

### 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 Fertiliser Supply Contract Form, as applicable.

**Fixed Fertiliser Supply Contract** means a fully executed Fixed Fertiliser Supply Contract Form and these Terms and Conditions.

**Fixed Fertiliser Supply 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 the 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 Fertiliser Supply Contract.
- b) On a variable price basis.

### 3. Purchase Price

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

- a) In respect of Product purchased under a Fixed Fertilizer Supply Contract the price shown in relation to that Product on the Fixed Fertiliser Supply Contract Form; or
- b) In respect of Product purchased on a variable price basis, the Whitfert List price at the time the Customer is due to collect the Product.

Where Whitfert and the Customer agree a Variable Price Offer, the Customer acknowledges that Whitfert may vary the Whitfert List Price from time to time in its discretion, without the need to provide the Customer with written notice.

### 4. Payment

- a) Unless Whitfert have advised the Customer in writing of an approved credit facility (relating to this contract).
  - I) The Customer must pay the Purchase Price on or before collection of the Product by the Customer from the Whitfert Depot.
  - II) The Product cannot be collected until payment of the Purchase Price is made in full to Whitfert.
- b) Where payment is made by cheque, the Purchase Price is not considered paid until Whitfert has received cleared funds.
- c) Where the Customer has been approved for credit in accordance with the Contract Form, the Purchase Price is not considered paid until payment is received through Summit's direct debit function.
- d) Whitfert's provision of credit to the Customer is subject to the credit trading account terms.

### 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 The Customer is not permitted to collect the Product in accordance with clause 5.1 until payment of the Purchase Price is made in accordance with clause 4.

5.3 For Fixed Fertilizer Supply Contracts, if collection is not made in the contracted month then a storage charge of \$10/tonne plus GST will apply to any uncollected portion of the nominated quantity for each month the nominated quantity remains uncollected.

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 the Customer has not notified Summit of a defect on collection or delivery of the Product (as applicable).

5.5 The Customer or their carrier must comply with all occupational health and safety obligations it has at law, as well as any protocols required of Summit when collecting the Product.

### 6. Variance in Quantity

The Customer acknowledges and accepts that while all reasonable efforts will be made to load the exact quantity of Product ordered, variances in quantity will sometimes occur. The 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 by Whitfert.

### 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 at the Whitfert depot.

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

The 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

#### PRIVACY POLICY

Your privacy is important to Whitfert. Our policy is to abide by the National Principles contained in the Commonwealth Privacy Act 1988. This policy requires that Whitfert respects the confidentiality of information and the privacy of individuals. Whitfert is committed to being open about how we use personal information disclosed and confirm any personal information disclosed to us is for the sole purpose of supplying products and services to you.

- ii) full payment of the Purchase Price.
- 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 the Customer if:

- a) The 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

Where Whitfert offers credit to the Customer, 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, together with storage and other charges. Whitfert reserves all rights to take such legal action to recover the Purchase Price 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.