identifiable as the property of Supplier. The Goods shall not be mixed with other goods or altered in any way and the Goods shall be adequately stored and maintained in a satisfactory condition.
 - 8.3 Risk shall pass on delivery of the Goods by Supplier or upon collection by You.
 - 8.4 Supplier reserve the right to charge for all costs incurred in repossessing materials (whether due to unpaid or overdue payment) from the clients premises.
- ### 9. Your Remedies
- 9.1 If the Goods are not in accordance with the contract for any reason Your sole remedy shall be limited to Supplier making good any shortage by replacing such Goods or if Supplier shall elect, by refunding a proportionate part of the Price.
 - 9.2 Supplier's liability to You, whether for any breach of contract, misrepresentation or otherwise, shall not in any event exceed the Price and Supplier shall be under no liability for any direct loss and/or expense or indirect, special or consequential loss and/or expense suffered by You or liability incurred by you for damage suffered by third parties.
 - 9.3 Supplier shall not be liable for any losses arising or your subsequent use or misuse of the Goods including (without limitation):
 - (a) wilful damage;
 - (b) our negligence, or that of your agents or employees, or any failure to follow Supplier's instructions as to use of the Goods;
 - (c) abnormal working conditions beyond those referred to in the Quotation; and
 - (d) any alteration to the Goods by any manufacturing process or otherwise or mixture of the Goods with materials which have not been agreed by Supplier.
 - 9.4 Where You reject any Goods without reason then Supplier has no liability to supply further Goods to you.
 - 9.5 Where You accept or are deemed to have accepted any Goods then Supplier shall have no liability whatever to You in respect of those Goods.

10. Third Parties

- 10.1 It is not intended that any term of these Conditions shall be enforceable by any third party as defined in the Contracts (Rights of Third Parties) Act 1999.

11. Termination

- 11.1 Supplier may terminate this agreement by giving written notice to You if any of the following events occurs
 - (a) a winding-up order or bankruptcy order is made against You; or
 - (b) You pass a resolution or make a determination to be wound up (without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by You); or
 - (c) You have appointed an administrator or an administrative receiver; or
 - (d) being a partnership in addition to the above, suffers bankruptcy orders being made against all of its partners; or
 - (e) an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of your assets; or
 - (f) You cease or suspend payment of any of your debts, or are unable to pay debts within the meaning of section 123 of the Insolvency Act 1986; or
 - (g) any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into; or
 - (h) You cease, or threaten to cease, to carry on business

12. Force majeure

- 12.1 Neither Supplier or You shall be liable to the other, or be deemed to be in breach of this agreement, by reason of any delay in performing, or failure to perform, any of its obligations under this agreement if the delay or failure was beyond that party's reasonable control (including without limitation fire, flood, explosion, epidemic, riot, civil commotion, any strike, lockout or other industrial action, act of God, war, warlike hostilities or threat of war, terrorist activities, accidental or malicious damage and any prohibition or restriction by any government or other legal authority which affects this agreement and which is not in force on the date of this agreement).

13. Waiver

- 13.1 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14. Assignment and subcontracting.

- 14.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

15. Dispute Resolution

- 15.1 If any dispute or difference arises out of or in connection with these Conditions the parties shall seek to resolve the dispute or difference amicably by using an Alternative Dispute Resolution (ADR) procedure acceptable to both parties.
- 15.2 If either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 90 days after it has arisen the dispute or difference may by agreement of the parties, be resolved by arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between the parties.
- 15.3 This contract is subject to the law of England and Wales, and the parties submit to the exclusive jurisdiction of the English Courts.