

Australian Mineral Fertilisers

Fertiliser Sales Agreement (FSA)

Terms and Conditions of Sale



AMM
FERTILISERS
CREATORS OF GROW SAFE®



AMF General Terms and Conditions – Sale of Fertiliser

1. In these general terms and conditions (“Terms”) and this Fertiliser Sales Agreement (“Agreement”), “AMF” means Australian Mineral Fertilisers, ABN 31 137 378 351 and “Vendor” means either AMF (if you have bought AMF fertiliser products or services directly from AMF) or the vendor that you purchase AMF fertiliser products or services from in any particular case.
2. The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by AMF and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to AMF for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
3. These terms and conditions, including any Credit Limits set by AMF, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by AMF by any means. Unless or except specifically excluded herein, AMF and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement. “Goods” and/or “Collateral” shall mean all goods and/or services supplied by AMF to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which AMF may intend to register a Security Interest. “Price” shall mean the cost of the Goods as referred to AMF’s price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.
4. This agreement shall be construed in accordance with laws of the **State of Western Australia** and, where applicable the Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of **Western Australia**. AMF shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.
5. The Customer consents to AMF effecting a registration on the PPSA register (in any manner AMF deems 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.
 - a) The Customer waives its right to receive notice of a verification statement in relation to any registration by AMF on the register and any other notice required under the PPSA.
 - b) The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with AMF and do any other act or thing that AMF requires 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.
 - c) The Customer must not, without providing prior written notice to AMF, 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.
 - d) The Customer must not, without AMF’s 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.
 - e) The Customer agrees that, until all monies owing to AMF are paid in full, it shall not sell or grant any other security interest in the Goods.
 - f) The Customer will not register a financing change statement in respect of the security interest without AMF’s prior written consent.
 - g) The Customer agrees that AMF may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to AMF in such order as AMF may determine.
 - h) 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 AMF to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); section 117 (security interests in personal property and land); section 118 (enforcement in accordance with land law); section 120 (enforcement of liquid assets - general); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession of collateral); section 127 (seizure by higher priority parties); section 128 (disposing of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires AMF to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134 (retention of collateral); section 135 (notice of retention); subsections 136(3) – 136(5) (retaining collateral free of interests); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
 - i) Notices or documents required or permitted to be given to AMF for the purposes of the PPSA must be given in accordance with the PPSA.
 - j) AMF agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
 - k) The Customer agrees to reimburse, upon demand, AMF for all costs and/or expenses incurred or payable by AMF in relation to registering or maintaining any financing statement, releasing in whole or in part AMF’s security interest or any other document in respect of any security interest, and for the enforcement of any rights arising out of AMF’s security interest;
 - l) In these terms the following words have the respective meanings given to them in the PPSA: accession, commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.
6. Property in all the Goods supplied shall remain vested in AMF and shall not pass to the Customer until all monies owing to AMF by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
 - a) The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of AMF until title has passed to the Customer.

- b) AMF may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
 - c) In the event that the Customer defaults in the payment of any monies owing to AMF, AMF and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and AMF, its employees or agents shall be entitled to do all things required to secure repossession.
7. At AMF's sole discretion, a deposit may be required prior to any supply.
- a) Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, in line with agreed terms.
 - b) In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
 - c) Should it be considered necessary by AMF to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
 - d) Amounts received by AMF may be applied first against interest, charges and expenses.
 - e) Interest on overdue amounts may be charged at a rate of 15% per annum calculated per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
 - f) 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 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.
 - g) The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by AMF) for all costs incurred as a result of any cheque or electronic banking transaction being dishonoured for whatever reason.
8. AMF shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.
9. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify AMF of any defects, short deliveries or any failure to fulfill any quotation or order. The Customer will, within a reasonable time following delivery, grant AMF access to the Goods in order to inspect for any alleged defects. Should the Customer fail to notify AMF within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.
10. Returns will be accepted only if prior arrangements have been made with AMF and charges, including but not limited to re-stocking fees, may apply. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.
11. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, AMF is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.
12. AMF may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means. AMF shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- c. The Customer may cancel the delivery of Goods at any time before delivery by giving notice to AMF by any means.
 - d. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any costs incurred by AMF up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by AMF.
13. Some of the offers maybe (and are stated to be) subject to forecast or order limits and may be withdrawn by AMF once those limits have been reached. You are responsible for making forecasts and placing orders for fertiliser to secure the benefit of these offers. AMF is not responsible for notifying you of the early closing of any offers under this Agreement.
14. To the extent permitted by law, AMF does not make any representations or warranties:
- a) in relation to any AMF fertiliser product (including but not limited to their quality, handling or storage characteristics); or
 - b) in relation to this Agreement and the offers available under this Agreement, other than the representations and warranties expressly set out in this Agreement and the representations and warranties expressly set out in any other applicable AMF offer.
15. Save for those representations, warranties and, guarantees (including those under the Competition and Consumer Act 2010 (Cth)) which cannot be lawfully excluded or modified, all representations and warranties not expressly set out in this Agreement are excluded.
16. Save for those rights and remedies (including those under the Competition and Consumer Act (Cth)) which cannot lawfully be excluded or modified, to the extent permitted by law, AMF's liability to you, in relation to, or in connection with any claim relating to the supply of goods or services pursuant to this Agreement or relating to this Agreement and the offers set out in this Agreement (including any claim in relation to, or in connection with, any negligence by AMF or any of its employees, agents or contractors, and including in relation to, or in connection with, to the supply or non-supply of Fertiliser) is:
- a) limited, where AMF supplies any goods or services under or in relation to this Agreement (except where such goods or services are of a kind ordinarily acquired for personal domestic or household use, or where you establish that reliance upon this clause would not be fair and reasonable):
 - i) in the case of goods, to the replacement of the goods or, at the election of AMF, to the supply of equivalent goods (including goods of the same nutrient value) or the repair of the goods or the payment of the reasonable cost of replacing the goods or of acquiring equivalent goods or of having the goods repaired; or

ii) in the case of services, to the supplying of the services again or, at the election of AMF, to the reasonable cost of having the services supplied again; and

b) in all other cases and except where inconsistent with the above, excluded to the fullest extent permitted by law. For the avoidance of doubt, the limitation of liability in this section does not limit any rights or remedies you are entitled to under the Competition and Consumer Act 2010 (Cth) and which cannot lawfully be excluded or modified.

17. To the extent permitted by law AMF will not be liable for any indirect, incidental, special, punitive and/or consequential loss or damage whatsoever, or any loss of business, opportunity, or profits, arising out of or in connection with this Agreement or the supply or non-supply of Fertiliser (including any claim in relation to, or in connection with, any negligence by AMF or any of its employees, agents or contractors, and including in relation to, or in connection with, to the supply or non-supply of Fertiliser), even if AMF have been advised of the possibility of such damages or losses.
18. If AMF is interrupted in or prevented from carrying out all or any part of its obligations under this Agreement by reason of a Force Majeure event then AMF will be excused from performance of, and shall not be liable for any failure in, carrying out any of its obligations to the extent and for the time that it is prevented in whole or in part from doing so by the Force Majeure event. Any delay in performance as a result of a Force Majeure event will not constitute default or give rise to any claim for damages.
19. For the purposes of these Terms, Force Majeure means any event or circumstance, to the extent that it is beyond the reasonable control of AMF and prevents AMF from meeting its obligations under this Agreement, including but not limited to any of the following:
 - a) fire, explosion, flood, earthquake, cyclone, natural disaster, epidemic;
 - b) riots, civil commotion, malicious damage, sabotage, act of public enemy, act of God, war (declared or undeclared), blockade, revolution;
 - c) strikes, lockouts, industrial and/or labour disputes and/or difficulties, embargoes, work bans, blockades or picketing, not reasonably within the control of AMF;
 - d) failure of any of AMF's suppliers to supply any relevant product;
 - e) the refusal of, revocation of, or delay in obtaining any necessary consents or approvals from any governmental or regulatory agency;
 - f) the failure or breakdown of or accident to, plant or machinery.
20. All monetary values stated in this Agreement are exclusive of the Goods and Services Tax (GST). 10% GST will be added to any prices and fees charged, and rebates and discounts paid.
21. You may change your order. A change of order will need to be discussed with and accepted by your vendor. Changes of order may in some circumstance render you liable to additional fees and charges.
22. This Agreement cannot be used in conjunction with any other agreement or offer from AMF, unless otherwise stated.