

**Terms and Conditions for the Supply of Products and Services**

By purchasing and/or using Products and any related services supplied by us you agree to be bound by these Terms and Conditions.

**1. Agreement**

- 1.1. An Agreement is formed when: (a) you request Products from us and we accept your order; or (b) when we provide a Quote and you accept our Quote; or (c), if no such document is used, when you purchase and/or use Products and/or any Services supplied by or on behalf of us.
- 1.2. The Agreement will be made up of: (a) these Terms and Conditions; and (b) the Quote, Purchase Order or similar document which details the specifics of the Products to be supplied by us; and (c) if applicable, the terms and conditions of the Credit Application.
- 1.3. The definitions of specific terms used in these Terms and Conditions are set out at clause 17.
- 1.4. We do not agree to any additional terms and conditions included in any Purchase Order.

**2. Term**

- 2.1. This Agreement commences on the Commencement Date specified in the Quote or, if no date is specified, on the date your order is accepted by us. This Agreement will continue for the Term or until it is terminated in accordance with clause 13.

**3. Fees and payment**

- 3.1. You must pay us the Fees in consideration for the supply of the Products and any related Services.
- 3.2. Fees are based on the details set out in the Quote or in an email sent by us and where applicable, will include the cost of delivering the product to your nominated site.
- 3.3. Fees are exclusive of GST unless expressed otherwise. If GST is or becomes payable on any supply under this Agreement, you must also pay us the GST amount at the same time as payment of the Fees.
- 3.4. In addition to the Fees, we may charge a Credit Card Charge for payments made by you using a credit card in consideration for our offering credit card payment facilities. Other charges may be applied as set out in this Agreement, including, without limitation, a surcharge for excess waiting time on delivery at the Waiting Surcharge Rate.
- 3.5. If we have accepted your Credit Application, you must pay the full amount of each invoice issued by us to our nominated bank account within 14 days of the date of invoice, or as otherwise indicated on the invoice or in the Credit Application or as agreed by us.
- 3.6. If you do not pay the invoice within the payment terms, we may charge you a reasonable late payment fee or interest rate on the amount owing.
- 3.7. If your Credit Application is not approved by us or there is no Credit Application in place, then payment must be received at the same time as an Agreement is formed.

**4. Variation of Fees**

- 4.1. We may offer you updated Fees where you request any changes to the specifics of the Products to be supplied, such as a change to the nominated place for delivery; or a change in the Equipment to be rented.
- 4.2. We may adjust the Fees provided we give you at least 30 days' notice. The new Fees will then be effective for any order placed after the 30-day notice period has passed.
- 4.3. We may adjust the Fees at any time to: (a) reflect changes in our costs of supply, including (without limitation) third party supplier costs; fuel costs (including the fuel levy); or (b) a Change in Law; which increases our costs in providing the Products and/or Services and/or Equipment.
- 4.4. If we propose to adjust the Fees charged to you, we will notify you as soon as possible. If you do not want to accept the Fee adjustment, you may cancel the order on giving us at least 48 hours' notice, or, in the case of Custom Mixes, at least 10 days' notice.

**5. Supply of Products**

- 5.1. We will supply the Products and perform any related Services as set out in the Quote or Purchase Order or similar document.
- 5.2. You acknowledge that you rely on your own knowledge, expertise, and judgment in selecting the Products for your intended use. You further acknowledge that any advice or recommendations provided by us regarding the selection or use of the Products are for general informational purposes only and do not constitute professional advice or a guarantee of product performance. We make no representations or warranties about the Products unless they are expressly set out in this Agreement. Nothing in this clause is intended to exclude liability for fraud or fraudulent misrepresentation or for any other representations which cannot be excluded by law.
- 5.3. Given the nature of the Product, and factors such as product bulk density, delivery truck capacity, and site access and regulations, you acknowledge and accept that the delivery quantity is approximate, and you agree to accept a tolerance range of 10% over or under the quantity specified in the Quote or Purchase Order. Any claim in relation to the quantity of Product delivered must be made in accordance with clause 10.

**6. Delivery**

- 6.1. If we have agreed to deliver the Products, delivery shall be to the kerbside of the delivery address nominated by you in this Agreement, and our responsibility for delivery will be deemed discharged at the kerbside of the delivery address.
- 6.2. If at your request it is necessary to cross the footpath or to enter upon private property for the unloading of the Product, you will provide safe and suitable access for a heavy vehicle to do so. You indemnify us and our Personnel against any claims, liability, loss, damage, or expenses arising in connection with the entry and presence of the delivery vehicle at the unloading point,

- and in connection with the suitability of the delivery point, including the costs of releasing the vehicle should it get bogged at the unloading area.
- 6.3. If we cannot deliver any Product to the delivery point for any reason, you authorise us to deliver to an area that is comparable to the delivery point notified to us or we may store the Product as we see fit and charge you reasonable transport and storage fees until a new delivery date and time or delivery point is agreed upon with you. You will be responsible for any additional costs we incur due to any delays in delivering the Product caused by you.
- 6.4. We will make all reasonable efforts to deliver the Products within the agreed delivery timeframe. However, delivery times are estimates only and are subject to transport delays and other factors. We will not be liable for any delays in delivery.
- 6.5. The Products must be unloaded by you as soon as possible after the arrival of the delivery vehicle at the delivery address. If discharge of the Products is not completed within 30 minutes of arrival, we may charge you a surcharge for the excess waiting time at the Waiting Surcharge Rate.
- 6.6. Upon delivery, we or our Personnel will allow you to conduct a reasonable inspection of the Product and we may request that you sign an acceptance receipt to confirm acceptance of the Product. If you do not accept the Products, you must notify us of any claim in accordance with clause 10. If no claims are notified in accordance with clause 10, you will be deemed to have accepted the Product.
- 6.7. If you are not present at the time of delivery, you authorise us to unload the Products at the delivery point without you being in attendance.
- 7. Collection and access**
- 7.1. If we have agreed that you will collect the Products from our nominated facility:
- (a) You will collect the Products from our facilities at the place, date and time specified for collection, and we will allow your authorised personnel access to the premises to collect the Product at the specified date and time. If we do not specify a particular date and time for collection, you will collect the Products and exit the premises within the normal trading hours of the relevant facility.
- (b) You must ensure your Personnel follow our reasonable directions regarding the loading and collection of the Product and their presence on the premises, including completing and adhering to any site induction and safety procedures we require.
- (c) You undertake that if you are loading or collecting Product then you have made your own assessment that:
- (i) you are physically fit and able to lift any Product into your vehicle and/or trailer;
- (ii) your vehicle and/or trailer is suitable to carry the Product having regard to the weight of any loads and tare of the vehicle and/or trailer;
- (iii) when the Product is loaded into your vehicle and/or trailer complies with all laws and regulations.
- 8. Title and Risk**
- 8.1. Title and the risk of loss or damage in the Products passes to you: (a) upon delivery in accordance with clause 6.1, if we are delivering the Products to you; or (b) upon our making the Products available for you or your Personnel to load them onto your vehicle at our facilities, if you are collecting the Products.
- 9. Your Use of Products**
- 9.1. You acknowledge that the Products by their nature contain a variety of microorganisms. You will review product information and inform yourself of the potential health hazards, and instructions for use and safety precautions prior to purchasing and using the Products. You will handle, use, and store the Products only in accordance with the Product guidelines and in accordance with any applicable laws and regulations. You will obtain and maintain all necessary permits, licenses, and registrations for your use or sale of the Products.
- 9.2. You will indemnify us from and against any claims, liabilities, damages, losses, costs, or expenses (including reasonable legal fees) arising out of or related to your use or sale of the Products, including any negligent, unlawful, or wrongful act or omission of you or your personnel in connection with the Products. The indemnity reduces to the extent that we have caused or contributed to any such loss.
- 10. Defects and shortages**
- 10.1. You are responsible for inspecting the Products at delivery or as soon as possible afterwards to ensure satisfaction and check for any potential shortage or defect.
- 10.2. You agree that any claim you wish to bring in relation to the quantity or quality of Product delivered must be made in writing to us: (a) for Product delivered within business hours, by 5pm on the day of delivery; and (b) for Product delivered outside of business hours, by midday on the day following delivery. You must include with the claim all relevant and available details such as the method of identifying or calculating the alleged defect or shortage and any supporting evidence. It is acknowledged that sample test results may be provided to us subsequently, in accordance with clause 10.3, provided you have notified us of your proposed claim in as much detail as possible within the time limits set out in this clause 10.2.
- 10.3. You must preserve the Product in its delivered state and must prevent any cross-contamination or comingling of the Product with any other material. If you have arranged for any tests to be carried out on the Product, you must provide us a copy of the test results as soon as they are

- available, and you must allow us and our Personnel suitable access to inspect the Product and, where we consider appropriate, to take samples of the Product for the purpose of having them tested.
- 10.4. Provided that you have complied with the requirements of clauses 10.2 and 10.3, and if we agree that there is a shortage in delivery, we will reduce our Fees in proportion to the shortfall amount and either refund or credit this amount to your account with us.
- 10.5. If we agree that there is a defect in the Products, we will, at our discretion, either replace the defective portion of the Products or cover the replacement cost, provided you have complied with the requirements of clauses 10.2 and 10.3.
- 10.6. If we choose to have any Product returned, you will return them to us in the condition they were first delivered to you.
- 10.7. You agree to cooperate and assist us and any government agency in the event of any product recall program concerning the Products.
- 10.8. To the extent permitted by law, we are not liable for any product shortages or defects caused or contributed to by you or your Personnel or a third party's actions or omissions, including instances where the Products are commingled with third party or other materials.
- 10.9. Any disputes will be resolved in accordance with clause 14.
- 11. Equipment**
- 11.1. We will deliver the Equipment to the Delivery Address and will collect it, if required by this Agreement.
- 11.2. Title in the Equipment at all times remains with us.
- 11.3. You will use the Equipment only for the designated purpose and in the manner advised by us from time to time. You will maintain the Equipment in a clean and sanitary condition and in compliance with all laws and will not remove it from the Delivery Address.
- 11.4. Once delivered to you, the Equipment is at your risk. If the Equipment is damaged, lost, stolen or destroyed, you will indemnify us in respect of any costs associated with the repair and/or replacement of the Equipment.
- 12. Limitation of Liability**
- 12.1. To the extent permitted by law, our liability under this Agreement is limited, at our option, to: (a) in the case of Products: (i) replacing the products or supplying equivalent products; or (ii) paying the cost of replacing the products or acquiring equivalent products; and (b) in the case of services: (i) supplying the services again; or (ii) paying the cost of having the services supplied again.
- 12.2. Neither party will be liable to the other for any special, exemplary, punitive, or consequential loss or damage (including without limitation any loss of profit, loss or opportunity or loss of goodwill) incurred directly or indirectly in connection with the supply of Products and/or Services, even if informed of the possibility of such loss or damages.
- 12.3. To the extent permitted by law, our total liability under this Agreement will not exceed the total Fees paid for the Products the subject of the claim.
- 12.4. Each party must use reasonable endeavours to mitigate any losses under this Agreement.
- 13. Termination:**
- 13.1. A party may terminate this Agreement immediately on written notice if: (a) the other party dies, becomes bankrupt, insolvent, or subject to external administration or to any similar process or related court action; or (b) the other party breaches any obligations under this Agreement and fails to rectify the breach (if rectifiable) within 7 days of receiving written notice of the breach from the other party.
- 13.2. We may immediately terminate this Agreement by giving you written notice if you fail to hold all necessary permits and consents to use or sell the Products.
- 13.3. Upon termination of the Agreement, our right to recover any outstanding amounts under this Agreement, or to enforce any right or claim that arises on or before the termination, remains unaffected.
- 13.4. Upon termination, if any Products remain unpaid for or Equipment is unreturned, you authorise and enable us to access and enter the relevant premises to repossess the Products or Equipment without using unreasonable force or causing damage.
- 13.5. Despite any other provision of this Agreement, upon its termination, all Purchase Orders will become invalid from the time of termination.
- 13.6. All obligations of the parties that, by their nature, should survive the expiration or termination of this Agreement will continue in full force and effect despite such expiration or termination.
- 14. Resolution of Disputes**
- 14.1. Each party must notify the other of any dispute relating to this Agreement as soon as possible. The parties must meet and try to resolve the dispute in good faith, including escalating through management when appropriate. If after 14 days of the first meeting, the parties have not resolved the dispute, then either party may take the dispute to litigation, or to another dispute resolution mechanism which may be agreed upon by the parties.
- 14.2. Despite the existence of a dispute, both parties will continue to fulfil their obligations under this Agreement.
- 14.3. Regardless of any other provision in this clause 14, a party may initiate court proceedings if seeking urgent interlocutory relief in relation to a dispute under this Agreement.
- 15. Governing Law and Jurisdiction**
- 15.1. This Agreement shall be governed by and construed in accordance with the laws of New South Wales. You submit to the non-exclusive jurisdiction of the courts of New South Wales.

**16. Other Important terms and conditions**

- 16.1. **Force Majeure** - If a party (**Affected Party**) is prevented from or delayed in complying with an obligation (other than a payment of money under this Agreement) by an event or circumstances beyond its reasonable control (including without limitation a strike; lockout or other industrial disturbance; epidemic or other public health emergency; interruption to the supply of materials, equipment or information; accident or breakdown of plant or machinery; or Change in Law), that obligation is suspended for the continuance of the event or circumstance. The Affected Party shall not be liable in such circumstances.
- 16.2. **Confidentiality** - Unless disclosure is required by law, the parties agree to keep confidential the Confidential Information of the other party.
- 16.3. **Intellectual Property** - We will retain ownership of, and title to, all Intellectual Property Rights relating to the Products and to the supply of the Products and any related services.
- 16.4. **Privacy** - From time to time, in connection with this Agreement (including when receiving a Credit Application), you agree that we may, collect, use, and disclose personal information of Your Personnel and any Guarantor, for the purposes of entering into and performing this Agreement, as well as conducting any relevant credit or background checks that we may require. Our collection, use and disclosure of this information will be in accordance with our Privacy Policy located online at: [www.soilco.com.au](http://www.soilco.com.au).
- 16.5. **Notices** - Notices under this Agreement must be in writing and sent by email or post, and, if from us, may be included on an invoice. Notices should be directed to a party using the party's contact details set out in the Quote, or Purchase Order or other similar document, or as otherwise notified by that party.
- 16.6. **Entire Agreement** - This Agreement supersedes all prior discussions and agreements and constitutes the entire agreement between the parties with respect to the subject matter of this Agreement.
- 16.7. **Severability** - Any provision of this Agreement which is held to be void, illegal, invalid, or otherwise unenforceable shall be severed to the extent permitted by law, and shall not affect the remainder of this Agreement.
- 16.8. **Interpretation** - A provision of this Agreement shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement.
- 16.9. **Amendments** - Any amendments to the specifics in the Supply Agreement must be agreed in writing by the parties. However, we may amend these Terms and Conditions from time to time and notify you of such amendment in writing. If you do not accept the amended Terms and Conditions, you may terminate this Agreement by giving us notice in writing within 14 days of receiving them.
- 16.10. **Subcontracting and Assignment** - We may subcontract all or part of the Services or the performance of our obligations under this Agreement. We may assign or novate this Agreement or any right we have under this Agreement at any time, and we will give you notice if we assign or wish to novate under this clause. You cannot assign, novate or otherwise transfer this Agreement to anyone else without our written consent, which we will not unreasonably withhold.
- 16.11. **Relationship** - The parties' relationship is one of supplier and customer and nothing in this Agreement infers or allows you to represent that you have any other relationship with us.
- 16.12. **Trust** - If you are acting as a trustee of any Trust, you warrant that: a) entering into this Agreement is a proper exercise of your authority and power under the trust instrument and by law; b) you have given us a true and correct copy of the trust instrument (including any variations, amendments, appointments, or resignations); and c) if the trust has an ABN, you have provided this to us on or before the date of this Agreement.
- 16.13. **Waiver** - If a party fails to enforce a right under this Agreement, that is not a waiver of that right at any time.
- 16.14. **PPSA** - If we determine that this Agreement (or any transaction in connection with it) contains a Security Interest for the purposes of the PPSA, you acknowledge that we will be entitled to Perfect such Security Interest by registration on the Register. You waive any entitlements under the PPSA regarding notices. You agree, at our request, to do all reasonable actions necessary to ensure we hold a valid and Perfected Security Interest. Non-compliance by you with this clause will constitute a breach of this Agreement. Any reasonable cost associated with the enforcement of our rights under the PPSA will be payable by you. In this clause PPSA means the Personal Property Securities Act 2009 (Cth), and Security Interest, Perfected and Register have the meanings given to those terms in the PPSA.
- 17. Definitions:**  
In this Agreement:  
"Agreement" means our agreement with you for the supply of Products and any related Services, comprising of a) these Terms and Conditions, and b) the Quote, Purchase Order, or similar document which details the specifics of the Products to be supplied by us, and c) if applicable, the terms and conditions of the Credit Application.  
"Change in Law" means the introduction of, a change in, or a change in the administration or interpretation of, a law or regulation in Australia, or any order, policy, judgment, or official directive or request of any government, government agency, or person charged with the administration of a law or regulation.

**"Confidential Information"** means information either party discloses to the other in connection with this Agreement but does not include information already in the public domain, or already known by the other party (except if known due to a breach of a confidentiality obligation).

**"Credit Application"** means the credit account application submitted by you to us and approved by us.

**"Credit Card Charge"** means a surcharge which we may apply to payments made by you using a credit card in consideration for our offering credit card payment facilities to you. The surcharge will be based on our cost of acceptance for the credit card transaction.

**"Custom Mixes"** means a product which is blended and manufactured to meet your specific requirements.

**"Equipment"** means the equipment described in the Quote (or any similar document) that we rent to you (including on a trial basis), and any other equipment that we rent to you under this Agreement.

**"Fees"** means the total amount set out in the Quote or similar document from us, and any additional fees or charges relating to the supply which are set out in the invoice.

**"GST"** means goods and services tax under the GST Law; and **"GST Law"** has the same meaning as in A New Tax System (Goods and Services) Act 1999.

**"Guarantor"** means each person named as a guarantor in the Credit Application.

**"Intellectual Property Rights"** - means any intellectual or industrial property rights, including any trademarks, copyright, designs, or patents, whether registered or unregistered.

**"Personnel"** means the officers, employees, agents, contractors, subcontractors, and representatives of a party.

**"Products"** means the products requested by you and agreed to be supplied by us under this Agreement, which may include composts, soils, mulches, and applications.

**"Purchase Order"** means a purchase order for Products and any related services, which may be provided by you for purchase of Products.

**"Quote"** means a sales quote prepared by us and provided to you which includes details about the Products and/or services offered to you.

**"Services"** includes delivery services and any other services provided by us under or in connection with this Agreement (as specified in the Agreement and as the context requires).

**"Term"** means the period specified in the Quote or other similar document provided by us, and if no period is specified means the period commencing the date your order is accepted by us until the later of the date of the last delivery of Products or the date of full payment of the last invoice issued by us.

**"Waiting Surcharge Rate"** means the rate specified on the Quote, or otherwise notified by us from time to time,

for each 10 minutes of waiting time in excess of 30 minutes after the arrival of the delivery truck.

**"we", "us"** means SOILCO Pty Limited ABN 85 055 303 243.

**"you" or "your"** means the person, company, sole trader, partnership, trustee, or other entity named as the Customer in the Quote or Purchase Order (or similar document) that we supply Products and/or Services and/or Equipment to, and includes your Personnel, where relevant in context. If there are two or more persons or entities referred to, then they will each be bound jointly and severally by the provisions of this Agreement.