

## TERMS AND CONDITIONS

### Our Disclosures:

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

You may be required to pay our costs if you fail to comply with certain terms in these Terms (including where you incorporate or resell the Products in a manner inconsistent with these Terms, breach the rights of any third party, breach the Intellectual Property Rights of us or a third party, where Your Products (which incorporate the Products) are the subject of a product liability claim, or as a result of your use or misuse of the Products);

Subject to your rights under the Australian Consumer Law, the Products are provided 'as is', without any representations, warranties or conditions of any kind, including warranties as to fitness for a particular purpose;

We may be legally required to, or we may voluntarily decide to, recall certain Products;

Our liability under these terms is limited to the price paid by you for the Products the subject of the relevant claim, and we will not be liable for consequential loss; and

We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Site or for featuring certain Products or services on the Site.

### 1 Introduction

(a) Our website (**Site**) is operated by BEYOND AG PTY LTD (ABN: 34 633 351 452) (**Bardee, we, our or us**). These terms and conditions, as well as any accompanying Quote and sales invoice (**Terms**) are between us and **you**, the person placing an order for Products through the Site or in response to a quote we have sent you (**Quote**). If you are using the Site on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

### 2 Accepting these Terms and using the Site

- (a) You accept these Terms by placing an order via the Site or in accordance with the process set out in any Quote.
- (b) You must not use the Site and/or place an order for Products through the Site unless you are at least 18 years old.
- (c) When using the Site, you must not do or attempt to do anything that is unlawful or inappropriate, including:
  - (1) anything that would constitute a breach of an individual's privacy or any other legal rights;
  - (2) using the Site to defame, harass, threaten, menace or offend any person;
  - (3) using the Site for unlawful purposes;



- (4) interfering with any user of the Site;
- (5) tampering with or modifying the Site (including by transmitting viruses and using trojan horses);
- (6) using the Site to send unsolicited electronic messages;
- (7) using a false email address or pretending to be someone other than yourself;
- (8) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Site; or
- (9) facilitating or assisting a third party to do any of the above acts.
- (d) You may be permitted to post, upload, publish or submit information and content on the Site. You agree that you are solely responsible for all content that you make available on the Site. You represent, warrant and agree that:
  - (1) neither your content nor the posting, uploading, publishing or submission of your content on our Site will infringe, misappropriate or violate a third party's Intellectual Property Rights, or rights of publicity or privacy, or result in the violation of any applicable law;
  - (2) your content will not contain libellous or otherwise unlawful, abusive or obscene material;
  - (3) your content will not mislead us or third parties as to the accuracy of your content; and
  - (4) we take no responsibility and assume no liability for any content posted by you or any third party on the Site.
- (e) We may, but have no obligation to, monitor, edit or remove any content that we determine in our sole discretion, is unlawful, offensive, threatening, libellous, defamatory, pornographic, obscene or otherwise objectionable or violates any person's Intellectual Property Rights or these Terms.

### **3 Accounts**

- (a) You may purchase Products from us without an account or you may choose to create an account with us which allows you to review your order history and save your wish list.
- (b) You must ensure that any personal information you give to us when creating an account is accurate and up-to-date. All personal information that you give to us will be treated in accordance with our Privacy Policy.
- (c) It is your responsibility to keep your account details confidential. You are responsible for all activity on your account, including purchases made using your account details.

### **4 Orders**

- (a) If you place an order for Products, you are making an order to purchase the Product(s) for the price listed on the Site or in the Quote (including the delivery fees or other applicable charges and taxes).
- (b) We may, at our absolute discretion, accept or reject an order. If we need to reject your order, we will notify you within a reasonable time after your order is placed. Once we accept an order, a binding agreement is formed for the supply of Products to you in accordance with this clause.
- (c) It is your responsibility to check the order details, including selected Products, delivery details and pricing, before you submit your order.
- (d) When you order and pay and your payment has been validated, we will provide you with an order confirmation email, which may include an order number, the delivery and billing addresses and a description of what was ordered.
- (e) All purchases made through the Site are subject to availability. We do our best to keep Products in stock and to keep the Site up to date with the availability of Products.
- (f) We may cancel, at any time before delivery and for whatever reason, an order that we have previously accepted, including where there is a considerable delay in dispatching your order, if for any reason we cannot supply the Products you

order (for example for an event beyond our reasonable control) or if Products ordered were subject to an error on our Site (for example in relation to a description, price or image). We will contact you using the details you provided when you placed your order. If we do need to cancel your order, you may choose to receive a refund or a store credit. If you choose a refund or store credit, any delivery costs you have paid for the Products will also be refunded or credited to you.

## 5 Price and payments

- (a) You must pay us the purchase price of each Product you order, plus any applicable delivery costs as set out on the Site or in the Quote (the **Price**) in accordance with this clause. All amounts are stated in Australian dollars and are inclusive of Australian GST (where applicable).
- (b) You must pay the Price upfront (prior to dispatch) using one of the methods set out on the Site or in the Quote.
- (c) Prices for our Products are subject to change without notice. We reserve the right at any time to modify or discontinue Products (or any part or content thereof) without notice at any time.
- (d) You must not pay, or attempt to pay, the Price by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- (e) The payment methods we offer are set out on the Site or in the Quote. We may offer payment through a third-party provider, for example, Stripe. You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions.
- (f) We do not store any credit card details, and all payment information is collected and stored through our third-party payment processor.
- (g) Where you order the Products for delivery outside Australia, you may need to pay custom charges or taxes in addition to the Price.
- (h) We may from time to time issue promotional discount codes for certain Products.
- (i) To claim the discount, you must enter the promotional discount code at the time of submitting your order.
- (j) The conditions of use relating to promotional discount codes will be set out on the Site. We may also from time to time run competitions on the Site or on social media. These competitions are subject to terms and conditions which will be made available on the Site at the time of the competition.

## 6 Delivery, title and risk

- (a) If possible we will deliver the Products to the delivery address you provide when making your order. Our delivery areas are set out on the Site. Please refer to the delivery information on the Site to ensure you are in our delivery area. If you are not in our delivery area please contact us to discuss delivery options.
- (b) We are unable to re-direct orders once items have been dispatched.
- (c) Unless explicitly stated, delivery costs are included in the Price.
- (d) We normally dispatch Products within 14 days of receiving an order, unless otherwise noted on the Site. Any delivery periods displayed on the Site are estimates only, based on the information provided by the delivery company.
- (e) We deliver the Products using a range of delivery methods. You may need to sign for some deliveries. If neither you nor your authorised representative is at the delivery address to accept delivery, you agree that we may leave the Products at your premises.
- (f) Title to the Products will remain with us until you have paid the Price in full for the Products. Until title passes, you must not do anything which seeks to create an encumbrance, lien, charge or other interest in or over the Products.
- (g) Risk in the Products will pass to you as soon as they are delivered to the delivery address you provided in your order.

## 7 Returns

### Change of mind returns

- (a) We offer exchanges (subject to stock availability) or refunds of our fertiliser Products only, for change of mind where we determine (at our absolute discretion):
- (1) you have provided the proof of purchase and you purchased the Products within 30 days prior to the request for an exchange or refund;
  - (2) the Products are in their original condition and have not been opened, used, damaged or tampered with;
  - (3) the Products are in their original undamaged packaging; and
  - (4) a return and exchanges form has been completed.
- (b) You will be responsible for paying for your own shipping costs for returning your item and any re-delivery costs that we incur.
- (c) If you receive a refund, the cost of shipping will be deducted from your refund as shipping costs are non-refundable.
- (d) Where you are a consumer under the Australian Consumer Law, you may have rights in addition to this clause.

### Australian Consumer Law

- (e) Clauses 7(f) and (g) apply to you where you are a consumer under the Australian Consumer Law.
- (f) Nothing in these Terms attempts to modify or exclude the conditions, warranties and undertakings, and other legal rights, under the Australian Consumer Law. In Australia, our goods come with guarantees which cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. Any and all other warranties or conditions which are not guaranteed by the Australian Consumer Law are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in these Terms.
- (g) Where you return Products to us to seek an Australian Consumer Law remedy, you will need to cover any associated costs (for example delivery costs) of you returning the Products to us.
- (h) Where your claim is a valid claim under the Australian Consumer Law, we will refund your return delivery costs and, depending on the failure, either dispatch a new or repaired replacement Product or refund you the Price of the relevant Product. Please contact us for further information.

## 8 Your obligations

- (a) You expressly agree that your use of, or inability to use, our Products is at your sole risk. To the extent permitted by law, the Products are provided 'as is' and 'as available' for your use, without any representation, warranties or conditions of any kind, either express or implied, including all implied warranties or conditions of merchantability, merchantable quality, fitness for a particular purpose, durability, title, and non-infringement.
- (b) You must follow any relevant safety information and safety or risk warnings relating to the Products included on the packaging or other published information such as the Product specification or Safety Data Sheet which can be found [here](#). By purchasing or using the Product you acknowledge and agree that you have accessed, read, understood and agree to comply with the published safety information including the Safety Data Sheet. We may update the safety information from time to time and will send you notification of any updates to the safety information made after the purchase date.
- (c) You agree that where you incorporate our Products into Your Products, that you must ensure that your packaging and labelling clearly set out any relevant risk warnings that we have published or made available as per clause (b) above.

(d) In addition to the restrictions in clause 11, you are prohibited from reselling or resupplying the Products 'as is' to third parties, including online without our prior written consent. For the avoidance of doubt, this includes your website, Amazon.com, eBay or any other online marketplace.

(e) You agree to ensure that you obtain all licences, consents and permissions in order to incorporate our Products into Your Products, including for commercial sale.

(f) You agree that monetary damages may not be an adequate remedy for a breach of this clause 8. We are entitled to seek an injunction, or any other remedy available at law or in equity, at our discretion, to protect us from a breach (or continuing breach) of this clause 8.

## 9 Recall Policy

(a) Occasionally, Products are recalled by the Australian Competition and Consumer Commission. Where this happens to any Products you have purchased from us, you will be notified and you must stop using the Products immediately. You will be provided with information as to how to return the Products to us.

(b) We may voluntarily recall certain Products. Where we do this, we will contact you through the contact details you provided when placing your order, and will also publish Product recall details on the Site. Where we voluntarily recall Products, we will provide you with a full refund of the Price paid in respect of those Products.

## 10 Liability

(a) You may have rights under the Australian Consumer Law (see above), and nothing in this Liability clause attempts to modify or exclude those rights.

(b) Despite anything to the contrary, to the maximum extent permitted by law:

(1) our maximum aggregate liability arising from or in connection with the Terms (including the Products and/or the subject matter of the Terms) will be limited to, and must not exceed, the portion of the Price paid by you to us for the Products the subject of the relevant claim; and

(2) we will not be liable to you for any consequential losses, including loss of profit (including anticipated profit), loss of benefit (including anticipated benefit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise, including where you have incorporated the Products into Your Products.

(c) To the maximum extent permitted by law, you are liable for, and agree to indemnify us and hold us harmless in respect of, any Liability that we may suffer, incur or otherwise become liable for, arising from or in connection with:

(1) your use or misuse of the Products, including any storage or handling of the Products;

(2) Your Products becoming the subject of a product liability claim, contractual claim, breach of warranty claim or any other type of claim (including breach of Intellectual Property Rights);

(3) your negligent or fraudulent acts or omissions;

(4) your breach of the rights of any third party;

(5) your breach of clause 8 (Your obligations); or

(6) your breach of clause 11 (Intellectual property).

(d) Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against any liability caused or contributed to by, arising from or connected with any event or circumstance which is beyond our reasonable control including but not limited to, fires, hurricanes, typhoons, earthquakes, landslides, tsunamis, mudslides or other catastrophic natural disasters, civil riot, civil rebellion, revolution, terrorism, insurrection,

militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

(e) You agree that any information contained on the Site and any materials provided with our Products (collectively **Materials**), are provided for general information purposes only and do not take into account your personal circumstances.

## 11 Intellectual property

(a) All Intellectual Property developed, adapted, modified or created by us or our personnel (including in connection with the Terms, any content on the Site, and the Products) (**Our Intellectual Property**) will at all times vest, or remain vested, in us.

(b) You must not use Our Intellectual Property for commercial purposes, including, for example, to advertise your own business, for re-sale, or for any other revenue generation activity.

(c) You must not, without our prior written consent:

(1) copy or exploit, in whole or in part, any of Our Intellectual Property;

(2) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party;

(3) use Our Intellectual Property on any product packaging or in any promotional or advertising materials;

(4) permit a third party to use Our Intellectual Property; or

(5) breach any intellectual property rights connected with the Site or the Products, including (without limitation) altering or modifying any of Our Intellectual Property; causing any of Our Intellectual Property to be framed or embedded in another website or other products, including Your Products; or creating derivative works from any of Our Intellectual Property.

(d) Nothing in the above clause restricts your ability to publish, post or repost Our Intellectual Property on your social media page or blog, provided that:

(1) you do not assert that you are the owner of Our Intellectual Property;

(2) unless explicitly agreed by us in writing, you do not assert that you are endorsed or approved by us;

(3) you do not damage or take advantage of our reputation, including in a manner that is illegal, unfair, misleading or deceptive; and

(4) you comply with all other terms of these Terms.

(e) You agree that monetary damages may not be an adequate remedy for a breach of this clause 11. We are entitled to seek an injunction, or any other remedy available at law or in equity, at our discretion, to protect us from a breach (or continuing breach) of this clause 11.

## 12 General

(a) **Disputes:** Neither party may commence court proceedings relating to any dispute arising from, or in connection with, these Terms without first meeting with the other party to seek (in good faith) to resolve that dispute (unless that party is seeking urgent interlocutory relief or the dispute relates to compliance with this clause).

(b) **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided when you submitted your order or in your account. Any notice may be sent by email, and will be deemed to have been served at the time of transmission in the case of transmission by email.

- (c) **Suggestions and complaints:** We are always looking to improve our services. If you have any suggestions or a complaint, please notify us on our contact details below and we will take reasonable steps to address any concerns you have.
- (d) **Assignment:** You must not assign any rights or obligations under these Terms, whether in whole or in part, without our prior written consent.
- (e) **Entire agreement:** Subject to your rights under the Australian Consumer Law, the Terms contain the entire understanding and agreement between you and us in respect of their subject matter.
- (f) **Amendment:** We may, at any time and at our discretion, vary these Terms by publishing varied terms on the Site. Prior to placing an order, we recommend you carefully read the terms that are in effect at that time to ensure you understand and agree to them. For any order that has been accepted by us, the terms and conditions that apply will be the ones that were in effect (and which you agreed to) when you placed your order.
- (g) **Governing law:** These Terms are governed by the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria, Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts. The Site may be accessed in Australia and overseas. We make no representation that the Site complies with the laws (including intellectual property laws) of any country outside of Australia. If you access the Site from outside Australia, you do so at your own risk and are responsible for complying with the laws in the place you access the Site.
- (h) **Third party sites:** The Site may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Site, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Site (**Affiliate Link**) or for featuring certain Products or services on the Site. We will make it clear by notice to you which (if any) Products or services we receive a benefit to feature on the Site, or which (if any) third party links are Affiliate Links.
- (i) **Severability:** In the event that any provision of these Terms is determined to be unlawful, void or unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms, such determination shall not affect the validity and enforceability of any other remaining provisions.
- (j) **Errors, Inaccuracies and Omissions:** Occasionally there may be information on our Site that contains typographical errors, inaccuracies or omissions that may relate to Product descriptions, pricing, promotions, offers, Product shipping charges, transit times and availability. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information or cancel orders if any information on the Site is inaccurate at any time without prior notice (including after you have submitted your order). Where we cancel your order in this situation, we will provide you with a refund of the Price paid in respect of the cancelled order.
- (k) **Product specifications; disclaimer of warranties:** All Products specifications, illustrations, drawings, images, particulars, dimensions, performance data and other information on our Site or made available by us is intended to only provide general information on the Products and their features. Any information made available regarding performance, including from trials or tests, is for information purposes only. You acknowledge and agree that the Product is natural and due to the nature of the products, there may be variations between Products you receive, and between the Product shipped to you and the Product information made available. Therefore, we do not provide any warranties, guarantees, or representations, of any kind, as to the accuracy or otherwise of the information provided on the site, or that the Products will meet your particular circumstances.
- (l) **Feedback:** You agree that: (1) all Intellectual Property Rights in any idea, suggestion, recommendation or request by you, whether made verbally, in writing, directly or indirectly, in connection with the Site (**Feedback**), will at all times vest, or

remain vested, in us; and (2) we may use Feedback in any manner which we see fit (including to develop new products and features) and no benefit will be due to you as a result of any use by us of any Feedback.

### 13 Definitions

- (a) **Intellectual Property** means any taglines, logos, graphics, product names, domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- (b) **Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs and unregistered designs, plant variety and plant breeder rights, rights to use, and protect the confidentiality of, confidential information (including know-how, trade secrets, and datasets), technology and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist now or in the future, anywhere in the world.
- (c) **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to these Terms or otherwise.
- (d) **Products** means the products we sell to you.
- (e) **Your Products** means the products that you create and/or produce using our Products.

**For any questions and notices, please contact us at:**

**BEYOND AG PTY LTD (ABN: 34 633 351 452)**

Email: [hello@bardee.com](mailto:hello@bardee.com)

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