



**INCITEC PIVOT PTY LIMITED (ABN 37 007 656 046) AND ITS WHOLLY OWNED SUBSIDIARIES
(IPPL)**

TERMS AND CONDITIONS OF BUSINESS IN AUSTRALIA

Effective 31 July 2025

Statutory provisions

1. These Terms and Conditions are subject to the provisions of the *Competition and Consumer Act 2010* (Cth), including the Australian Consumer Law, any amendment or re-enactment of that Act for the time being in force and any other relevant and applicable provision of State and/or Commonwealth legislation.

Terms and conditions

2. All references to IPL in any previous version of these Terms and Conditions shall be amended to mean Incitec Pivot Pty Ltd.
3. IPPL may vary these Terms and Conditions and will make available the replacement Terms and Conditions at www.myincitecpivot.com.au or www.incitecpivotfertilisers.com.au. If this occurs, by placing an Order or accepting an Offer Confirmation, the Customer will be deemed to accept the replacement Terms and Conditions.
4. These Terms and Conditions are to the exclusion of any terms and conditions submitted at any time by the Customer, whether printed on or sent with any customer order form or otherwise.
5. These Terms and Conditions together with any notice given to the Customer by IPPL, all information contained in the bag label for the Product located at <https://incitecpivotfertilisers.com.au/products-and-services/find-locations-and-product-details/products> and any written agreement entered into between the Customer and IPPL, in each case, pursuant to these Terms and Conditions, constitutes the entire agreement between the parties in connection with the supply of Products. If there is an inconsistency between these Terms and Conditions and any written agreement duly signed by IPPL and the Customer, these Terms and Conditions shall prevail to the extent of the inconsistency.
6. These Terms and Conditions replace all prior Terms and Conditions relating to the supply of Products issued by IPPL.

Price

7. The purchase price for Products will be the Price. Unless otherwise provided in writing, the Price for Products does not include freight charges, which are the responsibility of the Customer.

8. The Customer must pay the Price for Products and Services as set out in the invoices issued by IPPL to the Customer.

Purchase Contracts

9. The Customer may request an Offer from IPPL.
10. IPPL may in its absolute discretion issue an Offer Confirmation to the Customer. Such Offer Confirmation may be on the same terms, or on different terms, to the Offer requested by the Customer.
11. An Offer Confirmation constitutes an offer on the part of IPPL to make the Contract Volume available to the Customer at the Price during the Contract Period.
12. An Offer Confirmation may be accepted by the Customer within the period for acceptance set out in that Offer Confirmation.
13. If an Offer Confirmation is not accepted by the Customer within the period for acceptance set out in that Offer Confirmation, the Offer Confirmation shall lapse and will not be capable of acceptance by the Customer.
14. If a Customer accepts an Offer Confirmation:
 - a. a Purchase Contract is formed between the Customer and IPPL;
 - b. the Customer must take delivery from IPPL of a minimum of 95% of the Contract Volume for each Product Line Item at the Price during the Contract Period; and
 - c. IPPL must make available to the Customer a Minimum of the Contract Volume for each Product Line Item at the Price during the Contract Period.

Purchase Orders

15. Any Purchase Order provided by the Customer pursuant to a Purchase Contract is deemed to incorporate these Terms and Conditions.
16. IPPL will make all reasonable efforts to have the Products despatched, or made available, to the Customer on or about the date agreed between the parties for that Purchase Order, but any such date is an estimate only and is not binding on IPPL.

Breach of Purchase Contracts

17. If the Customer breaches its obligations to take delivery of any Product Line Items in accordance with clause 14(b), the Customer must pay the Non-

Compliance Fee to IPPL. IPPL will issue an invoice to the Customer for the Non-Compliance Fee and the Non-Compliance Fee must be paid in accordance with that invoice and these Terms and Conditions.

18. If IPPL breaches its obligations to make Product Line Items available in accordance with clause 14(c), the amount of the Supply Shortfall Fee shall be credited to the Customer's account with IPPL and shall be set off against any amounts the Customer owes to IPPL.
19. Except as expressly set out in a Purchase Contract, these Terms and Conditions will apply to the Purchase Contract and the supply of any Products the subject of a Purchase Contract.
20. Other than where the Customer has wilfully breached its obligations to take delivery of Product Line Items in accordance with clause 14(b), or where the Purchase Contract relates to blends of Products, IPPL's only right or remedy in respect of the Customer's breach or threatened breach of its obligations to take delivery of Product Line Items in accordance with clause 14(b) is payment of the Non-Compliance Fee.
21. Other than where IPPL has wilfully breached its obligations to make Product Line Items available in accordance with clause 14(c), the Customer's only right or remedy in respect of a breach or threatened breach by IPPL of its obligations to make Product Line Items available in accordance with clause 14(c), is payment of the Supply Shortfall Fee.

Standard Orders

22. Any Standard Order placed by the Customer for Products is deemed to incorporate these Terms and Conditions.
23. Any Standard Order constitutes an offer on the part of the Customer which may be accepted by IPPL. The receipt of a Standard Order by IPPL does not constitute acceptance of such Standard Order by IPPL. IPPL may in its absolute discretion decline to accept any Standard Order. IPPL is under no obligation to notify the Customer if it declines to accept any Standard Order and will incur no liability to the Customer for:
 - a. declining to accept any Standard Order; or
 - b. failing to notify the Customer that it declines any Standard Order.
24. IPPL will make all reasonable efforts to have the Products despatched, or made available, to the Customer on or about the date agreed between the parties in relation to that Standard Order, but any such date is an estimate only and is not binding on IPPL.
25. IPPL will not be liable for any failure to despatch or make available, or delay in despatch or availability, of the Products ordered under a Standard Order for any reason.

Blends of Products

26. Despite anything else in these Terms and Conditions, due to the specific nature of any blend instructions, any Standard Order, Purchase Order or Purchase Contract for blends of Products will be deemed to be accepted by IPPL and become an irrevocable Order once the blending process has commenced and:
 - a. a Customer is obliged to accept delivery for blends of Products;
 - b. if the Customer fails to take delivery of blends of Products, the Customer will:
 - i. be invoiced the Price for the blends of Products; and
 - ii. not be invoiced a Non-Compliance Fee.
27. The Customer acknowledges and agrees that the Price per tonne for each blend of Products will be rounded up to the nearest dollar.

Straight Products

28. Despite anything else in these Terms and Conditions, any Standard Order for Straight Products will be deemed to be accepted by IPPL and become an irrevocable Order once the Customer has accepted the Terms and Conditions and:
 - a. a Customer is obliged to accept delivery for the Straight Products;
 - b. if the Customer fails to take delivery of the Straight Products, the Customer will:
 - i. be invoiced the Price for the Straight Products; and
 - ii. not be invoiced a Non-Compliance Fee

Payment and default

29. Subject to any express written agreement between IPPL and the Customer providing otherwise, all amounts are due and payable not later than:
 - a. the last business day of the month following the month during which the Products are despatched; or
 - b. in respect of a Non-Compliance Fee, the date set out in the relevant invoice,

(Due Date)

30. The Customer waives any right to combine any account that the Customer holds with IPPL, or to set off any amount that is, or may become, owing by the Customer to IPPL, against any amount owing by IPPL to the Customer. This clause overrides any other document or agreement to the contrary.
31. In the event of default of payment by the Due Date or if the Customer defaults in the performance of any other obligation owed to IPPL under these Terms and Conditions, IPPL will be entitled to:
 - a. interest on all amounts overdue, from the end of the month during which the purchase is made

- until the date of payment in full, at the rate of 16.75% per annum (or such other rate as IPPL may publish from time to time in lieu of that rate), calculated daily;
 - b. compensation for the cost to IPPL of recovering the overdue amount;
 - c. payment for all purchases made by the Customer from IPPL, the payment of which would otherwise not have been then due and payable;
 - d. terminate or suspend despatch of any Order between IPPL and the Customer;
 - e. suspend or cancel the Customer's commercial credit account with IPPL;
 - f. amend the terms for any supply of Products to the Customer; and/or
 - g. treat the Customer's default as a repudiation of any existing contract for the purchase of Products and recover any unpaid sum from the Customer by way of liquidated damages.
32. In the event IPPL considers in its absolute discretion that the credit of the Customer has become impaired, to the extent permitted by law, IPPL will be entitled to:
- a. payment for all purchases made by the Customer from IPPL, the payment of which would otherwise not have been then due and payable;
 - b. terminate or suspend despatch of any Order between IPPL and the Customer;
 - c. suspend or cancel the Customer's commercial credit account with IPPL;
 - d. amend the terms for any supply of Products to the Customer; and/or
 - e. treat these matters as a repudiation of any existing contract for the purchase of Products and recover any unpaid sum from the Customer by way of liquidated damages.
33. For the avoidance of doubt, IPPL will not be:
- a. obliged to make Products available in accordance with clause 14(c); or
 - b. liable to pay the Supply Shortfall Fee for failure to make Products available in accordance with clause 14(c),
- to any Customer that is in default of payment to IPPL by the Due Date.
34. IPPL may at any time at its sole discretion and without being under any duty or obligation to provide reasons, alter or terminate the Customer's credit limit or payment terms without notice.

Alternative payment options

35. IPPL may, in its absolute discretion, offer the Customer:
- a. subject to IPPL's normal credit procedures, credit to a limit established on an individual account basis to facilitate payment for purchases under these Terms and Conditions; or
 - b. other payment options from time to time.

Despatch of Products

36. IPPL will nominate the despatch location of Products the subject of Orders.

Risk and Property

37. The risk of loss of, or damage to, the Products will pass to the Customer on despatch of the Products from the nominated despatch point, and the Customer must insure the Products from the point risk passes until sold by the Customer.
38. IPPL retains title to Products and title to, and ownership of, Products does not pass to the Customer until the Customer pays in full the purchase price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid, by the Customer to IPPL on any account at any time. This is so even if the Customer has taken possession of the Products, or has enhanced or changed the Products or performed work on the Products. The Products, Proceeds thereof and any product or mass that the Products may be or become part of are referred to in these Terms and Conditions as **Collateral**.
39. Until the Customer pays in full the purchase price and all other amounts that are payable, owing but not payable, or that otherwise remain unpaid, by the Customer to IPPL on any account at any time, the Customer must store the Products properly and separately and mark the Products to identify them as being subject to IPPL's security interest.
40. The Customer may only dispose of Collateral in the ordinary course of business and for cash proceeds at least equal to the market value of the Collateral and will not allow any other security interest to exist over those proceeds if that security interest could rank ahead of IPPL's security interest. If such a security interest does arise despite the previous sentence, the Customer must immediately pay those proceeds to IPPL in reduction of the amount owing. IPPL can apply amounts it receives from the Customer towards amounts owing to it in such order as IPPL chooses.
41. If the Customer defaults in the performance of any obligation owed to IPPL under these Terms and Conditions, IPPL considers that the credit of the Customer has become impaired or IPPL terminates the credit of the Customer, IPPL may repossess the Collateral and otherwise enforce its security interest in the Collateral.
42. If Products are damaged or destroyed before property passes to the Customer, IPPL may (in addition to any other right or remedy under these Terms and

Conditions) receive all insurance proceeds payable for the damaged or destroyed Products, whether or not the Price in respect of the Products has become payable under these Terms and Conditions. These Terms and Conditions are sufficient evidence of IPPL's right (as against the Customer) to receive payment of the insurance proceeds without the need for further inquiry by any person dealing with IPPL.

43. If payment is not made by the Customer on the Due Date, the Customer must deliver the Products to IPPL on demand. If the Customer does not comply with such a demand, IPPL, its employees or agents may:
 - a. enter the Customer's premises at any time to do all things necessary in order to take possession of the Products, and the Customer must procure the consent of all other persons having any interest in the premises where the Products are situated to entry of those premises by IPPL, its employees or agents; and
 - b. credit the Customer's account with the lower of the Price for the Products or the net realisable value of the Products, or re-sell the Products and apply the proceeds of sale in reduction of the outstanding balance due to IPPL under these Terms and Conditions.
44. The Customer must pay IPPL any expense of repossession, transportation, storage or re-sale incurred by IPPL. If IPPL re-sells the Products, it must account to the Customer for any balance remaining after deduction of any costs and payment of all amounts due to IPPL under these Terms and Conditions.

Property rights, interests and intellectual property of IPPL

45. The Customer acknowledges that all property rights in the Products (prior to IPPL receiving payment for such Products) and in all intellectual property associated with those Products are, and will be, owned solely by IPPL. The Customer must use its best endeavours to safeguard the property rights of IPPL (including the Intellectual Property Rights (defined below)).
46. The Customer must:
 - a. immediately notify IPPL of any improper use of IPPL's patents, trade secrets, trade marks, logos, copyright, designs or other intellectual property rights (**Intellectual Property Rights**) which come to its notice;
 - b. at the request of IPPL, assist IPPL in taking all steps to defend the property rights and the Intellectual Property Rights of IPPL;
 - c. not make any use of the property rights and Intellectual Property Rights other than as permitted by these Terms and Conditions or in such manner and style and in such circumstances as approved by IPPL;
 - d. not adapt, use or register any trade mark, trade name, trading style or corporate name which

could infringe or impair or which is intended to impair the Intellectual Property Rights or any registrations thereof; and

- e. at the written request of IPPL, cease using the Intellectual Property Rights and, as soon as reasonably practicable after such request, remove all signage and branding associated with the Intellectual Property Rights from its premises and equipment.

PPSA

47. The Customer acknowledges that IPPL has one or more security interests in the Collateral.
48. The Customer acknowledges that IPPL has not agreed to subordinate any PPS Security Interest in favour of any other person, except to the extent (if any) expressly provided by these Terms and Conditions.
49. If IPPL exercises a power, right, discretion or remedy in connection with the Collateral, that exercise is taken not to be an exercise of a power, right, discretion or remedy under the PPSA unless IPPL states otherwise at the time of exercise. However, this clause does not apply to a power, right, discretion or remedy which can only be exercised under the PPSA.
50. Where IPPL has a PPS Security Interest in the Collateral, to the extent the law permits:
 - a. for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i. IPPL need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - ii. sections 142 and 143 of the PPSA are excluded;
 - b. for the purposes of section 115(7) of the PPSA, IPPL need not comply with sections 132 and 137(3);
 - c. the Customer waives its right to receive from IPPL any notice required under the PPSA (including a notice of a verification statement); and
 - d. if the PPSA is amended to permit the parties to agree not to comply with or to exclude other provisions of the PPSA, IPPL may notify the Customer that any of these provisions is excluded, or that IPPL need not comply with any of these provisions.

This does not affect any rights a person has or would have other than by reason of the PPSA and applies despite any other clause in these Terms and Conditions.

51. Whenever IPPL requests Customer to do anything:
 - a. to ensure these Terms and Conditions (or any PPS Security Interest in the Collateral) is fully

effective, enforceable and perfected with the contemplated priority;

- b. for more satisfactorily assuring or securing to IPPL the property the subject of any such security interest in a manner consistent with these Terms and Conditions; or
- c. for aiding the exercise of any power in this Terms and Conditions,

the Customer shall do it promptly at its own cost. This may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents, or otherwise giving possession or control with respect to any property the subject of any security interest.

Notwithstanding the above, the Customer agrees and authorises IPPL to do anything required within its power with respect to the matters contemplated by this clause.

- 52. If the Customer is or could be a secured party in respect of any PPS Security Interest in the Collateral, the Customer must implement, maintain and comply with procedures (which are required by IPPL, or which are prudent for a person conducting a similar business) to identify and perfect those PPS Security Interests. These include procedures to ensure that those PPS Security Interests are continuously perfected, including all steps necessary:
 - a. for the Customer to obtain the highest priority possible in respect of the PPS Security Interest (such as perfecting a purchase money security interest or perfecting a PPS Security Interest by control); and
 - b. to minimise the risk of a third party acquiring an interest free of the PPS Security Interest.
- 53. The Customer and IPPL agree not to disclose information of the kind mentioned in section 275(1), other than:
 - a. in confidence to its officers, employees or professional advisers on a need-to-know basis;
 - b. in confidence with the other's consent (such consent not to be unreasonably withheld or delayed); or
 - c. as required by any law (other than section 275(1) of the PPSA), regulatory authority or any stock exchange, including circumstances required by sections 275(7)(b) to (e) of the PPSA. The Customer agrees not to make any request of IPPL under section 275 of the PPSA.

End-user complaints

- 54. The Customer must promptly and fully report to www.myincitecpivotfertilisers.com.au IPPL any complaints it receives from end users concerning the Products and the Customer must cooperate with IPPL in handling such complaints.

Compliance and fitness of Products

- 55. It is the Customer's responsibility to comply with all laws and requirements of any regulatory authority applicable to the Customer's business, in particular the *Privacy Act 1988* (Cth), and all those laws and regulatory requirements relating to the environment, health, safety, storage, handling and sale of Products and formulation and sale of any blends using any Products supplied by IPPL under these Terms and Conditions.
- 56. The Customer must comply with any processes, material safety data sheets (or similar documents), instructions or reasonable directions of IPPL issued in connection with the Products (including any blends).
- 57. The Customer must not use or re-sell the Products for use in an application or purpose other than those applications or purposes for which IPPL recommends the Products, as set out in IPPL's sales and promotional material and material safety data sheets (or similar documents).
- 58. The Customer acknowledges that it alone is responsible for determining the fitness of the Products for the purpose in which the end user intends to use them.

Packaging

- 59. It is the Customer's responsibility to return empty returnable containers (including bulk bags, ISO tanks, bulk bins and tanktainers) to the location from which they were supplied or other location nominated by IPPL. At all times bulk containers supplied by IPPL will remain the property of IPPL and must not be used for any commodity other than the particular IPPL Product contained in the bulk containers at the time of despatch.
- 60. The period of use for bulk containers will be such reasonable time as determined by IPPL, having regard to the circumstances in which the bulk containers are supplied. The Customer will pay rental charges as determined by IPPL from time to time on all containers which are not returned within the time determined by IPPL pursuant to this clause.
- 61. The Customer will be liable for bulk containers not returned in the same condition as they were supplied (fair wear and tear excepted), or not returned at all, and will be charged replacement value or repair cost, whichever is applicable.

Restriction on sale

- 62. The Customer must not, without IPPL's written approval:
 - a. place any Order; or
 - b. sell any Products,where it is aware, or it could reasonably be expected that it would be aware, that the end user proposes to re-sell or re-supply the Products.

Right to vary Products

63. IPPL may, at any time:
- vary the Products by notifying the Customer that particular Products may no longer be sold by the Customer; or
 - vary the Products by notifying the Customer that new products can be sold by the Customer.
64. IPPL will notify the Customer of any variation to the Products by issuing a revised Price List.

Confidentiality

65. The Customer must not, except in confidence to the Customer's officers, employees or professional advisors (on a need-to-know basis), disclose to any other person:
- any confidential information in relation to the Products;
 - any confidential information in relation to IPPL's affairs or business or method of carrying on business;
 - details of any agreement for the supply of Products or Services or any Purchase Contract.

Indemnity

66. The Customer must indemnify and keep indemnified IPPL and each of its officers, employees and agents (for each of whom IPPL holds the benefit of this indemnity upon trust) against any Loss which any such person may incur or be subjected to in respect of or arising from:
- the negligence, wrongful act or omission, breach of statutory duty or wilful default of the Customer or its officers, employees, agents or contractors;
 - any injury to or death of any person or any damage to or loss of property connected with the conduct, operations or performance of the business of the Customer;
 - transport, storage, blending, repackaging, re-bagging, spreading or other handling of the Products by the Customer;
 - misuse of Products by the Customer;
 - warranties or representations made by the Customer in relation to the Products; or
 - any breach of these Terms and Conditions by the Customer.

Limitation of Liability

67. Except for the warranties expressly made in these Terms and Conditions, all conditions, warranties, undertakings or representations, express or implied, arising by statute, general law or otherwise are expressly excluded by IPPL to the extent permitted by law.

68. The liability of IPPL to the Customer or any third party for any Loss relating to the Products is limited (to the full extent permitted by law) to the lesser of:

- replacing the Products, the subject of the Loss; or
- the cost of replacing the Products, the subject of the Loss.

69. In the case of the provision of any Services, the liability of IPPL is limited (to the full extent permitted by law) to the lesser of:

- the re-supply of the relevant Service, the subject of the Loss; or
- the payment of the cost of supply of the relevant Service.

70. For the avoidance of doubt, clauses 66 and 67 do not relate to IPPL's liability (if any) to the Customer for breach of IPPL's obligations to make Product Line Items available in accordance with clause 14(c). IPPL's liability (if any) for such breach is limited to crediting the amount of the Supply Shortfall Fee to the Customer's account with IPPL.

71. Nothing in these Terms and Conditions is intended to exclude, restrict or modify the operation of section 274 of the Australian Consumer Law (Schedule 2 of the *Competition and Consumer Act 2010* (Cth)).

72. IPPL is not liable to the Customer or any third party for any exemplary, special, indirect, incidental or consequential loss or damage or any actual or prospective lost revenue or profits.

Force majeure

73. IPPL will not be liable to the Customer for any failure to fulfil, or delay in fulfilling, in whole or in part, its obligations under these Terms and Conditions to the extent those obligations are affected by Force Majeure.

Change in control

74. The Customer must promptly notify IPPL in writing of any change to the management, control or ownership of the Customer.

Set-off

75. Notwithstanding anything else in these Terms and Conditions, IPPL may set-off against payments due to the Customer against any amounts that the Customer owes to IPPL.

Expenses incurred by Customer

76. No claims for, or deductions in respect of, expenses incurred by the Customer in the performance of its functions and duties under these Terms and Conditions will be made or allowed except with the prior consent of IPPL.

Waiver

77. The failure of a party at any time to require performance of any obligation under these Terms and

Conditions is not a waiver of that party's right to claim damages for breach of that obligation or at any other time, to require performance of that or any other obligation under these Terms and Conditions, unless written notice to that effect is given.

General Lien

78. In addition to any right of lien which IPPL may be entitled to at law, IPPL will be entitled to exercise a general lien over all items in its possession belonging to the Customer, until the Customer has paid in full for all Products and Services supplied by IPPL to the Customer. After giving reasonable notice to the Customer, IPPL may in its sole discretion sell any item that is subject to the lien, and after discharging in full any amounts owing to IPPL, will pay any surplus proceeds to the Customer.

Governing law

79. These Terms and Conditions are governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of the Courts of Victoria.

Severance

80. Each provision of these Terms and Conditions is deemed to be separate and severable from the other provisions. To the extent any provision is invalid or unenforceable in any jurisdiction, this will not:
- invalidate the remaining provisions of these Terms and Conditions in that jurisdiction; or
 - affect the validity or enforceability of that provision in any other jurisdiction.

Notice

81. Any notice, demand, consent, approval, authorisation or other communication (Notice) contemplated by, or given or made under, these Terms and Conditions must be in writing and signed by a person duly authorised by the person giving the Notice. Notices must either be delivered to the intended recipient by prepaid post or by hand, fax or email to the address, fax number or email address provided by the intended recipient for that purpose.

GST and Other Taxes

82. If GST is payable on a Taxable Supply made under, by reference to or in connection with these Terms and Conditions, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive. The GST Amount must be paid at the same time and in the same manner as the GST-exclusive Consideration is otherwise to be paid or provided.
83. Any reference in the calculation of an amount for a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

84. Any reference in these Terms and Conditions to value, sales, revenue or a similar amount (**Revenue**), is a reference to that Revenue exclusive of GST.
85. Any reference in these Terms and Conditions (other than in the calculation of Consideration) to cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.
86. All stamp duty (including fines, penalties and interest) payable on or in connection with these Terms and Conditions and any instrument executed under or any transaction evidenced by these Terms and Conditions must be borne by the Customer.

Authority

87. The Customer represents and warrants that it has taken all necessary action to authorise entry into, delivery of and compliance with its obligations with these Terms and Conditions, and in doing so will not contravene any law or directive from an Authority or, if applicable, its constituent documents.
88. Where a party enters into these Terms and Conditions as trustee of a trust, that party warrants that at the date of entry into these Terms and Conditions:
- 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;
 - the party is the sole trustee of the trust and has the power under the terms of the deed establishing the trust to enter into and be bound by these Terms and Conditions on behalf of the trust and that these Terms and Conditions are being entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
 - no action has been taken or is proposed to be taken to remove it as trustee of the trust; and
 - 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.
89. Where a party enters into these Terms and Conditions as a trustee it is bound both personally and in its capacity as a trustee.

Defined Terms

The following definitions apply unless the context requires otherwise:

Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body.

Contract Period means the period of time set out in the Offer Confirmation during which the Customer and IPPL must satisfy their obligations in accordance with clause 14.

Contract Volume means the volume of Product set out in the Offer Confirmation.

Consideration, GST and GST Group have the meaning given by the GST Law.

Customer means any party that acquires Products or Services from IPPL or proposes to acquire Products or Services from IPPL, and includes IPPL Customers and IPPL Dealers, as appropriate.

Despatch Volume Shortfall means, in relation to a Product Line Item in a Standard Order or Purchase Contract, the volume of the Product Line Item (other than blends of Products) equal to:

- i. 95% of the Contract Volume for that Product Line Item
less
- ii. the volume of that Product Line Item actually despatched to the Customer in the relevant Contract Period.

Due Date has the meaning given to that term in clause 29.

Force Majeure means an event or failure to act which is beyond the control of IPPL and includes:

- b. an act of God (other than adverse weather);
- c. cyclones, fire, flood, plague or other epidemic;
- d. damage to, destruction or inoperability of, breakages or accidents to plant, equipment or machinery;
- e. act of a Government, acts of war (whether declared or not declared or a war like situation), acts of public enemies, terrorist acts, riots, civil commotions, sabotage, quarantine, restriction, explosion or embargo; and
- f. law, order, rule, regulation, act, restraint, omission, direction or failure to act of any Authority;
- g. inability to obtain or failure to obtain any necessary approvals, consents, permits or licences from any Authority;
- h. any situation giving rise to an event of force majeure under a contract for:
 - i. the purchase of the Product by IPPL or a related company of IPPL; or
 - ii. the transport of the Product by or on behalf of IPPL or a related company of IPPL.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Intellectual Property Rights has the meaning given to that term in clause 46(a).

IPPL Customer means any party that acquires Products and/or Services from the IPPL or the fertiliser business owned by IPPL or proposes to acquire Products and/or Services from IPPL or the fertiliser business owned by IPPL.

IPPL Dealer means a Customer who purchases Products pursuant to the terms of a Business Partner Agreement.

Loss includes any damage, loss, cost, liability, charge, expense, diminution in value or deficiency of any kind or character.

Minimum means a minimum amount of 95% the Contract Volume for each Product Line at the Price during the Contract Period as may be amended from time to time.

Non-Compliance Fee is calculated as 15% of the Price of the Product Line Item multiplied by the Despatch Volume Shortfall.

Offer Confirmation means an offer to the Customer by IPPL to make a volume of Product available to the Customer at the Price during the Contract Period.

Order means a Purchase Order or Standard Order, as appropriate.

PPS Security Interest means a security interest that is subject to the PPSA.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means:

- a. the net price listed on the Price List applicable as at the date of despatch or as otherwise notified to the Customer by IPPL;
- b. the price set out in the Offer Confirmation or the price determined using the calculation set out in the Offer Confirmation; or
- c. the price nominated by IPPL from time to time for the purposes of a promotion,

including in each case, for the avoidance of doubt, any GST Amount payable.

Price List means the price list issued by IPPL from time to time for the locality in which the Customer's business is located.

Proceeds has the same meaning as in section 31 of the PPSA.

Product Line Item means an individual product line item on a Standard Order or Purchase Contract. (For clarity, a Standard Order or Purchase Contract may have more than one product line item of the same type but each product

line item is to be treated as independent of each other and not consolidated.)

Products means goods, services, products and materials supplied by IPPL.

Purchase Contract means the agreement formed between IPPL and a Customer following the Customer's acceptance of the Offer Confirmation.

Purchase Order means an Order submitted by the Customer under and in accordance with a Purchase Contract.

Services means any services offered in connection with the Products, including, without limitation, those services listed on the Price List.

Standard Order means an order submitted by the Customer for Products at the Price listed on the current Price List.

Supply Shortfall Fee is calculated as 15% of the Price of a Product Line Item multiplied by the Supply Volume Shortfall for that Product Line Item.

Supply Volume Shortfall means, in relation to a Product Line Item in a Standard Order or Purchase Contract, that volume of Product Line Item equal to:

- i. 95% of the Contract Volume for that Product Line Item
less
- ii. the volume of that Product Line Item actually made available to the Customer in the relevant Contract Period.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).