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# **CARGILL GENERAL SALESTERMS & CONDITIONS (OIL & MEAL)**

6 February 2019

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## 1. LEGAL EFFECT

- 1.1 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) or the Confirmation and the GTA Trade Rules, the Terms and Conditions (excluding the GTA Trade Rules) or Confirmation (as applicable) prevail to the extent of any such inconsistency

## 2. DEFINITIONS

- 2.1 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

- 3.1 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.
- 3.2 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, whereby the Seller's record of such oral agreement including any written confirmation shall be conclusive and binding on the Buyer.
- 3.3 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.
- 3.4 These Terms and Conditions may be amended from time to time. The most recently amended Terms and Conditions will apply in respect of any contract between the parties entered into on or from the date of the most recent amendments.

## 4. SELLER OBLIGATIONS

- 4.1 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

- 5.1 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

- 6.1 Time shall be of the essence.

## 7. DELIVERY, WEIGHTS & QUALITY

- 7.1 **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.

- 7.2 **Ex-store sales:** If the Confirmation specifies that the Delivery is 'ex-store' then the Seller will use its reasonable endeavours to make 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.
- 7.3 **Sales on delivered basis:** If the Confirmation specifies that the Delivery is 'delivered at place', the Seller undertakes to (i) notify the Buyer of all dispatches as soon as possible after dispatch; and (ii) provide notice to the Delivery Location on or before arrival of delivery vehicles at those premises.
- 7.4 **Risk:** Risk in the Commodities passes to the Buyer upon delivery of the Commodities to the Buyer or to a third party at the request of the Buyer in accordance with clause 7.2 or 7.3 as applicable.
- 7.5 **Weight Certificates for 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 requested by the Seller or driver, be given to the driver of the vehicle.
- 7.6 **Quality Certificates for 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:

- 8.1 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:

- 9.1 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 after that default.
- 9.2 If the Buyer fails to take delivery during the contracted Delivery Period/s, 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, as result of, or in connection with such failure.
- 9.3 If the Buyer fails to take delivery of the Commodity during the relevant Delivery Period in addition to any amount payable under clause 9.2:
- (a) for any reason whatsoever then, 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:
    - (i) **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);
    - (ii) **Oil:** \$8.00/mt per month;
    - (iii) **Seed and Grain:** \$4.00/mt per month,or such other amount as agreed between the parties;
  - (b) for any reason whatsoever then, interest is payable on the unpaid Price. 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.
- 9.4 If the Buyer fails to take delivery of the Commodity during the relevant Delivery Period, for any reason whatsoever, in respect of an Oilseed Commodity, which is susceptible to deterioration in quality if it is stored for longer periods of time, the Seller accepts no responsibility if the quality of that Oilseed Commodity does not meet the quality as specified in the Confirmation.

- 9.5 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:
- (a) the Seller may suspend deliveries/consignments of Commodities under any other contracts the Seller has with the Buyer until the Buyer remedies such default;
  - (b) the Buyer agrees that the Seller may terminate any other contract (including a contract arising from application of clause 21 of these Terms and Conditions) and seek damages; and
  - (c) 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.
- 9.6 Termination of a particular contract/contracts:
- (a) does not affect any other contracts between the parties except to the extent set out in this clause 19; and
  - (b) is without prejudice to the rights of either party that have accrued prior to the date of termination.

## 10. PAYMENT

### Disputed Amounts

- 10.1 If the Buyer provides the Seller with written notification of a genuine dispute regarding the amount or calculation of any invoice within 7 days of receiving the invoice from the Seller, it may withhold payment of the disputed amount pending the resolution of the dispute but must pay the undisputed amount of the invoice. If the Buyer fails to give the written notice within the time prescribed, it is taken to have accepted the contents of the invoice.

### Late Payment

- 10.2 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.
- 10.3 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 17.1(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 the Buyer's 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

- 11.1 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**).
- 11.2 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.
- 11.3 If the Seller, acting reasonably, 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. NON-COMPLIANT COMMODITIES

- 12.1 Any claim by Buyer that Commodities do not meet the specifications set out in the Confirmation (**Non-Compliant Commodities**) must be made within 3 business days after delivery of the Commodity. Buyer irrevocably waives and releases all claims that are not made within that period.
- 12.2 Where Non-Compliant Commodities have been supplied and notified pursuant to 12.1:
- (a) The Buyer must, at Seller's election, either arrange for the certified destruction of the Non-Compliant Commodities or return the Non-Compliant Commodities to Seller; and
  - (b) The Seller must, if requested by the Buyer, supply replacement compliant Commodity as soon as reasonably practicable.

- 12.3 The applicable undertakings in 12.2 will be carried out:
- (a) at the Buyer's expense, if the non-compliance was not caused by a defect arising from an act or omission of Seller; or
  - (b) otherwise, at the Seller's expense.

### 13. COMMODITY RECALL

- 13.1 Each party must notify the other immediately by telephone, and confirm in writing, if it becomes aware of any circumstances that might necessitate a recall of any of the Commodity.
- 13.2 The parties will give each other any assistance that shall reasonably be required to recall, as a matter of urgency, Commodity from the market.
- 13.3 Notwithstanding anything to the contrary herein, if Seller notifies Buyer that any of the Commodity needs to be recalled or otherwise withdrawn from the market and Buyer refuses or otherwise fails to do so in a timely fashion, Buyer agrees to indemnify Seller from and against any and all loss, cost, damage and expense incurred by Seller as a result of such failure or refusal.
- 13.4 Subject to clause 13.3, any Commodity recall which is brought about by any actual or defect in, contamination of or damage to the Commodities (**Defects**) will be at the cost of Seller unless the Defects were caused by Buyer, in which case the Commodity recall will be at the cost of Buyer.
- 13.5 In the event of a Commodity recall or customer complaint, Buyer will not make any press or other announcement or release any information without Seller's prior written approval as to the form and manner of the announcement or release unless, and to the extent that it is required to be made by Buyer by law.
- 13.6 Seller may provide notification and advice in respect of a Commodity recall or customer complaint to any of Buyer's customers who are directly affected by the recall or customer complaint, provided that Seller provides Buyer with a reasonable opportunity to review and provide input into the form of that notification or advice.
- 13.7 Both parties will maintain appropriate, up to date and accurate records to enable the immediate recall of any Commodities or batches of Commodities from relevant markets.

### 14. OWNERSHIP AND PPSA

- 14.1 In this clause 14, the following terms have the respective meaning given to them in the *Personal Property Securities Act 1999 (PPSA)*: grantor, perfected, proceeds, purchase money security interest, register, secured party, security agreement and security interest.
- 14.2 Subject to the following provisions in this clause 14, legal and beneficial ownership (Ownership) of the Commodity remains with the Seller and does not pass to the Buyer until the Buyer:
- (a) pays in full and in clear funds any amount it owes the Seller on any account at which time title passes to the Buyer; or
  - (b) resells the Commodity pursuant to a rights under these Terms and Conditions at which time title passes the third party purchaser.
- 14.3 While Ownership of the Commodity remains with the Seller:
- (a) the Buyer agrees to clearly designate the Commodity as the Seller's property and store the Commodity in such a way that it is identified as the property of the Seller;
  - (b) the Buyer agrees to maintain the Commodity in good order and condition;
  - (c) the Seller authorises the Buyer in the ordinary course of its business to sell the Commodity for full consideration. This authority is revoked from the time that:
  - (d) a default occurs; or
  - (e) the Seller notifies the Buyer in writing that this authority is revoked;
- and the Buyer agrees to:
- (f) advise the Seller immediately of any default or any action by third parties (including any of its creditors) affecting the Seller's interest in the Commodity; and
  - (g) the Seller, as the Buyer's agent, entering the premises where any Commodity are or may be stored and remove them, without being responsible for any damage caused in doing so. The Seller may resell any of the Commodity and apply the proceeds of sale in reduction of the amounts owing to the Seller.
- 14.4 The Seller may apply any payments received from or on behalf of the Buyer in reduction of the amount owing to the Seller, as the Seller thinks fit.

- 14.5 If the Buyer resells or uses any Commodity (i) before Ownership of the Commodity has passed to the Buyer or (ii) where Ownership of the Commodity has passed in accordance with clause 14.2(b), the proceeds of such sale or use will be received and held by the Buyer (in whatever form) in trust for the Seller to the extent of the amount owing (where the Seller's interest as beneficiary under that trust will be that portion of the proceeds which is equivalent of the amount owing to the Seller and the balance of the proceeds (if any) will be the Buyer's beneficial interest under that trust).
- 14.6 In addition to the foregoing provisions of this clause 14, the Buyer:
- (a) acknowledges and agrees that:
    - (i) this document constitutes a security agreement and gives rise to a purchase money security interest in favour of the Seller over the Commodities supplied or to be supplied to the Buyer, as grantor, pursuant to these Terms and Conditions, which secures the purchase price for all Commodities supplied by the Seller to the Buyer from time to time;
    - (ii) the security interest attaches to the Commodities purchased by the Buyer on delivery of the Commodities to the Buyer or a third party at the Buyer's direction; and
    - (iii) the Seller, as secured party, is entitled to perfect its security interest pursuant to the PPSA.
  - (b) grants to the Seller a security interest in the Commodity (and the proceeds of sale of the Commodity) as security for all of the Buyer's obligations to the Seller (including payment to the Seller of the purchase price for the Commodity) which security interest the Seller can register or perfect by any means possible in the jurisdiction of the Buyer (and any other jurisdiction the Seller deems necessary or desires) to ensure that the Seller has an enforceable security interest against the Buyer in the Commodity (and the proceeds of sale of the Commodity);
  - (c) agrees to do all things and execute or arrange for execution of all documents the Seller requires to ensure the Seller acquires enforceable, perfected, maintained first ranking security interest in the Commodity which attaches to the Commodity (including but not limited to a purchase money security interest in respect of the Commodity supplied) in the relevant jurisdiction(s);
  - (d) will indemnify the Seller for any costs the Seller incurs in registering, maintaining, discharging and/or enforcing the security interest created by these Terms and Conditions;
  - (e) agrees not to assign, charge, encumber, mortgage, or permit any lien to arise over, or any security interest (other than the Seller's) to attach to Commodity, or permit the Commodity to become an accession, without the Seller's written consent; and
  - (f) waives its right under the PPSA to the maximum extent permitted by law, to s 95, s 96, s121(4), s123, s129, s130, s132(2), s132(3)(d), s132(4), s135, s142 and s143; and
  - (g) waives any right it may otherwise have to receive a copy of any financing statement, financing change statement or verification statement registered or received by the Buyer in respect of any security interest created under or in connection with this.
- 14.7 Without limiting clause 14.6 and if s275(7) of the PPSA applies, each party agrees not to disclose any information of the kind referred to in s275(1) of the PPSA that is not publicly available.

## 15. IMPLIED CONDITIONS AND WARRANTIES

- 15.1 The Seller excludes all implied conditions and warranties, howsoever arising (including but not limited to, warranties as to merchantability and fitness for a particular purpose), 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**).

## 16. LIMITATION OF LIABILITY

- 16.1 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.



- 16.2 In no circumstances will the Seller be liable for any loss of profits or special, consequential or indirect loss or damage (including, without limitation, any and all loss of profit, loss of revenue, loss of goodwill, loss of reputation, loss of opportunity and loss of savings, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance, whether arising in contract, tort or equity or under statute).
- 16.3 The Buyer acknowledges and agrees with the Seller that:
- (a) use of the Commodities supplied are beyond the control of the Seller; and
  - (b) the Seller has not provided any advice, or made any recommendations to the Buyer regarding the appropriate use or subsequent on-sale of the Commodities and any information provided by the Seller, its employees, servants or agents regarding the Commodities sold and their potential use will not be construed as contractual conditions or warranties; and
  - (c) the Buyer has determined the appropriate use, merchantability or fitness for subsequent on-sale of the Commodities and assumes all risks and liabilities for any loss, damage or injury resulting from the use or subsequent on-sale of the Commodities, either alone or in combination with other commodities or products.
- 16.4 Without limiting clause 16.1 above but despite anything else to the contrary in these terms and conditions, the Seller's maximum liability under these Terms and Conditions or otherwise, from any cause whatsoever, whether arising in contract, tort (including negligence), equity or under statute or otherwise, shall not exceed three times the total consideration paid for the Commodities as specified in the Confirmation.

## **17. INSOLVENCY**

- 17.1 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.

## **18. FORCE MAJEURE**

- 18.1 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.
- 18.2 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 the Seller is affected by 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.
- 18.3 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 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 by the end of the further 30 consecutive day extension due to the Force Majeure Event preventing performance, 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.

## **19. AMENDMENT OF GTA TRADE RULES AND DISPUTE RESOLUTION RULES**

- 19.1 For the avoidance of doubt, Rule 16 (Finality) of the GTA Trade Rules applies only: as set out in Rule 15.4 of the GTA Trade Rules and then only to Commodities that do not comply with the contract specifications.

- 19.2 Both Rule 21 (Force Majeure) and the definition of "Force Majeure" of the GTA Trade Rules do not apply.

## 20. PRIVACY

- 20.1 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:
- (a) 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 information concerning the Buyer's credit worthiness which is within their possession and which is requested by the Seller;
  - (b) providing the Buyer Commodities, 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;
  - (c) for the purpose of any arbitration proceeding relating to the Confirmation or a contract between the Buyer and the Seller or a Related Body of the Seller; and
  - (d) as is otherwise set out in the Summary of Cargill's Privacy Policy located at <http://www.cargill.com.au/en/about> (Privacy Policy).
- 20.2 The Buyer agrees and acknowledges that the Seller:
- (a) may transfer information overseas and disclose it to others (including, without limitation, contractors and buyers); and
  - (b) may collect information from an entity other than the Seller including brokers used by the Seller.
- 20.3 The Buyer can withdraw its consent at any time by calling 03 9268 7200. A summary of the Seller's Privacy Policy, located at [www.cargill.com.au/en/about](http://www.cargill.com.au/en/about) contains information about how personal information held by the Seller may be accessed and corrected and how complaints can be made and are managed. 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 20.

## 21. CONSIGNMENT

- 21.1 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 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.

## 22. GENERAL

- 22.1 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.
- 22.2 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.
- 22.3 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.
- 22.4 A covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
- (a) two or more parties; or
  - (b) a party comprised of two or more persons,
- is made or given and binds those parties or persons jointly and severally.
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- 22.5 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.
- 22.6 Other than a purported assignment of the Seller's obligations under these Terms and Conditions, for which the Seller will require the Buyer's prior consent, the Seller may assign, transfer, novate and otherwise deal in any manner with all or any of its rights, remedies, powers, duties under the Confirmation to any person without the Buyer's consent and without providing the Buyer notice prior to the event. Without limiting the above, the Buyer agrees that the Seller may novate the Confirmation to any Related Body on the basis that the Seller and the Related Body have the same rights, entitlements and obligations as if the Related Body was a party to the Confirmation initially.
- 22.7 The Seller shall have the right to manufacture or have manufactured by any third party any Commodity for the Buyer in any of its facilities or the facilities of any third party without the Buyer's prior approval or consent.
- 22.8 The Confirmation does not create an agency or other fiduciary relationship between the parties.
- 22.9 In addition to any other right or remedy, the Seller may, without prior notice to any person, set off any sum or obligation owed by the Buyer or any of its Related Bodies, to the Seller or any of its Related Bodies, against any sum or obligation owed by the Seller or any of its Related Bodies, to the Buyer or any of its Related Bodies.
- 22.10 The Buyer may, after providing the Seller 5 Business Days written notice, set off any sum owed by the Seller or any of its Related Bodies, to the Buyer or any of its Related Bodies, against any sum or obligation owed by the Buyer or any of its Related Bodies, to the Seller or any of its Related Bodies.
- 22.11 The Confirmation is governed by the laws of Victoria, Australia and each party submits to the non-exclusive jurisdiction of courts in that State.
- 22.12 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.
- 22.13 These Terms and Conditions and the Confirmation supersede all previous agreements, understanding about their subject matter and embodies the entire agreement between the parties about their subject matter.
- 22.14 The Buyer acknowledges that no representations and warranties about the subject matter of these Terms and Conditions or the Confirmation have been made by or on behalf of the Seller except as expressly set out therein and that it has not relied on any representations or warranties about that subject matter given by or on behalf of the Seller except as expressly provided in these Terms and Conditions or the Confirmation.

### 23. INTERPRETATION

- 23.1 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:

- (a) strike, ban, lock-out, riot, civil commotion, difference with or between workmen or other industrial action;
- (b) accidents to or breakdown of machinery, infrastructure, plant or equipment;
- (c) blockage, stoppage, accident or hazard;
- (d) fire, natural disaster, drought, storm, flood, severe weather, acts of God;
- (e) embargo, blockade, sanctions;
- (f) delay en route;
- (g) terrorism or terrorism prevention;
- (h) policies or restrictions of governments including prohibition or restrictions of export or import;
- (i) action or inaction in connection with any licence, permit or approval;
- (j) war;

- (k) delay in receipt or shipment of any materials required for production of the Commodity;
- (l) 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 these Terms and Conditions;
- (m) all consequences of any such occurrences; or
- (n) 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 and its Related Bodies' (as applicable) reasonable control which causes the Seller to fail to perform on time any of its obligations under this agreement.

**"Oilseed Commodity"** means canola oil, cotton oil, soybean oil, sunflower oil, canola meal, cotton meal, soybean meal, sunflower meal.

**"PPSA"** has the meaning given in clause 14.1.

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

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

- 23.2 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"**.
- 23.3 The singular includes the plural and vice versa.
- 23.4 Words importing a gender include the other genders.
- 23.5 Other grammatical forms of defined words or phrases have corresponding meanings.
- 23.6 A reference to **"dollar"**, **"\$"** or **"\$A"** is a reference to Australian currency.
- 23.7 A reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- 23.8 Headings are for convenience of reference only and do not affect interpretation.
- 23.9 Unless specified otherwise, **"day"** means a calendar day.
- 23.10 Including must not be treated as a word of limitation.
- 23.11 A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- 23.12 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.
- 23.13 A reference to **"contract"** includes a contract arising by reason of application of clause 21 of these Terms and Conditions.