

TERMS OF TRADE

1. INTRODUCTION

- 1.1 **These terms.** These terms apply to "our product", "product/s" or "the product" being, all goods or services which we provide you with and "processed goods" being those goods after we have carried out a service for you or otherwise processed goods.
- 1.2 **Us.** All references to "Stahmann Webster Group", "us", "we", "our" etc, refer to Stahmann Farms Enterprises Pty Ltd ABN 85 130 195 470 trading as Stahmann Webster Group, or any Related Body Corporate.
- 1.3 **You.** All references to "you", "your", etc refer to the customer placing the order and its representatives and if more than one, each of them jointly and severally.
- 1.4 **Changing these terms.** We may change these terms at any time and you will be bound by any change on the date that we give you notice of such change. You are deemed to have received notice (whether or not you actually receive it) when we:
- (a) send you the changed terms to any address you have advised us of (including an email address); or
 - (b) place the changed terms on our website www.stahmannwebster.com.au

2. OUR INFORMATION

- 2.1 **Contact details.** Our contact details are as follows unless we notify you in writing of any changes:

Name: Stahmann Farms Enterprises Pty. Ltd. trading as Stahmann Webster;
Business address: 193 McDougall Street, Toowoomba QLD 4350
Telephone number: 07 4699 9400
Email address: accrec@stahmannwebster.com.au
Postal address: Locked Bag 9007, Toowoomba, QLD 4350

3. QUOTES AND ORDERS

- 3.1 **Quotes.** Any quote we give you is subject to final confirmation of the same prior to an order being placed. We can withdraw, modify or vary that quote until we deliver the product or provide the service for you. Any quote accepted by you will be an order for the purpose of these terms.
- 3.2 **Prevailing Terms.** If the terms of your order differ from these terms, these terms will prevail. These terms supersede any earlier negotiations or representations.
- 3.3 **Method of Ordering.** You must place an order in writing either to our designated postal address, facsimile number or e-mail address. We will not be bound by your order until we accept it.
- 3.4 **No Cancellation.** You cannot cancel an order you place with us.

4. PRICE

- 4.1 **Variation.** Prices listed in our quote, our product catalogue or website are fixed until we issue a revised price list or otherwise notify you that the prices have been revised. We can vary prices at any time prior to accepting your order.
- 4.2 **Amount.** You will pay us according to the applicable prices set out in the quote provided to you without deductions or set-off. Where the price is based on the quantity supplied or processed (usually per retail pack, carton, bag or kg) then it will be rounded up to the nearest retail pack, carton, bag or kg.
- 4.3 **Payment for Products.** Products will be invoiced on delivery and must be paid in accordance with agreed terms as specified in your quote or in correspondence at the time your order is placed.
- 4.4 **Payment for Services (other than Storage).** Services (other than storage services) will be invoiced once provided and must be paid in accordance with agreed terms.
- 4.5 **Unpaid Invoices.** Unless otherwise agreed in writing we will charge interest on any unpaid amounts. Interest will be calculated from the due date at a rate of 2% per month and capitalised monthly.
- 4.6 **Statutory Charges Excluded.** All prices are exclusive of sales tax, goods and services tax and other statutory duties and are net cash at our warehouse unless otherwise stated. For the avoidance of doubt, unless otherwise agreed in writing we will not be liable for any duties, taxes, import taxes, charges, fines or penalties associated (directly or indirectly) with the export of product to another jurisdiction or otherwise levied on the product.

5. STORAGE SERVICES

- 5.1 **Storage Fee.** Where our service involves the storage of your property or product (whether on consignment or otherwise), the applicable standard storage fee must be paid for each day your property or the product remains in our possession.
- 5.2 **Storage Fee Payment.** Storage fees will be invoiced monthly in arrears and you will pay us storage fees for each month on or before the 20th day of the following month.
- 5.3 **Unpaid Storage Fees.** Unless otherwise agreed in writing we will charge interest on any unpaid storage fees. Interest will be calculated from the due date at a rate of 2% per month and capitalised monthly.
- 5.4 **Non-Collection of Goods.** Where your property or the product is stored at our warehouse as a result of your failure to arrange for collection of the property or the product when required by us then, in addition to other rights we have at common law and under statute, a default storage fee may apply, which will be payable in the same manner as the standard storage fee.
- 5.5 **Lien and Sale.** In addition to any other lien to which we may be entitled, we will be entitled to a general lien on your property and the product in our possession to the extent of unpaid storage fees, service fees and associated costs of your default. We may sell your property or product in our possession and use the sale proceeds to cover any unpaid storage fees and other costs payable to us. Any surplus will be paid to you. Any short-fall will be a liquidated debt immediately payable by you to us.

6. DELIVERY OF GOODS AND PROVISION OF SERVICES

- 6.1 **Timely Delivery of Goods to be Processed.** Where the service involves processing property owned by you (including packaging), you must deliver that property in the time and manner we direct.
- 6.2 **Instructions.** You must give delivery instructions in your order, and if possible, we will arrange for delivery in accordance with those instructions. You must ensure that someone is present to accept delivery of the product on your behalf. You must pay the carrier's costs of transporting the product from our warehouse unless prior arrangements are made at the time you make your order. We reserve the right to select the carrier in all cases.
- 6.3 **Timing Estimates Only.** Any date we provide for the supply or delivery of product, or providing the service, is an estimate only. Delay in supply or delivery of product or the provision of services will not affect your obligation to accept or pay for the product or service.
- 6.4 **Instalments.** We reserve the right to supply or deliver product and/or services by instalments. Each instalment will be deemed to be sold under a separate contract.
- 6.5 **Overseas Deliveries.** Unless we otherwise agree in writing, where you ask for the goods to be delivered outside of Australia, then these terms will be governed by Incoterms 2010 on a CIF (cost, insurance and freight) basis.

7. RISK AND INSURANCE

- 7.1 **Risk.** Where we:
- (a) provide product to you: you bear the risk of any deterioration, loss or damage to those products from the time they are available for collection;
 - (b) provide a service: you bear the risk of any deterioration, loss or damage to your property at all times, including any period we process and/or use your property, store and/or deliver that property and/or product to you; and/or
 - (c) store your property and/or product: you bear the risk of any deterioration, loss or damage to your property and/or product at all times, including any period we store and/or deliver that property and/or product to you.
- 7.2 **Insurance.** You are responsible for all insurance of:
- (a) your property and/or product at all times, including any period we process and/or use your property, store and/or deliver that property and/or product to you; and/or
 - (b) the product in transit from the time the product is available for collection.

8. PRODUCT WARRANTY

- 8.1 **Warranty.** All product sold by us is free from material defects at the time of sale.

- 8.2 **Product Care.** You are solely responsible for any defect in or damage to product (including spoilage) caused or contributed to by your failure to fully comply with our product care recommendations, including in relation to packaging, transport and storage.
- 8.3 **Inspection on Delivery.** You must inspect the products as soon as they are delivered and if you do not, you will be deemed to accept those products, including that the amount (eg retail pack, carton, bag or kg) provided complies with your order.
- 8.4 **Claim.** If you believe that products do not comply with our warranty, you must make a claim to us either by post or email to the addresses in clause 2 within 7 days after receipt of the products.
- 8.5 **Our action.** Subject to clauses 8.6 and 8.7, we will, in our sole discretion:
- repair or replace the products or part of them;
 - provide again or rectify the services or part of them; or
 - wholly or partly recompense you by providing credit or reimbursing you.
- 8.6 **Conditions precedent.** Clause 8.5 is conditional on you having:
- notified us of your claim under clause 8.4;
 - allowed us access to inspect the products and investigate your claim; and
 - not used the products and having not further damaged those products.
- 8.7 **Deemed compliance.** If you do not comply with the conditions in clause 8.6, the products will be deemed to satisfy your order and you will be bound to pay for the products in accordance with these terms.
- 8.8 **Approval and Procedure.** Where you obtain our approval in writing, the products may be returned to us, such return conditional on your compliance with all reasonable directions given by us for their return.
- 8.9 **Transportation Costs.** You must pay all transportation costs to and from our nominated service facility unless the products are being returned due to our distribution error and such error was notified to us within 7 days of delivery.
- 8.10 **CC Act Consumer.** Where the *Competition and Consumer Act 2010* ("CC Act") applies, any rights and remedies given by the warranty in clause 8.1 are in addition to all other rights and remedies under the CC Act in relation to the product or services to which the warranty relates and which are not capable of exclusion by law.
- 9. LIABILITY**
- 9.1 **Exclusion of Legislation.** To the extent that they can be excluded by agreement, the provisions of all legislation, including the *CC Act* and the *Fair Trading Act 1989 (Qld)*, do not apply to these terms.
- 9.2 **Limitation of Liability.** Subject to clause 9.1 and other product warranties set out in these terms:
- we give no guarantee, warranty, undertaking or representation in relation to the product sold or services provided to you, their quality, fitness for any purpose, their compliance with any description or sample, or otherwise;
 - our liability to you arising in any way in relation to the product or services (including product contamination) will be limited to the extent of our warranty contained in clause 8;
 - in no case will our liability extend to any indirect, incidental or consequential damage including to property, personal injury, loss of profit, loss of revenue, loss of opportunity or otherwise; and
 - except as otherwise expressly provided in these terms, you release us from all actions, claims, demands, losses, liabilities, damages and expenses arising from or in relation to the supply of product or services.
- 9.3 **Reliance.** You acknowledge that you have not relied on and have not been induced to purchase the product or use any service based on any representation by us other than as expressly recorded in these terms.
- 9.4 **Product Recall.** In the event that we instigate a product recall, then you must comply with any reasonable request that we or our insurers make (provided we pay for freight on recalled goods or processed goods), and our liability will be limited to the amounts referred to in clause 9.2 plus the cost of freight (if any).
- 9.5 **Maximum Liability.** Notwithstanding clause 9.1, if we are found liable by operation of law, our total liability (including death or personal injury occurring as a consequence of any negligent act, omission or default on our part, under or in connection with this agreement), whether in contract, tort or otherwise will be limited to the amount received by us under any policy of insurance that responds to the relevant claim.
- 10. PASSING OF TITLE**
- 10.1 **Title Passes on Full Payment.** Title to the product will not pass to you until we receive your full payment for all product and services.
- 10.2 **Your Storage.** After delivery of the product to you, you must:
- store the product separately at your premises so they can be easily identified, including labelling, if required;
 - not alter, remove or tamper with any marks or numbers on the products or packaging;
 - only dispose of the products in the ordinary course of your business;
 - not cause the products to lose their identifiable character or be intermingled with other goods in any way by any process of its own or by a third party, except with our prior written consent;
 - not claim a right or interest in the products to secure any liquidated or unliquidated debt or obligation that we owe to you;
 - not claim any lien over the products;
 - not create any absolute or defeasible interest in the product in relation to any third party except with our prior written consent; and
 - provide us and our agents access to the premises where the products are stored to enable us to inspect and/or seize the products.
- 10.3 **Default.** If you are in default under these terms or commit an act pursuant to which bankruptcy or insolvency proceedings may be commenced against you, then:
- we may, without notice to you, immediately recover possession of the products from wherever they are stored and you waive the right to receive any statutory or *Personal Property Securities Act 2009* ("PPSA") notice;
 - we may cancel deliveries to you;
 - we may stop carrying out the services (even if partially processed goods will be spoiled);
 - we may require the immediate collection of your property, products or partially processed goods in our possession;
 - we may store your property, products or partially processed goods in our possession at your cost at the default storage fee rate;
 - payment of all monies which you owe to us will immediately become due and payable on demand;
 - we will be entitled to a general lien on all money and property belonging to you in our possession to the extent of the unpaid price of the products or services; and
 - we may destroy or discard any part of your property (including products) which we reasonably consider are spoiled or if the likely proceeds of sale will exceed the costs of selling those items.
- 10.4 **No Compensation.** You are not entitled to any compensation in relation to any action we take under clause 10.3.
- 10.5 **Indemnity.** You will indemnify us against the costs of any action in respect of recovery, handling and sale or re-sale, including without limitation any debt collection agency fees and solicitors' fees (on a solicitor-client basis), and the balance of any amount owing following sale or re-sale will be immediately due to us. A certificate produced by us will be conclusive evidence of the balance of the amount which you owe us.
- 10.6 **Right to Proceeds.** Where you dispose of the products before payment to us, the Proceeds of such disposal are our property and you hold the Proceeds on trust for us.
- 10.7 **Right to Trace.** If you sell the products to a third party, we have the right to recover any monies owing to you for that sale and to trace and recover the Proceeds of that sale.
- 10.8 **Further Assurance.** You appoint us and each of our directors as your joint and several attorneys for the purpose of doing all acts, matters or things we think are necessary to give full effect to this clause.
- 11. PPSA**
- 11.1 **PPSA Defined Terms.** Terms referred to in this clause 11 will, unless the context otherwise requires, have the same meaning given to those terms in the PPSA.
- 11.2 **PPSA Security Interest.** You acknowledge and agree that:
- these terms of trade are a Security Agreement for the purposes of the PPSA;
 - we may register our Security Interest in the products and their Proceeds via a Financing Statement or Financing Change Statement as a Purchase Monies Security Interest on the Personal Property Securities Register ("Register") or any other Security Interest we deem appropriate;
 - we may take a Security Interest in all and any products the subject of these terms and all of your present and after-acquired property related to the proceeds of any such products;

- (d) you will not change your name, ACN or ABN or other details required on the PPSR, without first notifying us;
- (e) you will sign any documents and provide all assistance and information required in order for us to attend to the registration and maintenance of any Security Interest;
- (f) you will ensure that our security position, rights and obligations, are not adversely affected by the PPSA;
- (g) unless we have consented in writing or otherwise specifically permitted under these terms of trade:
- (i) you will not register a Financing Change Statement in respect of a Security Interest relating to these terms of trade; or
 - (ii) you will not allow a third party to register a Financing Statement or a Financing Change Statement in relation to the products and/or their Proceeds;
- (h) In order to satisfy obligations secured by a Security Interest contemplated or constituted by these terms, we may, in our absolute discretion, utilise amounts received in relation to these terms in whatever way we decide.
- 11.3 On-Sales.** In all circumstances where you:
- (a) dispose of any products supplied by us under these terms in the ordinary course of your business to a third party ("Purchaser"); and
 - (b) that disposal was on terms other than full payment being received by you on or before the Purchaser obtaining Possession,
- then you must before the time the Purchaser obtains Possession of the products, register a Purchase Money Security Interest over the products with the Purchaser as Grantor.
- 11.4 On-Sale Defaults.** Where a Purchaser defaults on their payment obligations to you, you must immediately take all steps permitted under the PPSA to enforce your Security Interest (including under the Purchase Money Security Interest) in priority to any other party having a Security Interest in the products given by the Purchaser as Grantor including, but not limited to, seizing, disposing or retaining the products.
- 11.5 Subordination.** You acknowledge and agree that, pursuant to section 61 of the PPSA, your Security Interest in the products is subordinate to our Security Interest and our Security Interest will at all times take priority over your Security Interest.
- 11.6 PPSA Exclusions s115(1).** To the extent allowable under section 115(1) of the PPSA, sections 95, 96, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA are contracted out of and your rights pursuant to them cease.
- 11.7 PPSA Exclusions s115(7).** To the extent allowable under section 115(7) of the PPSA, sections 127, 129(2) and (3), 130(1), 132, 134(2), 135, 136(3), (4) and (5), and 137 of the PPSA are contracted out of and your rights pursuant to them cease.
- 11.8 Waiver.** You waive your rights pursuant to section 157 of the PPSA to receive notice of a Verification Statement.
- 11.9 Non-Disclosure.** You and we agree not to disclose information in connection with these terms (including the existence of any terms or the exercise of any rights under these terms) that is not publicly available except if the information is:
- (a) disclosed with the prior consent of the other party to these terms (which must not be unreasonably withheld);
 - (b) disclosed to you or our officers, employees, auditors, legal or other advisers; or
 - (c) is information which the disclosing party reasonably believes is required by any law or stock exchange to be disclosed (except that this clause 11.9 does not permit us to disclose any information of the kind referred to in section 275(1) PPSA unless sections 275(7) PPSA applies).
- 12. INTELLECTUAL PROPERTY**
- Our Intellectual Property.** We own and retain all intellectual property rights in and connected to our business, product and any related materials. You will not at any time do any act inconsistent with our intellectual property rights.
- 13. WARRANTY AND FURTHER ASSURANCES**
- 13.1 Warranties.** You warrant that:
- (a) you have provided us with all information required under these terms;
 - (b) you have full right, title and authority to enter into these terms; and
 - (c) your obligations under these terms are valid, binding and enforceable
- 13.2 Further information.** You must provide us with any further information that we require immediately upon our request.
- 14. GENERAL**
- 14.1 Force Majeure.** We will not be liable for any delays, loss or damage you suffer arising from any cause beyond our control including, but not limited to, delays in transportation, handling or supply, accidents, fire, strikes and other labour disputes, terrorist acts, acts of God, epidemic, pandemic, the requirements of any law or government agency or other circumstance of a similar nature beyond our control, until that cause has ceased to have effect.
- 14.2 Relevant Law.** These terms will be construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Commonwealth and courts that have jurisdiction to hear appeals from any of those courts.
- 14.3 Waiver.** The failure of either party to exercise any rights under these terms will not waive that right, nor will any practice developed between us waive or lessen our respective rights under these terms.
- 14.4 Severance.** Any provision of these terms which is found by a court of competent jurisdiction or any competent government authority to be invalid, illegal or unenforceable, will be severed from these terms and will be deemed never to have been part of them.
- 14.5 No Restraint.** No provision express or implied in these terms restricts our right to sell goods or processed goods or provide services to third parties.
- 14.6 Confidentiality.** You must treat all information which we give you as private and confidential, unless that information is public knowledge or was known by you before we gave it to you, and must not disclose that information to any person nor use it in any way which may cause us injury or loss.