

FARM BY NATURE PTY LTD – TERMS & CONDITIONS OF SALE

GENERAL

1. Goods sold by Farm by Nature Pty Ltd ("the Company") are sold on these terms and conditions and these terms and conditions shall be deemed to be incorporated into any agreement between the Company and the Customer relating to the goods unless otherwise stated in writing. These terms and conditions shall apply to the exclusion of all others including any terms and conditions of the Customer (whether on the Customer's order form or otherwise). The Customer acknowledges that these terms and conditions embody the whole agreement between the parties in relation to their subject matter and agrees to be bound by them.
2. The Company reserves the right to alter these terms and conditions from time to time. Such altered terms will apply to all orders placed by the Customer and accepted by the Company.

GOODS & SERVICES TAX

3. All charges and purchase costs that are or will become subject to GST, shall be passed on by the Company to the Customer and such charges, purchase costs and GST shall be payable by the Customer upon presentation of a valid tax invoice.

TERMS OF PAYMENT

4. Payment shall be made by the Customer to the Company for all the goods supplied, work and labour done and services rendered within 30 days from the date of the invoice unless otherwise agreed to in writing. The Customer acknowledges that time is of the essence with regard to payment and that any breach of this term will enable the Company to exercise all of its rights including but not limited to the right to cancel further credit and to take legal action for the recovery of all sums outstanding.

INTEREST & COSTS

5. Should payment remain outstanding beyond the Company's payment terms as outlined in Clause 4 above, the Customer is liable for and agrees to pay:
 - (a) interest on all amounts outstanding from the due date until the date of payment at a rate equal to the Company's then current overdraft rate as varied from time to time; and
 - (b) all costs, including legal costs (on a solicitor/own client basis) and mercantile agents' fees incurred by the Company in recovering the amount outstanding.

DELIVERY & DELIVERY DATE

6. In the event the Customer specifies a delivery date, the Company shall use its best endeavours to comply with the Customer's request. In no circumstances will the Company be liable for any loss or damage of any kind whatsoever in the event that it is not able to comply with the Customer's request for delivery at a certain time. The Customer acknowledges and agrees that it will not make any claim against the Company for any loss or damage incurred as a result of late or non delivery and expressly releases the Company from all such claims or liability whatsoever.
7. Any agreement or undertaking by the Company to deliver the goods is contingent upon its ability to secure and/or supply the goods.
8. The Company shall in its absolute discretion; either deliver the goods to a place of business of the Customer or to other such place as agreed to in writing between the parties.
9. The Company may at its option deliver the goods in a number of instalments. If goods are delivered by instalments and any one of those instalments is defective for any reason, it shall not be a repudiation of the contract of sale formed by these terms and conditions and the defective instalment is a severable breach that gives rise only to a claim for compensation.

RETENTION OF TITLE

10. The property of the goods supplied by the Company shall not pass from the Company to the Customer until the Customer has paid the full purchase price of the goods.
11. Upon the Customer taking actual or constructive possession of the goods, the risk in the goods shall pass to the Customer and the Customer agrees to hold the goods as bailee and fiduciary agent for the Company.
12. The Customer agrees to keep the goods safe and store them in a manner which enables the goods to be identified and ascertainable and agrees to insure the goods on behalf of the Company at the Customer's expense.
13. The Company agrees that the Customer may sell or deal with the goods in its ordinary course of business, but at all times the Customer shall keep a record of the goods sold or dealt with, which enables the goods to be identified, and the Customer shall keep any proceeds of such sale of the goods in a separate account until the Customer has paid the full purchase price of the goods to the Company.

14. If the goods are sold by the Customer, used by the Customer to make or manufacture any product which is sold by the Customer, or used by the Customer as part of services offered by the Customer to its customers, the Customer shall, upon the receipt of the proceeds of such sale of goods, product or services, hold in trust for the Company that amount from the proceeds of sale which represents the purchase price of the goods. Upon receipt by the Customer of the said proceeds of sale, the Customer shall pay that sum, which represents the amount owing to the Customer for the goods, to the Company forthwith; or if a period of credit has been extended, pay the sum owing to the Company immediately upon the expiration of the period of credit.
15. The Company does not claim any charge over any product created by the Customer using the goods, or any charge over the book debts of the Customer, or any charge over the goods.
16. Where the Company or the Company's agent seeks to recover any of the goods as a result of the failure by the Customer to pay the full purchase price of the goods, the Customer hereby grants to the Company an irrevocable licence to enter upon the Customer's premises and remove such goods without incurring any liability to the Customer or any person claiming through the Customer.
17. While the goods remain the property of the Company, the Customer agrees that it has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation the Company may owe to the Customer and the Customer cannot claim any lien over the goods.

CLAIMS

18. The Customer shall upon delivery of the goods examine the goods and must notify the Company in writing of any claims for any short deliveries, damage, errors or other matters of concern within seven days of delivery. In the event that the Customer fails to give such notice within seven days to the Company, the goods delivered shall be deemed to have been accepted by the Customer in good order, condition and quantity.
19. The Company will not accept any return of allegedly defective goods unless it has given prior written authorisation for the return.

WARRANTY

20. The Customer, its employees or agents shall not, in relation to the quality and/or description of the goods, make any representation, statement, warranty or undertaking other than those that are contained in current literature of the Company.
21. Upon delivery of the goods to the Customer, the Customer indemnifies the Company and agrees to keep the Company indemnified against any claim, action, damages, loss (including consequential loss or loss of profit(s)) suffered or incurred directly or indirectly arising out of:
 - (a) Any loss or damage caused to the goods
 - (b) Any representation, statement, warranty or undertaking made by or on behalf of the Customer other than those authorised in writing by the Company.

LIMITATION & EXCLUSION OF LIABILITY

22. To the extent permitted by statute, the Company shall not be liable to the Customer or any person claiming through the Customer, for any claims (whether arising in contract, tort, negligence, strict liability, or by virtue of any breach of any statutory duty) for any loss or damage (including any indirect, special or consequential damage) howsoever caused in relation to the supply by the Company of any goods.
23. Except as provided herein or prohibited by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the goods for any purpose are hereby expressly excluded and the Company shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the goods or arising out of the Company's negligence or in any way whatsoever.
24. Where permitted by statute, the Company's liability for any defective goods supplied, the Company's negligence, or for any breach of a condition or warranty implied by statute is hereby limited to, at the Company's option:
 - (a) a refund of the purchase price for the goods;
 - (b) the replacement of the goods or the supply of equivalent goods;
 - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods (as authorised by the Company and provided such cost does not exceed the original cost of the goods);
 - (d) the repair of the goods or the payment of the cost of having the goods repaired.

WAIVER OR ALTERATION

25. No waiver or alteration of these terms and conditions shall be binding upon the Company unless a duly authorised officer of the Company assents to the same in writing.

JURISDICTION

26. The proper law of all contracts arising between the Company and the Customer to which these terms and conditions relate, is the law of the State of Victoria and the parties agree to submit to the jurisdiction of the Courts of that state.

CANCELLATIONS

27. Orders placed with the Company cannot be cancelled without the written approval of the Company. In the event that the Company accepts the cancellation of any order placed with it, the Company shall be entitled to charge a reasonable fee for any work done on behalf of the Customer to date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.
28. The Company may cancel any contract to which these terms and conditions relate or cancel delivery of goods at any time before the goods are delivered by giving written notice to the Customer. On giving such notice, the Company shall repay to the Customer any sums paid in respect of the purchase price for the goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.

CHARGE

29. The Customer agrees that in the event:
 - (a) the Customer fails to pay the invoices as and when they fall due; and
 - (b) a period of 60 days has lapsed or the Company has taken action to recover the debt (whichever occurs first);the Customer:
 - (c) charges as beneficial owner all freehold and leasehold interest in land which it has, in respect of and as security for the obligation to pay all money due by the Customer to the Company; and
 - (d) consents to the Company lodging a caveat in respect of any such property to more properly secure the debt owed to the Company; and
 - (e) agrees to pay the Company's costs of and incidental to lodging a caveat pursuant to clause (d) above.

LIEN

30. The Customer hereby acknowledges that the Company has a lien over all the goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.

DISPUTES

31. In the event of a dispute between the Company and the Customer in relation to the contract for the supply of goods, either party may give written notice of such dispute to the other following which the dispute shall be referred to mediation prior to any legal action being taken. The Company has the right to waive this clause.

CHANGE OF OWNERSHIP

32. The Customer shall notify the Company in writing of any change of ownership of the Customer (except for a public company) or its business, or of directorships in the case of a corporate customer, or of any other change whatsoever affecting any contract of sale to which these terms and conditions relate within seven (7) days from the date of such change and agrees to indemnify the Company against any loss or damage incurred by it as a result of the Customer's failure to notify the Company of any such change.

SEVERABILITY

33. A provision of these terms and conditions which is unenforceable in a jurisdiction shall be ineffective to the extent of the unenforceability without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability of the provision in another jurisdiction.