

Brown's Conditions of Sale 15 June 2020

1. Interpretation

1.1 In these Conditions of Sale (**Conditions**):

a reference to the singular includes the plural and vice versa and if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;

Australian Consumer Law means *Schedule 2 of the Competition and Consumer Act 2010 (Cth)* and the corresponding provisions of the relevant State and Territory fair trading acts;

Business Day means any day except a bank or public holiday in Victoria or a Saturday or Sunday;

Company means Ameropa Australia Pty Ltd ACN 009 504 394 trading as Brown's Fertilisers ABN 21 009 504 394 and its successors and assigns;

Confidential Information means any information in any form which includes:

- (a) the existence of and the terms of these Conditions; and
- (b) all information, know-how, ideas, concepts, technology, industrial, marketing and commercial knowledge of a confidential nature (whether in tangible or intangible form) relating to or developed in connection with or in support of the business of a party or a Related Party of a party which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with these Conditions;

Consumer has the meaning given to it in section 3 of the Australian Consumer Law;

Consumer Guarantee means a right or guarantee under the Australian Consumer Law that cannot lawfully be excluded;

Contract means the contract for the sale and purchase of the Products and Services comprising any Customer Order, the Credit Application and these Conditions;

Customer means the purchaser of the Products and Services;

Customer Order means any order whether oral or written for the purchase of Products by the Customer and which is accepted by the Company;

Credit Application means the Company's credit application of which these Conditions form part;

Delivery means delivery of the Products and performance of the Services in accordance with clause 5;

Force Majeure Event means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a shortage or unavailability of raw materials, production capacity or transportation; and any other event not within the reasonable control of the Company;

GST has the same meaning as it does in Section 195-1 of the GST Act;

GST Act means the *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 when they are due, or 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) a party ceases, or threatens to cease, to carry on business;

Intellectual Property Rights means:

- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
- (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) confidential information and trade secrets;
- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
- (e) proprietary rights;

Loss means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise;

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not, or as otherwise defined by the Privacy Act 1988 (Cth);

Price means the price of the Products and Services as specified in clause 3;

Products means all products sold by the Company to the Customer;

Related Party has the meaning provided in the *Corporations Act 2001* (Cth);

Representatives means officers, directors, employees, agents, representatives, contractors and/or subcontractors of the relevant party but a party to the Contract and its officers, directors, employees, agents, representatives, contractors and subcontractors are not "Representatives" of the other party to these Conditions; and

Services means the services to be supplied by the Company under these Conditions.

2. **Application of Conditions**

- 2.1 These Conditions apply to all supplies and sales of Product and Services by the Company to the Customer unless otherwise agreed.
- 2.2 The Customer will be deemed to have accepted these Conditions if the Customer confirms this verbally or in writing to the Company or if the Customer places an order for or pays for Products or Services after receipt of or acknowledging these Conditions.
- 2.3 The Company reserves the right to insist upon written confirmation of any Customer Order placed verbally by a Customer.
- 2.4 The Customer is responsible to the Company for ensuring the accuracy of any Customer Order submitted by the Customer.
- 2.5 The Company will deliver the Products and perform the Services in accordance with each Contract.
- 2.6 The quantity, quality, nature and description of the Products and Services shall be those set out in the Contract.
- 2.7 If the Customer cancels a Contract prior to delivery of the Products and provided the Company has provided its prior written consent to do so, the Customer shall compensate the Company in accordance with the formula in clause 2.8, which the Customer acknowledges is fair compensation in the circumstances where the Customer cancels the Contract prior to delivery of the Products.
- 2.8 If the Customer cancels a Contract prior to delivery of the Products or refuses to take Delivery of Products ordered pursuant to a Contract, the Customer must pay the following:
 - (a) If the Fair Market Price for the Products has fallen below the Price, the Customer must pay within 7 Business Days of demand by the Company, for each Product, an amount equal to the difference between the value of the Product calculated with reference to the Fair Market Price and the Price of the Product.
 - (b) In addition to any amount recoverable under clause 2.8(a), if the Contract is in respect of a custom order the Company may also claim any of the following reasonable losses:
 - (i) costs for extended storage until such time as the custom order can be reused and/or resold;
 - (ii) internal handling costs such as labour costs for preparing custom orders and transport costs.
- 2.9 For the purposes of this clause, **Fair Market Price** means:
 - (a) the price per tonne, ascertained by bona fide transactions for products the same as or similar to the Products (in specification and in quantity) which is actively trading on the Delivery date; or
 - (b) where there is no active trade at the relevant time, the bona fide price being offered by other sellers in the market place for products the same as or similar to the Products on the Delivery date; or
 - (c) where there is no active trade at the relevant time, the price being offered by other sellers in the market place for products the same as or similar to the Products on the Business Day following the Customer's cancellation, if that day is within the Delivery date or (where there are a series of Delivery dates) the last applicable Delivery date.
- 2.10 Where either party is dissatisfied with the ascertained Fair Market Price calculated in accordance with clause 2.9 and an alternative price cannot be mutually agreed, then the determination of the Fair Market Price may be referred by either party for determination under clause 11.

3. **Price**

- 3.1 Subject to clause 3.2, the price of the Products and Services shall be:
 - (a) in the absence of a quoted price given in writing by the Company, the Company's price at the date the Company accepts the Customer Order; or

- (b) the Company's quoted price which will be binding on the Company for a period specified to the Customer by the Company from 24 hours to 7 days from the date of the quotation and which may be accepted by the Customer at any time within the specified period.
- 3.2 The Company reserves the right, by notice to the Customer at any time before Delivery, to increase the price of the Products and Services to reflect any increase in costs to the Company due to any change in Delivery dates, quantities or specifications for the Products requested by the Customer, or any delay caused by instructions of the Customer or failure of the Customer to give the Company adequate information or instructions in respect of the Contract. Except as otherwise stated on the Contract or as otherwise agreed between the parties in writing, all prices given by the Company are ex warehouse in respect of Products. In addition to the Price, the Customer must pay for all freight costs as notified by the Company.
- 3.3 Prices of Products are calculated on a per tonne basis and are rounded to the nearest whole cent. When quantities other than 1 tonne (whether more or less than a tonne) are supplied there may be a slight rounding difference in the price of a few cents per tonne (either up or down).
- 3.4 The amount shown as "Total Payable" on any quotation issued by the Company is exclusive of GST unless otherwise stated.

4. **Terms of Payment**

- 4.1 Customers who have not signed a Credit Application will be required to pay cash on Delivery.
- 4.2 Customers who have signed a Credit Application (and had their application for credit accepted in writing by the Company) will be subject to clauses 4.3 to 4.5.
- 4.3 Subject to any special payment terms shown in the Contract or otherwise agreed between the Customer and Company, the Company shall be entitled to invoice the Customer for the Price of the Products and Services on or at any time after the parties enter into a Contract and, the Customer must pay the Price of the Products and Services within 30 days from end of the month of Delivery of the Products or performance of the Services (as applicable).
- 4.4 If the Customer fails to make any payment on the due date or if the Customer's credit limit will be exceeded by a supply, then without prejudice to any other right or remedy available to the Company, the Company may:
 - (a) suspend any further Deliveries to the Customer;
 - (b) discontinue the performance of any Services; and
 - (c) charge the Customer interest on the unpaid amount at a rate of 15% per annum. Such interest will accrue from the date payment was due to the date payment is made, will be calculated daily and capitalised monthly and must be paid by the Customer on demand by the Company.
- 4.5 If the Company takes steps or action to recover any amount due to it, the Company may charge the Customer for any costs of collection of any debt owing by the Customer to the Company (including legal costs on a full indemnity or solicitor client basis at the Company's election).

5. **Delivery**

- 5.1 Delivery of the Products shall be made by either:
 - (a) the Company delivering the Products to the Customer's premises; or
 - (b) the Customer collecting the Products from the Company's premises after the Company has notified the Customer that the Products are ready for collection.
- 5.2 Any dates quoted for Delivery of the Products are approximate only and the Company shall use its best endeavours to deliver the Products during the agreed delivery period. However, the Company does not accept liability for any delay in Delivery of the Products caused by any factor beyond the Company's control. The Customer is entitled to cancel the Contract if Delivery is delayed by more than 14 days from the end of any agreed Delivery period. Except where the Company's liability may not be excluded under the Australian Consumer Law, the Company shall not be liable for any Loss suffered or incurred by the Customer due to a failure or delay in Delivery by the Company.
- 5.3 Other than for Products that are in liquid form, the Customer acknowledges that the Product consists of variable sized material and may segregate when unloaded into storage, particularly when belt conveyors and augers are used during Delivery.
- 5.4 The Company will not be liable to the Customer in respect of Product quality changes as a result of segregation, whether occurring during Delivery or otherwise.
- 5.5 The Customer must comply at all times with all laws with all laws in connection with these Conditions, including without limitation laws in respect to occupational health and safety and chain of responsibility. The Customer warrants and represents that it and its personnel (including without limitation employees, contractors and subcontractors) have been trained in respect of all applicable chain of responsibility requirements and have processes and procedures in place to ensure compliance with such requirements.

6. **Title and Risk**

- 6.1 Risk of damage to or loss of the Products shall pass to the Customer:
- (a) in the case of Products delivered at the Customer's premises, at the time the Products are unloaded from the Company's delivery vehicle; and
 - (b) in the case of Products collected by the Customer from the Company's premises, at the time when the Products have been loaded onto the Customer's vehicle.
- 6.2 Notwithstanding Delivery and the passing of risk in the Products on Delivery, the property and ownership of the Products shall not pass to the Customer until the Company has received in cleared funds, payment of the Price in full.
- 6.3 The Company's rights under this clause 6 secure:
- (a) the Company's right to receive the Price for the Products; and
 - (b) all other amounts owing to the Company under any other contract.
- 6.4 Until full property and ownership in the Products passes to the Customer in accordance with clause 6.2:
- (a) the Customer must keep the Products separate from all other goods except as is expressly consented to by the Company in writing from time to time;
 - (b) the Customer must keep the Products properly stored, protected and identified as the Company's property;
 - (c) the Customer must not sell the Products unless in the ordinary course of the Customer's business;
 - (d) the Company may at any time require the Customer to deliver up the unpaid Products to the Company and, if the Customer fails to do so immediately, to enter the premises of the Customer or any third party where the Products are stored and repossess the Products;
 - (e) the Customer agrees that the Company is authorised to enter any premises where the Products are located and the Customer will indemnify the Company against all claims, damages or other losses of whatever nature suffered by the Company as a consequence of recovering or attempting to recover the Products; and
 - (f) the Customer holds and agrees to hold the proceeds of any sale, lease or other dealing of the Products for the Company in a separate bank account with a bank to which the Customer has not given any security.

7. **Application of the PPSA**

- 7.1 In this clause, "**PPSA**" means the *Personal Property Securities Act 2009* (Cth). If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.
- 7.2 This clause applies to the extent that the Company's interest in any Products is a security interest.
- 7.3 The Customer agrees that the security interest is over the Products, any proceeds of the Products, and any product or mass that the Products may be or become part of. The Products, proceeds and product or mass are referred to in this clause collectively as the "**Collateral**".
- 7.4 The Customer acknowledges that the Company may register a financing statement in relation to its security interest. The Customer waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.
- 7.5 The Customer undertakes, if it disposes of any Collateral, that it will receive proceeds at least equal to the market value of the Collateral, and that it will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of the Company's security interest. If such a security interest does arise despite the previous sentence, the Customer must ensure that it receives cash proceeds for the Collateral at least equal to the market value of the Collateral and must immediately pay those proceeds to the Company in reduction of all amounts owing by the Customer to the Company.
- 7.6 The Company can apply amounts it receives from the Customer, including under clause 7.5, towards amounts owing by the Customer to the Company in such order as the Company chooses.
- 7.7 The Company and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances required by sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under section 275(7) (c) or request information under section 275(7) (d) of the PPSA if the Company approves. Nothing in this clause will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA.
- 7.8 To the extent that it is not inconsistent with clause 7.7 constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that the Company may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that the Company is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

- 7.9 If the Customer defaults in the timely performance of any obligation owed to the Company, the Company may enforce its security interest by repossessing and reselling the Collateral, or by exercising all or any of its rights under these Conditions, the general law and the PPSA. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Company of its security interest, the Customer and the Company agree that the following provisions of the PPSA do not apply:
- (a) to the extent that s 115(1) of the PPSA allows them to be excluded: ss 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and
 - (b) in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.
- 7.10 The Customer must promptly do anything the Company requires to ensure that the Company's security interest is perfected and has priority over all other security interests.
- 7.11 Nothing in this clause is limited by any other provision of these Conditions or any other agreement between the Company and the Customer. Nothing in this clause limits the Company's rights or the Customer's obligations apart from under this clause.
- 8. No Warranty**
- 8.1 The Company makes no express warranties to the Customer, except those expressly set out in these Conditions.
- 8.2 Subject to any implied condition, warranty or Consumer Guarantee, the exclusion of which would contravene any statute or cause this clause to be void ("**Non-Excludable Condition**"), the Company excludes:
- (a) all conditions, warranties and terms implied by statute or general law or custom;
 - (b) all liability to the Customer in contract for any indirect loss, loss of business, goodwill or reputation or consequential loss, loss of revenues, loss of profits, business interruption, unauthorised access to or loss of data, crop loss or reduction and loss or damage arising in connection with claims by third parties arising out of or in connection with these Conditions even though the Company knew they were possible or they were otherwise foreseeable, including, without limitation, lost profits and damages suffered as a result of claims by any third party. The parties agree that indirect and consequential loss does not include any loss that arises naturally (that is, the usual course of things) from the relevant act or omission.
- 8.3 To the extent permitted by law, the Company's liability for breach of any express provision of these Conditions or any Non-Excludable Condition is limited at the Company's option:
- (a) in the case of Products:
 - (i) resupplying the Products;
 - (ii) replacing the Products;
 - (iii) repairing the Products;
 - (iv) payment of the cost of replacing or of acquiring equivalent Products; or
 - (v) where the Customer is not a Consumer, provision of a credit note in respect of the value of the Products.
 - (b) in the case of Services:
 - (i) supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 8.4 It is the responsibility of the Customer to (as soon as possible after Delivery) verify for itself that the quantity and type of Products supplied is in accordance with the Contract.
- 8.5 Any claim for short or wrongful supply of Products must be notified by the Customer to the Company within 7 of Delivery.
- 8.6 The Customer must, give the Company notice of any defective Services within 7 days after the relevant Service has been performed.
- 8.7 To the extent permitted by law:
- (a) the Company is not responsible for making good any shortage;
 - (b) the Products will be deemed to have been delivered in good condition and without defect; and
 - (c) the Services will be deemed to have been performed with due care and skill and without defect, unless the Customer gives the Company notice of the shortage or defect in accordance with clause 8.5 or 8.6 (as applicable).
- 9. Indemnity**
- 9.1 The Customer indemnifies the Company against any Loss which the Company suffers, incurs or is liable for in connection with the Contract including, but no limited to:
- (a) any act or omission of the Customer or its personnel (including without limitation employees, contractors and subcontractors) in connection with the Contract;
 - (b) any breach of the Contract by the Customer; and
 - (c) enforcing any security interest arising in connection with the Contract.

- 9.2 The Company holds the benefit of the indemnity in clause 9.1 on trust for its Representatives.
- 9.3 The indemnity in clause 9.1 will not apply to the extent that any Loss is caused or contributed to by the Company.

10. Termination

- 10.1 Either party (Terminating Party) may immediately terminate the Contract by written notice to the other party if the other party (Defaulting Party):
- (a) breaches the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach:
 - (i) cannot be remedied; or
 - (ii) can be remedied, but is not remedied by the Defaulting Party within 5 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or
 - (b) suffers an Insolvency Event.
- 10.2 The Customer must, within 5 Business Days after the date of expiry or termination:
- (a) pay the Company all amounts it owes the Company, whether due at that time or not; and
 - (b) return all Confidential Information to the Company.
- 10.3 If the Contract is terminated under clause 10.1 by the Company, the Company will have an immediate right to payment for all amounts owing by the Customer, in respect of the Products and Services together with all other debts owing by the Customer to the Company, which will become due and payable and must be paid by the Customer on demand and the Company may do any one or more of the following:
- (a) suspend indefinitely all further deliveries of Products in respect of any orders being processed for delivery and cancel any order or refuse to accept any further orders;
 - (b) cancel any credit facility provided to the Customer;
 - (c) require the return of all Products the property in, and ownership of, has not passed in accordance with clause 6; and
 - (d) exercise its rights under clause 6.4(e) to enter the Customer's premises wherever situated without impediment, and with the full co-operation and assistance of the Customer, to locate, retrieve and take possession of Products held by the Customer.

11. Disputes and Arbitration

- 11.1 Any dispute, disagreement or claim relating to these Conditions (**Dispute**) will be dealt with in accordance with this clause.
- 11.2 The party claiming the Dispute will give notice of the Dispute to the other party which will include all facts on which that party relies in relation to that Dispute (**Dispute Notice**).
- 11.3 Within five Business Days after service of a Dispute Notice, representatives of each party will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.
- 11.4 If the Dispute has not been resolved within 15 Business Days after the service of the Dispute Notice, the Dispute shall be submitted to and settled by arbitration in accordance with the IAMA Provisions for Arbitration in the Australian Fertilizer Industry.
- 11.5 The IAMA Provisions for Arbitration in the Australian Fertilizer Industry form part of these Conditions.
- 11.6 Except in relation to any applications for urgent injunctive relief, neither party will bring any action or other legal proceedings against the other in respect of a Dispute until arbitrated in accordance with the IAMA Provisions for Arbitration in the Australia Fertilizer Industry.

12. Important Safety Information

Silos should not be used for storage of fertilisers. Silos used to store fertilisers have been known to collapse. This poses a risk to human safety and may lead to loss and damage of Product. The Company does not recommend storage of fertiliser in silos. All Products are handled and stored at the risk of the Customer and Company accepts no liability in this regard. The Customer must take all appropriate safety precautions with respect to the Products including referencing all safety data sheets provided with the Products or available from the Company.

13. Trusts

If a party enters into a Contract as a trustee of a trust, that party and its successors as trustee of the trust will be liable under the Contract in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of the Contract:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;

- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by the Contract on behalf of the trust and that this Contract is executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

14. **Confidentiality**

The parties agree to keep confidential the Confidential Information and agree not to disclose any Confidential Information to any third party except where:

- (a) the Confidential Information is in, or acquired from, the public domain or, without fault of either party, it becomes within the public domain;
- (b) the Confidential Information is required to be disclosed pursuant to the order of a court or by operation of law; or
- (c) disclosure of the Confidential Information is necessary to perform or enforce a party's rights and functions under the Contract.

15. **Intellectual Property**

- 15.1 The Company remains the owner or licensee (as the case may be) of all Intellectual Property Rights owned or used by the Company prior to the Contract and any other agreement with the Customer.
- 15.2 The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Products or Services are owned by the Company.

16. **Force Majeure**

Where a Force Majeure Event prevents or delays the Company from performing any obligation under the Contract, that obligation is suspended if the Force Majeure Event continues. Either party may terminate the Contract if a Force Majeure Event continues for more than 20 Business Days.

17. **Privacy**

- 17.1 The Company can collect, use and disclose Personal Information about the Customer and any guarantor, in accordance with the Credit Application and the Company's Privacy Policy, which is available at http://www.brownsfert.com.au/wp-content/uploads/browns-fertilisers-privacy-policy_20161108.pdf.
- 17.2 The Customer and any guarantor must notify the Company if any of its Personal Information changes and consents to the Company collecting, using and disclosing this updated Personal Information in accordance with the Company's Privacy Policy.

18. **GST and other taxes and duties**

- 18.1 Words or expressions used in this clause 18 that are defined in the GST Act have the same meaning given to them in that Act.
- 18.2 Unless otherwise stated, any amount specified in the Contract as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.
- 18.3 If a party makes a taxable supply under the Contract (Supplier), then the recipient of the taxable supply (Recipient) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.
- 18.4 Despite anything stated in this clause, the Recipient is not obliged under the Contract to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.
- 18.5 If an adjustment event arises in relation to a taxable supply made by a Supplier under the Contract, the amount paid or payable by the Recipient pursuant to clause 18.3 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.
- 18.6 If a third party makes a taxable supply and the Contract requires a party to the Contract (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

19. **General**

- 19.1 These Conditions including each Contract is governed by the laws of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.

- 19.2 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them.
- 19.3 In these Conditions, the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions do not limit what else is included and must be construed as if they are followed by the words 'without limitation' unless there is express wording to the contrary.
- 19.4 If a provision in these Conditions is wholly or partly void, illegal or unenforceable in any relevant jurisdiction that provision or part must, to that extent, be treated as deleted from this agreement for the purposes of that jurisdiction. This does not affect the validity or enforceability of the remainder of the provision or any other provision of these Conditions.
- 19.5 If the Customer comprises more than one person:
- (i) the Contract binds each Customer jointly and severally; and
 - (ii) the Company is only required to give notices, quotes and other information, to one of the Customers (who undertakes to provide the notices, quotes and information to the other Customer or Customers).
- 19.6 A waiver of any right arising under the Contract must be in writing and signed by the party granting the waiver.
- 19.7 Any variation of the Contract must be in writing and signed by the parties.
- 19.8 The Company and the Customer are independent contracting parties and nothing in the Contract makes either party the agent or legal representative of the other or grants either party any authority to assume or create an obligation on behalf of the other.