

## TERMS AND CONDITIONS OF TRADE

The following contractual clauses form all contracts between Engage Agro Europe Ltd of Chorley Business and Technology Centre, Euxton Lane ,Euxton, Chorley Lancashire UK PR7 6TE ("the Company ") and the Buyer.

### 1. Interpretation

"Buyer"	means the person or entity which places a Purchase Order with the Company for the purchase of Goods in accordance with clause 3.
"Contract"	means any contract between Company and the Buyer for the sale and purchase of Goods comprised of a Purchase Order and these terms and conditions.
"Delivery address"	means the place specified in a Purchase Order for delivery of the Goods the subject of that Purchase Order.
"Goods"	means any goods which Company is to supply to the Buyer (including any of them or any part of them).
"Company"	Engage-Agro Europe Ltd.
"Order terms"	has the meaning given in clause 3.1.
"Purchase order"	means a document, containing all the necessary information in accordance with clause 3.4, submitted by the Buyer to Company to place an order for the purchase of Goods.
"Working Days"	means a day other than Saturdays, Sundays and bank and public holidays.

### Incorporation of Terms and Conditions

- 1.1 Every Contract formed between the Buyer and Company will only be on the terms set out in this document. All other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document are expressly excluded. If the Buyer supplies the Company with a purchase order these terms and conditions will be deemed to be incorporated into any purchase order. If no purchase order is supplied they will be deemed to be incorporated into any contractual documentation supplied by the Buyer.
- 1.2 No terms or conditions supplied by the Buyer will form part of any Contract.
- 1.3 The Buyer shall deal only with an authorized representative of the Company and the Buyer cannot rely on any representations, variations or promises made by any employee or agent of Company which are not subsequently confirmed by Company in writing.

### 2. Orders and Formation of Contract

- 2.1 Following receipt of any enquiry from the Buyer the Company shall inform the Buyer as to:
  - (a) Company's current price for the Goods;
  - (b) the total quantity of Goods which Company is prepared to sell to the Buyer at the price specified; and
  - (c) the period of time during which Company is prepared to sell to the Buyer the volume of Goods specified at the price specified, (the "order terms"). At any time thereafter the Buyer may submit Purchase Orders to Company which are compliant with the Order Terms (it being acknowledged that any Purchase Order accepted by Company in accordance with clause 3.6 shall reduce the total volume of Goods available under the Order Terms applicable to subsequent Purchase Orders).
- 2.2 Company may revoke Order Terms at any time by giving notice to the Buyer. Any such revocation shall be without prejudice to any Contracts already formed at the date of revocation.
- 2.3 If the Buyer wishes to place an order with Company which does not comply with the applicable Order Terms, the Buyer may request modified Order Terms from Company to accommodate the Buyer's requirements, which Company may, in its absolute discretion, supply. Thereafter, if Company issues modified Order Terms, such modified Order Terms shall replace the Order Terms previously provided and the provisions of clause 3.1 above shall apply.
- 2.4 To place an order for Goods, the Buyer must submit a Purchase Order containing the following information:
  - (a) the date on which the Order Terms applicable to the Purchase Order were issued by Company;
  - (b) the quantity of Goods which the Buyer wishes to purchase;
  - (c) the required pack size and relevant documentation ;
  - (d) the price at which the Goods were quoted in the Order Terms; and
  - (e) the Delivery Address and contact details of the Buyer.The Buyer shall ensure that the details included in the Purchase Order are complete and accurate in all respects.
- 2.5 If the Buyer is purchasing the Goods on a wholesale basis, then the Buyer shall at all times remain a registered member of the Fertiliser Industry Assurance Scheme. The Buyer shall indemnify Company in full from and against any loss, liability, cost or claim which Company may suffer as a result of any breach of this term by the Buyer.
- 2.6 No Purchase Order submitted by the Buyer shall be deemed to be accepted by Company in accordance with its terms unless confirmed in writing by Company's authorized representative. Once accepted by Company, a Contract shall be deemed to be formed between the parties, based on the Purchase Order and incorporating these terms and conditions.
- 2.7 A Contract formed as set out above shall be binding on the parties and shall not be subject to change in any way by the Buyer.

### 3. Delivery

- 3.1 Company's delivery agent shall notify the Buyer when Goods the subject of a Contract is ready for delivery. The Buyer shall take delivery of the Goods within 14 days after the date of Company's notice. The Goods may be delivered by Company in advance of the agreed delivery date provided that Company gives reasonable prior notice of such earlier delivery.
- 3.2 Delivery of the Goods shall be made by Company delivering the Goods to the Delivery Address. Delivery of the Goods shall be accepted at any time of day. Company shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, howsoever arising.
- 3.3 If the Buyer fails to take delivery of any of the Goods on the date agreed (or notified by Company) pursuant to clause 4.1, or to provide adequate instructions, documents, licences or authorisations required to enable the Goods to be delivered on time, risk in the Goods will nevertheless pass to the Buyer on and from the delivery date agreed (or notified by Company) pursuant to clause 4.1, Company shall be deemed to have fulfilled its obligations under the Contract and (without prejudice to its other rights) Company may:
  - (a) store the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses; and/or
  - (b) following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- 3.4 The Buyer will indemnify Company against any liability and expense (whether arising under statute or common law caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading the Goods at the Delivery Address or arising directly or indirectly from the Buyer's negligent act or omission whilst collecting the Goods.
- 3.5 The quantity of any consignment of Goods as recorded by Company upon dispatch from Company's place of business shall be conclusive evidence

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of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

- 3.6 Company shall not be liable for any non-delivery of Goods (even if caused by Company's negligence) unless written notice is given to Company within five Working Days after the date when the Goods would in the ordinary course of events have been received (as determined under clause 4.1 above). A signature of qualified acceptance on a carrier's delivery note shall not constitute written notice to Company for the purpose of this clause 4.6.
- 3.7 Company's liability for Goods which it fails to deliver as envisaged in clause 4.6 shall be limited to either an obligation to replace the Goods within a reasonable time or to issue a credit note at the pro rata Contract rate against any invoice raised for such Goods. The remedy provided under this clause 4.8 shall be at Company's option.
4. **Specification of the Goods**
- 4.1 Company reserves the right to make any changes to the specification, design, materials used in production, or finished appearance of the Goods to the extent that the same may be required to conform with any applicable safety, regulatory or other statutory requirements or which do not, in Company's sole opinion, materially affect their quality or performance.
- 4.2 Company reserves the right to fulfil an Order using a product other than the product requested by the Buyer provided that the replacement product conforms to a specification such that it will (in the sole opinion of Company) be a suitable and adequate replacement for the product requested.
5. **Risk and Ownership of Goods**
- 5.1 Risk of damage to, or loss of, the Goods shall pass to the Buyer at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when Company is deemed to have fulfilled its obligations under this Agreement, as set out in clause 4.4.
- 5.2 The Buyer shall be responsible for ensuring the security of the Goods from the time of delivery.
- 5.3 Notwithstanding risk in the Goods passing in accordance with clause 6.1, title in the Goods shall not pass to the Buyer until Company has received in full (in cash or cleared funds) all sums due to it in respect of:
  - (a) the Goods; and
  - (b) all other sums which are or which become due to Company from the Buyer on any account.
- 5.4 The Buyer is licensed by Company to use or to agree to sell the Goods delivered to the Buyer subject to the express condition that the entire proceeds of any sale are held in trust for Company and are not mixed with other moneys or paid into an overdrawn bank account and shall at all times be identifiable as Company's moneys.
- 5.5 Until ownership of the Goods has passed to the Buyer and unless the Buyer resells the Goods before ownership passes to it (as envisaged in clause 6.6), the Buyer must:
  - (a) hold the Goods on a fiduciary basis as Company's bailee;
  - (b) store the Goods (at no cost to Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Company's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) maintain the Goods in satisfactory condition, insured on Company's behalf for their full price against all risks to the reasonable satisfaction of Company. On request the Buyer shall produce the policy of insurance to Company; and
  - (e) hold any proceeds of the insurance referred to in clause 6.5(d) on trust for Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 5.6 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
  - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to Company accordingly; and
  - (b) any such sale shall be a sale of Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 5.7 Where Company is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by Company to the Buyer in the order in which they were invoiced to the Buyer .
- 5.8 Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Company.
- 5.9 The Buyer grants to Company, its agents and employees an irrevocable licence at any time to enter any premises where Goods are stored in order to inspect them, or to recover them if entitled to do so under this clause.
6. **Price and Payment**
- 6.1 The price for the Goods shall be the price set out in the Order Terms (as confirmed in the accepted Purchase Order) and includes the cost of delivery to a Delivery Address in mainland Great Britain (excluding Northern Ireland), unless otherwise agreed, on the terms set out in clause 4 (save that if Company's delivery agent charges any additional premium to Company based on the location of the Delivery Address, Company reserves the right to charge such additional premium to the Buyer). If the Delivery Address specified in a Purchase Order is outside mainland Great Britain (or if Company's delivery agent charges a premium based on the Delivery Address as envisaged above), the Buyer shall pay such additional incremental delivery costs as Company may incur in delivering to that Delivery Address. Such additional delivery charges shall be invoiced and paid for at the same time as the purchase price of the Goods.
- 6.2 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.
- 6.3 Company may invoice the Buyer for the Goods at any time after delivery.
- 6.4 Payment of the price for the Goods is due on the day specified by Company in its invoice.
- 6.5 The Buyer shall not exceed any credit limit specified from time to time by Company and where any such limit is exceeded, then the Buyer shall be liable immediately to pay the amount by which the credit limited is exceeded.
- 6.6 No payment shall be deemed to have been received until Company has received cleared funds.
- 6.7 Notwithstanding any other provision to the contrary, on termination of any Contract (howsoever arising) all payments payable to Company under that Contract shall become immediately due and payable by the Buyer.
- 6.8 The Buyer shall make all payments due under this Contract without any deduction, set-off or counterclaim.
- 6.9 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) Company may charge the Buyer interest (both before and after judgment) on the amount unpaid at the monthly rate of 2% until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).
7. **Quality**
- 7.1 The Buyer shall inspect the Goods on delivery.
- 7.2 Company warrants that (subject to the other provisions of these terms and conditions) for 12 months from the date of delivery, the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 7.3 Company shall not be liable for a breach of the warranty in clause 8.2 unless:
  - (a) the Buyer gives written notice of the defect in the Goods giving rise to such breach to Company within 30 days after:
    - (i) the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
    - (ii) the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and

- (b) Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Company) returns such Goods to Company's place of business for the examination to take place there.
- 7.4 Company shall not be liable for a breach of the warranty in clause 8.2 if:
- (a) the defect arises because the Buyer failed to follow Company's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
  - (b) the Buyer alters the Goods in any way without the written consent of Company; or
  - (c) the defect arises from fair wear and tear, wilful damage by the Buyer, negligence of the Buyer, abnormal working conditions or misuse of the Goods without Company's approval; or
  - (d) the total price for the Goods has not been paid by the Buyer by the due date for payment.
- 7.5 If the Buyer makes a valid claim against Company based on a defect in the quality of the Goods, Company shall at its option replace such Goods (or the defective portion thereof) or refund the price of such Goods at the pro-rata Contract rate provided that, if Company so requests, the Buyer shall return the Goods or the part of such Goods which is defective to Company.
- 7.6 If Company complies with clause 8.5 it shall have no further liability for a breach of the warranty in clause 8.2 in respect of the quality of such Goods.
- 8. Limitation of Liability**
- 8.1 Save as expressly set out in these terms and conditions, all warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the maximum extent permissible in law.
- 8.2 Nothing in these terms and conditions excludes or limits the liability of Company for fraud, fraudulent misrepresentation, or for death or personal injury caused by Company's negligence.
- 8.3 subject to clause 9.2:
- (a) Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or howsoever otherwise arising in connection with any Contract shall be limited to the total price payable by the Buyer for the Goods the subject of that Contract; and
  - (b) Company shall not be liable to the Buyer for any type of special, indirect or consequential loss or damage, or loss of profits arising in connection with any Contract, whether or not caused by the default or negligence of Company, its agents or sub-contractors.
- 9. Termination**
- 9.1 Without prejudice to any other right or remedy available to Company, Company shall be entitled to terminate any Contract forthwith and/or suspend any further deliveries under other Contracts with the Buyer if:
- (a) the Buyer fails to pay any amount due under a Contract for a period of 14 days after the due date for payment as determined by clause 7; or
  - (b) any of the events set out in clause 24 of the AIC Contract occurs to the Buyer (or Company reasonably apprehends that any such event is about to occur to the Buyer and notifies the Buyer accordingly).
- 9.2 If Company exercises its rights under clause 10.1 and Goods have been delivered but not paid for under any Contract with the Buyer, the price for such Goods shall become immediately due and payable notwithstanding the provisions of clause 7.
- 9.3 Company's rights contained in clause 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and Company's primary obligations under a Contract consequent upon its termination.
- 9.4 The termination of a Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or Company accrued prior to termination.
- 10. Force Majeure**
- 10.1 Company shall not be liable for any failure to perform its obligations where any delay or failure to perform was due to the occurrence of an event or circumstance beyond Company's reasonable control.
- 10.2 Should Company be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- 11. Instructions**
- 11.1 The Buyer shall comply with all health and safety requirements concerning the Goods and take all reasonable steps to ensure the safe storage, handling transportation and use of the Goods having regard to the nature of the Goods. The Buyer should comply with all product literature supplied by Company concerning health and safety, storage, transportation, use and security matters. Should the Buyer require any further information or advice in connection with such matters, the Buyer should contact Company. It is the duty of the Buyer to inform all third parties who could come into contact with the Goods (including but not limited to any subsequent purchaser of the Goods) of all appropriate and relevant information in respect of both health and safety and the security of the Goods.
- 12. General**
- 12.1 Each right or remedy of Company under each Contract is cumulative and shall be construed without prejudice to any other right or remedy of Company however arising.
- 12.2 Any provision of any Contract which is invalid or unenforceable (in whole or in part) shall be deemed severable (in whole or in part) and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 12.3 No breach of any provision of these terms or conditions shall be waived or discharged except with the express written agreement of the parties.
- 12.4 The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 form part of these terms and conditions.
- 13. Assignment**
- 13.1 Company may assign the benefit of the Buyer's obligations and sub-contract any of its obligations under any Contract to any third party without the Buyer's consent.
- 13.2 The Buyer may not assign, license, sub-contract or transfer all or any of its rights under any Contract without Company's prior written consent.
- 14. Notices**
- 14.1 Any communication given under or in connection with any Contract shall be in writing and shall be delivered personally or sent by pre-paid first class post (air mail if posted to or from a place outside the United Kingdom) to the registered address of each party or sent by fax, in each case marked for the attention of the Company Secretary.
- 15. Proper Law and Jurisdiction**
- The formation, construction, performance, validity and all aspects of each Contract are governed by English law and any dispute arising in connection with any Contract shall be subject to arbitration in accordance with clause 21 of the AIC Contract.