

# SUMMIT FERTILIZERS GENERAL TERMS AND CONDITIONS OF SALE



## Application of Terms

- These Terms set out the contractual basis upon which we agree to supply you with Goods and apply whenever Goods are quoted for, sold, or supplied by us to you.
- Any other document provided by you (including any purchase order terms subsequently given to us by you) deviating from, or inconsistent with, these Terms:
  - are expressly rejected by us;
  - do not vary or supplement these Terms; and
  - do not form part of the Contract.
- Each supply which we make following our acceptance of an Order will be regarded as a separate Contract, which is subject to these Terms.
- Where we have granted you a credit facility, our Credit Facility Terms apply. In the event of any conflict or inconsistency between these Terms and our Credit Facility Terms, our Credit Facility Terms prevail to the extent of the conflict or inconsistency.

## Quotations

- Quotations made by us are estimates only and will not be construed as an offer or obligation to supply any Goods.
- Unless stated otherwise, quotations made by us:
  - are exclusive of GST;
  - are exclusive of the costs of delivery; and
  - will remain valid for a period of one (1) day from the date of quotation.
- You acknowledge and agree that quotations made by us may include additional terms or conditions, which will supplement (and are intended to be read in conjunction with) these Terms.
- We reserve the right to withdraw, vary, or extend the time for acceptance in respect of any quotation made by us at any time prior to the formation of a Contract in accordance with clause 12.

## Formation of Contract

- To request a supply of Goods from us, you must place an Order. By placing an Order, you agree that these Terms will apply to your Order.
- You may place Orders by:
  - contacting a Summit Area Manager;
    - in person;
    - by email; or
    - by telephone.
- We reserve the right to not accept your Order, without having to provide reasons to you for doing so. For clarity, nothing in these Terms obliges us to supply you with any Goods at any time unless we have expressly agreed otherwise as part of a Contract.
- Any Order placed by you will be construed as an offer. A binding Contract will only come into existence, if:
  - we communicate our acceptance of your Order, whether in writing or by electronic means;
  - we each enter into a Fixed Fertilizer Supply Contract or a Variable Fertilizer Supply Contract; or
  - we supply you with any Goods following receipt of your Order.
- For clarity, a Contract is formed at the location of ours where your Order is placed and expressly incorporates these Terms on formation.

## Orders based on weight

- Without limiting the generality of clauses 27 to 30, you acknowledge and agree that where Goods ordered are based on weights ("**Ordered Amount**") the records of the weight of the Goods generated by us, or by any government/public weighbridge will be conclusive evidence of the weight of the Goods supplied.

## Price and payment terms

- Subject to clause 16, the Price payable for the Goods will be in accordance with our prevailing price list (as stated on Summit's website at the following link: [www.summitfertz.com.au/pdf/list-prices](http://www.summitfertz.com.au/pdf/list-prices) and updated from time to time) (**Price List**), as applicable as at the date of delivery in accordance with clause 35.
- Where Summit and the Customer agree a Variable Fertilizer Supply Contract, the Customer acknowledges that the Price List may vary from time to time, without the need to provide the Customer with written notice.
- Where we have issued you a quotation, the Price will be our quoted price (subject to clauses 6 and 27 to 30) which will be binding on us provided you accept our quotation in writing within the period it is valid for acceptance.
- Unless we have granted you a credit facility, the terms of payment are strictly cash before delivery.
- Payment may be made by cash, Electronic Funds Transfer (**EFT**), and credit card. We reserve the right to change the payment methods that we accept at any time.
- Where the Customer has been approved for credit in accordance with the Contract Form, the Price is not considered paid until payment is received through Summit's direct debit function.
- We reserve the right to require payment of a non-refundable deposit. The amount of the deposit will be specified in our quotation or will be advised by us and will immediately become due and payable upon the formation of a Contract in accordance with clause 12, unless otherwise agreed in writing. For clarity:
  - where we require payment of a deposit, we are under no obligation to supply any Goods until the deposit has been received by us in cleared funds; and
  - the deposit will be refundable in circumstances where:
    - you are entitled to a refund under the Australian Consumer Law; or
    - you terminate a Contract because of our breach.
- If GST is imposed on a Taxable Supply made by us to you under any Contract of which these Terms form part, the price of the Taxable Supply will be equal to the GST-exclusive consideration that you must pay to us for the Taxable Supply under the Contract increased by an amount (the "**GST Amount**") equal to the amount of GST payable on that Taxable Supply. The GST Amount is, subject to us issuing a Tax Invoice to you, payable at the same time and in the same manner as the consideration to which it relates. If we become liable to pay any tax, duty, excise, or levy in connection with any Contract of which these Terms form part, you must pay us these additional amounts upon written demand.
- You must check all Tax Invoices and advise us of any errors or omissions within seven (7) days of receipt. Failing advice from you that a Tax Invoice contains any errors or omissions, the Tax Invoice may be deemed accepted by us.
- Any sums owed to us by you will be made free of any set-off or counterclaim whatsoever, and without deduction or withholding whatsoever.
- We are entitled to deduct or set off against any monies owing to you by us on any account whatsoever.

## Default

- If you default in the payment of any money due to us pursuant to any Contract by the date specified in our Tax Invoice (including any deposit required by us under clause 21), we are entitled to, without prejudice to any other rights which may be conferred upon us by law or equity, do any or all of the following:
  - charge you interest on the outstanding amount at the rate of 10% per annum, which interest will accrue and will be recoverable for each day (or part thereof), that the money remains outstanding until payment is received by us in full;
  - require you to pay, in advance, for any Goods which have not yet been supplied; and
  - suspend or cease the supply of any further Goods to you.

## Variations

- If you request or direct that any Goods be supplied that are not strictly in accordance with the written requirements of a Contract, then such Goods will constitute a variation.
- A notice of variation must be submitted by you in writing and is only effective if accepted by us in writing.
- You understand and agree that:
  - all variations must be agreed in writing prior to the Goods that are the subject of the variation being supplied; and
  - all variations will be, in our discretion, invoiced at the rates specified in our quotation, as specifically quoted, or in accordance with our Price List.
- Notwithstanding clauses 27 to 29, and subject to any rights you might have under the *Competition and Consumer Act 2010* (Cth) or any other legislation, we reserve the right to vary the quoted Price, if:
  - the Goods specified in your Order are varied from the Goods specified in our quotation (or are otherwise varied following the formation of a Contract); or
  - otherwise as provided for in these Terms.

## Order cancellations

- You may not:
  - cancel an Order (or any part of an Order);
  - defer delivery of the Goods; or
  - return ordered and collected Goods,once a Contract has been formed except with our prior written consent, and then only upon terms that you reimburse and indemnify us against all losses we have incurred or may incur as a result of the cancellation, deferral, or return, including third-party supplier restocking fees, cartage, bank charges, other incidental expenses incurred on any part of your Order, and loss of profits.

## Delivery

- Unless our Contract states otherwise, you will be liable for all costs associated with packaging and delivery, including cartage/freight, handling, and other charges. Where you have engaged a carrier to deliver the Goods, you will be also be responsible for the cost of insuring the Goods.
- You must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- You acknowledge and accept that any period or date for delivery stated by us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by you or any third party for failure to meet any estimated delivery date.
- Delivery is deemed to occur at the time:
  - you, or any third party on your behalf, collects the Goods from us;
  - the Goods are delivered to the delivery location specified in your Order (or to such other location as otherwise agreed in writing);
  - your nominated carrier takes possession of the Goods, in which event the carrier will be deemed to be your agent.
- If requested by us, you or your duly authorised representative must sign our delivery docket as confirmation that the Goods ordered by you have been received by you in apparent good order and condition.
- If delivery of the Goods is deferred:
  - at your request; or
  - due to you being unable to accept delivery of the Goods (for whatever reason), when:
    - (where no date for delivery has been specified by you) we are ready to deliver the Goods;
    - (where a delivery date has been specified by you) the Goods are due to be delivered,then we will be entitled to charge you, and you must pay to us:
    - reasonable storage charges (which will accrue daily until such time as the Goods are delivered); and
    - a charge to re-deliver the Goods (where delivery has previously been attempted).
- You acknowledge and accept that:
  - we may deliver Goods by instalments and reserve the right to require payment for each separate instalment in accordance with these Terms; and
  - you are not relieved from any obligation arising under these Terms, or any Contract, by reason of any delay in delivery, and delay in delivery will not entitle you to rescind the Contract.

## Risk

- Risk of loss or damage to the Goods passes to you upon delivery to you or to your agent or to a carrier commissioned by you in accordance with clause 35.
- You must insure the Goods for their full replacement value on or before delivery against all losses which may be sustained as a result of the loss, damage, or destruction of the Goods (or any part thereof) by accident, theft, fire, explosion, flood, negligence, and such other insurable causes as may be available and must include us as co-insured.
- If you request that Goods are to be delivered either to an unattended location, left outside your premises, or left outside our premises for collection, you acknowledge that we may deliver the Goods as requested at your sole risk.

## Retention of title

- Title in the Goods does not pass to you until such time as you have made payment in full for the Goods and until such time as you have made payment in full of all other money owing by you to us (whether in respect of money payable under a specific Contract or on any other account whatsoever), and you agree that property and title in the Goods will not pass to you, and we retain the legal and equitable title in those Goods supplied and not yet sold.

## Returns

43. You must, within seven (7) days of the date of delivery:
- give us written notice, with particulars, of any claim that the Goods delivered are not in accordance with the Contract (including any claim for shortfall, incorrect supply, or damage to the Goods); and
  - provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
44. If you fail to provide us with notice under clause 43, then to the extent permitted by law, the Goods must be treated as having been accepted by you and you must pay for the Goods in accordance with the Contract.
45. Unless otherwise agreed in writing, you must pay all costs associated with the return of any Goods (either to us or from us to you or any third party) including freight, insurance, handling, and other charges.
46. Goods cannot be returned to us without our prior written consent. To the extent permitted by law, Goods that have been specifically produced or procured at your request, including any Goods which are blended by us, cannot be returned in any circumstances.
47. Any return (except for Goods deemed by us to be incorrectly supplied or deemed by us to be defective) will incur a handling and administration charge of 20% of the Price of the returned Goods, unless otherwise agreed in writing.
48. Goods to be returned to us must be in good order in a saleable condition.
49. We accept no liability for any damage that occurs to any Goods in return transit.
- Description of Goods**
50. It is a condition of sale that any description or specification given by us or contained in our printed literature is for general indicative purposes only and does not render us responsible in any way, except to the extent that the Goods will comply with the standards set out in such description or specification and that such description or specification will not be taken as implying or giving any undertaking as to fitness for any particular purpose.
51. To the extent permitted by law, you agree that you do not rely on our skill or judgement in relation to the suitability of any Goods for a particular purpose. You agree that any advice, recommendation, information, or assistance provided by us is provided in good faith without any liability whatsoever.
52. If any Goods are required for a particular purpose, you must clearly specify that purpose in writing in the Contract and must obtain written assurance from us that the Goods when supplied will meet that requirement. If you do not specify the particular purpose and we do not expressly undertake in writing that the Goods will be fit for the specified purpose, then you agree that you did not rely on our skill or judgment in relation to the suitability of the Goods for a particular purpose.
- Blended Goods**
53. Without derogating from clauses 50 to 52, we may, in our sole discretion, and on your written request, blend Goods supplied by us with other substances provided by you or third parties at your sole cost. When this occurs:
- we do not warrant that the blended or treated Goods will be suitable, appropriate, or effective for their intended use and you must make your own assessment on whether the blending or treatment is suitable, appropriate, or effective for your intended use;
  - we take no responsibility for determining whether the substances provided by you or by third parties at your request are of suitable quality or fit or suitable for the purpose intended by you; and
  - we will not be liable for any loss or damage arising, either directly or indirectly, from the use, storage, or transportation of the blended or treated Goods.
- Intellectual property**
54. All right, title, and interest in the Intellectual Property Rights in and to all Working Documents and all Goods sold or supplied by us are, and will at all times, remain our property.
55. All improvements, enhancements, derivatives and modifications to the Intellectual Property Rights contemplated by clause 54 (the "Improvements") vest in us immediately on creation. To the extent necessary to give effect to this clause 55, you assign to us all right, title, and interest in the Improvements.
56. You acknowledge and agree that you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing.
- Indemnity**
57. You are liable for and indemnify us in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that we may suffer or incur at any time, directly or indirectly, as a result of:
- any default by you in the performance or observance of your obligations under any Contract; and
  - us agreeing to blend any Goods at your request in accordance with clause 53.
58. Your liability to indemnify us will be reduced proportionally only to the extent that:
- any negligent act or omission by us or a breach of our obligations under any Contract of which these Terms form part has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or
  - these Terms make us specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.
59. Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the performance or termination of any Contract of which these Terms form part.
60. It is not necessary for us to incur any expense or make any payment before enforcing our rights of indemnity conferred by these Terms.
- Nature of relationship**
61. For the removal of doubt, nothing in these Terms, or any Contract of which these Terms form part, is to be construed as giving rise to a relationship of agency, partnership, joint venture, trust, or other relationship with duties or incidents different from those of parties to an arm's-length contract.
- Segregation and storage**
62. You acknowledge that fertilizer products consist of variable sized material that may segregate when unloaded into farm storage if the same due care is not taken during unloading. Belt conveyors and augers that discharge product into storage are particularly prone to causing segregation and we will not be liable to you in respect to product quality deterioration if equipment has contributed to segregation of the Goods. You also acknowledge that blends require special storage and application conditions.
- Limitation of liability**
63. We will not be liable for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of you to us from time to time.
64. Subject to clauses 63, 65, 66, and 68, our liability for any loss or damage, however caused (including by our negligence), suffered or incurred by you in connection with any Contract of which these Terms form part is limited to the sum paid to us by you in respect of that Contract prior to the date you first suffered loss or damage in connection with that Contract.
65. The limitation contemplated in clause 64 is an aggregate limit for all claims, whenever made.
66. Subject to clause 68, we are not liable for any Excluded Loss, however caused (including by our negligence), suffered or incurred by you in connection with any Contract.
67. For clarity, and without limiting clauses 63 to 66, the Parties agree that clauses 63 to 66 are to apply in connection with a breach of a Contract, anticipated breach of a Contract, and other conduct regardless of the seriousness or nature of that breach, anticipated breach, or other conduct.
68. If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods or Services supplied in connection with any Contract of which these Terms form part and our liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 63 to 66 do not apply to that liability and instead our liability for such failure is limited to, in the case of a supply of Goods, us replacing the Goods or supplying equivalent Goods, or in the case of a supply of Services, us supplying the Services again or paying the cost of having the Services supplied again.
- Termination of Contract**
69. We may, with immediate effect and without liability, terminate any Contract of which these Terms form part by written notice to you, if:
- you fail to make payment of a deposit required by us or any amount owed to us as and when due;
  - you commit a material or persistent breach of these Terms and do not remedy the breach within seven (7) days of receipt of a notice identifying the breach and requiring its remedy; or
  - we are no longer able to, for whatever reason, supply the Goods (or any part of the Goods).
70. For clarity, termination of any Contract of which these Terms form part will not affect the rights which have already accrued to a Party at the time of termination, whether under that Contract or otherwise.
- Security interest**
71. Where Summit offers credit to the Customer, the Customer agrees to:
- promptly execute any documents and do any act required by Summit to register Summit's Security Interest in the Goods on the Personal Property Securities Register;
  - not register a financing change statement or change demand on the Personal Property Securities Register without Summit's prior written consent;
  - waive its rights to receive any verification statement or financing change statement under the PPSA; and
  - comply with all directions and do all acts reasonably required by Summit in order for Summit to exercise its rights as a secured party under the PPSA.
- Costs**
72. You will pay our costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against you, including collection costs, debt recovery fees, bank dishonour fees, and legal costs on a full indemnity basis.
- Force Majeure Events**
73. We are not liable to you for any delay or failure to perform any obligation under any Contract if such delay or failure to perform is due to a Force Majeure Event.
- Variation of Terms**
74. No variation of any Contract will be effective, unless varied and agreed in writing by both Parties.
- Assignment**
75. Neither Party may assign, transfer, or novate its rights or obligations under any Contract without the prior written and fully informed consent of the other (which consent must not be unreasonably withheld).
- Commercial purpose**
76. 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 Goods for commercial purposes.
- Non-performance**
77. If the Customer does not collect the nominated quantity of Goods during the month nominated in the Contract Form (or otherwise agreed with Summit), the Customer remains fully liable for the Price, together with storage and other charges. Summit reserves all rights to take such legal action to recover the Price and any other charges from the Customer.
- Waiver**
78. A waiver of any provision or breach of any Contract will only be effective if made by the affected Party in writing. If a Party elects not to enforce its rights arising as a result of a breach of a Contract, that will not constitute a waiver of any rights in relation to any subsequent or other breach.
- Severance**
79. If any provision of any Contract is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the Contract. Other provisions which are self-sustaining are, and will continue to be, enforceable in accordance with their terms.
- Entire agreement**
80. The Contract constitutes the entire agreement and understanding between the Parties. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of the Contract are merged in the Contract and are of no further effect. No oral explanation or information provided by a Party to another Party affects the meaning or interpretation of the Contract, or constitutes any collateral agreement, warranty, or understanding.
- Governing law**
81. The Contract, will be governed by and construed in accordance with the laws of Western Australia, and the laws of the Commonwealth of Australia in force in Western Australia.
82. The Parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.
- Definitions**
83. Unless the contrary intention appears, in these Terms:
- "**Australian Consumer Law**" means the Australian Consumer Law as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).
- "**Business Day**" means a day that is not a Saturday, Sunday, or public holiday in Perth, Australia.
- "**Contract**" means a contract for the supply of Goods between you and us, as constituted by our quotation (if any), your Order, the Credit Facility Terms (if applicable) and these Terms, and includes Fixed Fertilizer Supply Contracts and Variable Fertilizer Supply Contracts. In the event of any inconsistency between the documents forming part of a Contract, the inconsistency will be resolved in the following order of priority:
- the Credit Facility Terms (if applicable);
  - the Fixed Fertilizer Supply Contract or Variable Fertilizer Supply Contract (if applicable);
  - these Terms;
  - our quotation; and
  - your Order.

"Contract Form" means the Fixed Fertilizer Supply Contract Form or the Variable Fertilizer Supply Offer Form, as applicable.

"Credit Facility Terms" means our credit facility terms, as set out in the credit agreement executed by you (where applicable).

"Customer," "you," "your" means the corporation, partnership, person, or other entity acquiring Goods from us as identified in a Contract.

"Excluded Loss" means any:

- (f) consequential loss;
- (g) loss of revenues;
- (h) loss of reputation;
- (i) loss of goodwill;
- (j) loss of profits;
- (k) loss of bargain;
- (l) indirect loss;
- (m) special loss;
- (n) lost opportunities, including opportunities to enter into arrangements with third parties;
- (o) loss or damage in connection with claims against you by third parties; or
- (p) loss or corruption of data.

"Fixed Fertilizer Supply Contract" means a fully executed Fixed Fertilizer Supply Contract Form and these Terms.

"Fixed Fertilizer Supply Contract Form" means the form between the Customer and Summit listing the particulars of the Goods to be purchased on a fixed price basis.

"Force Majeure Event" includes any act of God, acts, decrees, orders or regulations of Government Authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other cause beyond our reasonable control.

"Goods" means all goods supplied by us to you (and where the context so permits includes any performance of Services) and as are described on our Tax Invoices, quotation, or any other forms as provided by us to you.

"Government Authority" means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental, or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

"GST" has the meaning given to it by the GST Act.

"GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Intellectual Property Rights" means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

"Order" means a written or oral order placed by you offering to acquire Goods from us.

"Parties" means us and the Customer, and "Party" means either one of them.

"Personal Property Securities Register" has the meaning given to it under the PPSA.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Price" means the price payable for the Goods, as notified by us to you from time to time.

"Security Interest" has the meaning given to it under the PPSA.

"Services" means all services performed by us (and where the context so permits includes any supply of Goods).

"Summit Fertilizers," "we," "us," "our" means Summit Rural (WA) Pty Limited ACN 058 794 737.

"Tax Invoice" and "Taxable Supply" have the same meaning as in the GST Act.

"Terms" means these Summit Fertilizers General Terms and Conditions of Sale.

"Variable Fertilizer Supply Contract" means a fully executed Variable Fertilizer Supply Offer Form and these Terms.

Variable Fertilizer Supply Offer Form means the form between the Customer and Summit listing the particulars of the Goods to be purchased on a variable price basis.

"Working Documents" means all literary, artistic, and other works, including all physical works, production materials and subject matter created solely or jointly with others, by us in the course of or in relation to any Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such works or subject matter (whether currently existing or created in the future).

#### Interpretation

84. If there is any conflict or inconsistency between any of the documents which comprise a Contract, it is expressly agreed the order of precedence will be (in descending order of precedence):
- (a) any additional terms or conditions contained in our quotation (where applicable);
  - (b) our Credit Facility Terms (where applicable);
  - (c) these Terms; and
  - (d) any other documents issued by us.
85. Unless the contrary intention appears, a reference to:
- (a) these Terms or another document includes any variation or replacement of them notwithstanding any change in the identity of the Parties;
  - (b) a reference to a clause is a reference to a clause contained in these Terms;
  - (c) the singular includes the plural and vice versa;
  - (d) "right" includes a benefit, remedy, authority, discretion, or power;
  - (e) "information" is to information of any kind in any form or medium, whether formal or informal, written or unwritten (e.g. computer software or programs, concepts, data, plans, reports, drawings, specifications, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets);
  - (f) "person" includes a natural person, partnership, body corporate, association, joint venture, Government Authority, or other entity;
  - (g) a person includes the person's successors, executors, administrators, substitutes (including a person who becomes a Party by novation), and assigns; and
  - (h) any statute, ordinance, code, or other law includes regulations and other statutory instruments under any of them and consolidations, amendments, re-enactments, or replacement of any of them.
86. Headings are for convenience only and will not affect the interpretation of these Terms.
87. Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
88. The expressions "in writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
89. Where two or more persons are defined as a Party in these Terms, that term means each of the persons jointly, each of them severally, and any two or more of them jointly.

90. An agreement, covenant, obligation, representation, or warranty on the part of two or more persons binds them jointly and severally and an agreement, covenant, obligation, representation, or warranty in favour of two or more persons is for the benefit of them jointly and severally.

91. Unless specified otherwise, all reference to sums of money is in terms of Australian currency (AUD), and all documents and correspondence between the Parties will be in the English language.

92. Nothing in these Terms is to be read or construed to purport to exclude, restrict, or modify or have the effect of excluding, restricting, or modifying the application in relation to the supply of Goods or Services all or any of the provisions of the *Competition and Consumer Act 2010* (Cth) or any other law which cannot be excluded, restricted, or modified.

