

SEALES WINSLOW LIMITED TERMS AND CONDITIONS OF SALE

Customer copy, for your records please retain.

GENERAL

1. In these conditions:
 - (a) **buyer** means the buyer of any goods or services from the seller;
 - (b) **CGA** means the Consumer Guarantees Act 1993 (and amendments);
 - (c) **conditions** means these terms and conditions and, as the context requires, each contract entered into between the buyer and the seller for the supply of goods or services and each invoice issued by the seller to the buyer for goods or services into which these conditions are incorporated;
 - (d) **event of default** has the meaning given to it in clause 31;
 - (e) **goods** means all goods supplied by the seller to the buyer under these conditions now and at any time in the future including (but not limited to) chemical and fertiliser products, animal nutrition products, animal supplements, bulk food material, equipment;
 - (f) **PPSA** means the Personal Property Securities Act 1999;
 - (g) **seller** means Seales Winslow Limited;
 - (h) **services** means all services performed by the seller for the buyer.
2. Unless otherwise required or agreed in writing by the seller, all goods or services supplied by the seller will be supplied on these conditions only and these conditions shall take precedence over any other terms of supply. If the buyer orders any goods or services from the seller, the buyer will be deemed to have accepted these conditions.

PRICE

3. Unless governed by any special conditions agreed in writing between the buyer and seller or the terms of any forward contract, the price payable by the buyer for any goods or services shall be the price determined by the seller on the date of despatch of the relevant goods and set out on the invoice or similar document issued by the seller at or following that time. The price does not include any goods and services tax, which is to be paid by the buyer in addition to the price.

PAYMENT

4. Payment is due on terms agreed between the buyer and seller. In the absence of any other agreement, payment of any amount due to the seller will be made on the 20th day of the month following the date of the invoice. The seller may apply any payments received in reduction of the amount owing as the seller sees fit. The seller reserves the right to require payment in cash on delivery if the seller is concerned about the buyer's ability to pay or if any order placed would exceed any agreed credit limit.
5. The buyer may not deduct or withhold any amount (whether by way of set-off, counterclaim, retention or otherwise) from any money owing to the seller.
6. Any cheque, bill of exchange or other negotiable instrument given by the buyer to effect payment will not be considered as payment until the same has actually been paid or honoured.
7. The buyer's account with the seller must be current and payment of any amount due to the seller must be made on the due time before the buyer's account will be credited with any applicable discount.
8. Unless the buyer gives written notice to the seller within 30 days after receiving an invoice that the whole or part of that invoice is disputed, the buyer will be deemed to have accepted the invoice and may not make any claim or raise any dispute in relation to its contents or any amounts payable under it. A dispute in relation to an invoice does not constitute grounds for withholding or delaying payment under it.

SUPPLY

9. The seller will endeavour to meet agreed delivery dates, but will not be held liable, nor may the buyer cancel any order or any part of any order, for late delivery. The seller reserves the right to cancel or suspend unconditionally and without liability any contract and/or to reject any order.
10. Where the buyer agrees to arrange the carriage of goods, delivery of any particular goods will be deemed to have been made when those goods are uplifted from the seller's premises or the seller's agent's premises.
11. Where the seller agrees to arrange the carriage of goods:
 - (a) unless otherwise expressly stated in writing by the seller, prices estimated or quoted will not include the cost of delivery or insurance and the buyer will be invoiced for any charges incurred by the seller in carriage of goods;

- (b) delivery will be deemed to have been made when the goods arrive at the delivery point agreed with the buyer;
 - (c) if the buyer or its authorised agent is not present at the delivery point when the goods are delivered, delivery will be deemed to have been effected in any event;
 - (d) the buyer is responsible for ensuring, at its own cost, that all agreed sites have unloading facilities together with labour and/or mechanical means to unload the goods promptly and suitable access and area for unloading and shall indemnify the seller against any loss, liability, costs or expenses incurred by the seller or its agents in unloading the goods;
 - (e) any claim for goods damaged during unloading or damaged or lost in transit must be made to the seller within 24 hours of delivery;
 - (f) quotations / estimates given for delivery costs cover only the usual methods of methods of transportation used by the seller;
 - (g) delivery may be by instalments and each instalment will be treated as a separate contract under these conditions; and
 - (h) where the unloading of goods is dependent on site access, and or unloading facilities, the seller may (without limiting any other right the seller may have) charge the buyer for any waiting time for delays by the buyer in unloading goods, handling charges for any unloading work carried out by the seller.
12. The seller reserves the right to cancel this contract and any orders placed should the seller or the buyer be refused any requisite export or import permit in respect of the goods.
 13. Where the buyer has committed to a minimum contract tonnage, the buyer agrees that the seller may invoke their right to recover any cost(s) of raw materials purchased in advance to support unrealised contract tonnage.

RISK AND INSURANCE

14. Goods supplied by the seller to the buyer will be at the buyer's risk immediately on delivery to any carrier of the buyer or on delivery into the buyer's custody in accordance with clauses 11(b) or (c). It is recommended buyers arrange insurance for goods transported by carriers.

PROPERTY

15. Ownership of the goods supplied by the seller to the buyer will not pass to the buyer until the seller has received in cash or cleared funds all amounts owing in respect of the goods.
16. Until ownership passes to the buyer of any goods held by the buyer, such goods shall be held as fiduciary bailee goods and stored in good order, in safe and sanitary conditions and in a manner in which they can be identified and matched with the invoiced raised for them.

SECURITY INTEREST

17. The buyer acknowledges that clause 15 creates a security interest in goods supplied to it by the seller.
18. The buyer shall not grant any other security interest or any lien over goods that the seller has a security interest in.
19. At the seller's request the buyer shall promptly sign any documents and do anything else required by the seller to ensure the seller's security interest constitutes a first ranking perfected security interest in the goods.
20. The seller may at any time enter the buyer's premises and properties to uplift goods that the seller has a security interest in.
21. If goods that the seller has a security interest in are processed, included or dealt with in any way causing them to become accessions, processed or commingled goods, the seller's security interest will continue in the whole in which they are included. The buyer shall not grant any other security interest or any lien in either the goods or in the whole.
22. The buyer waives any rights it may have under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133, and 134 of the PPSA.
23. The buyer waives its right to receive a copy of any verification statement (as that term is defined in the PPSA).
24. The buyer shall give the seller prior written notice of any proposed change of the buyer's name or address.

EXCLUSION OF LIABILITY

25. Any technical advice provided by the seller is given in good faith but without any liability or responsibility on the part of the seller and the seller is not liable for any loss, costs, expenses or other damages suffered by the buyer, whether direct or indirect, as a result of the buyer's reliance on any technical advice or any aspect of it provided by the seller. It is the buyer's obligation to test goods supplied by the seller as to their suitability for the intended purpose and use. The application and use of the goods is beyond the seller's control and therefore entirely the buyer's responsibility. Except for any express warranties or guarantees agreed in writing (but not by

email) by the seller including (but not limited to) pursuant to this clause 25, and any guarantees that cannot be excluded by virtue of the CGA, all warranties, descriptions, representations or conditions whether implied by law, trade, custom or otherwise, are expressly excluded to the fullest extent permitted by law. The parties agree that they are each in trade and that the goods and services are supplied and acquired in trade. The buyer and seller agree to contract out of the provisions of the CGA to the fullest extent permitted by the law.

26. In any event, the total Liability of the seller whether in tort (including negligence), contract or otherwise for any Loss, damage or injury arising directly or indirectly from any defect in goods or services supplied by the seller, any other breach of the seller's obligations or otherwise under these conditions shall be Limited, at the seller's option, except where statute expressly requires otherwise, to the Lesser of the sale price of the goods or services complained of, the cost of replacing the defective goods or services or the actual loss or damage suffered by the buyer and in no circumstances will the seller be liable for any consequential, indirect or special damage, (including loss of profits), loss, costs or injury of any kind suffered by the buyer or any other person.
27. In the event the buyer purchases goods for resupply or to supply to the end user the buyer warrants that these agreements state that the guarantees implied by the CGA are expressly excluded at every point in the supply chain to the fullest extent allowed by law.

CLAIMS

28. Except where statute expressly requires otherwise:
- (a) any claim to reject the goods or to claim damages on the grounds that the goods do not conform to the description by which they were sold, must be notified in writing to the seller within seven days of delivery (pursuant to clause 10) of the goods to the buyer, failing which any such claim shall be deemed conclusively to have been waived by the buyer: and
 - (b) goods may only be returned to the seller with the seller's prior written consent. All costs whatsoever for the return or delivery shall be payable by the buyer.
29. Claims under clause 28 must be notified and processed in accordance with any claims handling procedures as the seller may notify to the buyer from time to time.

INTEREST AND EXPENSES

30. Without limiting any other right of the seller, the seller reserves the right to charge interest on any amount that is not paid by the buyer on the due date, at a rate of 1% per month, calculated on a daily basis from and including the date payment is due until the date the seller receives payment in full (including accrued interest) in cash or cleared funds. The charging of interest does not imply the granting of an extension of credit.
31. The buyer will be liable to pay all expenses and costs of the seller incurred in relation to seeking payment of any amount that is not paid by the buyer on the due date including (but not limited to) any amount charged by any debt collection agency instructed by the seller to recover the amount due, and all expenses and legal costs of the seller as between solicitor and client.

OTHER RIGHTS OF SUPPLIER

32. If any amount payable by the buyer to the seller is overdue, or the buyer fails to meet any other obligations to the seller, or in the seller's opinion the buyer is likely to be unable to meet its payment or other obligations to the seller, or the buyer becomes insolvent, has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, or has a liquidator (provisional or otherwise) appointed, or is placed under statutory or official management, or an administrator is appointed to the buyer or the buyer, its board or shareholders is considering appointing an administrator or liquidator (each of the foregoing being an event of default), then without limiting any other right of the seller:
- (a) the seller shall be entitled to cancel or suspend all or any part of any contract with the buyer which remains unperformed: and
 - (b) all amounts outstanding under any contract with the seller shall whether or not due for payment immediately become due and payable.

33. The seller is entitled to recover from the buyer all costs that the seller incurs in connection with the exercise, protection or enforcement of the seller's rights under these conditions or conferred by law, in each case on demand and on a full indemnity basis (including solicitor client costs).
34. Subject to any mandatory law, the seller will not be liable in respect of any loss or damage that results from the exercise, attempted exercise or non-exercise by the seller of its rights under these conditions or conferred by law.

USE OF INFORMATION

35. The buyer agrees that the seller may obtain information about the buyer from the buyer or any other person in the course of the seller's business, including credit assessment, debt collecting and direct marketing activities, and the buyer consents to any person providing the seller with such information.
36. The buyer agrees that the seller may use any information it has about the buyer relating to the buyer's creditworthiness and, subject to any confidentiality agreement between the buyer and the seller, give that information to any other person (including other companies in the seller's group) for credit assessment or debt collection purposes. The buyer agrees that any other information collected by the seller about the buyer is accessed or collected for the use of the seller and any company in its group in the course of its business, including direct marketing activities. Under the Privacy Act 1993 (and as of 1 December 2020, the Privacy Act 2020), the buyer has rights of access to, and correction of, its personal information.

INDEPENDENT TRUSTEE LIMITATION

37. Where:
- (a) a person accepts these conditions in their capacity as trustee of a trust; and
 - (b) that person has no right to or interest in any of the assets of the trust except in their capacity as trustee of the trust; then, except as set out in the next sentence, the liabilities and obligations of that trustee in relation to these conditions will not be unlimited personal liabilities and obligations, but will be liabilities and obligations to pay the liabilities and meet the obligations out of the trust assets which are held by the trustees of the trust. To the extent that those trust assets have been reduced as a result of the dishonesty or wilful default of the trustee and are thereby not available to meet the obligations and liabilities of the trustee then, to that extent, the trustee's liabilities and obligations will be unlimited personal liabilities and obligations.

FORCE MAJEURE

38. The seller will not be liable for loss, damage, injury, shortages, delay, late delivery or non-delivery whatsoever due to any cause or circumstances beyond its control. Without derogating from the generality of the foregoing such cause or circumstances shall include non-availability of or late departure or non-delivery by shipping or any other freight, acts of God, any action or inaction of Government or any Government agency (including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order), strikes, lockouts, fire, accidents, acts of war, floods, national emergency, epidemic, pandemic, riots, civil commotions, malicious mischief or theft and the inability to obtain raw materials or products.

MISCELLANEOUS

39. If at any time the seller does not enforce any of these conditions or grants the buyer time or other indulgence, the seller shall not be construed as having waived that condition or its rights to Later enforce that or any other condition.
40. The buyer must not transfer or assign its rights under these conditions to anyone else without the seller's prior consent in writing. The seller may assign or transfer any of its rights or obligations under these conditions without the buyer's consent.
41. The seller may vary these conditions from time to time by giving notice in writing to the buyer, such amendments to be of immediate effect unless stated otherwise. The buyer agrees to be bound by such amendments.
42. These conditions will be governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the Courts of New Zealand.