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Crop Smart Pty Ltd General Terms & Conditions of Sale (Trading Terms)

1. DEFINITIONS:

- 1.1. **we, us or our** means Crop Smart Pty Ltd ACN 093 927 961 / ABN 28 093 927 961 trading as Crop Smart and its successors and subsidiaries.
- 1.2. **customer** means the person or persons named on the front of this document as the customer and if there are more than one, means each of them separately and every two or more of them jointly.
- 1.3. **order** means an order to purchase goods made by a customer placed verbally, by text message, email or sending a purchase order to Crop Smart or otherwise communicating with Crop Smart by any means acceptable to Crop Smart to place an order.
- 1.4. **contract** means a contract for the sale and purchase of goods between Crop Smart and the customer formed upon the acceptance of an order, in accordance with these Trading Terms.
- 1.5. **agreement** means this credit application agreement comprising the form, these trading terms and the privacy statement. The singular includes the plural and vice versa. A reference to any thing includes the whole or each part of it.
- 1.6. **goods** means all products and/or services supplied by Crop Smart to the customer under any contract or arrangement between us and the customer.
- 1.7. **price** means the cost to the customer of the goods as referred to in our price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.
- 1.8. **person** includes firm, partnership, committee, and incorporated and unincorporated bodies.
- 1.9. **payable** in relation to an amount means an amount which is currently payable or will or may be payable in the future.
- 1.10. **insolvent** means insolvent or insolvent under administration (each as defined in the Corporations Law), in receivership, in receivership and management, in liquidation, in provisional liquidation, administration, wound up, subject to any arrangement, assignment or composition, or protected from any creditors under any statute or dissolved (other than to carry out a reconstruction while solvent).

2. GENERAL:

- 2.1. The supply of goods and/or services by us to any customer shall be subject to these General Terms and Conditions of Sale, which shall take precedence over any terms and conditions which may be contained in any document provided by the customer. Each request for goods and/or services by the customer constitutes a separate agreement between the company and the customer for the supply or goods and/or services.
- 2.2. These Trading Terms supersede all prior arrangements written or oral.
- 2.3. We may change these Trading Terms at any time by publication on our website (www.cropsmart.com.au). By continuing to request the supply of goods and/or services, the customer agrees to the General Terms and Conditions applicable at the time that such request is made. It is the responsibility of the customer to regularly check these Trading Terms for any variations.

3. PRICE:

- 3.1. Unless otherwise specified, all prices are in Australian Dollars and inclusive of any delivery costs (including freight, loading and

insurance) and Government charges which, if applicable, will be for the customer's account. We shall charge fees for performance of services including, without limitation, an account management fee following a default by the customer or administration fee following dishonour of a cheque.

- 3.2. Orders accepted by us pursuant to clause 4, will be supplied at the price quoted by us at the time of order; or if no price is quoted, at the price prevailing and specified by us at the date of invoice.
- 3.3. If any statutory charge, duty, impost, or tax (including GST) is levied in respect of the goods and that charge has not been allowed for by us in calculating the price or when raising an invoice, then you must pay that charge and the price for the goods will increase accordingly.

4. ORDERS:

- 4.1. The customer may place an order with us to purchase goods and we shall be under no obligation to accept the whole or any part of any order.
- 4.2. An order constitutes an offer by the customer to purchase the goods on and subject to these Trading Terms. Acceptance of any order, or part of any order, will occur when we issue an invoice to a customer and advise the customer of an estimated delivery time.
- 4.3. If the customer cancels an order after the order has been accepted pursuant to clause 4.2, the customer must pay us for any loss, damage or expense incurred by us in relation to the supply or proposed supply of the goods.
- 4.4. We may freely assign our rights and interests in the contract with the customer created on acceptance of the customer's order.
- 4.5. The customer acknowledges that all purchases are made relying solely upon the customer's own skill and judgment.

5. CLAIMS AND RETURNS:

- 5.1. It is the responsibility of the customer to verify goods received are in all respects in accordance with the customer's order and suitable for intended use. The customer shall inspect the goods upon delivery and will, within 48 hours, notify us of any defects, short deliveries or any failure to fulfill any quotation or order.
- 5.2. Should the customer fail to notify us within the specified period (time is of the essence) then the goods shall be deemed to be in compliance with the order and free from any defect whatsoever.
- 5.3. You may not make a claim against us in respect of the goods unless at the time of the claim all of the goods (the subject of the claim) remain intact as a whole. Any disposal or use of any part of the goods will mean that you have accepted the goods and can no longer make any claim.
- 5.4. You grant to us full and free access to the premises owned or occupied by you to enable us to investigate any claim you make. Our investigation of your claim does not constitute an admission of liability.
- 5.5. We may, in our sole discretion, accept the return of the goods or refund you the purchase price of the goods. The invoice and/or the delivery note number must be supplied with the goods if they are returned. Any costs associated with the return of goods for the

purpose of a warranty claim shall be the responsibility of the Crop Smart.

6. PAYMENT TERMS:

- 6.1. Payment of the price will be strictly cash before delivery unless credit terms are approved by us.
- 6.2. Credit terms will only be available, at our absolute discretion, upon approval of a written application for this purpose. In addition to the written application, the customer shall provide to us any such financial information and documents as we may require to assess the application. We will treat this information in a confidential manner. As a condition of providing credit, we may require the provision of personal guarantees or other forms of security.
- 6.3. If credit terms are approved and unless otherwise agreed, payment for goods must be paid in full, and with no deduction or set-off, in line with agreed terms.
- 6.4. If you become an insolvent pursuant to any of the provisions of the Corporations Act 2001 or the Bankruptcy Act 1966 or similar law or statute, all amounts then owing by you to us, whether or not those amounts are then due under clause 7.1, will immediately become due and payable.
- 6.5. If any payment in respect of a contract is not made in full within the agreed periods, we are entitled to do any one or more of the following (without limiting its other legal rights):
 - a) rescind and terminate any contract.
 - b) refuse to make, or suspend, delivery of goods (whether or not ordered);
 - c) demand and receive immediate payment of any invoice in respect of a contract whether payment is due or not;
 - d) charge interest at our discretion on the overdue amount at the interest rate of eighteen percent (18%) per annum, calculated from the due date of payment until the date that payment has been received in full;
 - e) terminate or suspend any credit arrangements with the customer; and
 - f) recover in full from the customer all costs and expenses incurred by us in enforcing our rights under these Trading Terms (including legal costs on an indemnity basis).
- 6.6. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the agreed payment terms.
- 6.7. Any payment made by or on behalf of a customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the customer's indebtedness to us and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.

7. DEFAULT:

- 7.1. The customer shall be in default if any money is not received when due or there are reasonable grounds for us to form the opinion that the customer is insolvent or will not perform its obligations on any account whatsoever. In that event the customer shall be taken to have requested and we shall automatically suspend further trade. In the event of default we may also, at our discretion, withhold any delivery, enter any premises and seize any goods that are reasonably believed to be our property and sell them to pay any money payable or damages and/or by written notice terminate any or all contracts with the customer.

8. DELIVERY

- 8.1. We will use reasonable endeavours to deliver the goods in accordance with the estimated delivery time advised by us to the customer pursuant to clause 4.2. However, a delivery time is not guaranteed and may be delayed by circumstances beyond our reasonable control (for example, industrial disputes, accidents, transport delays, default of sub-contractors, pandemic, government orders and directions, etc.).
- 8.2. Delivery shall be deemed to have been made when we advise that the goods are available for collection from a Crop Smart warehouse, or, where goods are to be delivered, on receipt by us or an agreed carrier, of a delivery docket signed by an authorised representative of the customer or agreed carrier.

- 8.3. If we determine that we are or may be unable to supply within a reasonable time or at all, the contract may be cancelled by us and in that event the customer shall have no claim against us whatsoever. We shall not be liable for any loss or damage, including consequential loss, suffered by the customer arising from, or related to, any late delivery or for any consequential loss arising from, or related to, failure to make delivery of goods in whole or in part, due to circumstances beyond our control.
- 8.4. The customer's failure to take delivery of the goods or collect goods notified as being available for collection pursuant to clause 4.2 shall not affect the customer's liability to pay the price for the goods and delivery of the goods.

9. RETENTION OF TITLE

- 9.1. Title to and ownership of the goods shall pass to the customer only upon payment being received by us in full (in cleared funds) of the price for invoiced goods that have been delivered and all other goods ordered by the customer and subsequently invoiced and delivered by us.
- 9.2. The customer acknowledges and agrees that title to and ownership of the goods remains that of Crop Smart's until payment in full of the price and or other goods ordered by the customer and agrees not to use, commingle, blend or change the goods in any way and must store the goods separately from all other goods held by the customer so that they remain readily identifiable and maintained in a satisfactory condition, until all outstanding amounts on any account whatsoever have been paid to us.
- 9.3. If any goods belonging to us are sold or otherwise disposed of then the customer shall hold the proceeds in trust for us. The customer acknowledges that we shall have a security interest which attaches over any goods that the customer has not paid for in full. The customer consents to the registration and perfection of the interest set out in this clause 11 for the purposes of the Personal Property Securities Act 2009 ("PPSA").
- 9.4. The customer must not allow any person (other than us) to have or acquire any security interest in the goods provided under these Trading Terms without the prior written consent from us.

10. RISK

- 10.1. Notwithstanding Retention of Title provisions as per clause 9 hereof, the risk in goods purchased (including risk of damage or loss of the goods) shall pass to the customer upon delivery of goods to the customer or its agent or to a carrier nominated or commissioned by the customer.
- 10.2. If any of the goods are damaged or destroyed prior to the title passing to the customer, we are entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the goods.

11. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- 11.1. The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings in the PPSA.
- 11.2. The customer acknowledges and agrees that by accepting these Trading Terms which form part of the contract and constitute a Security Agreement that covers the Collateral for the purposes of the PPSA;
 - a) Crop Smart holds (as Secured Party) a Security Interest over all of the present and after acquired goods supplied by us to the customer and any proceeds of the sale of those goods ("Collateral") and the customer consents to us registering our security interest on the PPSR;
 - b) That any purchase by the customer on credit terms from us or retention of title supply pursuant to clause 9 hereof will constitute a purchase money security interest as defined under Section 14 of the PPSA ("PMSI");
 - c) The PMSI granted herein will continue to apply to any goods and the Proceeds of sale of goods supplied by us in the future under these Trading Terms;
 - d) We will continue to hold a security interest in the goods in accordance with and subject to the PPSA, notwithstanding that the goods may be processed, commingled, or become an accession with other goods.

- e) Any Crop Smart Security Interest will be a continuing and subsisting interest in the collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests;
- f) Until title in the goods pass to the customer, it will keep all goods supplied by us free of all encumbrances and ensure all such goods are kept free of any charge, lien or Security Interest and not otherwise deal with the goods in a way that will or may prejudice any rights of Crop Smart under the contract or the PPSA; and
- g) In addition to any other rights under these Trading Terms or otherwise arising, we may exercise (and the customer shall procure) any and all remedies afforded to us as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the customer, to search for and seize, dispose of or retain those goods in respect to which the customer has granted a Security Interest to Crop Smart.

11.3. The customer acknowledges and undertakes to:

- a) Sign any further documents and provide such information that we may reasonably require in respect of registering, amending, updating or maintaining a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR. This includes notifying us immediately in writing if the customer changes any of its details that are required to register a financing statement under the PPSA;
- b) Indemnify and upon demand reimburse Crop Smart all expenses incurred in registering a Financing Change Statement on the PPSR or releasing any Security Interests; and
- c) Not register or permit to be registered a Financing Change Statement in the collateral without the prior written consent of Crop Smart.

11.4. Crop Smart and the customer agree that sections 96, 125 and 132(3)(d) and 132(4) of the PPSA do not apply to the Security Agreement created under a contract.

11.5. The customer hereby waives its rights as Grantor and or a debtor under sections 142 and 143 of the PPSA.

11.6. Unless otherwise agreed in writing by us, the customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

- a) The customer shall unconditionally ratify any actions taken by us under this clause 11.
- b) This Clause 11 will survive the termination of a contract to the extent permitted by law.
- c) The customer consents to us effecting a registration on the Personal Property Securities Act 2009 (PPSA) register (in any manner we deem appropriate) in relation to any security interest in the goods and the proceeds of those goods arising under or in connection with or contemplated by these terms.
- d) The customer waives its right to receive notice of a verification statement in relation to any registration by us on the register and any other notice required under the PPSA.
- e) The customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with us and do any other act or thing that we require to ensure that any interest created under these terms is perfected and remains continuously perfected, has priority over any other security interests in the goods or otherwise and any defect in the security interest, including its registration, is overcome.
- f) The customer must not, without providing prior written notice to us, change its name, address, contact details or any other details that would cause any details in a financing statement to be different if the security interest was re-registered.
- g) The customer must not, without our prior consent, allow any of the goods to become an accession to, or commingled with, any property that is not subject to a security interest under these terms.
- h) The customer agrees that, until all monies owing to us are paid in full, it shall not sell or grant any other security interest in the goods.
- i) The customer will not register a financing change statement in respect of the security interest without our prior written consent.

- j) The customer agrees that we may, at our absolute discretion, apply any amounts received from the customer toward amounts owing to us in such order as we may determine.
- k) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires us to give a notice to the customer;

12. WARRANTIES AND CONDITIONS

12.1. All implied warranties and conditions (including under any statute) are excluded to the maximum extent permitted by law.

12.2. To the maximum extent permitted by law, we are not liable for:

- a) any loss or damage to the goods resulting from any act or omission on the part of the customer, or the employees, contractors or agents of the customer;
- b) any special, consequential, direct or indirect loss or damage incurred by the customer.

12.3. Crop Smart's liability for breaches of express and implied conditions and warranties in relation to the goods (including under any statute) are limited to, at Crop Smart's election, the replacement of the goods or the payment of the cost of replacement of the goods.

12.4. Subject to clause 8.3, Crop Smart shall bear no liability or responsibility for direct or indirect loss or consequential loss in relation to the delivery or use of the goods, whether or not Crop Smart provides any advice to the customer in relation to the goods.

13. TERMINATION AND RESCISSION

13.1. We may, in addition to any other course of action available to us, elect to terminate or rescind any contract by notice in writing to the customer if the customer:

- a) is served with any proceedings under the Bankruptcy Act 1966 (Cth) or the winding-up provisions of the corporation's law or similar legislation.
- b) is insolvent or unable to pay its debts as and when they fall due;
- c) is placed in liquidation, provisional liquidation, voluntary administration or if it or any of its assets are placed in receivership or under external management or control; or
- d) commits a breach of these terms and fails to remedy such breach after being given seven (7) days written notice by us to do so.

13.2. On termination or rescission, all invoices rendered by us are payable immediately, without demand.

14. CHANGE IN PARTICULARS:

14.1. The customer agrees that it must promptly notify us of any sale of its business, cessation of trade, the vacation of premises of the business or commencement of business at new premises. The customer must also advise of any change to its address or contact phone numbers. If the customer is a company, then it must notify us of any change in control of the customer. Upon any notification of change of ownership of the business or a change of control of the customer either the customer or us may terminate this agreement by notice in writing to the other but without prejudice to the customer's obligation to pay to us all monies payable.

15. CUSTOMER'S WARRANTIES

15.1. The customer warrants that:

- a) the customer is a party to a contract of the goods as a principal in its own right. If the customer acts as agent or trustee of a trust, it must inform us in writing of the details of this relationship and also contracts with us in that capacity.
- b) any financial information we may require the customer to give is true and accurate and the customer will keep us informed of any material adverse change.

16. SEVERANCE:

16.1. A provision of part of these terms which is deemed to be unenforceable shall be severable in whole or in part and shall not affect the remaining terms of the agreement or the portion of the particular term from which the part has been severed.

17. GOVERNING LAW:

17.1. A contract is to be governed and construed in accordance with the law in effect in South Australia and, where applicable the Commonwealth of Australia and the customer submits to the non-exclusive jurisdiction of the courts of South Australia.

18. FORCE MAJEURE

18.1. If Crop Smart is unable to deliver the goods because of any acts of god, wars, insurrection or other significant internal disturbance, fire, floods, accidents, breakdowns of plant or machinery, unavailability of or delays in shipping, transport strikes, lock-outs of workers, shortages or other default by suppliers of fuel, power or raw material, priority for supplies claimed by the Federal or State Governments of the Commonwealth of Australia or any overseas government, pandemic, or any other similar happening or event ("force majeure"), then:-

- a) The customer will not be entitled to make any claim against Crop Smart for any delay in the manufacture or delivery of the goods ordered;
- b) whilst the delay continues, after 90 days of delay, Crop Smart and the customer will each have the option to cancel any orders.
- c) Subject to Clause 8(a), the customer may not cancel any order or any part of it for any other reason without our prior consent in writing.

d) We may consent to the customer's proposed cancellation of any order or any part of it if the customer pays to us what we consider to be a fair and reasonable amount to fully compensate us for any costs, expenses, loss of profit and consequential damage that we may have incurred or may suffer because of the cancellation.

e) Neither Crop Smart nor the customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective god, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.

19 PRIVACY POLICY

19.1. Crop Smart will collect, use and disclose information about you in accordance with the Privacy Policy available on our website (www.cropsmart.com.au).

19.2. To enable us to assess the customer's application for commercial credit, the customer authorises us as follows:

- a) If asked to provide commercial credit, to obtain from a credit reporting agency a credit report containing personal credit information about the customer. This is in accordance with Section 18K (1)(b) of the Privacy Act 1988.
- b) If asked to provide personal credit, to use a credit report containing information about the customer's commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person. This is in accordance with Section 18L (4) of the Privacy Act 1988.
- c) The customer agrees that if they default on our terms of subscription, the company may list information about the credit default with a credit reporting agency. This is in accordance with (Section 18E (1)(b)(vi) of the Privacy Act 1988.