

Donaghys Pty Ltd - Terms of Trade

1. Terms of Contract

1.1

Any Goods supplied by us to you shall be subject to these Terms unless we agree in writing to change them. If you accept Goods from us, that action by you will be deemed to be acceptance of these Terms, despite anything that may be stated to the contrary in your enquiries or your order.

2. Price

2.1

The price for Goods will be either the price agreed by us or quoted to you in writing, or if there is no agreed price or written quotation, our standard or applicable price applying at the time of delivery. Special conditions may apply in respect of Non-Standard Products, which will be advised to you following receipt of your order, and which will be deemed to have been accepted by you unless you notify us of your non acceptance within 7 days of the conditions being advised to you.

2.2

Despite clause 2.1 above, unless otherwise agreed in writing, any agreed or quoted price may be altered before delivery of Goods to you, if our costs fluctuate materially after the date of quotation. Further, agreed or quoted prices only apply to the total quantities, delivery dates and other terms specified in the quotation.

2.3

We may withdraw a quotation before it is accepted and, in any event, a quotation will lapse, without notice, 30 days after it is given.

2.4

Unless otherwise agreed in writing:

(a) all amounts payable by you under these Terms in respect of a Taxable Supply by us is a GST exclusive amount and you must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. In this clause, "Taxable Supply" and "GST"; have the meanings set out in *A New Tax System (Goods and Services) Act 1999*; and

(b) all prices are exclusive of other government duties, levies or taxes in respect of the Goods, and any applicable minimum order service and handling charge, surcharge, or freight charge imposed by us from time to time.

3. Payment

3.1

Unless we have agreed in writing to extend credit to you, you must pay for Goods in full before delivery.

3.2

Where we have agreed to extend credit to you, you must pay for Goods in full, without deduction or set off, by the 20th day of the month following the date of invoice. Your payment is made only when funds have fully cleared through the bank system into our bank account.

3.3

If full payment for the Goods is not made by the due date, then without prejudice to any other rights or remedies available to us:

(a) we may cancel or suspend the delivery of further Goods;

(b) we may charge interest on overdue monies on a daily basis at a rate 2 percentage points greater than the per annum percentage rate then prescribed by the Penalty Interest Rates Act 1983 (Vic) from the date on which the payment was due until the date full payment is made (both dates inclusive);

(c) you will be responsible for all costs (including debt collection and legal costs on a solicitor /client and indemnity basis) incurred by us in recovering such monies; and

(d) any discount offered to you will be deemed to be withdrawn, and you will be liable for the standard sale price of the Goods as specified by us.

3.4

We may accept, apply and reallocate payments from you in respect of any indebtedness, and we will not be bound by any conditions or qualifications attaching to the payments.

3.5

Where we have agreed to extend credit to you, we may, from time to time at our discretion, vary your credit limit with us. If a purchase of Goods would exceed your current credit limit, we may require payment in cash of the excess before delivery of them.

3.6

Despite the provisions of clause 3 above, or any other agreement to the contrary, we may revoke any credit extended to you in our sole discretion and demand full payment of any monies due at any time without notice.

4. Ownership

4.1

Ownership in the Goods shall not pass to you at the time of delivery, including Goods delivered to you on consignment, but will remain with us until we have received full payment, in cash or cleared funds, of all monies owing by you to us.

4.2

Until all such monies have been paid:

(a) you will keep the Goods separate from any other goods in your possession, and properly stored, protected and insured, and identified as our property;

(b) all sums received from any insurance claim made in respect of loss of or damage to the Goods shall be treated as if they were proceeds of sale and held by you on the same terms as those set out in clause 4.2(d) below, and you will also hold on trust for us and, if required by us, forthwith assign to us the benefit of any insurance claim made in respect of the Goods;

(c) if the Goods are mixed with, or incorporated or processed by you into other goods, those other goods shall be separately stored and marked so as to be identifiable as being made from or with the Goods; if those other goods are sold paragraph (d) below will apply;

(d) where the Goods are sold to you as inventory for resale, you may resell them in the normal course of your business at full market value, provided that (i) the resale shall be as principal in relation to your sub-buyer but, as between you and us, you will sell as our fiduciary agent and bailee and (ii) you hold the proceeds of the resale on trust for us, and pay them into a separate bank account without mixing them with other monies; and

(e) we may, at any time and without prejudice to our other rights, require you to deliver the Goods (which have not been resold) to us and, if you fail to do so forthwith, our employees and agents may enter any premises where the Goods might be stored and recover them, and you agree to indemnify us, on demand, against any liability incurred by us in our exercise of this right.

5. Risk and Delivery

5.1

Delivery of the Goods will take place when they are received by a carrier for delivery to you, or the time they are received by you or your agent, whichever is earlier. When you ask us to deliver Goods directly to another person, that person takes possession of the Goods for you as your agent.

5.2

We will make every effort to ensure delivery of Goods is on time. However, we shall not be liable to you for any failure to deliver on a specified date or within a specified period, however that failure was caused.

5.3

Despite clause 4 above, risk in respect of the Goods shall pass to you on delivery in accordance with clause 5.1 above. You are responsible for insurance of the Goods from that time.

5.4

Without limiting the provisions of this clause 5 above, all claims for shortages or delivery damage must be made to the carrier and us within 7 days after delivery, failing which any such claims shall be irrevocably waived by you.

6. Returns and Cancellation

6.1

Goods may be returned for credit only if we have agreed in writing, and they are received by us at our premises where they were despatched from within 14 days after delivery and in the same condition as they were delivered to you. Returned Goods must be sent at your expense, with a copy of the original packing slip or invoice. We may charge you a restocking fee.

6.2

You may not cancel an order for Goods, wholly or partly, without our written consent. As a condition of giving our consent, we may require reimbursement of any costs (including materials, handling fees and labour) incurred by us in connection with the order up to the date of our consent.

6.3

In addition to our rights under clause 3.3(a) above, we may cancel or suspend an order for Goods, wholly or partly and without liability to you, if fulfilling the order becomes impractical or uneconomic due to any cause beyond our control, if we reasonably believe that the information which you have given us in your credit application is not correct or no longer correct, or if you default under any agreement with us, or become insolvent or commit any act of bankruptcy, or a receiver, a receiver and manager, liquidator or administrator, or statutory manager is appointed to you or a receiver, receiver and manager, mortgagee or chargee takes possession of any of your assets or undertakings, or you make or attempt to make an arrangement or composition with your creditors.

7. Trade Practice Act 1974 (Cth)

7.1

If the TPA applies, these Terms shall be read subject to your rights under the TPA.

7.2

Where you are not acquiring the Goods as a consumer (as defined in section 4B of the TPA), Part V of the TPA shall not apply.

7.3

Where clause 7.2 above applies, your terms of trade applying to the resale of the Goods (and, if your customers acquire the Goods for the purposes of resale, their terms of trade and the terms of trade of each other person in your distribution chain) must include a provision having the same effect as that clause. You agree to indemnify us, on demand, against any liability under the TPA as a result of any failure by you, your customers or any other person in your distribution chain to include such a provision.

7.4

We do not undertake that repair facilities and parts will be available for the Goods, and section 74F of the TPA will not accordingly apply where the requirements of that section are satisfied.

8. Warranties and Liabilities

8.1

We will replace or, at our option, repair Goods manufactured by us:

- (a) which are accepted to have been defective at the time of supply free of charge, provided that you notify us in writing of the defect in sufficient detail for the Goods and the defect to be clearly identified within 7 days after delivery, and return the Goods to us at our premises where they were despatched from or to an authorised repairer nominated by us for the purpose at your expense;
- (b) that have any defect in materials or workmanship that breaches the terms of any written guarantee and/or warranty attached to the Goods, provided that you notify us in writing of the defect prior to the expiry of the written guarantee or warranty period.

Any claims not notified to us in writing within the above timeframes shall be irrevocably waived.

8.2

Where Goods are subject to a separate supplier's or manufacturer's guarantee or warranty, we will, where we are able to do so, pass on the benefit of that guarantee or warranty to you, without us being directly liable to you.

8.3

We shall not be liable for any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our instructions, misuse, or any alteration or repair of the Goods not authorised by us or for any defect arising from a drawing, design or specification supplied by you.

8.4

To the fullest extent permitted by law:

- (a) our liability under these Terms is in substitution for, and to the exclusion of, all other warranties, representations, conditions or obligations imposed or implied by law, statute or otherwise in relation to the Goods; and
- (b) all liability for any indirect, special or consequential loss or damage of any kind, including where it arises out of our negligence, is expressly excluded.

8.5

Where you are acquiring the Goods for the purpose of resale, your terms of trade applying to the resale shall contain a provision having the same affect as clause 8.4.

8.6

We will not be liable for any loss or damage whatsoever suffered by you as a result of any act,

omission or statement made by us, our employees, contractors or agents whether negligent or not, except that nothing in these Terms limits any liability imposed by any statute unless or to the extent that it is lawful to do so.

8.7

Despite any other provision of these Terms, to the fullest extent permitted by law our maximum liability arising out of the supply of Goods will, at our election, be limited to the amount paid for the specific Goods, the replacement of the Goods or the supply of equivalent Goods.

9. Privacy Act

9.1

In accordance with the Privacy Act 1988 (Cth), you and any guarantor (if relevant) authorise us to collect and hold personal information from any source we consider appropriate to be used for credit, administration, service and marketing purposes. You further authorise us to disclose personal information held by us for these purposes to any other person.

9.2

You understand that you have a right of access to, and may request correction of, personal information held by us about you.

10. Intellectual Property

10.1

Neither we nor our suppliers transfer to you any right, title or interest in any copyright, trade marks, patents or other intellectual property rights in or relating to the Goods.

10.2

You warrant that any designs, drawings or specifications which you provide to us will not infringe any intellectual property rights of any third party, and you agree to indemnify us, on demand, against any liability we may suffer as a result of our use of those designs, drawings and specifications.

11. General Terms

11.1

We may amend or substitute these Terms from time to time by notice to you in writing.

11.2

No delay or failure by us to exercise our rights under these Terms operates as a waiver of those rights. A partial exercise of those rights does not prevent their further exercise in the future.

11.3

If a court decides that part of these Terms is unenforceable, the part concerned shall be deleted from the rest of these Terms, which will then continue in force.

11.4

These Terms bind you both personally and as trustee of any trust of which you are trustee.

11.5

These Terms will be interpreted in accordance with and governed by the laws of the Courts of the State of Australia in which any supply of Goods to you occurs, and failing such supply, the Courts of the State of Victoria. Such State, and the State's Courts will have non-exclusive jurisdiction in respect of all matters between us.

12. Defined Terms and Interpretation

12.1

In these Terms, unless the context otherwise requires, the following words have the following special meanings:

"Goods" means all animal and plant management products, including biostimulants, bloat, dairy detergents, dairy teat care, household or commercial detergents and cleaners, mineral supplements, probiotics, biological preparations, stock management, stirrers, drum pumps and torpedo dispensers; all feed conservation products, including baler twine, balenet, silage, grain storage and fencing; all horticulture products, including biostimulants and horticultural twine; all rope and cordage products, including aquaculture rope and cordage, general rope and cordage, industrial and safety braids, leisure marine rope, cordage, packaging and lashings; and any other goods supplied by us to you at any time, including on consignment, including any goods described by item or kind on any relevant order form, packing slip or invoice, on the basis that each such order form, packing slip or invoice shall be deemed to be incorporated in and form part of these Terms, and (except where the context otherwise requires) any services supplied by us to you whether in conjunction with the supply of goods or otherwise;

"Non-Standard Products" means Goods that are not generally held by us in stock;

"Terms" means these terms of trade (as amended or substituted from time to time);

"TPA" means that Trade Practices Act 1974 (Cth);

"we", "our", and "us" means Donaghys Pty Ltd; and

"you" and "your" means the applicant named in the attached credit application, and/or any party acquiring Goods from us, as the case may be.

12.2

For convenience, these Terms have been grouped under different headings, but the headings do not affect the meaning of these Terms.

12.3

In these Terms references to any law include any law that amends or replaces it and any subordinate legislation made under it from time to time.