

Cargill General SALES Contract Terms and Conditions November 2016

1. Legal Effect

These terms and conditions ("**Terms and Conditions**") incorporate the trade rules of Grain Trade Australia in force at the time of formation of the Cargill Confirmation of Sales Contract ("**GTA Trade Rules**"). If there is any inconsistency in express terms between:

- (a) the Cargill Confirmation of Sales Contract ("**Confirmation**") and the Terms and Conditions, the Confirmation prevails to the extent of any such inconsistency; and
- (b) these Terms and Conditions (excluding the GTA Trade Rules) and the GTA Trade Rules, the Terms and Conditions (excluding the GTA Trade Rules) prevail to the extent of any such inconsistency.

2. Definitions:

Capitalised terms used but not defined in these Terms and Conditions have the same meanings as set forth in the Confirmation, or the GTA Trade Rules, as applicable.

3. Contract Formation

The Buyer offers to purchase from the Seller such quantity and quality of Commodity as specified in the Buyer's offer on and subject to these Terms and Conditions.

The contract between the parties for sale and purchase of the Commodity is formed when the Seller accepts the Buyer's offer for the purchase of the Commodity by:

- (a) Telephone, whereby; the Seller's record of such telephone call, including any written confirmation, shall be conclusive and binding on the Buyer; or
- (b) email, at the time the Seller accepts the Buyer's offer for the purchase of the Commodity, whereby the Seller's record of such acceptance, shall be conclusive and binding on the Buyer; or
- (c) entering into an oral agreement with the Seller or its agents. The Seller's record of such oral agreement including any written confirmation shall be conclusive and binding on the Buyer.

For the purposes of these terms and conditions, the Seller's record referred to in paragraphs (a), (b) and (c) shall constitute the "Confirmation" if the Seller has not otherwise issued a Cargill Confirmation of Sales Contract.

4. Seller Obligations

In accordance with the Confirmation, the Seller has agreed to:

- (a) sell such quantity and quality of Commodity as specified in the Confirmation to the Buyer; and
- (b) deliver the Commodity within the Delivery Period to the Delivery Location.

5. Buyer Obligations

In accordance with the Confirmation, the Buyer has agreed to:

- (a) purchase such quantity and quality of the Commodity from the Seller as specified in the Confirmation;
- (b) to pay the Price for the Commodity in accordance with the Payment Terms (and in the absence of a written Confirmation, the Payment Terms will be the end of the month following the date of the invoice);
- (c) take delivery or collect (as applicable) the Commodity before the end of the Delivery Period from the Delivery Location; and
- (d) comply with the Confirmation.

6. Time:

Time shall be of the essence.

7. Delivery, Weights & Quality

- (a) Delivery. The Seller will use its reasonable endeavours to deliver the Commodity within the Delivery Period but will not be liable to the Buyer for any loss sustained due to delay outside the control of the Seller which includes the action or inaction of any third parties
- (b) Ex- store sales. If the Confirmation specifies that the Delivery is 'ex-store' then the Seller makes the Commodity available for Buyer to collect at the Delivery Location. Delivery shall be made free on vehicles (truck or rail wagon). The Buyer undertakes to advise the Seller of intended times of collection within the Delivery Period.
- (c) Sales on delivered basis. If the Confirmation specifies that the Delivery is 'delivered at place', the Seller undertakes to notify the Buyer of all dispatches as soon as possible after dispatch. Notices should be available at the Delivery Location on or before arrival of delivery vehicles at those premises.
- (d) Risk. The Commodities are at the Buyer's risk upon delivery to the Buyer or to a third party at the request of the Buyer in accordance with clause 7(b) or 7(c) as applicable.
- (e) Weight Certificates: Ex Store sales and sales on delivered basis: The parties agree that the Commodity is sold on the basis of Origination Weights unless the Confirmation specifies that the Weight Final is 'at destination', in which case it is sold on the basis of Destination Weights. A receipt for the weight at the time of delivery shall, if required by the Seller or driver, be given to the driver of the vehicle.
- (f) Quality Certificates: Ex Store sales and sales on delivered basis: The parties agree that the Commodity is sold on the basis of Origination Quality unless the Confirmation specifies that the Quality Condition Final is 'at destination', in which case it is sold on the basis of Destination Quality.

8. Quantity Tolerances:

The Seller shall have the option to deliver at the Price:

- (a) Oil - twelve [12.00] tonnes or to the nearest truckload, whichever is the lesser quantity, more or less (of that lesser amount) than the quantity contracted.
- (b) Meal and Hull - twelve [12.00] tonnes or to the nearest truckload, whichever is the lesser quantity, more or less (of that lesser amount) than the quantity contracted.
- (c) Seed and Grain - five percent [5.00%] or twelve [12.00] tonnes, whichever is the lesser quantity, more or less (of that lesser amount) than the quantity contracted.

9. Failure to Take Delivery:

- (a) The Buyer agrees that failure to take delivery of the Commodity during the relevant Delivery Period/s is a default of its obligations under these Terms and Conditions entitling the Seller to terminate the contract at any time.
- (b) Upon termination of the contract, in addition to any amount payable by the Buyer to the Seller as damages, the Buyer agrees to pay and reimburse on demand, all losses, costs, expenses and liabilities of the Seller, howsoever arising, as result of, or in connection with such default and termination.
- (c) If the Buyer fails to take delivery of the Commodity during the relevant Delivery Period, for any reason whatsoever then:
 - (i) the following carrying charges will accrue for each calendar month, or part thereof, that the failure to take delivery continues and are payable on demand :

- A. **Meal and Hull:** \$5.00/mt per month. An additional \$5.00/mt per month applies after two months delinquency (combined total of \$10.00/mt);
 - B. **Oil:** \$8.00/mt per month;
 - C. **Seed and Grain:** \$4.00/mt per month or such other amount as agreed at the time of contract formation;
- (ii) interest is payable on the unpaid Price (including all other amounts payable by the Buyer to the Seller). The interest is accrued daily at a mutually agreed rate for the period commencing immediately after the end of the last day of the Delivery Period and ending on but excluding the date on which all amounts outstanding under the Confirmation and these Terms and Conditions are paid to the Seller. If the interest rate is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily. Any accrued interest that is unpaid at the end of each month shall be capitalised; and
 - (iii) the Seller accepts no responsibility if the quality of any Oilseed Product does not meet the quality as specified in the Confirmation.
- (d) The Buyer agrees and acknowledges that where the Buyer has failed to take delivery during the relevant Delivery Period/s, regardless of whether the Seller has terminated the relevant contract/s:
 - (i) the Seller may suspend deliveries/consignments of Commodities under any other contracts the Seller has with the Buyer until the Buyer remedies such default;
 - (ii) the Buyer agrees that the Seller may, in its absolute discretion, terminate any other contract (including a contract arising from application of clause 18 of these Terms and Conditions) and seek damages;
 - (iii) the Seller will be entitled to unilaterally amend the payment terms associated with any other contracts the Buyer has with the Seller to require payment in advance of delivery of the Commodity.
 - (e) Termination of a particular contract/contracts:
 - (i) does not affect any other contracts between the parties except to the extent set out in this clause;
 - (ii) is without prejudice to the rights of either party that have accrued prior to the date of termination.

10. Late Payment:

Interest will accrue daily on any outstanding payments payable by the Buyer to the Seller at a mutually agreed rate commencing immediately after the end of the day that the payment became overdue and ending on but excluding the date on which all amounts outstanding under the Confirmation and these Terms and Conditions are paid to the Seller. If the interest rate is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily.

If the Buyer fails to make any payment on or before the due date for payment or, being an individual trader, dies, the Buyer agrees that the Seller may exercise the rights and powers conferred by clause 14(a) of these Terms and Conditions (Insolvency) as if the foregoing events are an Insolvency Event, provided that within a reasonable time after the relevant event the Seller gives the Buyer or his representative written notification of the Seller's intention to exercise all or any such rights and the Buyer has not paid any outstanding amounts prior to the exercise of such rights.

11. Credit

- (a) The Seller may in its absolute discretion grant the Buyer a line of credit, which shall be expressed as a maximum amount (**Maximum Credit**), for the sole purpose of purchasing from the Seller Commodity in accordance with and subject to these Terms and Conditions (**Credit Trading Facilities**).
- (b) The Buyer must not exceed the Maximum Credit at any time and any Confirmation which causes the Credit Trading Facilities to exceed the Maximum Credit must be paid by the Buyer on delivery of the Commodity.
- (c) If the Seller suspects the Buyer represents a credit risk, the Seller in its absolute discretion, may by notice in writing to the Buyer reduce the Maximum Credit or cancel all Credit Trading Facilities effective immediately, and all open contracts must be executed and delivered as specified by the Seller, under any revised payment terms.

12. Implied Conditions and Warranties:

The Seller excludes all implied conditions and warranties, howsoever arising, except any implied conditions and warranties the exclusion of which would contravene any statute or cause any part of these Terms and Conditions to be void (**Non Excludable Condition**).

13. Limitation of Liability:

- (a) To the extent permitted by law, the Seller's liability to the Buyer for breach of any Non Excludable Condition is limited, at the Seller's option, to refunding the price of the relevant Commodities or services in respect of which the breach occurred or to supplying those Commodities and services respectively again or to paying the cost of having those Commodities and services respectively supplied again.
- (b) In no circumstances will the Seller be liable for any loss of profits or special, consequential or indirect loss or damage.
- (c) The Buyer acknowledges and agrees with the Seller that:
 - (i) use of the Commodities supplied are beyond the control of the Seller; and
 - (ii) any advice, recommendation, information or services provided by the Seller, its employees, servants or agents regarding the Commodities sold and their use are not construed as contractual conditions or warranties.

14. Insolvency:

On the happening of an Insolvency Event,

- (a) In relation to the Buyer, the Seller may, without prejudice to any other rights available to it, terminate its contract/s with the Buyer and claim as damages an amount equal to the quantity the subject of the default multiplied by the difference between the contract Price and the Fair Market Price as at the date of default plus all other reasonable costs of the Seller. The Seller may also cancel and/or suspend any or further deliveries/ consignments.
- (b) In relation to the Seller, the Buyer shall have the right, without prejudice to any other rights available to it, to terminate its contract/s at anytime thereafter and refuse to accept any further deliveries/consignments.

15. Force Majeure:

- (a) If the Seller is affected by a Force Majeure Event the Seller must use reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event. The Seller shall give notice to the Buyer of the nature of the Force Majeure Event, its likely duration and the obligations affected by the Force Majeure Event.

- (b) Performance of the Seller's obligations is suspended to the extent to which the Seller is affected by the Force Majeure Event and for the duration of the Force Majeure Event. The Seller shall not be responsible for delay in delivery of the Commodity or any part thereof occasioned by the occurrence of a Force Majeure Event and the Seller is released and discharged from any obligation to indemnify the Buyer for liabilities, losses, costs or expenses in respect of any period of time arising out of or in connection with the Force Majeure Event.
- (c) If delivery is delayed for more than 30 consecutive days after the last day of the Delivery Period and at the end of that period the Force Majeure Event is still in existence and continues to prevent the performance of the Confirmation, then either party shall have the right to terminate the delayed portion of the Confirmation, such right to be exercised by the terminating party serving notice to be received by the other party not later than 14 days after the end of the 30th consecutive day. If neither party exercises this right, such delayed portion shall be automatically extended for a further period of 30 consecutive days. If delivery under this clause is prevented during the further 30 consecutive day extension due to the continuation of the Force Majeure Event, the delayed portion of the Confirmation shall be considered void. The Buyer shall have no claim against the Seller for delay or non-delivery under this clause, provided that the Seller shall have supplied to the Buyer, if required, evidence justifying the delay or non fulfilment.

16. Amendment of GTA Trade Rules and Dispute Resolution Rules

- (a) For the avoidance of doubt, Rule 16 (Finality) applies only as set out in Rule 15.4 and then only to Commodities that do not comply with the contract specifications.
- (b) Rule 21 and the definition of "Force Majeure" of the GTA Trade Rules do not apply.

17. Privacy:

- (a) Subject to any law to the contrary, provided the Buyer has not indicated otherwise, the Buyer authorises the Seller to collect and use any information related to the Buyer and the performance of the Confirmation (which includes but is not limited to the Buyer's personal information) for the purpose of managing the Seller's commercial relationship with the Buyer including but not limited to:
 - (i) investigating the credit worthiness of the Seller from time to time including (but without limiting the generality of the foregoing) making enquiries of persons nominated as trade referees, the bankers of the Buyer or any other credit providers (collectively "the information sources") and the Buyer hereby authorises the information sources to disclose to the Seller such information concerning the Buyer which is within their possession and which is requested by the Seller;
 - (ii) providing the Buyer's products or services which the Buyer has agreed to obtain from the Seller and/or for any other purposes relating to the Seller's business operations and the Seller's dealings with the Buyer; and
 - (iii) for the purpose of any arbitration proceeding relating to the Confirmation or a contract between the Buyer and the Seller or a Related Body Corporate of the Seller.
- (b) The Buyer agrees and acknowledges that the Seller:
 - (i) may transfer information overseas and disclose it to others (including, without limitation, contractors and buyers); and
 - (ii) may collect information from an entity other than the Seller including brokers used by the Seller.
- (c) The Buyer can withdraw its consent at any time by calling 03 9268 7200. The Seller's Privacy Policy, located at www.cargill.com.au contains information about how personal information held by the Seller may be accessed and corrected and how complaints can be made and are managed.

- (d) If the Buyer wishes to give the Seller any information about an individual other than itself, then it agrees to ensure the individual to whom that information relates agrees that the Seller may use and disclose information about him or her in accordance with this clause 21.

18. Consignment

Where Commodities are to be delivered in more than one consignment, the Confirmation shall be deemed to be a separate Confirmation in respect of each consignment. The Buyer shall not be entitled to reject an entire consignment because of any default occurring in some other consignment on the same Confirmation. Notwithstanding any express or implied election by the Buyer, the Buyer agrees that the Seller may in its absolute discretion appropriate, allocate and apply any payments received from the Buyer against any amounts the Buyer owes to the Seller in respect of any other consignment.

19. General

- (a) Any failure by the Seller to insist on strict compliance with any of the Terms and Conditions or the Confirmation will not constitute a variation or waiver of any of the Terms and Conditions or any other right that is available to the Seller.
- (b) If part or all of any provision of the Confirmation or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or any part of it cannot be so interpreted, the provision or part of it will be severed from these Terms and Conditions and the remaining provisions of these Terms and Conditions remain in force.
- (c) If the Buyer is a trustee, the Buyer agrees that the Confirmation is binding upon the trustee personally and in its capacity as trustee of the trust and nothing contained or implied in the Confirmation or in any notification given or deemed to be given to the Seller will prejudice, affect or in any way limit the personal liability of the trustee on its own account as a party under the Confirmation.
- (d) A covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
 - (i) two or more parties; or
 - (ii) a party comprised of two or more persons,is made or given and binds those parties or persons jointly and severally.
- (e) The Buyer is not entitled to withhold payment of any disputed amount the subject of an invoice issued by the Seller or to set off against the amount of an invoice any other claim that the Buyer has against the Seller.
- (f) The Buyer must not assign or transfer any of its rights or novate any of its obligations under the Confirmation without the Seller's prior written consent and no assignment of any obligation will be effective until the incoming party has covenanted in favour of, and in form satisfactory to the Seller, to assume and to be bound by the obligations assigned.
- (g) The Seller may assign or transfer any of its rights or novate any of its obligations under the Confirmation to any person without the Buyer's consent and without providing the Buyer notice prior to the event.
- (h) The Confirmation does not create an agency or other fiduciary relationship between the parties.
- (i) In addition to any other right or remedy, the Seller may without prior notice to any person set off any sum or obligation (whether or not arising under this Confirmation and Terms and Conditions) owed by the Buyer to the Seller or any of its Related Bodies against any sum or obligation (whether or not arising under this Confirmation and terms and Conditions) owed by the Seller or any of its Related

Bodies to the Buyer.

- (j) The Confirmation is governed by the laws of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts in that State.
- (k) If the contract between the Seller and the Buyer is effected through an intermediary or a broker the provisions of these Terms and Conditions are paramount and prevail and shall govern the relationship between the Buyer and the Seller. The Seller enters into any such contract subject to these Terms and Conditions.

20. Interpretation.

- (a) In these terms and conditions, unless the context otherwise requires:

"Confirmation" means the document entitled Confirmation of Sales Contract being the written confirmation of the contract between the Buyer and the Seller for the purchase of the Commodity which incorporates these Terms and Conditions as varied from time to time and any applicable addendums that accompany that contract.

"Force Majeure Event" – means any

- (i) strike, ban, lock-out, riot, civil commotion, difference with or between workmen or other industrial action;
- (ii) accidents to or breakdown of machinery, infrastructure, plant or equipment;
- (iii) blockage, stoppage, accident or hazard;
- (iv) fire, natural disaster, drought, storm, flood, severe weather, acts of God;
- (v) embargo, blockade, sanctions;
- (vi) delay en route;
- (vii) terrorism or terrorism prevention;
- (viii) policies or restrictions of governments including prohibition or restrictions of export or import;
- (ix) action or inaction in connection with any licence, permit or approval;
- (x) war;
- (xi) delay in receipt or shipment of any materials required for production of the Commodity;
- (xii) a Force Majeure Event arising under agreements or arrangements between the Seller and any of its suppliers and customers which may impact upon the performance of the Seller's obligations under this contract;
- (xiii) all consequences of any such occurrences; or
- (xiv) any other contingency (whether or not of a similar kind to the occurrences or contingencies mentioned in this clause) which is beyond the Seller's reasonable control.

"Related Bodies" means 'related body corporate' as that term is defined in the Corporations Act 2001.

"Seller" means Cargill Australia Limited ABN 42 004 684 173.

"Oilseed Commodity" means Canola Oil, Cotton Oil, Soybean Oil, Sunflower Oil, Canola Meal, Cotton Meal, Soybean Meal, Sunflower Meal.

- (b) Where a provision of the Terms and Conditions (incorporating the GTA Trade Rules) other than the provision defining "Fair Market Price" (see Definition Section of GTA Trade Rules) requires that the Fair Market Price be calculated at a particular time, it must be calculated at that time and in all other circumstances at the relevant time specified in the provision defining "Fair Market Price".
- (c) The singular includes the plural and vice versa.
- (d) Words importing a gender include the other genders.
- (e) Other grammatical forms of defined words or phrases have corresponding meanings.
- (f) A reference to "dollar", "\$" or "\$A" is a reference to Australian currency.
- (g) A reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (h) Headings are for convenience of reference only and do not affect interpretation.
- (i) Unless specified otherwise, "day" means a calendar day.
- (j) Including must not be treated as a word of limitation.
- (k) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (l) Nothing in these Terms and Conditions are to be interpreted against a party solely on the ground that the party put forward these Terms and Conditions or a relevant part of them.
- (m) A reference to "contract" includes a contract arising by reason of application of clause 18 of these Terms and Conditions.