



# FERTILIZER **TRADE** RULES



**ARA FERTILIZER TRADE RULES**

**Introduction**

The ARA Fertilizer Contract Task Force developed the following ARA Fertilizer Trade Rules (“Trade Rules”) for members of the fertilizer industry to use as the basis for their trading terms with others. The purpose of these voluntary trade Rules is to facilitate the sale of fertilizer and improve trade practices in the industry. The ARA Board of Directors approved this document on February 13, 2013.

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## Part A – General Provisions and Application

RULE 1: Reference and incorporation of the Trade Rules are discretionary. Members of the fertilizer industry are encouraged to incorporate the Trade Rules (as reflected in the revised ARA Model Fertilizer Contract) or to use the Trade Rules as members deem appropriate for a particular transaction. The Trade Rules will only apply to the extent that the parties to a Contract expressly incorporate the Trade Rules in the parties' Contract in writing at the time of entering into the Contract. When a Contract incorporates these Trade Rules, the rules shall apply in full, unless exceptions are specified in the Contract.

RULE 2: Unless stated otherwise in a particular Contract:

- (a) The singular includes plural and vice versa;
- (b) A reference to "includes" or "including" is to be construed without limitation;
- (c) A reference to Price represents U.S. dollars;
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) A reference to a person, corporation, trust, partnership, incorporated body or other entity includes any of them;
- (f) If any individual provision of these Trade Rules is determined to be null and void, it shall be severed and the remaining provisions shall remain valid and in effect; and
- (g) Nothing in these Trade Rules is to be interpreted against a party solely on the ground that the party put forward these Trade Rules or any part of them.

## Part B - Definitions

RULE 3: Definitions for these Trade Rules include the following:

- (a) **Buyer** means the person or entity agreeing to purchase the Product(s) from the Seller in accordance with the terms of the Contract and these Trade Rules.
- (b) **Contract** means the legally binding contract between the Seller and the Buyer for the sale and purchase of the Product(s).
- (c) **Delivery** means the actual or constructive conveyance of Product(s) to the Buyer.
- (d) **Delivery Period** means the date stated in the Contract for the Delivery of the Product(s).
- (e) **Delivery Location** means the address specified in the Contract where the Seller has agreed to deliver the Product(s), if applicable.
- (f) **Fair Market Price** means:
  - (i) the price per ton, ascertained by bona fide transactions for products the same as or similar to the Product(s) (in specification and Quantity) which are actively trading during the Delivery Period;
  - (ii) where there is no active trade at the relevant time, the price being offered by other sellers in the market place for products the same as or similar to the Product(s) during the Delivery Period; or

- (iii) where there is no active trade at the relevant time, the price being offered by other sellers in the market place for products the same as or similar to the Product(s) on the business day following the giving of notice by the Buyer pursuant to these Trade Rules or the last day of the Delivery Period.
- (g) **Order** means an order for the Product(s) issued by the Buyer to the Seller.
- (h) **Overdue Amount** means the amount of the Price that the Buyer has not paid to the Seller if the Payment Due Date has passed.
- (i) **Other Losses** means losses actually incurred by a party as a result of the other party's default as stated in Rule 63 of these Trade Rules. As stated in Rule 67, a party's total amount of damages is limited to the purchase Price of the Product(s).
- (j) **Payment Due Date** means the date when the Buyer agrees to pay the Seller for the Product(s) according to the terms of the Contract.
- (k) **Price** means the price payable to the Seller for the Product(s) as stated in the Contract.
- (l) **Product(s)** means the fertilizer and/or related products that the Seller agrees to sell and the Buyer agrees to purchase, as stated in the Contract.
- (m) **Product Specifications** means the product description as set out in the Product and/or manufacturer label.
- (n) **Quantity** means the amount of the Product(s) stated in the Contract.
- (o) **Seller** means the person agreeing to sell the Product(s) to the Buyer in accordance with the terms of the Contract and these Trade Rules.
- (p) **Trade Rules** means these ARA Fertilizer Trade Rules.

### Part C – Contract Contents

**RULE 4:** Each Contract shall be in writing and include the following information:

- (a) Date of Contract
- (b) Product Specification
- (c) Quantity of Product(s)
- (d) Price per Unit/Unit of Measure
- (e) Total Price
- (f) Delivery Period
- (g) Delivery Location
- (h) Payment Due Date
- (i) Price Point – F.O.B. Location
- (j) Buyer's details, including name and address
- (k) Seller's details, including where applicable name and address
- (l) Other terms and conditions (if any) in addition to these Trade Rules

**RULE 5:** If Buyer and Seller have been trading on agreed terms and conditions, the use of the phrase "usual terms" in any Contract confirmation shall mean that such terms and conditions that governed previous trades of a like character shall apply instead of the specifications required above.

**RULE 6:** By signing the Contract, both the Buyer and Seller represent that they are not insolvent, as that term is defined in the Uniform Commercial Code. If either party's financial condition is unsatisfactory to the other party, the complaining party may suspend its performance until it receives reasonable adequate assurance that the other party is able to fully perform under the Contract.

**RULE 7:** Both the Buyer and Seller represent and warrant that they are merchants as that term is defined by the Uniform Commercial Code.

#### **Part D – Contract Formation**

**RULE 8:** The Buyer may submit an Order either verbally or in writing. The Order alone will not be legally binding and no Contract will be formed unless the Seller otherwise confirms acceptance of the Order in accordance with Article 2 of the Uniform Commercial Code.

**RULE 9:** If the Seller is willing to accept the Order, the Seller will send to the Buyer a Contract in writing.

**RULE 10:** Within two (2) business days of receipt of the Contract, the Buyer must carefully check all specifications in the Contract and either:

- (a) Sign and return the Contract to Seller; or
- (b) Upon finding any material discrepancies, immediately notify the Seller that the terms of the Contract are unacceptable.

**RULE 11:** If the Buyer submits a written notification that the terms of the Contract are unacceptable, the Seller may submit a revised Contract, in which case the Buyer has two (2) days to notify the Seller of any discrepancies. This process shall continue until the terms of the Contract are confirmed.

**RULE 12:** If the Buyer accepts the Contract and proposes additional terms, the additional terms are to be construed as proposals for addition to the Contract. Such additional terms become part of the Contract unless:

- (a) The Contract expressly limits acceptance to the terms of the offer;
- (b) The additional terms materially alter the Contract; or
- (c) Notification of objection to the additional terms has already been given or is given within a reasonable time after receipt.

**RULE 13:** A Contract will be formed when either:

- (a) The Buyer signs and returns the Contract; or
- (b) The Buyer and Seller recognize the existence of a Contract sufficient to establish a Contract for sale under Article 2 of the Uniform Commercial Code.

**RULE 14:** Any variation, error or omission detected in the Order or Contract shall be corrected and brought to the attention of the other party within twenty-four (24) hours after discovery. Failure to

immediately notify the other party of any inaccuracies shall be construed against the party with knowledge of the discrepancy.

### **Part E – Quantity**

**RULE 15:** The Quantity shall include the total quantity of the transaction. Except as provided in Rules 16 and 17, any Product(s) ordered in excess of the Quantity stated will be priced at Seller's market price at the time of Delivery. The Contract shall clearly indicate if the quantities expressed are in pounds (lb), gallons (gal), tons or other measurement. If necessary, the following conversions apply:

One ton = one 'short ton' or 2,000 lbs

Cwt = hundredweight or 100 lbs

1lb = 0.4536 kg

1kg = 2.205 lbs

1,000 kg = 2,205 lbs (1 metric tonne)

**RULE 16:** The addition of the word "about" or "approximately" or "~" shall authorize the Seller to deliver, at the conditions of the Contract, a quantity up to five (5) percent more or less than the Quantity stated in the Contract.

**RULE 17:** If no variance of Quantity is stated in the Contract, then the Seller will have the option to vary the Quantity of the Product up to (the lesser of): two (2) tons or two (2) percent of the Quantity for that Product(s).

**RULE 18:** In the case of non-Delivery or partial Delivery, the Quantity stated in the Contract shall serve as basis for the accounting.

**RULE 19:** If the Quantity stated in the Contract varies between two figures, the Seller shall deliver within these limits. In case of non-Delivery or partial Delivery, the average of the two figures shall serve as basis for the accounting.

**RULE 20:** The delivery quantity used to calculate Price will be determined by the Seller.

**RULE 21:** The Buyer acknowledges and understands that some Product(s) consist of variable sized material and may segregate when unloaded or during Delivery. The Seller will not be liable to the Buyer with respect to quality changes resulting from segregation, whether occurring during Delivery or otherwise.

### **Part F – Payment**

RULE 22: Price does not include taxes, surcharges, delivery costs, or application costs that may be applicable.

RULE 23: In the case of partial Delivery, the Price will be adjusted in accordance with the variation in Quantity on a pro-rata basis.

RULE 24: Full payment must be received from the Buyer by the Payment Due Date.

RULE 25: All payments shall be made in U.S. Dollars.

RULE 26: In the event of nonpayment, the Buyer agrees to pay any and all costs of litigation, including but not limited to reasonable attorneys' fees, court costs, and other reasonably associated expenses.

RULE 27: In the event of a breach of the Contract, the breaching party shall pay interest on any amount owing to the non-breaching party by reason of the breach, until paid, at the highest rate permitted by applicable law.

### **Part G – Change or Modification of Contract**

RULE 28: The specifications or terms and conditions of a Contract cannot be altered or amended without the express consent of the Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed by both in writing.

RULE 29: Product rollover may be requested by the Buyer, but approval is at the Seller's discretion. Storage fees shall be assessed at the Seller's standard rates.

RULE 30: The Contract cannot be assigned without the express written consent of both the Buyer and the Seller. The Contract shall be binding upon and inure to the benefit of the Buyer and Seller and their respective permitted successors and assigns.

### **Part H – Cancellation**

RULE 31: Once signed by both the Buyer and the Seller, the Contract cannot be cancelled without express written approval from both parties.

### **Part I – Delivery**

RULE 32: Contracts shall state a Delivery Period within which shipment or Delivery is to be made.

RULE 33: Where commercially necessary, Delivery may be by installments.

RULE 34: When the Delivery Period falls on Saturday, Sunday, or a legal holiday, Delivery may be made on the next business day.

RULE 35: First half of the month shall mean the first fifteen (15) days, including February, and the last half of the month shall mean the remaining days.

RULE 36: First week in [month]; second week in [month]; etc. shall mean: First to seventh day inclusive; eighth to fourteenth day inclusive; fifteenth to twenty-first day inclusive; twenty-second to last day of the month inclusive. The fourth week of the month may consist of from seven (7) to ten (10) days.

RULE 37: First calendar week in [month]; second calendar week in [month]; etc. shall mean the respective weeks as shown on the calendar. A calendar week begins on Monday. The first calendar week begins on the first Monday of the month, and the last calendar week may consist of from one (1) to seven (7) days.

### **Part J – Risk of Loss/Damage**

RULE 38: Title to the Product(s) shall remain with the Seller until (the later of): (a) payment of the Price has been received by the Seller; or (b) at the time of Delivery, whichever is the later.

RULE 39: Risk of loss and/or damage passes to the Buyer upon arrival at the Delivery Location or when the Product(s) is (are) constructively made available at the Buyer's destination.

RULE 40: For in-store Contracts, risk of loss and/or damage passes to the Buyer when the Contract is signed by the Buyer, unless and to the extent that the warehouse receipt and/or storage Contract assumes the risk of loss and/or damage.

RULE 41: On F.O.B. origin or F.O.B. basing point Contracts, risk of loss and/or damage passes to the Buyer at the time and place of shipment. The time of shipment is the moment that the carrier accepts the appropriate shipping document.

### **Part K – Rejection of Products**

RULE 42: The Buyer will inspect the Product(s) upon Delivery and will immediately notify the Seller in writing if the Product(s) contain any defects. Notice by the Buyer is only effective if written objection is received by the Seller's officer or manager at the Seller's address set forth in the Contract.

RULE 43: To the extent permitted by law, the Seller shall not be liable for any defects in the Product(s) if the Buyer does not notify the Seller, in writing, within ten (10) days of Delivery.

RULE 44: The Buyer's receipt of any Product(s) delivered hereunder shall be an unqualified acceptance of, and waiver by the Buyer of any and all claims with respect to, such Product(s) unless the Buyer gives the Seller written notice of claim within ten (10) days after such receipt.

RULE 45: If the Buyer provides a timely, written notice of defect to the Seller, the Seller must respond within ten (10) days notice that it either: (a) accepts the Buyer's claim; or (b) rejects the Buyer's claim.

RULE 46: If the Seller does not respond within the ten (10) day period, the Seller will be deemed to have accepted the Buyer's claim.

RULE 47: The Buyer must properly store and protect any allegedly defective Product(s) until settlement of the claim. As a condition to compensation, the Seller may require the Buyer to return the allegedly defective Product(s).

RULE 48: If the Seller accepts the Buyer's defect claim, the Seller may elect to either: (a) replace the Product(s) at issue; or (b) refund the Price to the Buyer.

### **Part L – Failure to Perform**

RULE 49: The Buyer understands that all Orders and Contracts are subject to the Seller's ability to obtain the necessary materials or Product(s), and all Orders and Contracts are subject to the Seller's current manufacture/distribution schedules, government regulations, orders, directives, and restrictions that may be in effect from time to time.

RULE 50: Neither the Buyer nor the Seller shall be liable for delay in its performance when such delay is due to the unforeseen causes beyond its reasonable control and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, governmental action, fires, floods, earthquakes, epidemics, quarantine restrictions, labor difficulties, freight embargoes, plant breakdowns, transportation shortages, or terrorist attack. Should any of the foregoing events occur, at the aggrieved party's option and upon notice to the other party, the aggrieved party's performance may be extended for a time equivalent to the delay.

RULE 51: Nothing in this section shall excuse the Buyer from its obligation to make timely payment under the Contract. A lack of capacity to pay due to production risks or crop failure does not constitute an unforeseen cause beyond the Buyer's control.

RULE 52: If the Seller finds that it will not be able to perform according to the terms of the Contract, the Seller must at once give notice to the Buyer by telephone and confirm in writing. The Buyer shall elect to either: (a) grant the Seller an extension to perform; or (b) cancel the defaulted portion of the Contract based on the pro rata Price of the remaining Product(s).

RULE 53: If the Buyer finds that it will not be able to perform according to the terms of the Contract, the Buyer must at once give notice to the Seller by telephone and confirm in writing. The Seller shall elect to either: (a) grant the Buyer an extension to perform; or (b) cancel the defaulted portion of the Contract based on the pro rata Price of the remaining Product(s). The Buyer will be responsible for any

necessary storage or warehouse costs resulting from a delayed Delivery Period caused by the Buyer or circumstances within the Buyer's control.

RULE 54: The Buyer understands and acknowledges that the Seller, in reliance on the Contract, has or will obligate itself to purchase the Product(s) for the Buyer. In the event any Quantity of Product(s) cannot be delivered during the Delivery Period as a result of the Buyer's refusal to take Delivery, the Seller may treat the Buyer's refusal as a breach of the Contract and will be entitled to remedies stated in these Trade Rules or other remedies authorized by the applicable law.

RULE 55: If the Buyer has not paid in full for the Product(s) in accordance with the payment terms stated in the Contract, without limiting other rights of the Seller, the Seller may at its option: (a) withhold Delivery of the Product(s) (or any other services or products under any other contract between the parties) ordered but not delivered until the Buyer has paid the Seller; and (b) charge the Buyer interest on the Overdue Amount, calculated from the Payment Due Date until the date that payment is made, pursuant to Rule 27; and (c) terminate the Contract and the Buyer will be deemed to be in default.

### **Party M – Default**

RULE 56: Failure of the Buyer to accept Delivery of the Product(s) within the Delivery Period is a default.

RULE 57: Failure of the Seller to deliver the Product(s) with the Delivery Period is a default.

RULE 58: The Buyer and Seller each agree to give written notice to the other as soon as they know that they will be in default.

RULE 59: Where either party advises the other that they will be in default, the non-defaulting party will notify the party in default of the non-defaulting party's elected remedy pursuant to Rule 52 or 53.

RULE 60: Where either party reasonably believes the other party to be in default, they will give the defaulting party written notice and along with the elected remedy pursuant to Rule 52 or 53.

RULE 61: In the case of default by the Buyer, if the Fair Market Price has fallen below the Price, the Buyer must pay within seven (7) days of written demand by the Seller, an amount equal to the undelivered Quantity of the Product(s) multiplied by the difference between the Price and the Fair Market Price of the Product(s). If the Fair Market Price has risen above the Price, no compensation is payable by the Seller to the Buyer.

RULE 62: In the case of default by the Seller, if the Fair Market Price has risen above the Price, the Seller must pay within seven (7) days of written demand by the Buyer, an amount equal to the undelivered Quantity of the Product(s) multiplied by the difference between the Price and the Fair Market Price of the Product(s). If the Fair Market Price has fallen below the Price, no compensation is payable by the Buyer to the Seller.

**RULE 63:** In addition to any losses recoverable under Rule 61 and 62 above, the non-defaulting party may also be entitled to claim any of the following Other Losses:

- (a) Costs for extended storage;
- (b) Handling costs;
- (c) Transport costs; and
- (d) Interest costs.

**RULE 64:** Where appropriate, the parties may specify, by way of liquidated damages, the amount of Other Losses that may be recoverable by one or both parties. The parties agree that such an amount will be a genuine pre-estimate of the loss that a party (or both parties) will incur as a result of a default, and will not constitute a penalty.

#### **Part N – Notice**

**RULE 65:** All notices given under these Trade Rules shall be given by writing delivered by hand, by U.S. Mail, by facsimile, or by email.

#### **Part O – Damages Limitation and Indemnification**

**RULE 66:** In no event shall either the Buyer or the Seller be liable for any incidental, consequential, punitive, or similar damages of any kind arising under or in any way related to the Contract, except as otherwise specified herein.

**RULE 67:** In no event shall either the Buyer's or the Seller's aggregate liability to the other party arising under or in any way related to the Contract exceed the purchase Price of the Product(s) , except as otherwise specified herein.

**RULE 68:** The foregoing limitations shall apply regardless of the form of any claim, whether for breach of any warranty, for breach or repudiation of any other term or condition of the Contract or any related engagement letter or other writing, for negligence, on the basis of strict liability, or otherwise.

#### **Part P – Warranties and Limitations**

**RULE 69:** **To the fullest extent permitted by the applicable law, the Seller makes no representations or warranties other than warranties specifically stated in the Contract.**

**RULE 70:** **The Seller explicitly disclaims all warranties, guarantees, or representations of any kind to the Buyer, either express or implied, or by usage or trade, statutory or otherwise, with regard to the Product(s) sold, including but not limited to all warranties of merchantability, fitness for a particular purpose, use and eligibility of the Product(s) for any particular trade usage.**

**RULE 71:** The Seller's sole warranty for Product(s) is that the Product(s) will meet the Product Specifications at the time of Delivery.

RULE 72: The Buyer assumes all risk and liability from the results obtained by the use of any Product(s) delivered by the Seller, or in manufacturing processes of the Buyer or in combination with other substances.

RULE 73: At the Buyer's request, the Seller may furnish such technical assistance and information as it has available with respect to the use of the Product(s). Unless the Seller otherwise agrees in writing, all such technical assistance and information will be provided gratis, and the Buyer assumes sole responsibility for results obtained in reliance thereon.

### **Part Q – Arbitration**

RULE 74: Unless arbitration is expressly excluded in the Contract, any controversy or claim arising out of or relating to the Contract or breach thereof shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. Arbitration shall take place in the State where the Seller is located (as stated by the Seller's address on the Contract) or as reasonably agreed to by the parties.

RULE 75: The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof.

RULE 76: Each Contract shall be interpreted according to and governed by the laws in force in the state when the Seller is located (as stated by the Seller's address in the Contract), unless otherwise stated in the Contract, and the parties submit to the non-exclusive jurisdiction of courts in that jurisdiction for the purposes of the Contract dispute.

RULE 77: The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

RULE 78: Should litigation arise, the prevailing party is entitled to recover all costs of litigation, including reasonable attorneys' fees and costs, from the other party.

### **Part R – Entire Agreement**

RULE 79: The Contract, as supplemented by these Trade Rules, constitutes the entire agreement between the parties with respect to its subject matter and supersede all previous understandings, representations, proposals, and discussions, whether oral or written, between the parties concerning its subject matter, except as specified herein.

RULE 80: All rights of the Buyer and the Seller are separate and cumulative and not one of them, whether or not exercised shall be deemed to be an exclusion of any of the other rights and shall not limit or prejudice any other legal or equitable right which either party may have.

RULE 81: The waiver of any of the terms of the Contract by either party will not be a waiver of any subsequent failure to comply fully with or perform the same or any other term of the Contract.



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