



Terms for Supply

These terms and conditions apply to the supply of Terragen's Probiotic for Ruminant products ("**Products**") by Terragen. By ordering or purchasing any Products from us, you agree to be bound by these terms and conditions. These terms and conditions supersede and take precedence over any other terms and conditions which may be contained in any document provided to Terragen by you ("**Customer Terms**") or any agency agreement, supply agreement or other agreement entered into by Terragen and you prior to the date of the purchase order. Failure by Terragen to object to any Customer Terms will not constitute our acceptance of any Customer Terms.

1 Orders and confirmation

- (a) All purchase orders are subject to written confirmation by Terragen. Terragen is not bound to accept any purchase orders.
- (b) You may not cancel or vary any orders that have been confirmed by Terragen without our written consent (which consent may be given or refused at our absolute discretion).

2 Price and payment

- (a) The price for Products will be as stipulated in the purchase order. Unless otherwise specified in the purchase order, you must pay any applicable GST on top of the price for Products at the same time that the price is payable.
- (b) Terragen may invoice you for the relevant Products at any time on or after delivery of the Products. Payment must be made in accordance with the payment terms stipulated in the confirmed purchase order, or if none are stipulated, within 30 days from the date of Terragen's invoice.
- (c) All payments must be made in Australian dollars. We may charge interest on overdue amounts at the rate of 1% per calendar month or part thereof.
- (d) You must make all payments due to us in full without any set-off or deduction or withholding including on account of any counter-claim.
- (e) You must pay all collection, repossession and/or legal costs incurred by Terragen as a result of your failure to pay any amount you owe to Terragen when due.
- (f) Any Taxes levied in connection with the sale of any Products to you will be for your account and may be added to your invoice for the Products or separately invoiced by Terragen.

3 Delivery

- (a) Unless otherwise agreed by Terragen in writing, all Products are sold Free In Store (Incoterms 2020) to the delivery address specified in the purchase order. All risk of loss and damage to the Products will pass as provided in this clause. Title in Products will pass as provided by clause 4.
- (b) Any estimated or anticipated delivery dates provided by Terragen are not binding on Terragen and Terragen will not be liable in any circumstances with respect to any delays in delivery.
- (c) It is your responsibility to immediately check the Products upon delivery. Any discrepancies, shortfalls,

damage or visible defects must be notified to us in writing within 48 hours from delivery, failing which the Products will be deemed to be in compliance with the purchase order and free from damage and visible defects. You must, within a reasonable time following delivery, grant us access to delivered Products in order to inspect any alleged damage or defects.

- (d) Deviations in quantities of Products delivered from the quantities stated in the purchase order will not give you the right not to accept delivery of the Products.

4 Retention of Title

- (a) Title to all Products supplied by Terragen will remain vested in Terragen and will not pass to you until all amounts owed to Terragen by you on any account, including any collection, repossession and/or legal costs incurred, have been paid in full. Until such time you must hold the Products as a bailee of Terragen and a fiduciary relationship will exist between Terragen and you.
- (b) If you re-sell any Products, or if you use any Products, before title in those Products passes to you, you must: (i) hold all of the proceeds of any sale or dealing in the Products on trust for Terragen; (ii) keep such proceeds in a separate account as the beneficial property of Terragen; and (iii) pay such amount to Terragen on demand.
- (c) In the event of any default in the payment of the full amount payable in respect of any Products when due, Terragen may, in addition to any other rights and remedies to which it may be entitled, retake possession of any Products and re-sell the same on its own account without liability to you. You hereby irrevocably grant to Terragen and its employees and agents, and must procure your Associates to provide to Terragen and its employee and agents, the right to enter without notice upon your premises or any other premises where the Products are known to be stored to repossess any Products the title to which has not passed from Terragen to you.
- (d) If any Products are damaged or destroyed prior to the title in them passing to you, Terragen is entitled, without affecting any other rights and remedies under these terms and conditions, to any insurance proceeds payable for the Products.

5 PPSA

- (a) In this clause "PPSA" means the *Personal Property Securities Act 2009* (Cth); "PMSI" means a purchase money security interest as defined in the PPSA; "PPSR" means the Personal Property Securities Register; "security interest", "security agreement", "financing statement", "financing change statement", "verification statement", "attached", "attachment", "perfected" and all related terms have the meanings given them by the PPSA.
- (b) You acknowledge that these terms and conditions constitute a security agreement which creates a security interest in favour of Terragen in the goods supplied by Terragen to you (including all goods previously supplied by Terragen to you (if any) and all after acquired goods supplied by Terragen to you, or for your account).
- (c) You agree to grant a PMSI in the goods and all future goods supplied to you by Terragen. You agree that a

PMSI has attached to all goods now or in the future supplied to you by Terragen.

- (d) You agree, until title in the Products pass to you, to keep all goods supplied to you by Terragen free of any charge, lien or security interest except as created under these terms and conditions and not otherwise deal with the goods in a way that will or may prejudice the rights of the Terragen under these terms and conditions or the PPSA.
- (e) You agree to sign any further documents and/or provide any further information (which information you warrant to be complete, accurate and current) which Terragen may reasonably require to enable registration of a financing statement or financing change statement on the PPSR or to ensure that the security interest is otherwise enforceable, perfected and effective.
- (f) You agree to reimburse Terragen upon demand for all expenses incurred in registering a financing statement or financing change statement on the PPSR.
- (g) You undertake to give to Terragen not less than 14 days prior written notice of any proposed change in your details, including, but not limited to, changes of address, entity or business name and/or contact details.
- (h) Unless otherwise agreed to by Terragen in writing, neither Terragen nor you may disclose to any third party any information of the kind referred to in Section 275(1) of the PPSA. We are not obliged to give you any notice or provide copies of any documents under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded and you consent to the waiver of the requirement for notice or copies of any documents under this clause. Terragen and you agree that the following provisions of the PPSA do not apply to or in relation to the security interest to the extent that the PPSA permits the parties to contract out of or waive such provisions: section 95 (notice of removal of accession) to the extent that it requires Terragen as secured party to give a notice to you as grantor; section 117 (obligations secured by land and personal property); section 118 (enforcing securities in accordance with land law); section 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires Terragen as secured party to give a notice to you as grantor; section 132(3)(d) (secured party to give statement of account); section 132(4) (statement of account if no disposal); section 135 (notice of retention of collateral); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).

6 Limitation of liability

- (a) Subject to clauses 6(c) and 6(d), to the maximum extent permitted by law we exclude all liability to you for any direct loss, indirect loss, Consequential Loss or damage however caused (including through negligence) incurred or suffered by you with respect to any Products.
- (b) Except for losses attributable to breaches of the consumer guarantees in the Australian Consumer Law and the warranty provided in clause 6(d), to the extent permitted by law, any condition or warranty which could otherwise be implied in connection with the Products is excluded.
- (c) If the Australian Consumer Law or any other law implies a guarantee, condition or warranty into these terms and

conditions which cannot be excluded by law, our liability for any breach of such guarantee, condition or warranty will be, to the maximum extent permitted, limited to, at our option, either the replacement of the Products or supply of equivalent Products, or the payment of the cost of having the Products re-supplied.

- (d) Terragen warrants that the Products will be free from damage, contamination and material manufacturing defects as at delivery. Terragen's sole obligation under this warranty will be, at Terragen's option, either to grant you a credit for the price paid or payable for the Products by you, or to replace the Products, free of charge. Terragen will have no obligation to either provide a credit or replace a Product if the Product has, following delivery, been repackaged, subject to misuse, negligence or accident, or if your stocks of the Products have not been stored in accordance with instructions given by Terragen. Any return of Products to Terragen in connection with a warranty claim may only be made upon our prior written confirmation and shipping instructions.

Your additional obligations

- (a) You must not, or permit any third party to, repackage the Products or remove or obscure any of our trade marks on the packaging of the Products.
- (b) You must promptly inform us of any complaints that you receive with respect to the Products.
- (c) If requested by Terragen from time to time, you must provide Terragen with any reports or information requested by Terragen with respect to your sales of the Products including, without limitation, your sales prices, the identity of your customers who purchase Products from you and the volume of Products sold to each of your customers by you.

Events Outside Our Control

We will not be liable or responsible for any failure to perform, or delay in our performance, of any of our obligations with respect to the Products or under these terms and conditions that is caused by an Event Outside Our Control. If an Event Outside Our Control takes place that affects the performance of our obligations we will contact you as soon as reasonably possible to notify you and our obligations will be suspended for the duration of the Event Outside Our Control.

Dispute resolution

- (a) You agree that you will use reasonable endeavours and act in good faith to try and resolve any dispute that you have with us about the Products or these terms and conditions ("**Dispute**") in accordance with this clause.
- (b) If a party wishes to raise any Dispute with the other party, it must give the other party written notice describing the Dispute and detailing the resolution required. The parties must then communicate and attempt to resolve the Dispute.
- (c) If the Dispute is not resolved within 21 days after the notice of Dispute, either party may give notice to the other party that the Dispute must be referred to mediation by a Queensland Law Society approved mediator who is agreed by the parties, or failing agreement, appointed by the President of the Queensland Law Society on the application of either party, on the terms of the standard mediation agreement approved by the Queensland Law Society. Any mediation will take place in Brisbane, Queensland,

Australia. The parties must share the cost of the mediator equally.

"You" means the customer detailed in the purchase order.

- (d) If the Dispute is not resolved within 30 days from the date that it is referred to mediation, either party may commence legal proceedings in any court of competent jurisdiction.
- (e) Except where urgent injunctive relief is being sought, neither party may commence proceedings in any court seeking resolution of a Dispute until the provisions of this clause have been complied with.

10 General

- (a) These terms and conditions are governed by the laws of Queensland, Australia. You agree to submit to the exclusive jurisdiction of the courts of Queensland, Australia.
- (b) Any provision in these terms and conditions that is illegal, void or unenforceable in a jurisdiction will as to that jurisdiction, be ineffective to the extent of the illegality, voidability or unenforceability, without invalidating the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in another jurisdiction.
- (c) If we waive any rights we have under these terms and conditions as a result of your breach, it will not operate as a waiver of any future breaches.

11 Definitions

"Associate" has the meaning given in the *Corporations Act 2001* (Cth).

"Australian Consumer Law" means the Australian Consumer Law as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

"Consequential Loss" includes, without limitation, loss of profits, loss of revenue, loss of data, lost production, loss of business, loss of the benefit of any contract or other agreement or arrangement, losses which do not arise naturally from a breach of contract in the usual course, damage to reputation, damage to property, downtime costs and legal costs.

"Events Outside Our Control" means any act or event beyond our reasonable control including strikes, lock-outs or other industrial action by third parties, failure of supply, failure of transport, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence or other natural disaster, pandemic, epidemic, or failure of public or private telecommunications networks.

"GST" means a goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise of a supply.

"GST Act" means *A New Tax System (Products and Services Tax) Act 1999* (Cth).

"GST Law" has the same meaning as in the GST Act.

"Tax" means all forms of taxes, duties, imposts, charges, withholdings, rates, levies or other governmental impositions of whatever nature and by whatever authority imposed together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges incidental or related to the imposition, but excludes any income tax imposed on Terragen.

"Terragen", "we", "us" and "our" are references to Terragen Biotech Pty Ltd ACN 140 928 972.