



## TRADING TERMS AND CONDITIONS

### 1. Application of these Terms and Conditions

- 1.1 Unless otherwise agreed in writing, these terms will apply to all supplies and sales of ECO-GROWTH Products to you as customer (“Customer”).
- 1.2 These terms will apply to the entire exclusion of all and prevail over other terms and conditions (whether or not in conflict or inconsistent with these terms and conditions), including those of the Customer, or which are implied by trade custom, practice or course of dealing, unless those conflicting or inconsistent clauses are inserted as part of the Special Conditions and attached to the Purchase Order.
- 1.3 These terms and conditions supersede all terms and conditions of sale / supply previously issued by ECO-GROWTH.

### 2. Definitions and Interpretation

#### 2.1 Definitions

**Agreement** means and include:

- these Trading Terms;
- the Purchase Order issued by the Purchaser;
- any Special Conditions attach to the Purchase Order;
- any additional terms set out in ECO-GROWTH’s Credit Application Form (where applicable).

**Claim** includes any action, suit, proceeding, application or demand of any kind;

**Collection Point** means the address stated in the Purchase Order or such other address as is notified to the Customer for the collection of the Product;

**Confidential Information** means any information (in whatever format or form or document) of a confidential nature (or which the recipient of such information ought to reasonably expect to be confidential) that relates to the business, affairs or activities of the ECO-GROWTH;

**Credit Application Form** means ECO-GROWTH’s credit application form which may contain additional terms governing this Agreement between ECO-GROWTH and the Customer;

**ECO-GROWTH** means **ECO GROWTH INTERNATIONAL PTY LTD (ACN 094 070 407)** (ABN 23 094 070 407) of 75 Postans Road, Hope Valley, Western Australia 6165;

**Force Majeure** means any event or circumstance or occurrence as a direct or indirect result of which ECO-

GROWTH relying on it is prevented from performing any of its obligations under this Agreement, that is beyond the reasonable control of ECO-GROWTH and is not the direct or indirect result of the failure of ECO-GROWTH to perform its obligations and includes act of war (whether declared or not) or terrorism, civil commotion or riot, act of God, natural disaster, industrial action or labour disturbance, action or inaction by a government agent, or a failure of a supplier, public utility or common carrier;

**GST** means Goods and Services Tax, as defined in the GST Act;

**Insolvency Event** means a party:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a Controller (as defined in the *Corporations Act 2001 (Cth)* or analogous person appointed to it or any of its property;
- (c) being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand;
- (d) being unable to pay its debts as they fall due or where the other party believes on reasonable grounds that that party is insolvent;
- (e) taking any step that is reasonably likely to result in the person becoming insolvent under administration (as defined in section 9 of the *Corporations Act*);
- (f) proposing to enter or entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- (g) any analogous event under the laws of any jurisdiction, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party (which approval is not to be unreasonably withheld).

**Intellectual Property Rights** mean patents, rights to inventions, trademarks, rights in confidential information (including know-how and trade secrets), copyright, design rights (and all similar or related rights existing anywhere in the world, whether registered or not and including any applications for the same) in any materials, equipment, tools, dies, moulds, drawings, specifications, data and software;

**Loss(es)** means all direct, indirect or consequential liability, all losses, damages, expenses, costs, claims, proceedings or demands including legal and other professional expenses;

**PPSA** means the Personal Property Securities Act 2009 and includes any variation or amendments to the Act from time to time;

**Product** means any fertilizer product specified in the Purchase Order or offered for sale by ECO-GROWTH from time to time;

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Purchase Order** means the purchase order placed by the Customer for the supply of the Products (and may include any Special Conditions) and includes any quotation(s) by ECO-GROWTH to the Customer for a particular order or order(s). All Purchase Orders accepted by ECO-GROWTH whether via electronic mail, facsimile or telephone will be subject to these terms unless otherwise agreed;

**Security Interest** has the same meaning given under the PPSA;

**Special Conditions** mean any terms and conditions attached or referred to in a Purchase Order applicable to a particular supply of Product. Where a special condition conflicts with these terms and conditions, the Special Conditions will prevail to the extent of the inconsistency; **Supply** has the same meaning as it does in Section 9-10 of the GST Act and excludes any "GST-free supplies" and "input tax supplies" as those terms are defined in section 195-1 of the GST Act.

### 3. **Placing an order for Products**

- 3.1 Any order made by the Customer is not binding on ECO-GROWTH until accepted by ECO-GROWTH in writing (or via email).
- 3.2 ECO-GROWTH may at its discretion decline an order or any part of a Purchase Order.
- 3.3 An Agreement is formed by ECO-GROWTH's acceptance of the Customer's Purchase Order.
- 3.4 The Customer is responsible for ensuring the accuracy of any Purchase Order.
- 3.5 The Customer confirms that the purchase and acquisition of the Products will not be predominantly for personal, domestic or household use or consumption.

### 4. **Cancellation of a Purchase Order**

The Customer may not cancel any Purchase Order (or any part of a Purchase Order) that has been accepted by ECO-GROWTH without written consent from ECO-GROWTH for that cancellation.

### 5. **Pricing**

- 5.1 Unless accepted by ECO-GROWTH, all quoted pricing for any Product is valid for 30 days only. ECO-GROWTH may at its sole discretion alter any quoted pricing for any of its Products after the expiry of 30 days from any quotation date.
- 5.2 Prices of the Products will be fixed from the date of ECO-GROWTH's acceptance of the Customer's Purchase Order. All pricing is exclusive of GST (unless otherwise confirmed in writing).

### 6. **Payment Terms**

- 6.1 Unless otherwise specified in writing, all Products must be paid for prior to collection at such Collection Point specified by ECO-GROWTH.

- 6.2 Time for payment of the purchase price for the Products shall be of the essence of this Agreement and if the Customer fails to pay the purchase price (or any amount due to ECO-GROWTH pursuant to this Agreement) as and when due, ECO-GROWTH may treat the Customer as having repudiated the Agreement AND ECO-GROWTH may suspend or withdraw all supply of the Products to the Customer without incurring any liability whatsoever to the Customer and the Customer may not Claim against ECO-GROWTH for damages for such non-supply.

- 6.3 ECO-GROWTH may at its sole discretion permit the Customer to pay on credit terms provided the Customer complete, sign and send back to ECO-GROWTH, the Credit Application Form AND the Customer receives email confirmation from ECO-GROWTH that ECO-GROWTH has agreed to extend to the Customer credit facility.

- 6.4 In consideration of ECO-GROWTH agreeing to extend to the Customer a credit facility on such terms as set out in the Credit Application Form, the Customer charges (in favour of ECO-GROWTH) all of its rights, title and interest in any land, realty or other assets capable of being charged to secure the performance by the Customer of its obligations under these terms and under the credit facility granted. The Customer agrees that ECO-GROWTH may lodge a private caveat over any land or realty (including any real property which is jointly owned by the Customer) to secure its interest under the charge.

- 6.5 ECO-GROWTH may at its discretion charge the Customer interest on any unpaid amount at the rate of 16% per annum (calculated on a day to day basis) until payment is made in full. The Customer agrees that the interest imposed is a reasonable estimate of loss suffered by ECO-GROWTH as a result of any non-payment or delay in payment by the Customer.

### 7. **Risk & Collection**

- 7.1 Risk (of loss or damage) passes to the Customer upon collection of the Products from the designated Collection Point as specified in the Agreement.
- 7.2 Until the full amount due to ECO-GROWTH for the Products has been paid, the Customer acknowledges that legal and equitable interest does not pass to Customer despite risk passing or the Customer having collected the Products under clause 7.1 above.
- 7.3 All Products must be collected within 14 days of the Customer receiving notification from ECO-GROWTH to collect.
- 7.4 Uncollected orders will be cancelled and ECO-GROWTH may at its discretion credit the cost of those Products to the Customer's account.
- 7.5 ECO-GROWTH will not be liable to the Customer in respect of any Product changes (in quality) as a result of poor storage, segregation or mishandling by the Customer.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

8. **PPSA**

8.1 Until the full amount due for the Products has been paid to ECO-GROWTH, the Customer must:

- (a) store the Products so as to show clearly that they are property of ECO-GROWTH;
- (b) insure the Product for their full insurable value against loss or damage by fire, theft, accident or other such risks which a reasonable business person is likely to insure against;
- (c) at its expense, take all necessary and reasonable precautions to keep the Products safe and free from damage;
- (d) act as ECO-GROWTH's bailee of the Products and must not sell, encumber or allow any security interest (or lien) to be created over those goods without the prior written consent of ECO-GROWTH which consent will not be unreasonably withheld if the Products are sold or disposed of in the Customer's ordinary course of business.

8.2 Until ECO-GROWTH has received payment for the Products in full, the Customer acknowledges that ECO-GROWTH has a "Purchase Money Security Interest" (PMSI) which attaches over such Products and their proceeds and a Security Interest in relation to other amounts owed by the Customer to ECO-GROWTH.

8.3 ECO-GROWTH may register a financing statement in relation to its PMSI and Security Interest on the PPS Register established by the PPSA and where necessary amend such registration from time to time.

8.4 The Customer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which ECO-GROWTH may ask and consider necessary for the purpose of:

- (a) ensuring that the Security Interest created under these terms and conditions is enforceable, perfected and otherwise effective; or
- (b) enabling ECO-GROWTH to apply for any registration, or give any notification, in connection with a Security Interest created under these terms and conditions so that the Security Interest has the priority required by ECO-GROWTH, including anything ECO-GROWTH reasonably asks the Customer to do in the connection with the PPSA.

8.5 To the extent permitted by law, if the PPSA is applied, the Customer irrevocably waives any rights the Customer may have to:

- (a) receive notices or statements under Sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- (b) redeem the goods under Section 142 of the PPSA;

- (c) reinstate these terms and conditions under Section 143 of the PPSA; and
- (d) receive a verification statement (as defined in the PPSA).

8.6 If the Customer fails to make full payment for any goods supplied by ECO-GROWTH, ECO-GROWTH is entitled to possession of those goods and may recover and sell those goods. The Customer must place those goods at the disposal of ECO-GROWTH and ECO-GROWTH is entitled to enter upon any premises of the Customer and remove those goods.

8.7 The parties acknowledge that this clause 8 will survive the termination of this Agreement to the extent permitted by law.

9. **Warranties and Exclusions of Liability**

9.1 Save for the 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 these terms and conditions are excluded.

9.2 Save for those rights and remedies (including those under the *Competition and Consumer Act 2010 (Cth)*) which cannot lawfully be excluded or modified, to the extent permitted by law, ECO-GROWTH's liability to the Customer, in relation to, or in connection with any claim relating to the supply of any Product 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 ECO-GROWTH or any of its employees, agents or contractors, and including in relation to, or in connection with, the supply or non-supply of Products) is:

- (a) limited to the replacement of the Products, or at the election of ECO-GROWTH, limited to the supply of equivalent Products or a full refund of the purchase price collected for the Products;
- (b) in all other cases, ECO-GROWTH's liability to the Customer is excluded to the fullest extent permitted by law.

For the avoidance of doubt, this limitation of liability does not limit or purport to limit any rights or remedies the Customer may have under the *Competition and Consumer Act 2010 (Cth)* which cannot be lawfully excluded or modified.

9.3 To the extent permitted by law, ECO-GROWTH 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 the Products even if ECO-GROWTH have been advised of the possibility of such damages or losses.

9.4 If ECO-GROWTH is interrupted in or prevented from carrying out all or part of its obligations under this Agreement by reason of a Force Majeure event then

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

ECO-GROWTH will be excused from the 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 a default or give rise to any claim for loss or damage.

10. **Application Rates, Use and Storage of Products**

10.1 All application rates and usage of the Products are as depicted in ECO-GROWTH webpage at [www.ecogrowth.com.au](http://www.ecogrowth.com.au). The Customer must utilise its own judgement as to the suitability of the Products prior to any placement of Purchase Order(s).

10.2 All Products must be used or stored in accordance with the directions provided either on the Product labels or set out in the ECO-GROWTH webpage.

10.3 The Customer must take all appropriate safety precautions with respect to the storage of any Products including referencing all safety fact sheets / leaflets provided with the Products by ECO-GROWTH.

10.4 All goods are handled and stored at the risk of the Customer and ECO-GROWTH accepts no liability in this regard.

11. **Default and Termination**

11.1 If the Customer:

- (a) fails to pay any moneys due and payable pursuant to the Agreement; or
- (b) breaches, repudiates or terminates the Agreement; or
- (c) (being a corporation) suffers an Insolvency Event as defined; or
- (d) (being a person) commits an act of bankruptcy (as defined by the *Bankruptcy Act 1966*); or
- (e) if ECO-GROWTH (acting reasonably) believes that the Customer is insolvent or a third party may attempt to levy any form of execution against the Products held under any credit facility arrangement; or
- (f) suspends, or threatens to suspend, the conduct of its business; or
- (g) becomes unable to pay its debts as and when they are due,

then ECO-GROWTH at its absolute discretion may by written notice terminate the Agreement with the Customer.

11.2 In the event ECO-GROWTH terminates the Agreement with the Customer, ECO-GROWTH may recover from the Customer all costs and expenses incurred by ECO-GROWTH in its performance of the terms of the Agreement, and all loss and damages arising from or relating to the termination or repudiation including but not limited to the costs of any Products ordered by not collected (which Purchase Order cannot be cancelled).

12. **Intellectual Property**

The Customer confirms that the sale and supply of the Products by ECO-GROWTH does not confer on the Customer any Intellectual Property Rights which shall at all relevant times remain with ECO-GROWTH.

13. **Disputes**

13.1 The parties agree that any dispute in connection with this Agreement must be resolved, at first instance, by discussion between a representative nominated by Customer and a representative nominated by ECO-GROWTH.

13.2 If such representatives fail to resolve the dispute, the dispute shall be referred to mediation. The mediator and the process will be agreed upon between the parties.

13.3 Neither party to this Agreement may commence legal proceedings unless and until they have complied with clauses 13.1 and 13.2 above.

14. **Confidentiality**

The information and terms contained in these terms and conditions and in relation to the Agreement (including price and any applicable rebates) are Confidential Information and must not be disclosed to any third party except:

- (a) where the Confidential Information is in, or acquired from public domain or without fault of the Customer (its agents or employees) becomes available within the public domain;
- (b) where the Confidential Information is required to be disclosed pursuant to a court order or by operation of law; or
- (c) where necessary to perform or enforce a party's rights and obligations under the Agreement.

15. **General**

15.1 Nothing in these terms is intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* or the applicable Fair Trading Act in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

15.2 The failure by ECO-GROWTH to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect ECO-GROWTH's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the State in which ECO-GROWTH has its

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_

principal place of business, and are subject to the jurisdiction of the courts in that State.

- 15.4 Subject to clause 9, ECO-GROWTH shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by ECO-GROWTH of these terms and conditions (alternatively ECO-GROWTH's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 15.5 The Customer shall not be entitled to set off against, or deduct from the price of the Products, any sums owed or claimed to be owed to the Customer by ECO-GROWTH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.6 ECO-GROWTH may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 15.7 The Customer agrees that ECO-GROWTH may amend these terms and conditions at any time. If ECO-GROWTH makes a change to these terms and conditions, then that change will take effect from the date on which ECO-GROWTH notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for ECO-GROWTH to supply Goods to the Customer.
- 15.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 15.9 In addition to clause 15.8, where the Customer is a trustee:
- (a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) if, and when, requested by ECO-GROWTH; and
  - (b) the Customer warrants it shall be bound by the terms and conditions of this deed both personally and as trustee; and
  - (c) the Customer confirms that the trustees shall be liable for the obligations of the Customer hereunder, and that in addition the assets of the trust shall be available to meet payment of any monies owed by the Customer under this contract.

16. **Governing law and jurisdiction**

- 16.1 The parties agree that these terms and conditions will be construed in accordance with the law of the state of Western Australia.
- 16.2 The parties hereby irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.

Signature: \_\_\_\_\_

Date Signed: \_\_\_\_\_