

Standard Terms and Conditions

These terms and conditions apply to all business conducted between customers and Ovara Limited whether the order is placed via the Web site, phone, fax, email or in writing.

1 Definitions

Advice means written opinion provided to the Buyer from the Company in respect to any aspect of the Goods or Services or the usage of the Goods;

Buyer means any person or business that buys Goods from the Company;

Carrier means any third party responsible for transporting purchased Goods from the Premises to the Buyer's premises;

Conditions means the terms and conditions of sale as set out in this document and any additional terms and conditions agreed in writing by the Company;

Goods means any products that the Company advertises or makes available for sale;

Company means Ovara Limited whose registered office is at 34 Bridgegate, Howden East Yorkshire DN14 7AB;

Directions for Use means the recommendations and instructions for use of the Goods given in writing by either the Company or the original manufacturer that are relevant at the time of purchase;

Event of Default means any act or omission on the part of the Company or any of its employees, directors or agents in connection with the provision of Advice;

Payment Terms means immediate payment in advance for orders placed via the Web Site and means payment in full on 30 days for credit sales unless other payment terms have been agreed in writing between the Company and the Buyer. In all cases the Buyer is expected to pay their own bank charges or fees in respect to the payment.

Price means the price for the Goods, excluding VAT and any carriage, packaging, bank charges and insurance costs.

Services means collectively any online facilities, tools, services or information that the Company makes available through the Web Site or directly;

Web Site means the Company website www.ovaraltd.com and any sub-domains of this site unless expressly excluded by their own terms and conditions.

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2 General

- 2.1 These Conditions shall form the basis of a contract between the Company and the Buyer in relation to the sale of Goods and Services, to the exclusion of all other terms and conditions including the Buyer's standard conditions of purchase. Any variation to these Conditions must be agreed in writing between the Buyer and the Company as provided for by 2.4
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods from the Company pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of a director of the Company.
- 2.5 These Conditions represent the whole of the agreement between the Company and the Buyer. They supersede any other conditions previously issued.

3 Orders

- 3.1 Orders must be made in writing and sent to the Company via email, the Web Site, fax or post.
- 3.2 Orders are accepted subject to availability of the Goods at the time of despatch.
- 3.3 Orders are priced based on the Web Site price published at the time the order is placed or based upon the agreed price for Goods and Services between the Buyer and the Company.
- 3.4 The Price is exclusive of VAT or other relevant taxes and these will be applied to the order for the purpose of calculating payment or creating invoices.
- 3.5 An order is confirmed as accepted by the Company for non-credit customers when payment is made in full.
- 3.6 An order is confirmed as accepted by the Company for credit customers when Goods or Services are delivered to the Buyer or when written confirmation of the order is sent to the Buyer.

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4 Delivery

- 4.1 The Company will notify the Buyer by email, verbally or by fax when Goods are to be dispatched.
- 4.2 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods on the day notified by the Company for delivery.
- 4.3 The Company undertakes to use its reasonable endeavours to despatch the Goods on an agreed delivery date, but does not guarantee to do so. Time of delivery shall not be the essence of the contract.
- 4.4 The Company shall not be liable to the Buyer for any loss or damage whether arising directly or indirectly from the late delivery or short delivery of Goods. If short delivery does take place, the Buyer undertakes not to reject the Goods but to accept the Goods delivered as part performance of the contract.
- 4.5 If the Buyer fails to take delivery of the Goods on the agreed delivery date or, if no specific delivery date has been agreed, when the Goods are ready for despatch, the Company shall be entitled to store and insure the Goods and to charge the Buyer the reasonable costs of so doing.
- 4.6 The Buyer must notify the Company within 7 days of non-delivery of ordered stock.
- 4.7 If the Company receives no communication from the Buyer within 7 days of delivery regarding any problems with the Goods, the Buyer is deemed to have received the Goods in full working order and with no problems.

5 Acceptance of the Goods

- 5.1 In the case that the Goods are not accepted immediately in person, the Buyer shall be deemed to have accepted the Goods, 48 hours after delivery.
- 5.2 The Buyer shall carry out a thorough inspection of the Goods within 48 hours of delivery and shall contact the Company immediately and give written notification to the Company within 7 working days of delivery of the Goods of any defects, which a reasonable examination would have revealed.
- 5.3 Where the Buyer has accepted, or has been deemed to have accepted, the Goods the Buyer shall not be entitled to reject Goods which are not in accordance with the contract.

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6 Returns

The Company aims to always provide high quality Goods that are fault free and undamaged. On occasion however, goods may need to be returned. Returns are governed by these Conditions.

- 6.1 Under no circumstances may Goods be returned for credit unless previous agreement has been obtained and in no case will open or broken drums or packages or those in a neglected or in a condition un-suitable for re-sale, be accepted.
- 6.2 The Buyer should contact the Company as soon as possible and at latest within 48 hours of receipt of the Goods if they wish to discuss a return for whatever reason.
- 6.3 In the event that a return is agreed the Buyer will be given the option to have the Goods replaced with those ordered or a credit note issued. Credit notes and replacements will be issued upon receipt of the returned Goods.
- 6.4 If the Buyer receives Goods which do not match those ordered, unless accompanied by an explanatory note explaining a substitution, the Buyer should contact to arrange collection and return.
- 6.5 If any Goods purchased have faults when they are delivered, the Buyer should contact the Company as soon as possible to discuss the defect, arrange collection and return. Goods must be returned in their original condition with all packaging and documentation.
- 6.6 If Goods are damaged in transit and the damage is apparent on delivery, the Buyer should sign the delivery note to the effect that the goods have been damaged. In any event, such damage should be reported to the Company within 48 hours and the Company arrange collection and return.
- 6.7 The Company reserves the right to exercise discretion with respect to any returns under these Conditions. Factors which may be taken into account in the exercise of this discretion include, but are not limited to:
 - Any use or enjoyment that you may have already had out of the Goods;
 - Any characteristics of the Goods which may cause them to deteriorate or expire rapidly;
 - Any discounts that may have formed part of the purchase price of the Goods to reflect any lack of quality made known to the Customer at the time of purchase.Such discretion will be exercised only within the confines of the law.

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7 Title and risk of Goods

- 7.1 Title in the Goods passes to the Buyer when the Company has received full payment for the Goods.
- 7.2 Risk of loss or damage to the Goods passes to the Buyer when the Goods are delivered to the Buyer's address.
- 7.3 Until title passes the Buyer shall hold the Goods as bailee for the Company and shall store or mark them so that they can at all times be identified as the property of the Company.
- 7.4 The Company may at any time before title passes and without any liability to the Buyer:
repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Buyer's right to use, sell or otherwise deal in them;
for that purpose (or determining what if any Goods are held by the Buyer and inspecting them) enter any premises of or occupied by the Buyer.
- 7.5 The Buyer may sell the Goods before title passes on the condition that it does so as an agent for the Company and in the event that full payment for the Goods is not made in line with the Payment Terms the Buyer shall account for all proceeds of the sale to the Company. Should the Buyer sell the Goods at a loss the Buyer will still be liable for the full Price plus relevant taxes to the Company.

8 Limitation of Liability

- 8.1 In the case of Goods sold by the Company the only obligation accepted by the Company will be to pass on to the Buyer by way of assignment or transfer the benefit of any manufacturer's warranty the Company has received.
- 8.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) and relating to any Goods are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 The Buyer acknowledges that the provisions of Clauses 8.1 and 8.2 are fair and reasonable given that the Company is not the manufacturer or producer of the Goods (save in the case of the treatment of seeds by the Company) and given that the Company itself only has the benefit of any manufacturer's warranty in respect of the Goods.
- 8.4 If and to the extent that the Company has any legal obligation to the Buyer arising out of the quality, use or fitness for purpose of any Goods, breach of warranty or otherwise, the Company shall have no liability to the Buyer if:
the Buyer makes any further use of such Goods after it discovers or ought to have discovered any defect in the Goods;
the Buyer fails to follow the manufacturer's or Company's instructions or recommendations as to the storage, application or use of the Goods;

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the Buyer makes use of the Goods in abnormal weather or soil conditions;
there is an occurrence of any weed, pest or disease which are resistant to the Goods.

- 8.5 To the extent the Company has any legal obligation to the Buyer arising from these Terms, the Company shall at its option replace such Goods or refund the price of such Goods at the pro rata price provided that, if the Company so requests and to the extent reasonably possible, the Buyer shall return the Goods or the part of such Goods which are defective to the Company.
- 8.6 If the Company complies with clause 8.5 it shall have no further liability for a breach of any legal obligation to the Buyer in respect of such Goods.
- 8.7 Without prejudice to the generality of clause 8.2 the Buyer acknowledges that (save to the extent that the Company has provided any advice) it has relied on its own skill and knowledge in selecting the Goods and acknowledges that no condition or warranty is to be implied that the Goods are fit for any purpose other than those set out in the Directions for Use.
- 8.8 The Buyer is under duty to use, handle and store the Goods in accordance with any the Directions for Use or any instructions given by the Company. The Buyer will notify any person to whom the Buyer passes the Goods of the need to comply with the same and will indemnify the Company in respect of any loss or damage arising as a result of any failure by the Buyer to do so.
- 8.9 Nothing in these Conditions excludes or limits the liability of the Company or any of its employees, directors or agents for
death or injury to any human being resulting from its own or that of any of its employees', directors' or agents' negligence; or
fraudulent misrepresentation.
- 8.10 Subject to clause 8.9 above, the Company shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer, whether the same is suffered directly or indirectly or is immediate or consequential, which falls within any of the following categories:
special damage even though the Company was aware of the circumstances in which such special damage could arise; or
loss of business opportunity, goodwill or anticipated savings.
- 8.11 Other than provided for in other clauses in these Terms the Buyer shall serve notice in writing to the Company of any claim within one year of the date it became aware of the circumstances giving rise to the claim or the date when it ought reasonably to have become so aware.
- 8.12 The following provisions set out the Company's entire liability (including any liability for the acts and omissions of its employees, directors and agents) to the Buyer in respect of or arising out of the provision of any Advice by the Company

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- 8.13 All warranties, conditions and other terms implied by statute or common law and relating to any Advice are, to the fullest extent permitted by law, excluded
- 8.14 The Company shall have no liability for any Advice unless it is confirmed in writing.
- 8.15 The Company shall have no liability for any Advice unless the Company has specifically agreed with the Buyer that the Company will provide the Advice for a separate fee and not as part of any other sale.
- 8.16 Subject to these Terms, if the Company has any liability to the Buyer, the Company's entire liability to the Buyer in respect of any Event of Default shall be limited to damages of an amount equal to £200,000 (Two hundred thousand pounds)
- 8.17 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to one claim against the Company
- 8.18 Nothing in these Terms shall confer any right or remedy upon the Buyer which it would not otherwise be legally entitled

9 Overdue accounts

If the Buyer fails to pay the Company any sum when due, the Buyer will be liable to pay interest to the Company on the overdue amount. The rate of interest will be 8% above the official dealing rate of the Bank of England and be calculated daily until the payment is received.

10 Default

If the Buyer breaches any contract with the Company the Company shall without prejudice to any other rights and remedies it might have and without any liability whatsoever be at liberty forthwith by notice in writing to the Buyer to cancel all or any orders and contracts or any part thereof remaining unfulfilled between the Company and the Buyer.

11 Force Majeure

The Company reserves the right to defer the date of delivery to cancel or reduce an order without liability to the Buyer if it is prevented from carrying on its business due to circumstances beyond its reasonable control. These may include without limitation, acts of God, governmental actions, war or national emergency, or restraints or delays affecting carriers or inability or delay in obtaining supplies of raw materials.

12 Patents & Trade Marks

No warranty or representation is given by the Company that the Goods do not infringe any letters patent, trade marks registered or unregistered designs or any other intellectual property rights. The use of the Company's trade mark requires the prior written approval of the Company.

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13 Data Protection

- 13.1 The company agrees to process Buyer data in accordance with the lawful and reasonable obligations of the Data Protection Act 1998.
- 13.2 The Company may transfer information about the Buyer to its financiers, who:
- 13.2.1 may use, analyse and access information about the Buyer including the nature of its transactions, and exchange such information with other members of their group of companies and others for credit or financial assessment, market research, statistical analysis, insurance claim, underwriting and training purposes and in making payments and servicing their agreement with the Company;
- 13.2.2 from time to time, may make searches of the Buyer's record at credit reference agencies where its record with such agencies may include searches made and information given by other businesses; details of their searches will be kept by such agencies but will not be seen by other organisations that may make searches;
- 13.2.3 may give information about the Buyer and its indebtedness to insurers, guarantors, indemnifiers or bankers as may be required to evaluate, insure and estimate the risk of trading.
- 13.3 The Company may monitor and/or record any phone calls the Buyer may have with them, for training and/or security purposes.
- 13.4 In the event that the Buyer transfers all or any of their rights and obligations under their agreement with the Company to a third party, the Company transfer information about the Buyer to enable the third party to enforce their rights or comply with the obligations.
- 13.5 The Company may from time to time, make searches of the Buyer's record at credit reference agencies where its record with such agencies may include searches made and information given by other businesses; details of these searches will be kept by such agencies but will not be seen by other organisations that may make searches.

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14 General

- 14.1 Each right or remedy of the Company under these Terms is without prejudice to any other right or remedy of the Company whether under these Terms or not.
- 14.2 Failure or delay by the Company in enforcing or partially enforcing any provision of these Terms will not be construed as a waiver of any of its rights under the contract.
- 14.3 Any waiver by the Company of any breach of or any default under any provision of these Terms by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect any of the other Terms.
- 14.4 If any part of these Terms is held by a court to be invalid, void or unenforceable in the jurisdiction of the court in which that decision is made, the remainder of the provisions of the Terms shall remain in full force and effect.

15 Proper Law

The construction validity and performance of this contract, shall be governed by the law of England.