

ACC Standard Terms of Purchase

1. Application of Standard Terms

- 1.1 These Terms apply to all Goods and Services purchased by ACC.
- 1.2 These Terms apply instead of:
 - (a) all terms set out on or referred to in any invoice, delivery docket, or other document delivered by the Supplier in connection with the supply of the Goods or Services; and
 - (b) all terms set out or referred to in any contract, credit application or other document already signed by ACC in connection with the supply of goods or services by the Supplier.
- 1.3 For the purposes of clause 1.2(a), signature by ACC of any such invoice, delivery docket or other document is not acceptance of any terms contained or referred to in it. Where applicable, signature only acknowledges delivery.
- 1.4 For the purposes of clause 1.2(b), acceptance of a Purchase Order by the Supplier operates as a replacement of those terms with these Terms.
- 1.5 If the Special Terms are inconsistent with these Terms, the Special Terms prevail to the extent of any inconsistency.

2. Ordering and Acceptance

- 2.1 ACC may offer to purchase goods or services by delivering a Purchase Order to the Supplier.
- 2.2 The Supplier accepts the offer when it communicates acceptance to ACC.

3. Price

- 3.1 The price payable for the Goods or Services is the price shown on the Purchase Order.
- 3.2 The Purchase Order may, instead of specifying a price, specify a mechanism for calculating the price. The price payable for the Goods or Services will be the price calculated in accordance with that mechanism.
- 3.3 Amounts shown on the Purchase Order are exclusive of GST, unless otherwise specified.
- 3.4 The Supplier must not add any other amount to the price, unless specified on the Purchase Order or approved by ACC. For example:
 - (a) the Supplier cannot add taxes, tolls, freight charges, insurance costs, travel costs, fuel costs, packaging costs, the cost of special tools or hire charges to the price;
 - (b) with respect to a Purchase Order for maintenance or repair, the cost of parts must first be approved by ACC.
- 3.5 If no price is shown on the Purchase Order the price is:
 - (a) the price shown on any quotation previously provided to ACC by the Supplier; or
 - (b) where no quotation has been provided to ACC, a reasonable price having regard to the price of the same or similar goods or services in the market-place.

4. Invoice and Payment

- 4.1 Each invoice must specify the Purchase Order number, contain a brief description of the Goods and Services provided, specify the Supplier's name and ABN, specify the GST exclusive price, the GST and the total price including GST, and comply with the requirements for a tax invoice.
- 4.2 The Supplier must not render an invoice until the Goods are delivered or the Services are performed.
- 4.3 ACC is not required to pay an invoice until 30 days after it is given to ACC.
- 4.4 ACC may deduct from any payment:
 - (a) any amount owing by the Supplier to ACC;

- (b) any expenses incurred by ACC as a result of a breach by the Supplier of the Contract; and
 - (c) the amount of any compensation or damages ACC is entitled to claim from the Supplier as a result of a breach by the Supplier of the Contract.
- 4.5 Payment of an invoice is without prejudice to any rights ACC may have against the Supplier in respect of a breach of the Contract.
- 5. Performance of Services**
- 5.1 The Supplier must:
- (a) perform the Services in a proper and workmanlike manner to the standards of skill and care normally exercised by qualified and experienced persons in the performance of similar services;
 - (b) perform the Services at the time and place specified in the Purchase Order, or as subsequently notified by ACC;
 - (c) complete the Services, or each designated stage of the Services, by the date/s specified in the Purchase Order, or as subsequently notified by ACC;
 - (d) perform the Services with reasonable expedition;
 - (e) where the Services involve transportation of livestock, follow the route designated by ACC to and from ACC's premises;
 - (f) comply with all industry standards which are relevant to performance of the Services, or which ACC directs the Supplier it must comply with; and
 - (g) where the Services are performed on ACC's premises, comply with:
 - (i) all of ACC's site conditions and policies; and
 - (ii) all safety directions given by ACC.
- 6. Defective Services**
- 6.1 If the Services are not performed in accordance the Contract, the Supplier must at ACC's request rectify the defect and perform the Services in accordance with the Contract, at no additional cost to ACC. This is without prejudice to any other rights ACC may have against the Supplier for breach of the Contract.
- 7. Supply of Goods**
- 7.1 The Supplier warrants that:
- (a) it has the right to sell the Goods;
 - (b) the Goods are free of encumbrance;
 - (c) if the Goods are sold by description, they will correspond with the description;
 - (d) if the Goods are sold by sample, they will correspond with the sample;
 - (e) the Goods are fit for their purpose, of merchantable quality, free of defects, free of disease, and free of infestation by pests;
 - (f) the Goods comply with all applicable Laws;
 - (g) the Goods are of the quality required by relevant industry standards and any industry agreements to which ACC is a party; and
 - (h) use of the Goods will not cause environmental harm.
- 7.2 The Supplier must:
- (a) comply with ACC's delivery instructions, including instructions as to:
 - (i) the date, time and place for delivery; and
 - (ii) the authorised recipient for the goods;
 - (b) safely and securely pack and prepare the Goods for shipment;
 - (c) if specified on the Purchase Order or requested by ACC, remove all packaging after delivery at no additional cost to ACC;
 - (d) when delivering the goods, obtain acknowledgement of delivery from ACC on a delivery docket which describes the Goods and specifies the Purchase Order number; and
 - (e) provide ACC with a copy of the delivery docket when delivering the Goods.
- 7.3 The Supplier must not:
- (a) deliver the Goods by instalments, unless approved by ACC; or

- (b) leave the Goods unattended at ACC's premises.
- 7.4 Title in the Goods passes to ACC:
 - (a) when the Goods are delivered to ACC; or
 - (b) when ACC pays for the Goods,
 whichever is earlier.
- 7.5 Risk in the Goods passes to ACC:
 - (a) when ACC signs a document acknowledging delivery of the Goods; or
 - (b) when ACC pays for the Goods,
 whichever is later.
- 7.6 However, if the Goods are to be installed by the Supplier at ACC's premises, then title and risk passes when they are installed.
- 7.7 Receipt of the Goods by ACC does not by itself constitute acceptance of them. Any rights that ACC may have in connection with a breach of any warranty contained in clause 7.1, or any other breach of the Contract continue even if:
 - (a) ACC has taken delivery of the Goods;
 - (b) ACC has signed a delivery docket in respect of the Goods; or
 - (c) title and risk in the goods have passed to ACC.
- 7.8 ACC may inspect and test the Goods:
 - (a) during manufacture, if the Supplier or a contractor of the Supplier is manufacturing them; and
 - (b) prior to delivery, at the Supplier's premises.

8. Defective Goods

- 8.1 If any Goods supplied to ACC:
 - (a) are not in accordance with the warranties contained in clause 7.1; or
 - (b) have not been supplied in the quantity requested in the Purchase Order,
 then:
 - (i) ACC may, at its election, reject all or some of the goods;
 - (ii) the Supplier must, if requested by ACC, remove the rejected goods from ACC's premises at no cost to ACC; and
 - (iii) the Supplier must, if requested by ACC, repair or replace the rejected goods at no additional cost to ACC.

This is without prejudice to any other rights ACC may have against the Supplier for breach of the Contract.

- 8.2 If ACC rejects Goods under this clause ACC is not obliged to pay for them, and title and risk passes back to the Supplier (if title and risk had already passed to ACC).

9. Supplier's Warranties

- 9.1 The Supplier warrants that:
 - (a) all information contained in its catalogues, price lists, brochures and advertising material is accurate and correct;
 - (b) it and its employees, agents and contractors have the necessary expertise and qualifications to perform the Services;
 - (c) any equipment, vehicles or aircraft it uses to perform the Services:
 - (i) are in good working order and repair; and
 - (ii) have passed all inspections, and are certified and registered as required by any Authority or under any Law;
 - (d) it and its employees, agents and contractors hold all necessary permits, licences, certificates and registrations necessary to perform the Services;
 - (e) the Services will be performed and the Goods are manufactured in a manner which will not cause environmental harm;
 - (f) the Goods are manufactured in a workplace using best workplace health and safety standards; and
 - (g) it has examined and understands all documentation provided to it by ACC in connection with performance of the Services, including where applicable

ACC's policies and manuals, plans and specifications of works, and tree clearing and vegetation management permits.

10. Compliance With Statutory Requirements

10.1 The Supplier must comply with all Laws which are applicable to:

- (a) the performance of the Services;
- (b) the manufacture, sale, delivery, labelling and quality of the Goods;
- (c) the operation of any equipment used in performing the Services; and
- (d) the conduct of the Supplier's business.

11. Indemnities and Releases

11.1 The Supplier indemnifies ACC against all Claims ACC incurs as a result of:

- (a) the Supplier's negligence;
- (b) the Supplier's breach of the Contract;
- (c) the Supplier's breach of any warranty contained in these Terms; and
- (d) the Supplier's breach of any Laws.

For the purposes subclauses (a) and (d), "Supplier" includes the Supplier's officers, employees, agents and contractors.

11.2 The Supplier releases ACC from all Claims for injury, death, and damage to or destruction of property which occur:

- (a) on ACC's property;
 - (b) in connection with performance by the Supplier of the Services; or
 - (c) in connection with supply by the Supplier of the Goods,
- unless caused by ACC's negligence.

11.3 The Supplier acknowledges and accepts all risks associated with performing the Services and delivering the Goods, including the risk of acquiring disease when in the vicinity of livestock.

12. Damage to ACC's Property

12.1 If the Supplier causes damage to ACC's property in performing the Services or delivering the Goods it must at ACC's request rectify the damage or compensate ACC for the damage.

13. Prohibitions on Supplier

13.1 The Supplier must not:

- (a) permit or cause the release of any Contaminant onto ACC's property; or
- (b) discharge any weapon on ACC's property, without ACC's consent.

14. Assignment and Subcontracting

14.1 The Supplier must not assign the Contract or subcontract supply of the Goods or Services, without ACC's consent.

14.2 ACC may withhold its consent in its absolute discretion, or grant consent subject to conditions. For example, ACC may require that the assignee or subcontractor sign an agreement agreeing to be bound by these Terms.

15. Insurance

15.1 The Supplier must maintain public liability insurance for at least \$10 million, worker's compensation insurance if required by Law, product liability insurance, defective workmanship insurance and such other insurances as may be reasonably required by ACC.

15.2 The Supplier must provide ACC with a certificate of currency for any insurance policy required to be taken out under this clause, and the Supplier's worker's compensation number.

16. Confidentiality

16.1 All Information provided to the Supplier in connection with the Contract remains the property of ACC and must be kept confidential and not disclosed to any other person unless necessary for performing the Services or supplying the Goods.

17. Advertising

17.1 The Supplier must not, without ACC's consent, publish or advertise that ACC is a customer of the Supplier. ACC may withhold its consent in its absolute discretion.

18. Intellectual Property

- 18.1 All Intellectual Property created by the Supplier in performing the Services is the property of ACC.
- 18.2 The Supplier must do all things necessary to ensure that ownership in the Intellectual Property passes to ACC.
- 18.3 The Supplier warrants that performance of the Services and supply of the Goods, will not infringe the Intellectual Property rights of any other person.

19. Default and Termination

- 19.1 ACC may terminate the Contract by notice to the Supplier if:
- (a) the Supplier breaches the Contract and does not remedy the breach within 7 days after receiving notice from ACC requiring it to do so;
 - (b) the Supplier becomes an Externally Administered Body Corporate; or
 - (c) the Supplier commits an act of bankruptcy or becomes bankrupt.
- 19.2 If ACC terminates the Contract under clause 19.1 and engages another supplier to fulfill the Purchase Order, the Supplier must reimburse ACC to the extent that the costs of the alternative arrangements exceed the price that was payable to the Supplier under the Contract. This does not limit any other rights ACC may have against the Supplier for a breach of the Contract.
- 19.3 Where the Purchase Order is for Services which are to be provided on a periodic or progressive basis, ACC may terminate the Contract at any time by giving 7 days notice to the Supplier. This is without prejudice to any rights which accrued to either party under the Contract prior to termination.

20. Goods and Services Tax

- 20.1 If the price shown on the Purchase Order is exclusive of GST, and the supply of the Goods or Services under the Contract is a taxable supply, ACC must also pay GST on the price.

21. Waiver

- 21.1 The failure of either party to exercise any right arising as a result of a breach by the other will not waive that right, nor will any practice developed between the parties waive or lessen their rights under the Contract.

22. Governing Law

- 22.1 The Contract will be construed in accordance with the law of Queensland and the parties submit to the exclusive jurisdiction of the Queensland Courts in Brisbane City notwithstanding the domicile or residence of any party or the occurrence of any act, matter or thing outside of Queensland or the jurisdiction of those Courts.

23. Arbitration

- 23.1 If a dispute arises in relation to Goods or Services supplied by the Supplier to ACC then ACC may at any time prior to determination by a Court require that such dispute or part thereof be determined by arbitration according to the Commercial Arbitration Act 1990 (Qld). There will be a single arbitrator appointed by agreement between the parties, or failing agreement as nominated at the request of either party by the President of the Queensland Law Society. The arbitrator's decision is final and binding subject to any right of appeal under the Commercial Arbitration Act 1990 (Qld).

24. Severance

- 24.1 If any provision of the Contract is, for any reason, considered or found by a Court of competent jurisdiction or any competent Authority to be invalid, illegal or unenforceable, that provision is to be severed from the remainder of the provisions of the Contract and will be deemed never to have been part of the Contract. The remainder of the provisions of the Contract will remain in full force and effect unless the basic purposes of the Contract are defeated.

25. Interpretation

- In the interpretation of these Terms unless the context otherwise requires:-
- (a) Words denoting any gender include all other genders.

- (b) Words denoting persons include all bodies, associations, trusts, partnerships, instrumentalities and entities corporate or unincorporate, and vice versa.
- (c) References to any of the parties include in the case of a person, their personal representatives and permitted assigns, and in other cases their successors and permitted assigns.
- (d) Any obligation on the part of two or more persons is deemed to bind or benefit as the case may be, any two or more of them jointly and each of them severally.
- (e) Words expressing the singular include the plural and vice versa.
- (f) Headings are included for convenience only and do not affect the interpretation of this Agreement.
- (g) References to the Contract are to the Contract as amended supplemented or varied from time to time.
- (h) References to any document or agreement includes all references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time.
- (i) References to "\$" and "dollars" are to Australian dollars.
- (j) References to writing include typing, telex, facsimile and all other means of reproducing words in a permanent and visible form.
- (k) References to any legislation includes any legislative provision which amends, extends, consolidates or replaces it and any orders, regulations, instruments, proclamations or other subordinate legislation made under it.
- (l) References to institutes, associations, bodies and authorities whether statutory or otherwise will, if it ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred, refer to the institute, association, body or authority established or constituted in its place or which substantially succeeds to its powers or functions.
- (m) No rule of construction will apply to the disadvantage of a party because that party was responsible for the drafting of this Contract or any part of it.

26. Definitions

26.1 In these Terms the following terms have the following meanings:

“ACC”: means the company ordering the Goods or Services as shown on the Purchase Order. The parties acknowledge that this will be either Australian Country Choice Holdings Pty Ltd ACN 009 729 999 or another company having a common director with Australian Country Choice Holdings Pty Ltd ACN 009 729 999.

“Authority” means any government or statutory body.

“Claims” means:

- (i) any claim, legal action or liability for damages or compensation;
- (ii) liability to pay any fine or penalty;
- (iii) expenses, including legal costs; and
- (iv) consequential losses.

“Contaminant” means any substance that may cause contamination or environmental harm, including fuel and chemicals.

“Contract” means the contract constituted by these Terms and the Purchase Order.

“Externally Administered Body Corporate” has the meaning defined in the Corporations Law.

“Goods” means the goods specified in the Purchase Order.

“GST” means the GST referred to in the A New Tax System (Goods and Services Tax) Act 1999.

“Information” means all plans, specifications, data, policies, permits, financial information, marketing strategies, details of systems and modes of operation, and other documents or information about ACC or the Goods or Services.

“Intellectual Property” includes patents, designs, copyright and trademarks.

“Laws” means all Federal, State and Local laws, including any regulations or orders made pursuant to them, and any standards or codes of practice referred to in them.

“Purchase Order” means the document used by ACC to place an order with the Supplier. The document may be in electronic form.

“Services” means the services specified in the Purchase Order, and includes delivery and installation of the Goods.

“Special Terms” means any terms specified in or attached to the Purchase Order.

“Terms” means ACC Standard Terms of Purchase.

“Supplier” means any person who supplies or agrees to supply goods or services to ACC.