

BENNETT FERTILISERS LTD - TERMS & CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 "BFL" shall mean Bennett Fertilisers Ltd or any agents or employees thereof.
- 1.2 "Customer" shall mean the customer, any person acting on behalf of and with the authority of the customer, or any person purchasing services from BFL.
- 1.3 "Services" shall mean all services provided by BFL to the Customer and shall include without limitation the supply, cartage and spreading of fertiliser by BFL for the Customer.
- 1.4 "Price" shall mean the cost of the Services agreed between BFL and the Customer and includes all disbursements e.g. charges BFL pays to others on the Customers behalf subject to clause 4 of this contract.

2. ACCEPTANCE

- 2.1 Any instructions received by BFL from the Customer for the supply of Services shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises BFL to collect, retain and use any information about the Customer for the purposes of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Services provided by BFL to any other party.
- 3.2 The Customer authorises BFL to disclose any information obtained to any person for the purposes set out in clause 3.1
- 3.3 Where the Customer is a natural person the authorities under clause 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Services shall be deemed to be sold at the current amount as such Services are sold by BFL at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Service that is beyond the control of BFL between the date of the contract and delivery of the Services.

5. PAYMENT

- 5.1 Payment for Services shall be made in full on or before the 20th of the month following the date of the invoice ("the due date")
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2% per month or part month
- 5.3 Any expenses, disbursements and legal costs incurred by BFL in the enforcement of any rights contained in the contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Payment must be made by Direct Credit
- 5.5 A deposit may be required

6. QUOTATION

- 6.1 Where a quotation is given by BFL for Services:
 - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
 - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
 - 6.1.3 BFL reserves the right to alter the quotation because of circumstances beyond its control
- 6.2 Where Services are required in addition to the quotation the Customer agrees to pay for the additional costs of such Services

7. AGENCY

- 7.1 The Customer authorises BFL to contract either as principal or agent for the provision of the Services that are the subject of this contract, including subcontracting arrangements
- 7.2 Where BFL enters into a contract of the type referred to in clause 7.1 it shall be read with and form part of this agreement and the Customer agrees to pay any amounts due under the contract.

8. DISPUTES

- 8.1 No claim relating to Services will be considered unless made within fourteen (14) days of supply

- 8.2 In the event of any dispute involving loss or damage the Customer accepts that all reasonable effort is made to mitigate any damage or loss including notifying BFL immediately the Customer is aware of any loss or damage.

9. LIABILITY

- 9.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon BFL which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or term imposed on BFL, BFL's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 9.2 Except as otherwise provided by clause 9.1 BFL shall not be liable for:
 - 9.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Services by BFL to the Customer, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Services provided by BFL to the Customer, and
 - 9.2.2 If contrary to the disclaimer of liability contained in these terms and conditions of trade BFL is deemed liable to the Customer, following and arising from the supply of Services by BFL to the Customer, then such liability is limited in its aggregate to \$500

10. CONSUMER GUARANTEES ACT

- 10.1 The guarantees contained in the Consumers Guarantees Act 1993 are excluded where the Customer acquires Services from BFL for the purposes of a business in terms of section 2 and 3 of that Act

11. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 11.1 If the Customer is a company or trust, the director(s) or trustee(s) entering into this contract, including the acceptance of these terms and conditions of trade, in consideration for BFL agreeing to supply Services and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to BFL the payment of any and all monies now or hereafter owed by the Customer to BFL and indemnify BFL against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereafter.

12. MISCELLANEOUS

- 12.1 BFL shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 12.2 Failure by BFL to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations BFL has under this contract.
- 12.3 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired
- 12.4 If the Customer defaults in payment then the Customer agrees that where the Services relate to Customer's land, then the amount of such default gives rise to a legal or equitable estate or interest in the Customer's land which entitles BFL to register a caveat against the Customer's land pursuant to the Land Transfer Act 1952 and its amendments or any legislation in substitution thereof