



## ADAMA AUSTRALIA TERMS AND CONDITIONS

November 2021

### 1. APPLICATION

- (a) These terms form part of any:
- (i) sale of Products by the Seller to the Buyer; and
  - (ii) supply of Products to the Buyer on consignment.
- (b) Unless otherwise agreed by the parties in writing, these terms apply exclusively to every sale or supply of Products and cannot be varied or replaced by any other terms, including the Buyer's terms and conditions of purchase (if any).
- (c) An agreement for the sale or supply of Products is accepted by the Seller when the Seller accepts an offer from the Buyer or provides the Buyer with the Products.

### 2. DEFINITIONS

In this Agreement:

- (a) **ACL** means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended;
- (b) **Buyer** means the buyer of Product from the Seller or anyone who holds Product on consignment from the Seller;
- (c) **Default Event** means where:
- (i) the Buyer does not pay any amount owing to the Seller when it is due;
  - (ii) an Insolvency Event occurs; or
  - (iii) the Buyer is in breach of any obligation it has to the Seller and does not rectify it after 7 days' notice;
- (d) **Delivery** means delivery of Products to any place nominated by the Seller or to any agent or courier nominated by the Buyer and Delivered has a corresponding meaning;
- (e) **Force Majeure Event** means an event or events beyond a party's reasonable control including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, material increase in costs of supply such that the Seller's performance is rendered substantially different to what was originally envisaged by either or both of the parties, or acts or threats or terrorism or war;
- (f) **Insolvency Event** means any of the following:
- (i) the Buyer commits an act of bankruptcy;
  - (ii) a receiver is appointed to the Buyer or any of its property;
  - (iii) the Buyer goes into liquidation, administration, or some other form of insolvency administration whether formal or informal;
  - (iv) the Buyer ceases to carry on business; or
  - (v) the Buyer enters into a scheme of compromise with its creditors;
- (g) **Premises** means anywhere that Products are stored by the Buyer or on behalf of the Seller;
- (h) **Price** means the price for the Products determined in accordance with the Seller's pricing policy as notified to the Buyer or listed on the Seller's website from time to time;
- (i) **Product** means any goods or products supplied by the Seller to the Buyer whether on consignment or otherwise;
- (j) **PPSA** means the *Personal Property Securities Act 2009* (Cth); and

- (k) **Seller** means Adama Australia Pty Limited ABN 55 050 328 973.

### 3. EXCLUSION OF CONDITIONS AND WARRANTIES

- (a) Except as these terms specifically state, or as cannot be excluded by law, or as contained in any express warranty provided in relation to the Products, the agreement for the supply of Products does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Products or any contractual remedy for their failure.
- (b) The Buyer acknowledges that:
- (i) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Seller in relation to the Products or their use or application;
  - (ii) if advice or assistance is required in relation to the use or application of the Products, it should engage the services of appropriate specialists and/or agronomists; and
  - (iii) it has not made known, either expressly or by implication, to the Seller any purpose for which it requires the Products and it has the sole responsibility of satisfying itself that the Products are suitable for the use of the Buyer.

### 4. LIMITATION OF LIABILITY

- (a) If the Buyer is a consumer nothing in these Terms restricts, limits or modifies the Buyer's rights or remedies against the Seller for failure of a statutory guarantee under the ACL.
- (b) If the Buyer on-supplies the Products to a consumer and:
- (i) the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Seller's liability to the Buyer;
  - (ii) the Products are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Seller's liability to the Buyer;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Products by the Buyer or any third party.
- (c) If clause 4(a) or 4(b) do not apply, then the Seller's liability to the Buyer in any way arising under or in connection with the sale, installation, use of, storage or any other dealings with the Products by the Buyer or any third party is limited to:
- (i) replacement of the Products;
  - (ii) paying the cost of supplying equivalent products; or
  - (iii) refunding the price paid by the Buyer in respect of the supply of the Products.



## 5. DELIVERY

- (a) Any date for Delivery of the Products stated by the Seller is an estimate only and not a contractual commitment.
- (b) The Seller will use its reasonable endeavours to meet any estimated dates for Delivery of Products, but will not be liable for any loss or damage suffered by the Buyer or any third party for any failure to meet any such estimated date.
- (c) If the Seller cannot complete Delivery of Products by any estimated date, it must notify the Buyer and use reasonable endeavours to make Delivery of the Products within a reasonable time.
- (d) Provided the Seller has complied with clause 5(c), the Buyer must accept Delivery of the Products ordered and pay the Price irrespective of any delay in Delivery.

## 6. RISK AND STORAGE

- (a) Unless otherwise recoverable under law, risk in the Products passes to the Buyer on Delivery.
- (b) The Buyer is responsible for the proper handling, transport, storage and use of the Products.
- (c) Without limiting clause 6(b) the Buyer must:
  - (i) handle, transport and store the Products so that:
    - (1) they are transported only by a reputable carrier (in the reasonable opinion of Seller) and otherwise at all times kept safe and secure having regard to their label instructions, other handling instructions of Seller and any current industry code of practice including Chain of Responsibility (COR), Safe Transport, Handling and Storage of Packaged Agricultural and Veterinary Chemicals code published by AGSAFE; and
    - (2) the Buyer complies with all relevant laws, regulations, licenses and permits (including those relating to environment protection, occupational health and safety, and planning and permit use).
  - (ii) ensure that chemical storage facilities for receiving and storing the Products are accredited by AGSAFE and by the Seller;
  - (iii) ensure the employment of adequate numbers of staff with appropriate AGSAFE (AVCARE) accreditation to ensure that the Buyer is able (in the reasonable opinion of the Seller) to carry out its obligations under the Seller's terms and conditions; and
  - (iv) apply the 'First In, First Out' inventory and valuation method to all Products in possession or control of the Buyer in all storage facilities used or managed by the Buyer.

## 7. PROPERTY

- (a) Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- (b) A term that is used in this clause 7 has the same meaning as used in the PPSA.
- (c) Legal and equitable title in and ownership of the Products supplied by the Seller to the Buyer does not pass to the Buyer until:
  - (i) the money owing for those Products; and

- (ii) any other money owing by the Buyer to the Seller,  
has been paid (whether or not the Products are Delivered at different times, are the subject of separate invoices or, after Delivery, may be determined by the Seller to be the subject of a specific invoice).
- (d) The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.
- (e) Until all amounts owing by the Buyer to the Seller are paid, the Buyer:
  - (i) must properly store, protect and insure the Products, including storing them in a manner that clearly shows that they are the property of the Seller;
  - (ii) must not consume or sell Products other than in the ordinary course of business;
  - (iii) may use the products in a manufacturing or other process of its own or of a third party in the ordinary course of business;
  - (iv) (without prejudice to any other rights of the Seller) authorises the Seller and any person authorised by it to enter any Premises upon reasonable notice to inspect the Products and undertake a stocktake;
  - (v) must hold the proceeds of sale of the Products on trust for the Seller in a separate account with a bank to whom the Buyer has not given security however failure to do so will not affect the Buyer's obligation as trustee;
  - (vi) agrees not to attempt to sell, assign, charge or otherwise encumber or grant any right or interest in any Products or over any debts and other obligations which a third party may owe to the Buyer as a result of the use, manufacture or resale of the Products, without the permission of the Seller;
  - (vii) agrees that, in addition to its rights under the PPSA, the Seller may without notice, enter any premises where it suspects the Products are and remove them, notwithstanding that they may have been attached to other goods not the property of the Seller, and for this purpose the Buyer irrevocably licences the Seller to enter such premises; and
  - (viii) must immediately advise the Seller of any breach by the Buyer of this clause.
  - (ix) Nothing in this clause 7(e) limits or excludes the Seller's interest as principal in those debts and other obligations.
- (f) If the Price of all Products sold to the Buyer is greater than the sum of all payments actually received by the Seller in respect of the Products, the difference remains a debt owing by the Buyer to the Seller.
- (g) If, at any time, the Seller retains legal title to the Products as contemplated by this clause 7, the Buyer acknowledges and agrees that:
  - (i) these terms and conditions are a security agreement;
  - (ii) this clause 7 creates a continuing security interest in all present and after acquired Products as security for the Buyer's obligations to the Seller;
  - (iii) the Seller is a secured party in relation to the Products and any proceeds of the Products,



- and is entitled to register its interest on the register established under the PPSA as a security interest or, if applicable, a purchase money security interest, at the discretion of the Seller;
- (iv) the Seller may, by notice to the Buyer, require the Buyer to take all steps that the Seller considers necessary or desirable to ensure its security interest in the Products is enforceable, and to perfect, or better secure the position of the Seller under these terms and conditions as a first ranking security;
  - (v) the Buyer must comply with a notice from the Seller under this provision at the cost and expense of the Buyer;
  - (vi) the Buyer must promptly inform the Seller of any change to information that it provides to the Seller under this provision;
  - (vii) Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA; and
  - (viii) The Seller and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- (h) The Buyer will be liable for any loss arising from or in connection with the recovery of possession of the Product by the Seller, in the event of a breach of this clause 7 by the Buyer.
  - (i) Every payment to the Seller in respect of the Products must be taken to be a payment:
    - (i) firstly, of the amounts held by the Seller subject to a security interest, to the extent that the security interest is not a purchase money security interest;
    - (ii) secondly, of amounts subject to a security interest to the extent that it is a purchase money security interest;
    - (iii) thirdly, for any Products that the Buyer has sold but for which it has not received proceeds; and
    - (iv) fourthly, for whatever Products that the Buyer has not sold as the Seller elects.
  - (j) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Terms and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Terms nor the sale of the goods, except as otherwise required by law or that is already in the public domain.
  - (k) To the extent permitted by the PPSA, the Buyer agrees that:
    - (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and
    - (ii) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
  - (l) If a Default Event occurs:
    - (i) any right of the Buyer to sell or otherwise dispose of the Products, or part with their possession in the ordinary course of business and any other rights of the Buyer in respect of the Products, immediately terminates;
    - (ii) the Buyer must immediately return to the Seller all Products in which title has not passed; and
    - (iii) without notice to Buyer and without prejudice to any of the Seller's other rights, the Seller may recover and/or re-sell the Products and the Buyer irrevocably authorises the Seller (and anyone authorised by it) to enter the Buyer's premises at any time to take possession of the Products for that purpose.
  - (m) The Seller agrees that it will exercise its right of entry (including the use and extent of force) in accordance with applicable laws.
  - (n) The Buyer indemnifies the Seller for all claims, actions, suits, demands or orders for costs or damages relating to or arising out of the Seller exercising its right of entry under this clause 7.
- 8. FORCE MAJEURE**
- (a) Subject to clause 8(b), neither party will be liable for any failure to perform any obligation under this Agreement to the extent that such failure is caused by a Force Majeure Event.
  - (b) The operation of clause 8(a) does not excuse the Buyer from any obligation it has to pay money to the Seller.
  - (c) If a party is prevented from acting by a Force Majeure Event, that party must:
    - (i) promptly notify the other party of the existence and expected duration of the Force Majeure Event;
    - (ii) take all reasonable steps to alleviate or remedy the effect of the Force Majeure Event; and
    - (iii) subject to clause 8(d), resume performance of the obligation prevented by the Force Majeure Event as soon as practicable after the Force Majeure Event ceases.
  - (d) If a Force Majeure Event prevents performance of an obligation beyond 60 days, either party may suspend or terminate an affected order by written notice to the other party.
  - (e) Without prejudice to any other provision of these Terms, if a Force Majeure Event causes an increase in costs to be incurred by the Seller (for example, as a result of changes in exchange rates), the Seller may change the Price payable for the Products at any time (including after an order has been placed) to reasonably reflect the additional costs incurred or to be incurred.
- 9. PRICE AND PAYMENT**
- (a) The Buyer acknowledges and agrees that the Price of the Products is subject to change, even after an order has been placed, in accordance with the Seller's applicable pricing and ordering policies (e.g. seasonal Products and/or Product promotions), and by reason of forces causing an increase in costs to be incurred by the Seller, including but not limited to Force Majeure Events and changes in exchange rates.
  - (b) Where there is any change in the costs incurred by the Seller in relation to the Products (including but not limited to sourcing, freighting or transporting a Product or Products), the Seller may vary its Price to



take account of any such change, in which case the Seller must notify the Buyer of that change as soon as is practicable, and the Buyer must pay the Price for the Products to the Seller.

- (c) All invoices must be paid within 30 days of the end of the month in which it is issued unless otherwise agreed, and where the due date for payment falls on a weekend or public holiday in New South Wales the Buyer must make payment by the last working day of the month in which payment falls due.
- (d) Amounts outstanding beyond the time due for payment as agreed by the Seller will automatically be subject to a service charge of 1.25% for each month, (or part) that the outstanding amount remains unpaid.

#### 10. DEFAULT

- (a) If a Default Event occurs, subject to any statutory stay of proceedings the Seller may exercise any rights it may have against the Buyer including (without limitation):
  - (i) suspending Delivery of Products;
  - (ii) cancelling any order for Products;
  - (iii) requiring cash payment on Delivery;
  - (iv) entering any Premises and removing Products owned by the Seller in addition to those rights conferred on the Seller under clause 7;
  - (v) commencing legal action to recover any amount owing by the Buyer; or
  - (vi) exercising any security it holds in respect of the Buyer's obligations to the Seller.
- (b) Any expense, cost or disbursements incurred by the Seller in recovering any outstanding monies including debt collection agency fees, commission and any fees, costs or disbursements paid to the Seller's solicitors, must be paid by the Buyer on a full indemnity basis.
- (c) If the Buyer is a trustee of a trust, the Buyer acknowledges that in addition to the assets of the trust being available to meet its obligations, the Buyer is personally liable for those obligations.

#### 11. CONTAINERS

All containers, cylinders, drums, magazines and pallets in or on which Products are delivered remain the property of the Seller (or where applicable Seller's contractor) and must not be used for any other purpose than that used at the time of Delivery. The Buyer must, at the Buyer's expense, return all containers in good order and condition to the factory or store of the Seller from which the Products were delivered.

#### 12. WEIGHT

Except in the case of manifested error, the weights of Products sold will be the last weight determined by the Seller's system of weighing prior to Delivery. If the Buyer does not agree with the weight determined by the Seller then the Buyer must notify the Seller of the dispute within 48 hours.

#### 13. GST

- (a) In these terms:
  - (i) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended (**GST Act**) or any replacement or other relevant legislation and regulations;
  - (ii) words used in this clause which have a particular meaning in the GST law (as defined

in the GST Act) have the same meaning, unless the context otherwise requires;

- (iii) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.
- (b) Unless GST is expressly included, the consideration expressed to be payable under any other clause of these terms and conditions for any supply made under or in connection with these terms and conditions (including the price at which the Products are sold) does not include GST.
- (c) To the extent that any supply made under or in connection with these terms (including the supply of the Products) is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is to be paid or provided.

#### 14. CANCELLATION

- (a) If the Seller is unable to deliver the Products, it reserves the right to cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer, and will use reasonable endeavours to communicate with the Buyer in relation to replacement product and expected availability.
- (b) The Buyer's ability to cancel or suspend orders will be governed by the Seller's applicable pricing and ordering policies (eg. seasonal Products and/or Product promotions).

#### 15. GENERAL

- (a) The Seller may at any time set-off any amount owing by the Seller to the Buyer, against any amount payable by the Buyer in respect of Products and/or services
- (b) The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.
- (c) If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of these terms remains in force.
- (d) The law of New South Wales governs these terms. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.