

AGRIUM GENERAL TERMS AND CONDITIONS OF SALE

1. **APPLICATION:** Unless otherwise explicitly agreed in a formal written contract signed by both Parties, these Agrium General Terms and Conditions of Sale, together with any written Sales Agreement or Sales Confirmation, (collectively, the "Agreement") comprise the basis on which Agrium Inc., including all of its Affiliates (as defined below) (collectively "Seller"), sells products and/or services (collectively, "Products") to any purchaser of such Products (herein "Buyer"). Buyer and Seller are sometimes collectively referred to herein as the "Parties", and individually referred to herein as a "Party".

2. **WARRANTIES AND QUALITY:**

(a) **Product Warranty:** The Buyer represents that it is familiar with the characteristics, qualities and uses of the Product it is purchasing from the Seller and that the Buyer is not relying on the skill or judgment of Seller to select or furnish the Product suitable for any particular purpose. As its exclusive warranty, the Seller warrants that any Product sold to Buyer conforms to any written product specifications ("Specifications") specifically identified by the Seller to the Buyer in a written sales agreement or written sales confirmation prepared by Seller ("Sales Agreement") and that the Seller has title to the Product at the time of its delivery. No claim may be asserted by the Buyer for breach of warranty unless (i) with respect to the physical characteristics of the Product, the Buyer gives written notice to the Seller of such breach of warranty within three (3) days of the transfer of title in the Product to Buyer, and (ii) with respect to the chemical analysis of the Product, the Buyer gives written notice to the Seller within seven (7) days of the transfer of title in the Product to Buyer. Should the Buyer at any time commingle the Product with other product(s), the Buyer shall be deemed to have accepted the Product as meeting the Specifications and it shall be deemed to have waived any claims in that regard. The Buyer assumes all risk and liability for the use of the Product, whether alone or in combination with other materials. EXCEPT AS SET FORTH IN THIS SECTION, THE SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE, AND THE PRODUCT IS SOLD "AS IS".

(b) If the Buyer properly and timely notifies the Seller that the Product does not meet the Specifications, ("Off-Specification Product") and the Seller agrees with such claim, then Seller's exclusive and total liability, and Buyer's sole and exclusive remedy, for any cause of action arising out of or related to the breach of Seller's warranty above is, at Seller's sole option, limited to: (1) replacement of the Off-Specification Product with delivery terms equivalent to those in the original transaction; or (2) a refund to Buyer of the portion of the purchase price allocable to the Off-Specification Product. If the Seller does not agree with the Buyer that the Product is Off-Specification Product, the Parties shall resolve the dispute in accordance with Section 15 of this Agreement.

3. **TAXES:** The Buyer shall pay all government sales and excise taxes on the Product purchased from Seller.

4. **PAYMENT TERMS:** Seller's pricing in effect on date of shipment will govern, unless a written Sales Agreement establishes otherwise. Required payment terms are stated in the Sales Agreement, Credit Agreement and/or Invoice. If Buyer places an order for future delivery at a set price ("Forward Sale(s)"), the Sales Agreement will confirm Buyer's binding order and any required down payment. Buyer's Forward Sale down payment is nonrefundable, confirms acceptance, and binds the Buyer to accept delivery and make full payment.

5. **FORCE MAJEURE:**

(a) Neither Party shall incur any liability to the other by reason of failure or delay in fulfilling its obligations to the other Party (except for payment for delivered Product) where such failure or delay is caused by, or results from, events outside or beyond the reasonable control of the affected Party

("Affected Party"), including, but not limited to, acts of God, floods, fires, explosions, strike, lockouts, cessation, slowdown or stoppage of labor, sabotage, riots, war, enemy action, laws, regulations, rulings or acts of any governmental body or authority, inability to obtain electricity or other type of necessary energy, raw materials or labor, failure of equipment, storage, loading facilities, interruption of transportation or pipelines not due to the acts or omissions of the Party claiming force majeure, failure of third party machinery due to accident or breakage, governmental restriction or prohibition of exports or imports, governmental blockade or hostility, governmental seizure or expropriation, the inability or failure by the Seller's production facility to produce or deliver, either wholly or partially, the Product, or the inability or failure by a supplier of Product to Seller, to produce or deliver, either wholly or partially, the Product, the closure of international trade routes, or other acts outside the control of the Affected Party similar in nature to the events described above (collectively called "Force Majeure"). For clarity, the Parties agree "Force Majeure" shall not include any failure or delay by Buyer in fulfilling its obligations to the other Party that is caused by, or results from, a decrease in the fair market value of, or Buyer's customers' demand for, the Product, regardless whether such decrease is within the control of Buyer.

(b) If the Buyer or the Seller is affected by a Force Majeure event, ("Force Majeure Event"), the Affected Party shall promptly provide notice to the other Party, ("Notice") explaining in detail the full particulars of the Force Majeure Event and the expected duration thereof. The Affected Party may elect to suspend performance of all or any portion of its obligations under the Agreement that cannot be fulfilled due to the Force Majeure Event for such time as may be reasonably necessary under the circumstances and shall use its commercially reasonable efforts to remedy the Force Majeure Event. At the end of a Force Majeure Event the Seller may, at its option, choose to terminate any orders that have not yet been delivered to the Buyer as a result of the Force Majeure Event ("Terminated Orders"). Thereafter, neither Party shall have any further obligations with respect to the Terminated Orders, and any minimum quantity purchase or sale contractual commitments, if applicable, shall be reduced by the amount of the Terminated Orders. In the event a Force Majeure Event extends for more than ninety (90) days and the Force Majeure Event causes material harm to either Party, this Agreement may be terminated by either Party upon written notice thereof.

6. DELIVERY/COLLECTION - TITLE AND RISK: At the sole discretion of Seller, and unless stated otherwise in the Sales Agreement, deliveries may be evenly spread over the period of the Agreement. Title to, ownership and risk of loss of the Product shall pass from the Seller to the Buyer at the time the Product: (1) crosses Seller's plant gate if (a) the Product is sold F.O.B. Seller's plant, or (b) Buyer is responsible for arranging transportation of the Product; or (2) arrives at the mutually agreed upon delivery point if the Product is to be delivered by Seller. Thereafter the Buyer shall bear all risk of the Product. For collection of Product, Buyer shall comply with the standard policies, rules and procedures applicable to the relevant terminal or site. Buyer shall return all pallets, containers, vehicles and other receptacles intended to be returned without delay, clean and in good condition.

7. REMEDIES AND TERMINATION FOR DEFAULT:

(a) If the Buyer shall default in the payment of any amount for a period of ten (10) days beyond the due date of such payment, the Seller shall, in its own discretion, be entitled to (i) stop any Product in transit and defer any further deliveries to Buyer or require cash in advance of any delivery until the Seller has been reasonably satisfied of the Buyer's ability to pay or creditworthiness, as the case may be, and/or (ii) terminate the Agreement with immediate effect.

(b) Either the Seller or the Buyer may terminate this Agreement upon ten (10) days' prior written notice to the other in the event of the occurrence of any of the following events of default: (i) breaches of any material term or condition of the Agreement by the defaulting Party; (ii) if the defaulting Party shall be or becomes insolvent, or if the normal conduct of business (or such defaulting Party's credit) shall become substantially impaired by such defaulting Party's credit problems; (iii) if the defaulting Party shall call any meeting of creditors or if a receiver or trustee shall be appointed for it or its assets; or (iv) if

any petition, proceeding or action under any bankruptcy proceeding shall be filed or instituted by the defaulting Party or against it and, in the event such proceeding is filed against the defaulting Party, such proceeding is not dismissed within sixty (60) days; provided that during the above ten (10) day notice period, the defaulting Party may cure its default and thereby abate the termination; and provided further, that the Party giving notice of such default may, in its sole discretion, extend the period within which the defaulting Party may cure its default.

In the event of termination as set forth in this Section, the Party terminating the Agreement shall have, subject to any limitations contained in this Agreement, all rights and remedies available to it at law or in equity against the defaulting Party.

8. INDEMNIFICATION:

(a) **Seller Indemnity.** To the fullest extent permitted by law, Seller shall protect, defend, indemnify, and hold Buyer, any Affiliates of Buyer, and their respective shareholders, partners, officers, directors, members, representatives, managers, and employees (collectively the "Buyer Indemnitees") harmless from and against any and all losses, costs, claims, strict liability claims, actions, suits, proceedings, demands, damages, natural resource damages, fines, penalties, amounts paid in settlement interest, taxes and expenses (including reasonable attorneys' and consultants' fees, court costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (collectively, "Damages") incurred by a Buyer Indemnitee resulting from the misuse, disposal, environmental release, possession, use, transportation, handling, delivery, or supply of Product before the point in time that title of the Product transfers to Buyer.

(b) **Buyer Indemnity.** To the fullest extent permitted by law, Buyer shall protect, defend, indemnify, and hold Seller, any Affiliates of Seller, and their respective shareholders, partners, officers, directors, members, representatives, managers, employees, agents and assigns (collectively the "Seller Indemnitees") harmless from and against any and all Damages incurred by a Seller Indemnitee resulting from the misuse, disposal, environmental release, possession, use, transportation, handling, delivery, or receipt of the Product at or after the point in time that title of the Product transfers to Buyer.

9. LIMITATION OF LIABILITY:

(a) The Seller's maximum liability to the Buyer on any claim of any kind for any loss or damage arising out of, in connection with, or resulting from, the purchase of Product by Buyer from Seller or the performance or breach of any agreement pertaining thereto, including but not limited to the Agreement, shall be limited to the purchase price for the Product with respect to which such matter arises or such claim relates.

(b) **NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, NEITHER PARTY NOR ITS AFFILIATES, NOR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER PARTY, ITS AFFILIATES OR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED OR INCURRED BY ANY SUCH PARTY, INCLUDING BUT NOT LIMITED TO COSTS OR CLAIMS ARISING FROM THIRD-PARTY CONTRACTS, DOWN TIME, LOST PRODUCTION TIME, LOST PROFITS, LOST EARNINGS AND BUSINESS INTERRUPTION.**

(c) The limitations on, and releases from, liability expressed in the Agreement shall apply regardless of how caused and under any theory of liability, including without limitation, negligence (in whole or in part), strict liability, breach of contract, default or otherwise, of the Party whose liability is limited, and shall extend to its Affiliates and its and their directors, officers, and employees, and shall survive completion of the termination of the Agreement for any reason.

10. INSURANCE PROVIDED BY EACH PARTY: During the Term of the Agreement, each Party shall procure and maintain at its sole cost and shall require its subcontractors to procure and maintain at their sole cost, the following minimum insurance:

(a) Comprehensive General Liability insurance coverage covering products and completed operations, contingent employer's liability where such employee is not covered by Workers' Compensation as required in the jurisdiction in which the work is being performed, and contractual liability, with a combined single limit of Five Million Dollars (\$5,000,000) for each occurrence involving bodily injury, death or property damage.

(b) Automobile Liability Insurance - covering all vehicles either owned or non-owned used in connection with the performance of this Agreement. The insurance to be provided shall include coverage for bodily injury, passenger hazard and property damage in an amount of not less than \$1,000,000 inclusive any one occurrence.

(c) Property Insurance - covering all loss of or damage to each Party's property used in performance of this Agreement. Each Party shall waive any right of subrogation against the other for any damage to such equipment.

(d) Insurance Required by Law - any other insurance which is required by law to be carried in connection with this Agreement, including but not necessarily limited to, Workers' Compensation insurance pursuant to relevant Workers' Compensation Acts, and Unemployment Insurance.

11. **CONFIDENTIALITY:** The Parties agree that the contents of the Agreement and all offers, prices and other information exchanged between the Parties are confidential and, except as required by law, shall be kept strictly confidential and shall not be disclosed to any other person or company without the prior written consent of the other Party.

12. **COMPLIANCE WITH LAWS:** The Buyer and the Seller shall comply with the relevant provisions of any national, state, provincial or local law or ordinance and all lawful orders, rules and regulations issued thereunder, which are applicable to the operation of the Buyer's or the Seller's respective businesses and the delivery and purchase of Product as set forth in the Agreement.

13. **GOVERNING LAW:** The validity, interpretation, construction and performance of the Sales Agreement, including these General Terms and Conditions, and the rights of the Parties, shall be governed by the laws in force in (i) the State of Colorado, United States of America if the Seller is a resident of the United States of America when the Sales Agreement is entered into; and (ii) the Province of Alberta, Canada, if the Seller is a resident of Canada when the Sales Agreement is entered into.

14. **NOTICE:** Any notice permitted or required by the Agreement must be in writing and, unless otherwise stated, may be given in person or by courier, electronic mail or fax, to the recipient at the address set forth on the first page of the Agreement. Any such notice is deemed to be given: (a) if delivered in person, at the time of delivery; (b) if sent by courier, upon receipt, as evidenced by a delivery notice from the courier; (c) if sent by fax, at the time specified in the fax transmission report of full transmission, free of errors, to the recipient's fax number; (d) an electronic mail message is deemed to be: (i) dispatched or sent when it enters an information system outside the control of the sender; and (ii) received at the time when it enters an information system designated by the addressee. When an electronic message is sent to an information system other than that designated by the addressee, the electronic message is deemed to be received at the time when the addressee becomes aware of the message.

15. **DISPUTE RESOLUTION:**

(a) If any controversy, dispute, claim, question or difference (a "Dispute") arises with respect to this Agreement or its performance, enforcement, breach, termination or validity, the Parties shall use all reasonable commercial efforts to settle the Dispute. To this end, they shall consult and negotiate with each other in good faith and understanding of their mutual interests to reach a just and equitable solution satisfactory to all Parties.

(b) If the Parties do not reach a solution within a period of ten (10) business days following the first notice of the Dispute by any Party to the other, then upon written notice by either Party to the other, the Dispute shall be finally settled by arbitration (i) in Denver, Colorado and pursuant to the rules of the American Arbitration Association, if Buyer is a resident of the United States of America when the Agreement is entered into; (ii) in Calgary, Alberta and pursuant to Alberta's Arbitration Act if Buyer is a resident of Canada when this Agreement is entered into; or (c) if Buyer is not a resident of the United States or Canada, the state/province/country in which the relevant Affiliate of Seller supplying the Product to Buyer is headquartered when the Agreement is entered into.

(c) Except as otherwise provided in the Agreement or otherwise decided by the arbitrator, the fees and other costs associated with the arbitrator shall be shared equally by the Parties and each Party shall bear its own costs.

(d) The Arbitration award shall be given in writing, shall provide reasons for the decision and shall be binding on the Parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters.

This Section shall not, however, stop the Parties from seeking injunctive relief from a court of competent jurisdiction.

16. **ELECTRONIC TRANSACTIONS:** The Agreement may be electronically created, transmitted, accepted, amended, copied and stored (the "Imaged Agreement"). The Imaged Agreement (once digitally regenerated to paper form), and any facsimile, and all computer records of the foregoing, if introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records created, transmitted, accepted, amended, copied and stored in hard-copy form and neither party shall object on the basis that such business records were not originated or maintained in documentary form under any rule of evidence.

17. **MISCELLANEOUS:**

(a) Unless otherwise agreed upon in writing by the Parties, no assignment of the Agreement, in whole or in part, will be made by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld; except, either Party may assign this Agreement to a subsidiary, Affiliate, or parent without the prior written approval of the other Party provided that the Party so assigning shall remain in all respects responsible to the other Party for all of its obligations under this Agreement. For purposes of the Agreement, the term "Affiliate" shall mean a Party's ultimate parent company and any company more than 50% owned directly or indirectly by such ultimate parent company and for greater certainty, in the case of a Party being a partnership, a partner of the partnership shall be considered an Affiliate.

(b) These terms and conditions, together with any Sales Agreement, shall constitute the full and complete agreement between the Parties hereto related to the subject matter hereof and supersede all prior or contemporaneous understandings, statements, or agreements between the Parties on such subject matter. Each Party acknowledges and agrees that no employee, officer, agent or representative of the other Party has the authority to make any representations, statements or promises in addition to or in any way different than those contained in the Agreement, and that it is not entering into this Agreement in reliance upon any representation, statement or promise of the other Party except as expressly stated in the Agreement. No changes, amendments or clarifications of any of the terms and conditions of the Agreement shall be valid or effective unless in writing and signed by both Parties.

(c) Any purchase orders issued by the Buyer to the Seller during the term of the Agreement are subject to the provisions of the Agreement as if such provisions were fully set forth in such purchase orders. No other terms and conditions, whether on the reverse side of Buyer's purchase orders or otherwise presented, shall have any application to the Agreement, or any transactions occurring pursuant thereto, unless the Agreement shall be specifically amended in writing by the Seller and the Buyer.

(d) The Buyer may not cancel any order after the Product has been shipped.

- (e) The provisions of the Agreement are severable, and if any provision(s) contained herein may be found to be judicially unenforceable, in whole or part, the remaining provisions shall nevertheless be binding and enforceable.
- (f) Except as otherwise stated herein, each remedy under the Agreement shall be cumulative and in addition to any other remedy provided by law. The failure of either Party to insist on strict performance of any provision under the Agreement, or to take advantage of any right hereunder, shall not be construed as a waiver of such provision or right.
- (g) The Agreement, and all the terms hereof, shall enure to the benefit of and be binding upon the Parties hereto, and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (h) In the event of any inconsistency between the Agrium General Terms and Conditions of Sale, and the terms and conditions listed in a Sales Agreement, the terms and conditions in the Sales Agreement shall be controlling.
- (i) In the event the Buyer defaults in payment due to the Seller under this Agreement, the Seller shall have the right to withhold any unpaid sums due by the Seller or any of its Affiliates to the Buyer or the Buyer's Affiliates under any other contract and to apply such sums to the amount owing by the Buyer to the Seller under the Agreement.