

TERMS AND CONDITIONS OF TRADE
AUSSIE-GRAINS Pty Ltd T/AS H E Silos Forbes ABN 68 614 731 378

1. Definitions

- 1.1. "Seller" shall mean AUSSIE-GRAINS Pty Ltd trading as H E Silos Forbes and its successors and assigns.
- 1.2. "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3. "Completion Date" means the date on which the Goods are to be collected by the Buyer or delivered by the Seller as set out on the Sales Order.
- 1.4. "Date of Despatch" means the date on which the Goods leave the Seller's premises to be delivered to the Buyer and includes collection of the Goods by the Buyer (or its duly authorised agent or representative) from the Vendor's premises.
- 1.5. "Delivery" means the transport and delivery of the Goods by the Seller, or any other person appointed by the Seller to the Buyer's address.
- 1.6. "Goods" shall mean Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.7. "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.8. "Price" shall mean the cost of the Goods and Services as agreed between the Seller and the Buyer subject to clause 4 of these Terms and Conditions of Trade.

2. Acceptance

- 2.1. Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of these Terms and Conditions of Trade.
- 2.2. Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for payment of the Price.
- 2.3. Upon acceptance of these Terms and Conditions of Trade by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these Terms and Conditions of Trade or with the written consent of the manager of the Seller.
- 2.4. None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.5. The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

3. Goods and Services

- 3.1 The Goods and the Services are as described on the invoices, quotation, sales order or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 The Seller reserves the right to alter any and all of the technical and general specifications of the Goods at any time without prior notification.

4. Price and Payment

- 4.1. At the Seller's sole discretion:
 - (a) The Price shall be as indicated on invoices provided by the Seller to the Buyer in respect of Goods and Services supplied; or
 - (b) The Price shall be as indicated on the specific contract or tender provided by the Seller to the Buyer in respect of Goods supplied; or
 - (c) The Price of the Goods and the Services shall be the price quoted in writing by the Seller to the Buyer. Such quoted Price shall only be binding upon the Seller if the Buyer provides written acceptance of the quote to the Seller within thirty (30) days of the date which appears on the Seller's written quote.
- 4.2 At the Seller's sole discretion a deposit may be required. The amount of the deposit will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the Invoice, quotation or any other order forms. If no time is stated then payment shall be on the Completion Date.
- 4.4 At the Seller's sole discretion, payment for approved Buyers shall be due on thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 4.5 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by telegraphic transfer, or by any other method as agreed to between the Buyer and the Seller. All credit card transactions will incur a processing fee of 1.5% of the total invoice amount.

5. Delivery of Goods

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods within 7 days of the Completion Date.
- 5.2 The failure of the Seller to deliver shall not entitle either party to treat these Terms and Conditions of Trade as repudiated.
- 5.3 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Purchase Money Security Interest/Retention of Title

- 6.1 The parties agree that for the purposes of the *Personal Property Securities Act 2009*:
 - (a) this agreement, together with any quotation, invoice and delivery docket, is a security agreement; and
 - (b) by this agreement the Buyer grants to the Seller a security interest in respect of the Goods to secure payment of the purchase price and all outstanding debts and obligations to the Seller from time to time;
 - (c) the Seller's security interest in the Goods continues until all debts and obligations of the Buyer are discharged; and
 - (d) the Seller's security interest is a Purchase Money Security Interest (PMSI).
- 6.2 The Goods are:
 - (a) Collateral for the purposes of the *Personal Property Securities Act 2009*; and
 - (b) Commercial property; and
 - (c) Of the class "other goods", for the purposes of *Personal Property Securities Act 2009* section 153(1), item 4(c), and *Personal Property Securities Regulations 2010*, Schedule 1, Part 2, item 2.3(1).

7. Risk

- 7.1 All risk for the Goods (including the risk of any loss of or damage to or deterioration of the Goods from whatever cause) will pass to the Buyer on the Completion Date (subject to the terms of clause 5 of these Terms and Conditions of Trade).
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under these Terms and Conditions of Trade. The production of these Terms and Conditions of Trade by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

8. Disclaimer

- 8.1 The Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Seller shall not be bound by nor responsible for any terms, condition, representation or warranty other than the warranty given by the Seller or any warranty that cannot be excluded by law which warranty shall be personal to the Buyer and shall not be transferable to any subsequent Buyer.

8. Intellectual Property

- 9.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.

9. Default and Consequences of Default

- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgment.
- 10.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
- 10.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under these Terms and

- Conditions of Trade. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 10.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 10.5 In the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law; the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and if all amounts owing to the Seller shall, whether or not due for payment, immediately become payable.
- 10. Cancellation**
- 11.1 The Seller may cancel these Terms and Conditions of Trade or cancel delivery of Goods at any time before the Goods are delivered by giving written notice in which case the Seller will repay any sums paid by the Buyer in advance to the Seller in respect of the relevant Goods. The Seller will not be liable for any loss or damage whatever arising from such cancellation.
- 11. Privacy Act 1988**
- 12.1 The Buyer and the Guarantor/s hereby irrevocably authorise the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 12.2 The Buyer and the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) to assess an application by the Buyer;
 - (b) to notify other credit providers of a default by the Buyer;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (d) to assess the credit worthiness of the Buyer and/or the Guarantor/s.
- 12.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 12.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and the Seller or required by law from time to time:
- (a) provision of Services and Goods;
 - (b) marketing of Services and/or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services and Goods;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and
 - (e) enabling the daily operation of the Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 12.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 12. General**
- 13.1 If any provision of these Terms and Conditions of Trade shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 13.2 All Goods supplied by the Seller are subject to the laws of New South Wales and the Seller takes no responsibility for changes in the law which affect the Goods supplied.
- 13.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of the breach by the Seller of these Terms and Conditions of Trade.
- 13.4 In the event of any breach of these Terms and Conditions of Trade by the Seller the liability of the Seller shall be limited to the Price of the Goods and the Services. Under no circumstances shall the liability of the Seller exceed the Price of the Goods and the Services.
- 13.5 The Buyer shall have no right to set off any amounts owed to it by the Seller against the total amount outstanding from time to time from the Buyer to the Seller.
- 13.6 The Seller may transfer, assign, license or sub-contract all or any part of its rights or obligations under this agreement without the Buyer's consent.
- 13.7 The Seller reserves the right to review these Terms and Conditions of Trade at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Seller notifies the Buyer of such change.