



## TERMS AND CONDITIONS

### 1. Definition: In these terms and conditions

"Goods" includes all products and services agreed to be supplied by the Company to the Customer under any contract, arrangement or understanding between the Company and the Customer.

"Personal Property" means any form of property, other than land or a right or entitlement under a Commonwealth, state or territory that declares that the right or entitlement is not personal property for the purposes of the *Personal Property Securities Act 2009* (Cth)

"Company" means Advanced Nutrients Pty Ltd and its agents, servants and employees and any related bodies corporate as defined in the Corporation Law (if such related body is named as the party is seeking or accepting the Customers order of goods).

"Customer" means the person or entity to whom any quotation is made, any person or entity offering to contract with the Company on these terms and conditions and any person or entity who purchases goods From the Company.

"Contract" means any contract for the sale or supply of Goods entered into between the Company and the Customer.

"Quoted Date" means the expected delivery date as agreed by the Company and the Customer.

"Security Interest" means any interest in personal property provided for by a transaction that secures payment or performance of an obligation.

"Secured Party" means the person who holds a security interest in Personal Property.

### 2. Statutory Provision – these terms and conditions:

- a) Shall be subject to the provisions of the *Competition and Consumer Act (Cth) 2010*, and statutory amendment or re-enactment thereof for the time being in force and any other relevant and applicable State and/or Commonwealth Legislation ("the Statutory Provisions").
- b) Unless the Company otherwise agrees to in writing, these are the only terms and conditions of sale to which the Company will be bound and the Customer agrees that these terms and conditions will in all circumstances preside over the Customers terms and conditions of purchase (if any); and
- c) Supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods including, but not limited to, those relating to the performance of Goods or the results that ought to be expected from using the Goods.

### 3. Warranties – subject to the Statutory Provisions:

- a) The Company warrants that the Goods supplied are of merchantable quality and shall comply with the description and specifications as set out on the label or other product documentation published by the Company;
- b) The Companies liability for breach of sub-clause 3(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51, 52 and 53 of Schedule 2 of the *Competition and Consumer Act (Cth) 2010*) it is limited to any one of the following as determined by the Company:
  - i) The replacement of the Goods or the supply of equivalent Goods,
  - ii) The repair of the Goods or payment of the cost of repair of the Goods, or
  - iii) The refund of the price paid by the Customer to the Company.

The Customer will examine the Goods for defects and shall notify the Company of any defects in writing within 30 days of delivery. If the Customer does not notify the Company within 30 days of delivery the Customer shall be deemed to have accepted the Goods.

To the extent that the law permits and not withstanding any other clause of these terms and conditions, the Company excludes all liability whatsoever to the Customer arising out of or in any way connected with a Contract for any consequential or indirect losses of any kind however arising and whether caused by breach of attribute, breach of contract, negligence or other act. Consequential or indirect losses will be taken to include but not

be limited to:

- a) Any loss of income, profit or business;
- b) Any loss in nature of overhead costs; and
- c) Any loss of goodwill or reputation.

### 4. Advice.

Subject to Statutory rights, any advice, recommendation, information, assistance or service by the Company in relation to Goods sold or manufactured by it or application is given in good faith and is believed to be appropriate and reliable. However, any liability arising out of or in respect of such advice, recommendation, assistance or service provided by the Company is hereby excluded.

### 5. Delivery

It is the customer's responsibility to pick up their product from the designated depot within 15 days of placing their order. The Company will make all reasonable efforts to assist the customer in organizing freight and have the Goods available to the Customer on the date agreed between the parties as the Quoted Date, but the Company shall not be liable for any failure to deliver or delay in delivery for any reason.

### 6. Risk

- a) Unless otherwise agreed to in writing all risk in and to the Goods purchased shall pass to the Customer upon delivery to the Customer, its agent or to a carrier commissioned by the Customer.

b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Customer, its agent or to a carrier commissioned by the Customer, the Customer covenants and warrants to the Company that, in the storage and handling of the Goods, the Customer and its agents and carriers shall comply with all relevant environmental laws and regulations and do comply with all necessary and/or relevant permits or licenses pertaining to the storage and handling of the Goods, and the Customer shall ensure that the Customers, and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

c) If the Company does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 15 days of notification from the Customers that they are ready, the Customer shall be deemed to have taken delivery of the Goods from such date. The Customer shall be liable for storage charges payable monthly on demand.

#### **7. Title**

a) Title in and to the Goods shall not pass to the Customer until payment in full for all Goods is made.

b) The customer acknowledges that until title in and to the Goods passes to the Customer in accordance with this clause, the Customer holds the Goods on behalf of the Company and that a fiduciary relationship exists between the Customer and the Company.

c) According to the requirements of the *Personal Property Securities Act 2009* (Cth), the Company may register their Security Interest as a Secured Party over any Personal Property (or Goods).

d) The Customer acknowledges that for each agreement for the supply of the Goods, the Goods may be registered as Personal Property on the Personal Property Securities Register.

e) The Customer agrees that if they do not pay for the registered Goods, the Company may seize and reclaim the Goods from the Customer.

f) Until title in and to the Goods passes to the Customer in accordance with this clause the Customer shall store the Goods separately and in such a manner that they are clearly identified as the property of the Company. The Company shall be entitled at any time until title in and to the Goods passes to the Customer so demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer to enter any premises occupied by the Customer in order to search for and remove the Goods.

g) The Customer acknowledges that if it sells the Goods before title in and to the Goods has passed to the Customer in accordance with this clause, it sells the Goods as a fiduciary agent of the Company provided that such sales do not give rise to any obligation on the part of the Company. The Customer shall hold the proceeds of sale on trust for the Company in a separate account.

h) If title in and to the Goods has not passed to the Customer in accordance with this clause, the Customers implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in Paragraph 10(b)(i-v) hereof.

#### **8. Price**

Unless otherwise agreed in writing, the price charged for the Goods shall be the price ruling as determined by the Company at the date of delivery. All quotes are valid for 7 days only. Any price indications or price lists are subject to alteration in accordance with the price ruling at that date.

#### **9. Force Majeure**

Deliveries may be partially or totally suspended by the Company during any period in which the Company may be prevented or hindered from manufacture, delivery or supply through any circumstances outside the Companies reasonable control, including but not limited to flood, storm, cyclone, tempest, earthquake, strikes, lockouts or other labour difficulty, inability to obtain necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdown of plant, machinery software, hardware or communication network. The Company shall not incur any liability to the Customer in respect of such suspension.

#### **10. Payment and Default.**

Unless otherwise agreed separately in writing, terms of payment shall be contained on the invoice. The Customer is not entitled to withhold any payments or to refuse payment on the grounds of counter claims which are disputed by the Company.

a) Should the Customer not pay within the time stipulated on the invoice or as otherwise agreed, the Company shall be entitled to charge and overdue account fee, service fee or finance fee on the amount outstanding as liquidated damages at a rate of 12% p.a., charged daily.

b) If any of the events set out in i)-v) below occur, the Company may at its option withhold further deliveries or cancel the Contract without notice to the Customer and without prejudice to any other action or remedy which the Company has or might otherwise have had, and all monies owing and outstanding to the Company on any account whatsoever and irrespective of the due date on any statement of account shall become immediately due and payable.

i) The Customer makes default in any payments or is unable or states that it is unable to pay its debts when they fall due;

ii) The Customer being an individual commits an act of bankruptcy or has a liquidator or trustee appointed in respect of the Customers estate or part of the Customers property or assets;

iii) The Customer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;

iv) A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Customer;

v) The Customer experiences any events having substantially similar effects to any of the events specified above.

c) Notwithstanding sub-clause 10.a) hereof, the Company may at all times in its sole and unfettered discretion and without being under any duty or obligation to assign reasons, therefore review, alter or terminate the Customers credit limit or payment terms without notice. Without limiting the generality of the foregoing, the decision of the Company shall be final and accepts no liability or responsibility for any loss, however arising, incurred by the Customer due to the operation of this condition.

d) The Customer must collect 90% of the ordered quantity of goods or a fee of 5% of the quoted price on the outstanding quantity will be charged by the Company.

## 11. Lawful Use of the Goods

- a) The Customer undertakes with the Company:
- i) That it will acquaint itself with the requirements of all relevant Government and Statutory or other authorities, bodies or corporations relating to the Goods and to the application to which the Goods are put;
  - ii) That at all times whilst the Goods are in the Customers possession or under its control it will comply with such requirements;
  - iii) That it will procure that any Customer of the Goods from them will also acquaint themselves with and comply with such requirements;
  - iv) That it will indemnify the Company against any liability resulting from a breach of such requirements.
- b) The Customer undertakes that it will comply with the Companies safety instructions as notified from time to time by the Company relating to the Goods.

## 12. Pallets

Unless otherwise agreed to in writing all pallets on which Goods are delivered remain the property of the Company and must be returned at the Customers expense in good order and condition to the store of the Company from which they were delivered. Pallets will be deemed to be still in the Customers hands until received at such store. To the extent the law permits, all risks whatsoever associated with the pallets rest with the Customer absolutely and the Customer agrees to indemnify the Company in respect of any pallet that is not returned in good order and condition to the Company within one month of delivery of the Goods.

## 13. Bulk Containers

a) It is the Customers responsibility to return empty returnable bulk containers (including bulk bags and bulk bins) in the same condition as they were supplied (fair wear and tear excepted) to the location from which they were supplied or other location nominated by the Company. At all times bulk containers supplied by the Company will remain the property of the Company and must not be used for any other commodity other than that contained in the bulk containers at the time of delivery.

b) The period of use for bulk containers shall be such reasonable time as determined by the Company, having regard for the circumstances in which the bulk containers are supplied. The Customer will pay rental charges as determined by the Company from time to time on all containers which are not returned within the time determined by the Company pursuant to this clause.

c) The Customer will be liable for bulk containers not returned in the same condition as they were supplied (fair wear and tear excepted) and will be charged replacement value or repair cost whichever is applicable.

## 14. Bulk Storage

The Company does not recommend or take any responsibility for any of its granular or powdered fertiliser or animal supplement products to be stored in any type of silo. If placed in a silo all risk is undertaken by the customer.

## 15. General Lien

In addition to any right of lien to which the Company may be entitled under the common law, the Company shall be entitled to exercise a general lien over all items in its possession belonging to the Customer until the Customer has paid in full for all Goods supplied by the Company to the Customer. The Company may in its sole discretion sell any item that is subject to the said lien, provided that the Company shall pay to the Customer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to the Company in respect of Goods that have been delivered by it to the Customer and all reasonable costs of sale incurred by the Company.

## 16. Severance

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable that provision shall so far as possible be read down to such extent as it may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of these terms and conditions shall not in any way be affected or impaired.

## 17. Governing Law

The contract shall be governed and construed in accordance with the law in force in the State of Queensland. The Customer and the Company hereto irrevocable submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of any of the courts of the State of Queensland as the Company may elect with respect to any legal action or proceedings which may be brought at any time relating in any way to this contract.

## 18. Transaction Tax

Where a transaction tax, including Goods and Services Tax (GST), and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under these terms and conditions, the Company may recover from the Customer an additional amount on account of that transaction tax in accordance with clause 10.

## 19. Patents

No right or license is granted the Customer under any patent, copyright, registered design or other industrial or intellectual property right except the right to resell Goods.

## 20. Set-Off

The Company in its sole and unfettered discretion may at any time set-off any amount owing to the Company to the Customer on any account whatsoever, including any monies held by the Company for or on account of the Customer, against any amount owing by the Customer to the Company in respect of the Goods supplied by the Company whether or not that amount has become due and payable.

