

1. Definition

Customer means the person or company identified as the **customer** in the Contract Form and referred to as “you” in these Terms and Conditions.

Contract Form means the Fixed Contract Form, as applicable.

Fixed Price Contract means a fully executed Fixed Price Contract Form and these Terms and Conditions.

Fixed Price Contract Form means the form between the **Customer** and **Whitfert** listing the particulars of the Product to be purchased on a fixed price basis.

Personal Property Securities Register has the same meaning given to it under the *Personal Property Securities Act 2009(Cth)*

Product means fertilizer supplied or agreed to be supplied by **Whitfert** to **Customer**.

Purchase Price has the same meaning given to it by clause 3.

Security interest has the same meaning given to it under the *Personal Property Securities Act 2009(Cth)*

Whitfert means Summit Rural(WA) Pty Ltd ABN 49 058 794 737 trading as **Whitfert**.

Whitfert List Price is the price for Product as published by **Whitfert** from time to time.

Terms and Conditions means these terms and conditions as varied by **Whitfert** from time to time and notified to you in writing.

2. Formation of Contract

Whitfert agrees to supply, and the **Customer** agrees to purchase and collect, the Product in accordance with this Contract.

- a) On a fixed price basis by entering into a Fixed Price Contract.

3. Purchase Price

The purchase price payable by the **Customer** to **Whitfert** for Product;

- a) In respect of Product purchased under a Fixed Price Sales Contact Form in each case multiplied by the tonnes nominated for collection (“**Purchase Price Payable**”).

4. Payment

- a) **Customer** must pay the Purchase Price Payable on or before collection.
- b) Product cannot be collected until payment of the Purchase Price payable is made in full to **Whitfert**.
- c) Where payment is made by cheque, the Purchase Price Payable is not considered paid until **Whitfert** has received cleared funds.
- d) Where payment is made by Direct Debit, the Purchase Price Payable is not considered paid until payment is made through **Whitfert's** Direct Debit function.
- e) For fixed price contract if payment is not made in the contracted Month then a \$10/t/month storage fee will be charged to the **Customers** account until full payment is made.

5. Collection and Loading

5.1 Unless otherwise specified in the Contract Form, the **Customer** is responsible for and must collect the nominated quantity of Product from **Whitfert** in the month nominated for collection, including making all the necessary arrangements, payments, and a loading appointment at the **Whitfert** depot.

5.2 Product cannot be collected until payment of the Purchase Price Payable is made in full to **Whitfert**.

5.3 If full collection is not made in the contracted month than storage charges may apply to any uncollected portion of the nominated quantity (at the discretion of **Whitfert**).

5.4 The **Customer** must inspect the Product on collection or delivery and immediately notify **Whitfert** in writing if the Product contains any defects. To the extent permitted by law. **Whitfert** shall not be responsible for any defects in the Product if not notified by the **Customer** on collection or delivery.

6. Variance in Quantity

Customer acknowledges and accepts that while all reasonable efforts will be made to load the exact quantity of Product ordered by a **Customer**, variances in quantity will sometimes occur. **Customer** must pay for the quantity of Product actually collected, including any overloaded amount. Payment for any overloaded quantity is to be paid within seven (7) days of invoice.

7. Customer's Acknowledgements

7.1 The **Customer** acknowledges that product consists of variable sized material and may segregate when unloaded into farm storage, particularly when belt conveyors and augers are used for discharge.

Whitfert shall not be liable to the **Customer** in respect to Product quality changes as a result of segregation occurring during discharge or otherwise.

7.2 **Whitfert** takes no responsibility for any deterioration or alteration to the Product after loading.

7.3 The **Customer** acknowledges that blended Product requires particular storage conditions and application requirements, and that the **Customer** is solely responsible for the Product after collection from **Whitfert**, including for storage and application of such Product.

8. Blended Product

Whitfert may, at its discretion and on the written request of the **Customer**, blend Product supplied by it with other substances provided by the **Customer** or third parties at the **Customer's** request.

The **Customer** agrees:

- a) that **Whitfert** does not warrant that the blended or treated product will be suitable, appropriate or effective for its intended use; and
- b) that **Whitfert** shall not be liable for, and the **Customer** indemnifies **Whitfert** against all loss and damage arising either directly or indirectly from the use, storage or transportation of the blended or treated Products.

9. Taxes ancillary costs and GST

Customer is responsible for and must pay all government duties, taxes and charges imposed by any relevant authority in respect of any sale, collection or delivery of Product.

In this clause:

“GST” means goods and services tax or similar value added tax levied or imposed in Australia, “GST Act” means A New Tax System (Goods and Services Tax) Act 1999 (Cth) (including any amendments and any replacement legislation) and “GST Tax Invoice” includes any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit.

Any amount referred to in this Contract exclusive of GST unless it is expressly included. A party which makes a supply (or deemed supply) under or in connection with this Contract must provide to the recipient of that supply a GST Tax Invoice as required by the GST Act.

10. Title and Risk

10.1 Title passes to the **Customer** at the later of;

- i) the time of collection of all the Product; and
- ii) full payment of the Purchase Price Payable.

10.2 Risk passes to the **Customer** at the time of the collection.

11. Warranty

Except to the extent expressly required by law, **Whitfert** makes no representations or warranties other than as expressly agreed with the **Customer** in writing, and all terms, conditions, warranties and undertakings whether express, implied, statutory or otherwise, relating in any way to the Product or the Contract, are excluded.

12. Liability

12.1 **Whitfert** shall not in any circumstances be liable to the **Customer** for indirect, consequential, special or penal damages or losses (including any loss of revenue, profit or other consequential loss or damage) however caused and the **Customer** irrevocably releases **Whitfert** and indemnifies **Whitfert** against any such claims for loss of damage.

12.2 To the maximum extent permitted by law, the liability of **Whitfert** under the Contract shall be limited to:

- a) in the case of Product supplied, to:
 - i) the replacement of the Product or the supply of a reasonably equivalent product;
 - ii) the payment of the cost of replacing the Product or of acquiring reasonably equivalent product, in each case, at **Whitfert's** option.
- b) in the case of services supplied, to:
 - i) the resupply of the services; or
 - ii) the payment of the cost of having the services supplied, in each case at **Whitfert's** option.

13. Force Majeure

Whitfert shall not be liable to the **Customer** in the event of nonfulfillment of any obligation under this Contract due to the act of god, disease, strike, lock-outs, fire, unavailability, delay or restriction on supply, or any accident or incident of any nature whatever beyond the reasonable control of **Whitfert**. If the nonfulfillment continues for longer than two (2) months either party may terminate the Contract by notice in writing.

14. Termination

Whitfert may terminate this contract by written notice to **Customer** if;

- a) **Customer** is in default of any of its obligations in this Contract that is not capable of remedy, or if capable of remedy is not remedied within 14 days of written notice by **Whitfert** of such default;
- b) **Whitfert** believes that **Customer** is ceasing to carry on business, entering into liquidation or having a controller or managing controller or liquidator or administrator appointed, or the **Customer**, being a natural person, is being declared bankrupt or has his or her estate assigned for the benefit of creditors.
- c) **Whitfert** provides **Customer** with 21 days notice for any reason.

15. Security Interest

The **Customer** agrees to;

- a) promptly execute any document and do any act required by **Whitfert** to register **Whitfert's** Security Interest in the Products on the Personal Property Securities Register;
- b) not register a financing change statement or change demand on the Personal Property Securities Register without **Whitfert's** prior written consent.
- c) waive its right to receive any verification statement or financing change statement under the *Personal Property Securities Act 2009 (Cth)*; and
- d) comply with all directions and do all acts reasonably required by **Whitfert** in order for **Whitfert** to exercise its right as a secured party under the *Personal Property Securities Act 2009 (Cth)*.

16. Commercial Purpose

The **Customer** warrants that it is not a consumer as defined in the *Competition and Consumer Act 2010 (Cth)* and that it is acquiring the Product for commercial purposes.

17. Non-Performance

If the **Customer** does not collect the nominated quantity of Product during the month nominated in the Contract Form (or otherwise agreed with **Whitfert**), the **Customer** remains fully liable for the Purchase Price Payable, together with storage and other charges. **Whitfert** reserves all rights to take such legal action to recover the Purchase Price Payable and any other charges from the **Customer**.

18. Entire Agreement

This Contract is the whole agreement between the parties in relation to the supply of Product and replaces any prior agreement, arrangement, or understanding concerning the provision of the Product.

19. General

- a) This contract is governed by the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.
- b) The **Customer** must not assign its right or obligations under this Contract without **Whitfert's** prior written consent.
- c) Waiver by **Whitfert** of any rights under this contract is effective only if in writing and executed by **Whitfert**.
- d) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it.
- e) A term or part of a term of this Contract that is illegal or unenforceable may be read down to the extent necessary or severed from this contract in order for the remaining terms of this Contract to continue in force.
- f) Clauses 12 (Liability) and 17 (Non-Performance) survive the termination of this Contract.