

GrowHow

UK Limited

Fertiliser Terms & Conditions of Sale



GROWHOW UK EAST LIMITED/GROWHOW UK WEST LIMITED: STANDARD TERMS & CONDITIONS

1. INTERPRETATION

- "AIC Contract"** means the Agricultural Industries Confederation Limited model contract for the sale of fertilisers (Ferts No. 8/09).
- "Buyer"** means the person or entity which places a Purchase Order with GrowHow for the purchase of Goods in accordance with clause 3.
- "Contract"** means any contract between GrowHow and the Buyer for the sale and purchase of Goods comprised of a Purchase Order and these terms and conditions.
- "Delivery Address"** means the place specified in a Purchase Order for delivery of the Goods the subject of that Purchase Order.
- "Goods"** means any goods which GrowHow is to supply to the Buyer (including any of them or any part of them).
- "GrowHow"** means GrowHow UK East Limited (registered number 3455690), or GrowHow UK West Limited (registered number 482033), as the context requires.
- "Order Terms"** has the meaning given in clause 3.1.
- "Purchase Order"** means a document, containing all the necessary information in accordance with clause 3.4, submitted by the Buyer to GrowHow to place an order for the purchase of Goods.
- "Working Days"** means a day other than Saturdays, Sundays and bank and public holidays.

2. INCORPORATION OF TERMS AND CONDITIONS

- 2.1 The terms of the AIC Contract No. 8/09 are hereby incorporated into these terms and conditions by reference. In the event of any inconsistencies between the AIC Contract No. 8/09 and these terms, the provisions of these terms shall prevail.
- 2.2 Every Contract formed between the Buyer and GrowHow will be on the terms set out in this document, to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document).
- 2.3 No terms or conditions supplied by the Buyer will form part of any Contract.
- 2.4 The Buyer shall deal only with an employee specified in writing by GrowHow to be an authorised representative and the Buyer shall not rely on any representations, variations or promises made by any employee or agent of GrowHow which are not subsequently confirmed by GrowHow in writing.

3. ORDER TERMS AND FORMATION OF CONTRACT

- 3.1 Following receipt of any enquiry from the Buyer as to the availability and price of Goods which it wishes to purchase, GrowHow shall inform the Buyer as to:
- GrowHow's current price for the Goods;
 - the total quantity of Goods which GrowHow is prepared to sell to the Buyer at the price specified; and
 - the period of time during which GrowHow is prepared to sell to the Buyer the volume of Goods specified at the price specified,
- (together, the **"Order Terms"**). At any time thereafter the Buyer may submit Purchase Orders to GrowHow which are compliant with the Order Terms (it being acknowledged that any Purchase Order accepted by GrowHow in accordance with clause 3.6 shall reduce the total volume of Goods available under the Order Terms applicable to subsequent Purchase Orders).
- 3.2 GrowHow may revoke Order Terms at any time by giving notice to the Buyer. Any such revocation shall be without prejudice to any Contracts already formed at the date of revocation.
- 3.3 If the Buyer wishes to place an order with GrowHow which does not comply with the applicable Order Terms, the Buyer may request modified Order Terms from GrowHow to accommodate the Buyer's requirements, which GrowHow may, in its absolute discretion, supply. Thereafter, if GrowHow issues modified Order Terms, such modified Order Terms shall replace the Order Terms previously provided and the provisions of clause 3.1 above shall apply.
- 3.4 To place an order for Goods, the Buyer must submit a Purchase Order. The Purchase Order it submits must, as a minimum, include the following information:
- the date on which the Order Terms applicable to the Purchase Order were issued by GrowHow;
 - the quantity of Goods which the Buyer wishes to purchase;
 - whether the Goods are to be supplied as tonnage in full ("**TIF**") or by full loads only ("**FLO**");
 - the price at which the Goods were quoted in the Order Terms; and
 - the Delivery Address and contact details of the Buyer.

The Buyer shall ensure that the details included in the Purchase Order are complete and accurate in all respects.

- 3.5 If the Buyer is purchasing the Goods on a wholesale basis, then the Buyer shall at all times remain a registered member of the Fertiliser Industry Assurance Scheme. The Buyer shall indemnify GrowHow in full from and against any loss, liability, cost or claim which GrowHow may suffer as a result of any breach of this term by the Buyer.
- 3.6 No Purchase Order submitted by the Buyer shall be deemed to be accepted by GrowHow in accordance with its terms unless confirmed in writing by GrowHow's authorised representative. Once accepted by GrowHow, a Contract shall be deemed to be formed between the parties, based on the Purchase Order and incorporating these terms and conditions.
- 3.7 A Contract formed as set out above shall be binding on the parties and shall not be subject to change in any way by the Buyer.

4. DELIVERY

- 4.1 GrowHow's delivery agent shall notify the Buyer when Goods the subject of a Contract are ready for delivery. The Buyer shall take delivery of the Goods on a

date agreed by the parties, such date to fall no later than 14 days after the date of GrowHow's notice. The Goods may be delivered by GrowHow in advance of the agreed delivery date provided that GrowHow gives reasonable prior notice of such earlier delivery.

- 4.2 Delivery of the Goods shall be made by GrowHow delivering the Goods to the Delivery Address. Delivery of the Goods shall be accepted at any time of day. GrowHow shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, howsoever arising.
- 4.3 Where the Buyer has specified that the Goods are to be delivered TIF, delivery of the Goods shall be complete when the total tonnage of Goods has been delivered. Where the Buyer has specified that the Goods are to be delivered FLO, delivery of the Goods shall be complete when the number of full loads which most closely approximates to the total tonnage requested (without exceeding it) have been delivered. In the latter case, GrowHow shall not be liable for any deficit in tonnage delivered compared to the tonnage requested provided that it has delivered in full loads.
- 4.4 If the Buyer fails to take delivery of any of the Goods on the date agreed (or notified by GrowHow) pursuant to clause 4.1, or to provide adequate instructions, documents, licences or authorisations required to enable the Goods to be delivered on time, risk in the Goods will nevertheless pass to the Buyer on and from the delivery date agreed (or notified by GrowHow) pursuant to clause 4.1, GrowHow shall be deemed to have fulfilled its obligations under the Contract and (without prejudice to its other rights) GrowHow may:
- store the Goods until actual delivery or sale and charge the Buyer for all related costs and expenses; and/or
 - following written notice to the Buyer, sell any of the Goods at the best price reasonably obtainable in the circumstances and charge the Buyer for any shortfall below the price under the Contract.
- 4.5 The Buyer will indemnify GrowHow against any liability and expense (whether arising under statute or common law caused by the Buyer's failure to provide appropriate equipment and manual labour for off-loading the Goods at the Delivery Address or arising directly or indirectly from the Buyer's negligent act or omission whilst collecting the Goods).
- 4.6 The quantity of any consignment of Goods as recorded by GrowHow upon despatch from GrowHow's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.7 GrowHow shall not be liable for any non-delivery of Goods (even if caused by GrowHow's negligence) unless written notice is given to GrowHow within five Working Days after the date when the Goods would in the ordinary course of events have been received (as determined under clause 4.1 above). A signature of qualified acceptance on a carrier's delivery note shall not constitute written notice to GrowHow for the purpose of this clause 4.7.
- 4.8 GrowHow's liability for Goods which it fails to deliver as envisaged in clause 4.7 shall be limited to either an obligation to replace the Goods within a reasonable time or to issue a credit note at the pro rata Contract rate against any invoice raised for such Goods. The remedy provided under this clause 4.8 shall be at GrowHow's option.

5. SPECIFICATION OF THE GOODS

- 5.1 GrowHow reserves the right to make any changes to the specification, design, materials used in production, or finished appearance of the Goods to the extent that the same may be required to conform with any applicable safety, regulatory or other statutory requirements or which do not, in GrowHow's sole opinion, materially affect their quality or performance.
- 5.2 GrowHow reserves the right to fulfil an Order using a product other than the product requested by the Buyer provided that the replacement product conforms to a specification such that it will (in the sole opinion of GrowHow) be a suitable and adequate replacement for the product requested.

6. RISK AND OWNERSHIP OF GOODS

- 6.1 Risk of damage to, or loss of, the Goods shall pass to the Buyer at the time of delivery or, if the Buyer fails to take delivery of the Goods, the time when GrowHow is deemed to have fulfilled its obligations under this Agreement as set out in clause 4.4.
- 6.2 The Buyer shall be responsible for ensuring the security of the Goods from the time of delivery.
- 6.3 Notwithstanding risk in the Goods passing in accordance with clause 6.1, title in the Goods shall not pass to the Buyer until GrowHow has received in full (in cash or cleared funds) all sums due to it in respect of:
- the Goods; and
 - all other sums which are or which become due to GrowHow from the Buyer on any account.
- 6.4 The Buyer is licensed by GrowHow to use or to agree to sell the Goods delivered to the Buyer subject to the express condition that the entire proceeds of any sale are held in trust for GrowHow and are not mixed with other moneys or paid into an overdrawn bank account and shall at all times be identifiable as GrowHow's moneys.
- 6.5 Until ownership of the Goods has passed to the Buyer and unless the Buyer resells the Goods before ownership passes to it (as envisaged in clause 6.6), the Buyer must:
- hold the Goods on a fiduciary basis as GrowHow's bailee;
 - store the Goods (at no cost to GrowHow) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as GrowHow's property;
 - not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition, insured on GrowHow's behalf for their full price against all risks to the reasonable satisfaction of GrowHow. On request the Buyer shall produce the policy of insurance to GrowHow; and

- (e) hold any proceeds of the insurance referred to in clause 6.5(d) on trust for GrowHow and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.6 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall account to GrowHow accordingly; and
 - any such sale shall be a sale of GrowHow's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.7 Where GrowHow is unable to determine whether any goods are the Goods, the Buyer shall be deemed to have sold all goods of the kind sold by GrowHow to the Buyer in the order in which they were invoiced to the Buyer .
- 6.8 GrowHow shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from GrowHow.
- 6.9 The Buyer grants to GrowHow, its agents and employees an irrevocable licence at any time to enter any premises where Goods are stored in order to inspect them, or to recover them if entitled to do so under this clause.
- 7. PRICE AND PAYMENT**
- 7.1 The price for the Goods shall be the price set out in the Order Terms (as confirmed in the accepted Purchase Order) and includes the cost of delivery to a Delivery Address in mainland Great Britain (excluding Northern Ireland) on the terms set out in clause 4 (save that if GrowHow's delivery agent charges any additional premium to GrowHow based on the location of the Delivery Address, GrowHow reserves the right to charge such additional premium to the Buyer). If the Delivery Address specified in a Purchase Order is outside mainland Great Britain (or if GrowHow's delivery agent charges a premium based on the Delivery Address as envisaged above), the Buyer shall pay such additional incremental delivery costs as GrowHow may incur in delivering to that Delivery Address. Such additional delivery charges shall be invoiced and paid for at the same time as the purchase price of the Goods.
- 7.2 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.
- 7.3 GrowHow may invoice the Buyer for the Goods at any time after delivery.
- 7.4 Payment of the price for the Goods is due on the day specified by GrowHow in its written acknowledgement or order or, if no payment date is specified, the fourteenth day of the month following the month in which the Goods are delivered.
- 7.5 The Buyer shall not exceed any credit limit specified from time to time by GrowHow and where any such limit is exceeded, then the Buyer shall be liable immediately to pay the amount by which the credit limited is exceeded.
- 7.6 No payment shall be deemed to have been received until GrowHow has received cleared funds.
- 7.7 Notwithstanding any other provision to the contrary, on termination of any Contract (howsoever arising) all payments payable to GrowHow under that Contract shall become immediately due and payable by the Buyer.
- 7.8 The Buyer shall make all payments due under this Contract without any deduction, set-off or counterclaim.
- 7.9 If the Buyer fails to make any payment under this Contract on the due date then (without prejudice to its other rights and remedies) GrowHow may charge the Buyer interest (both before and after judgement) on the amount unpaid at the monthly rate of 2% until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest).
- 8. QUALITY**
- 8.1 The Buyer shall inspect the Goods on delivery.
- 8.2 GrowHow warrants that (subject to the other provisions of these terms and conditions) for 12 months from the date of delivery, the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 8.3 GrowHow shall not be liable for a breach of the warranty in clause 8.2 unless:
- the Buyer gives written notice of the defect in the Goods giving rise to such breach to GrowHow within 30 days after:
 - the date of delivery (where the defect would be apparent to the Buyer upon a reasonable inspection); or
 - the date when the Buyer knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Buyer upon a reasonable inspection); and
 - GrowHow is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by GrowHow) returns such Goods to GrowHow's place of business for the examination to take place there.
- 8.4 GrowHow shall not be liable for a breach of the warranty in clause 8.2 if:
- the defect arises because the Buyer failed to follow GrowHow's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
 - the Buyer alters the Goods in any way without the written consent of GrowHow; or
 - the defect arises from fair wear and tear, wilful damage by the Buyer, negligence of the Buyer, abnormal working conditions or misuse of the Goods without GrowHow's approval; or
 - the total price for the Goods has not been paid by the Buyer by the due date for payment.
- 8.5 If the Buyer makes a valid claim against GrowHow based on a defect in the quality of the Goods, GrowHow shall at its option replace such Goods (or the defective portion thereof) or refund the price of such Goods at the pro-rata Contract rate provided that, if GrowHow so requests, the Buyer shall return the Goods or the part of such Goods which is defective to GrowHow.
- 8.6 If GrowHow complies with clause 8.5 it shall have no further liability for a breach of the warranty in clause 8.2 in respect of the quality of such Goods.
- 8.7 Any replacement Goods supplied by GrowHow under clause 8.5 will be guaranteed on these terms and conditions for the unexpired portion of the 12 month period applicable to the Goods which they replace.
- 9. LIMITATION OF LIABILITY**
- 9.1 Save as expressly set out in these terms and conditions, all warranties, conditions and other terms implied by statute or common law are excluded from the Contract to the maximum extent permissible in law.
- 9.2 Nothing in these terms and conditions excludes or limits the liability of GrowHow for fraud, fraudulent misrepresentation, or for death or personal injury caused by GrowHow's negligence.
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 9.3**
- 9.3 Subject to clause 9.2:
- GrowHow's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or howsoever otherwise arising in connection with any Contract shall be limited to the total price payable by the Buyer for the Goods the subject of that Contract; and
 - GrowHow shall not be liable to the Buyer for any type of special, indirect or consequential loss or damage, or loss of profits arising in connection with any Contract, whether or not caused by the default or negligence of GrowHow, its agents or sub-contractors.
- 10. TERMINATION**
- 10.1 Without prejudice to any other right or remedy available to GrowHow, GrowHow shall be entitled to terminate any Contract forthwith and/or suspend any further deliveries under other Contracts with the Buyer if:
- the Buyer fails to pay any amount due under a Contract for a period of 14 days after the due date for payment as determined by clause 7; or
 - any of the events set out in clause 24 of the AIC Contract occurs to the Buyer (or GrowHow reasonably apprehends that any such event is about to occur to the Buyer and notifies the Buyer accordingly).
- 10.2 If GrowHow exercises its rights under clause 10.1 and Goods have been delivered but not paid for under any Contract with the Buyer, the price for such Goods shall become immediately due and payable notwithstanding the provisions of clause 7.
- 10.3 GrowHow's rights contained in clause 7 (but not the Buyer's rights) shall continue beyond the discharge of the Buyer's and GrowHow's primary obligations under a Contract consequent upon its termination.
- 10.4 The termination of a Contract howsoever arising shall be without prejudice to the rights and duties of either the Buyer or GrowHow accrued prior to termination.
- 11. FORCE MAJEURE**
- 11.1 GrowHow shall not be liable for any failure to perform its obligations where any delay or failure to perform was due to the occurrence of an event or circumstance beyond GrowHow's reasonable control.
- 11.2 Should GrowHow be prevented from delivering in the above circumstances, it shall give the Buyer written notice of this fact as soon as reasonably practicable after discovering it.
- 12. INSTRUCTIONS**
- 12.1 The Buyer shall comply with all health and safety requirements concerning the Goods and take all reasonable steps to ensure the safe storage, handling transportation and use of the Goods having regard to the nature of the Goods. The Buyer should comply with all product literature supplied by GrowHow concerning health and safety, storage, transportation, use and security matters. Should the Buyer require any further information or advice in connection with such matters, the Buyer should contact GrowHow. It is the duty of the Buyer to inform all third parties who could come into contact with the Goods (including but not limited to any subsequent purchaser of the Goods) of all appropriate and relevant information in respect of both health and safety and the security of the Goods.
- 13. GENERAL**
- 13.1 Each right or remedy of GrowHow under each Contract is cumulative and shall be construed without prejudice to any other right or remedy of GrowHow however arising.
- 13.2 Any provision of any Contract which is invalid or unenforceable (in whole or in part) shall be deemed severable (in whole or in part) and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 13.3 No breach of any provision of these terms or conditions shall be waived or discharged except with the express written agreement of the parties.
- 13.4 The Ammonium Nitrate Materials (High Nitrogen Content) Safety Regulations 2003 form part of these terms and conditions.
- 14. ASSIGNMENT**
- 14.1 GrowHow may assign the benefit of the Buyer's obligations and sub-contract any of its obligations under any Contract to any third party without the Buyer's consent.
- 14.2 The Buyer may not assign, license, sub-contract or transfer all or any of its rights under any Contract without GrowHow's prior written consent.
- 15. NOTICES**
- 15.1 Any communication given under or in connection with any Contract shall be in writing and shall be delivered personally or sent by pre-paid first class post (air mail if posted to or from a place outside the United Kingdom) to the registered address of each party or sent by fax, in each case marked for the attention of the Company Secretary.
- 16. PROPER LAW AND JURISDICTION**
- The formation, construction, performance, validity and all aspects of each Contract are governed by English law and any dispute arising in connection with any Contract shall be subject to arbitration in accordance with clause 21 of the AIC Contract.



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