

SUMMIT FERTILIZERS TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale do not apply to orders made pursuant to Summit Fertilizers Fixed or Variable Priced Contracts.

1. Basic Arrangement

Purchaser will place an order for fertilizer and Summit Fertilizers will, subject to clause 12, supply the ordered fertilizer to the purchaser.

2. Order Forms

Orders must be made and will only be accepted if made on Summit Fertilizers' order form.

3. Price

The price for fertilizer ordered is the Summit Fertilizers List Price as at the date of delivery or collection (as applicable) of product.

4. Payments prior to delivery or collection

Payment for fertilizer must be made in full prior to delivery or collection. Any payments made prior to delivery or collection do not create an obligation to deliver or make available for collection, and will be held by Summit Fertilizers as payments made on account.

5. Loading Appointments

It is the obligation of the purchaser to nominate a Summit Fertilizers depot and to arrange a loading appointment for collection of fertilizer. Fertilizer will not be loaded until payment in full has been received.

6. Over Delivery

Whilst all reasonable efforts will be made to load the correct quantity ordered by a purchaser, the purchaser accepts that overloading may sometimes occur. Purchaser is entitled to retain but must pay for excess quantities received, and payment for such overloaded quantity must be made within seven (7) days of invoice.

7. Segregation and storage acknowledgement

Purchaser acknowledges that fertilizer products consist of variable sized material and 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 Summit Fertilizers shall not be liable to the Purchaser in respect to product quality deterioration if equipment has contributed to segregation of the product. The purchaser also acknowledges that blends require special storage and application conditions.

8. Blended Product

Summit Fertilizers may, at its discretion, and on the written request of the Purchaser, blend fertilizer supplied by it with other substances provided by the Purchaser or third parties at the Purchaser's cost. When this occurs the Purchaser agrees:

- (a) that Summit Fertilizers does not warrant that the blended or treated product will be suitable, appropriate or effective for its intended use and the Purchaser will make its own assessment on whether the blending or treatment is suitable, appropriate; or effective for its intended use;
- (b) that Summit Fertilizers takes no responsibility for determining whether the substance(s) provided by the Purchaser or by third parties at the Purchaser's request is of suitable quality or fit or suitable for the purpose intended by the Purchaser; and
- (c) that Summit Fertilizers shall not be liable for any loss or damage arising either directly or indirectly from the use, storage or transportation of the blended or treated products. The Purchaser agrees to indemnify Summit Fertilizers from any loss or damage to itself, its employees or any person or property arising from Summit Fertilizer's receipt, use or blending of the substance(s).

9. Taxes and duties

Purchaser is responsible for and must pay all government duties, taxes and charges imposed by any relevant authority in respect of sale or delivery of product to the purchaser.

10. Title and Risk

- (a) Title passes to the purchaser at time of delivery provided full payment has been made.
- (b) Risk passes to the purchaser at time of delivery irrespective of whether or not payment has been made.

11. Limited Warranty - Limitation of Liability

- (a) Summit Fertilizers shall not in any circumstances be liable to the Customer for indirect, consequential, special or penal damages or losses (including any loss of revenue, profit or other consequential loss or damage) however caused and the Customer irrevocably releases Summit Fertilizers and indemnifies Summit Fertilizers against any such claims for loss of damage.
- (b) To the maximum extent permitted by law, the liability of Summit Fertilizers under the Contract shall be limited to the replacement of the Product or the supply of a reasonably equivalent product.

12. Supply

Summit Fertilizers will make its best endeavours to supply product ordered, however supply is subject to availability, and Summit Fertilizers reserves the right at its absolute discretion not to supply any order. In the event that Summit Fertilizers does not supply as ordered, Summit Fertilizers shall refund any monies paid on account to the purchaser.

13. Entire Agreement

This Contract is the whole agreement between the parties and replaces any prior agreement, arrangement or understanding concerning the provision of fertilizer by Summit Fertilizers to the purchaser.