

## Terms and Conditions of Sale

### 1. Definitions

In these Terms and Conditions:

**Application** means the account application form (if any) submitted by the Customer and accepted by Micropellets.

**Consequential Loss** means any loss which is indirect or consequential, including loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation or, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss of opportunity.

**Contract** means the contract for the purchase of Goods comprising these Terms and Conditions, the Application and the accepted Orders placed under this Contract.

**Customer** means any person that purchases Goods under this Contract.

**Defect or Defective** means a defect or flaw in the Goods which prevents the Goods from being used for the purposes intended for such Goods or which makes the use of the Goods dangerous, but does not include anything which has been disclosed as a feature or limitation of the Goods by Micropellets before the date of purchase, or any defect or flaw that is trivial or insubstantial.

**Delivery** means Delivery of the Products by any of the methods set out in clause 5.3 and **Deliver** has a corresponding meaning.

**Goods** means all products and services agreed to be supplied by Micropellets to the Customer from time to time under this Contract.

**GST** means any goods and services tax and any replacement or similar tax.

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

**Insolvency Event** means the happening of any of these events:

- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
- (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party's prior consent;
- (d) a party goes bankrupt; or
- (e) party ceases, or threatens to cease, to carry on a business.

**Invoice** means the invoice issued by Micropellets to the Customer setting out the amount to be paid by the Customer.

**Micropellets** means Garden City Planters Pty Ltd ACN 005 295 223 trading as *Micropellets*.

**Order** means any order for Goods placed by the Customer with Micropellets, in whatever form.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and includes any regulations made at any time under that Act.

### 2. Contract

Unless Micropellets otherwise agrees in writing, this Contract is the only contract which shall apply to all Goods supplied by Micropellets.

### 3. Orders

Micropellets has sole discretion to accept or reject any Order or any variation or modification of an Order requested by the Customer. Micropellets has sole discretion to accept or reject any Order cancellation request by the Customer. If Micropellets accepts a cancellation request, the Customer will be liable for any direct loss or expense incurred by Micropellets in respect of that Order (including, payment for any Goods ordered by Micropellets from its suppliers relating to that Order).

### 4. No reliance or representations

The Customer acknowledges that:

- (a) it has not relied on any service involving skill or judgment, or on any advice, recommendation or, information given by Micropellets regarding the Goods or their use or application;
- (b) no sale under these Terms and Conditions constitutes a sale by sample;
- (c) neither Micropellets nor any person purporting to act on its behalf has made any representation which is not expressly set out in writing, about the fitness of the Goods for any particular purpose;
- (d) it alone is responsible for determining the fitness of the Goods for the purpose for which the Customer intends to use them; and
- (e) any description of the Goods is given by way of identification only and the use of such description does not constitute a sale by description.

### 5. Delivery

- 5.1 Micropellets will make all reasonable efforts to Deliver the Goods to the Customer on the date agreed between the parties as the Delivery date.

However, time is not of the essence under this Contract and Micropellets shall not be liable for any failure to Deliver or delay in Delivery for any reason.

- 5.2 On Delivery of the Goods, the Customer must (itself or via its freight forwarding agent) sign Micropellets' Delivery receipt.
- 5.3 The methods of Delivery shall be clearly set out in the Order being one of the following options agreed by the parties:
  - (a) Delivery to the Goods to the Customer's nominated premises;
  - (b) the collection by the Customer of the Goods from Micropellets nominated premises;
  - (c) the collection of a shipment of Goods by the Customer's freight forwarding agent.
- 5.4 The Customer is responsible for insuring the Goods in transit and for all freight charges connected with the Delivery of the Goods.
6. **Shortages and defects**
  - 6.1 The Customer must, as soon as possible after delivery, check the quantity of the Goods delivered against the quantity due to be delivered. Micropellets is not responsible for making good any shortage unless the Customer gives Micropellets notice of the shortage within 7 days after delivery. If Micropellets does not receive a notice under this clause, the Goods delivered will be considered to accord with the relevant order and to be accepted by the Customer.
  - 6.2 The Customer must, as soon as possible after delivery, check whether the Goods were Defective when delivered. The Goods will be considered to have been delivered in good condition unless the Customer gives Micropellets notice of the Defect within 7 days after delivery. If the Customer gives Micropellets notice under this clause, it must:
    - (a) preserve the Goods in the state in which they were delivered after it gives Micropellets the notice; and
    - (b) during that period, allow Micropellets access to the Customer's premises to inspect the Goods; or
    - (c) at Micropellets' request return the Goods, within a mutually acceptable period after the delivery date in the condition in which they were delivered and with all packaging material in as new condition as is reasonably possible in the circumstances.
7. **Remedies for Defective Goods**

Subject to clause 11.1 and to the extent permitted by law, Micropellets' liability in respect of Goods that are Defective is limited to any one of the following options as determined by Micropellets:

  - (a) the repair or replacement of the Goods or the supply of equivalent Goods;
  - (b) payment of the cost of replacing or repairing the Goods or of acquiring equivalent Goods; or
  - (c) provision of a credit.
8. **Title and risk**
  - 8.1 Unless otherwise agreed in writing, risk in the Goods purchased passes to the Customer when the Goods are delivered to the Customer. Title in and to the Goods passes to the Customer on full payment of cleared funds for all Goods.
  - 8.2 Until Micropellets receives full payment of cleared funds for all Goods supplied by it to the Customer, as well as all other amounts owing to Micropellets by the Customer under any other contract:
    - (a) the Customer holds the Goods as bailee for Micropellets;
    - (b) the Customer must maintain the labelling and packaging of any unused Goods so that they are readily identifiable as the property of Micropellets;
    - (c) the Customer must not sell the Goods except in the ordinary course of the Customer's business;
    - (d) the Customer holds the proceeds of any sale of the Goods or any product made from the Goods on trust for Micropellets until the Customer pays the proceeds; and
    - (e) if any of the events in clause 10.3(a) - 10.3(c) occurs and the Customer fails to comply with its obligations under clause 10.3(e), in addition to any rights Micropellets may have under Chapter 4 of the PPSA, Micropellets may, without notice, enter into any premises where it suspects the Goods are located and remove them without committing a trespass, even though they may have been attached to other goods or land not owned by Micropellets. The Customer irrevocably licenses Micropellets to enter such premises and indemnifies Micropellets against all loss suffered or incurred by Micropellets as a result;
    - (f) the Customer acknowledges and warrants that Micropellets has a security interest (for the purposes of the PPSA) in the Goods and any proceeds described in this clause 8 until title passes to the Customer in accordance with this clause 8. The Customer must do

- anything reasonably required by Micropellets to enable Micropellets to register its security interest, with the priority that Micropellets requires and to maintain that registration; and
- (g) the security interest arising under this clause 8 attaches to the Goods when the Customer obtains possession of the Goods and the parties confirm that they have not agreed that any security interest arising under this clause 8 attaches at any later time
- 8.3 Micropellets' rights under this clause 8 secure:
- (a) Micropellets' right to receive the price of the Goods; and
- (b) all other amounts owing to Micropellets under this Contract and any other contract.
- 8.4 All payments received from the Customer must be applied by Micropellets in accordance with section 14(6)(c) of the PPSA.
- 8.5 Micropellets does not need to give the Customer any notice under the PPSA unless the notice is required by the PPSA and that requirement cannot be excluded.
- 9. Price and GST**
- 9.1 Unless otherwise agreed in writing, the price for the Goods shall be the price as determined by Micropellets at the date of delivery according to Micropellets (plus any GST payable in accordance with this Contract).
- 9.2 Despite any other clause in this Contract, to the extent that any supply made under or in connection with this Contract is a taxable supply (as defined by the GST Law), the Customer must pay to Micropellets, in addition to the consideration provided for under this Contract or that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The Customer must pay Micropellets the additional amount at the same time as the consideration to which it is referable. The Customer must pay any other duties, taxes or charges, including any stamp duty (if applicable), in relation to the Goods.
- 10. Payment**
- 10.1 Subject to clause 10.3 and 10.4, and unless otherwise agreed in writing by Micropellets all Invoices shall be payable by the Customer within 30 days after the date that Micropellets issues an invoice to the Customer.
- 10.2 Micropellets may charge interest on any overdue amount at a rate of 1.5% per month on the balance owing to the Company from the due date until payment in full is made.
- 10.3 If the Customer:
- (a) makes defaults on any payments;
- (b) breaches any other term of this Contract; or
- (c) suffers an Insolvency Event, then:
- (d) Micropellets may, at its option, withhold further deliveries or cancel any Order without notice to the Customer and without prejudice to any other action or remedy which Micropellets has or might otherwise have under this Contract; and
- (e) all moneys owing to Micropellets on any Invoice and irrespective of whether the due date on any Invoice has occurred or passed shall become immediately due and payable by the Customer.
- 10.4 Despite clause 10.1, Micropellets may in its sole discretion alter or terminate the Customer's credit limit or payment terms by written notice without liability. Micropellets' decision shall be final.
- 11. Limitation of liability**
- 11.1 The Company acknowledges that provisions in the Competition and Consumer Act 2010 (Cth) (as amended) and other statutes from time to time in force imply or impose statutory guarantees, conditions or warranties into contracts for the supply of goods and services which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent ("Non Excludable Terms"). Nothing in these Terms and Conditions is intended to exclude or restrict the application of the Non Excludable Terms.
- 11.2 Subject to clause 11.1 and to the extent permitted by law, Micropellets is not liable to the Customer for any loss or claim of any kind in connection with these Terms and Conditions, or any Goods obtained under them, except as provided under clauses 6 and 7.
- 11.3 If any Non Excludable Terms apply, then to the extent to which Micropellets is entitled to do so, its liability under those Non Excludable Terms will be limited to the following:
- (a) the replacement of the goods or the supply of equivalent goods;
- (b) the repair of the goods;
- (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) the payment of the cost of having the goods repaired.
- 11.4 With the exception of any Non-Excludable Terms and to the extent permitted by law, Micropellets excludes:
- (a) any term, condition or warranty that may otherwise be implied into this Contract;
- (b) any liability for Consequential Loss.
- 12. Force majeure**
- Micropellets is not liable for any failure to perform any of its obligations under this Contract because of any event beyond its reasonable control. If this occurs, Micropellets may suspend performance of any obligations under this Contract while the event continues or may, without liability, terminate any affected Order or this Contract immediately by giving the Customer written notice.
- 13. Intellectual Property Rights**
- The purchase of Goods under this Contract does not confer on the Customer any licence or assignment of any copyright, patent, design or trademark, or any other intellectual property right (whether registered, registrable or not) that subsists in the Goods.
- 14. Privacy**
- 14.1 The Customer agrees for Micropellets to obtain from a credit reporting body, credit reporting information containing personal credit information about the Customer in relation to credit provided by Micropellets.
- 14.2 The Customer agrees that Micropellets may exchange information (which credit providers are allowed to exchange under the Privacy Act 1988) about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting body for the following purposes:
- (a) to assess an application by the Customer;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.
- 14.3 The Customer consents to Micropellets being given a consumer credit report to collect overdue payment on commercial credit.
- 14.4 The Customer agrees that personal credit information provided may be used and retained by Micropellets for the following purposes (and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time):
- (a) the provision of Goods;
- (b) the marketing of Goods by Micropellets, its agents or distributors;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Client's account and the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 14.5 Micropellets may give information about the Customer to a credit reporting body for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting body to create or maintain a credit information file containing information about the Customer.
- 14.6 The information given to the credit reporting body may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, employer and driver's licence number); and
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested.
- 14.7 On request by the Customer, Micropellets must give access to the credit eligibility information Micropellets holds about an individual.
- 15. General**
- 15.1 If any part of these Terms and Conditions is held to be void or unlawful, such part is to be read and enforced as if the void or unlawful part had been deleted.
- 15.2 This Contract may be varied by the parties in writing only.
- 15.3 The Customer may not transfer any of its rights or obligations under this Contract without Micropellets' prior written consent.
- 15.4 This Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria.
- 15.5 Micropellets' waiver of a breach of this Contract or of any right or power arising on a breach of this Contract must be in writing and signed by Micropellets. A right or power arising on a breach of this Contract is not waived by any failure to exercise or delay in exercising that or any other right or power.