

## SALES TERMS & CONDITIONS

### 1. LEGAL EFFECT

- 1.1 These terms and conditions (“**Terms and Conditions**”) incorporate the trade rules of Grain Trade Australia (“**GTA Trade Rules**”). If there is any inconsistency in express terms between:
- (a) the MSM Milling 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 AND INTERPETATIONS

- 2.1 Capitalised terms used but not defined herein have the same meanings as set forth in the Confirmation, or the GTA Trade Rules, as applicable.
- 2.2 Confirmation is defined as 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.
- 2.3 MSM or Seller means **MSM Milling Pty Ltd ABN 57 115 070 150, Manildra Packing Pty Ltd ABN 85 137 962 657** or any duly authorised agent of either Company.
- 2.4 Commodity means canola or other vegetable oil, canola seed, canola meal, stockfeed pellet, stockfeed mash, or any other product that MSM may produce from time to time.
- 2.5 All MSM stockfeed products are designed for animal consumption only and are formulated to meet specific nutritional requirements. Any product description provided are for informational purposes only and may not always reflect the exact ingredients or specifications of the product received.
- 2.6 Related Bodies means ‘related body corporate’ as that term is defined in the Corporations Act 2001 (Cth).

### 3. FORMING A SALES CONTRACT

- 3.1 The Buyer agrees to purchase from MSM 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 MSM accepts the Buyer’s offer for the purchase of the Commodity by:
- (a) email, at the time MSM accepts the Buyer’s offer for the purchase of the Commodity, whereby MSM’s record of such acceptance, shall be conclusive and binding on the Buyer; or
  - (b) entering into any other form of written agreement with MSM or its agents, whereby MSM’s record of written confirmation shall be conclusive and binding on the Buyer.
  - (c) Accepting an order from the Buyer for purchase of the Commodity from the proposed contract. This action constitutes immediate formation of the contract.
- 3.3 For the purposes of these terms and conditions, MSM’s record referred to in 3.2 above shall constitute the "**Confirmation**" if MSM has not otherwise issued a MSM Confirmation of Sales Contract.

### 4. PRICE AND PAYMENT

- 4.1 In accordance with the Confirmation, MSM agrees 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.
- 4.2 The Buyer has agreed to:
- (a) purchase such quantity and quality of the Commodity as specified in the Confirmation.
  - (b) pay the agreed Price for the Commodity within the agreed Payment Terms.
    - (i) in the absence of written agreement, Payment Terms will be 30 days 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.
- 4.3 If the Buyer fails to make any payment within the agreed Payment Terms, MSM, acting reasonably, may terminate the contract and cease further supply of Commodities. In addition to any amount payable by the Buyer to MSM, the Buyer agrees to pay and reimburse on demand, all direct costs, expenses, and liabilities of MSM, incurred as result of, or in connection with the failure to pay.
- 4.4 If the Buyer genuinely disputes the amount or calculation of any invoice, it must provide MSM with written notification of any dispute within 7 days of receiving the invoice. Any undisputed amount of the invoice must be paid within the agreed Payment Terms. If the Buyer does not give the required notice, it is taken to have accepted the contents of the invoice.
- 4.5 MSM 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 MSM the Commodity in accordance with and subject to these Terms and Conditions (**Credit Trading Facilities**).
- 4.6 The Buyer must not exceed the Maximum Credit at any time.
- 4.7 If MSM, acting reasonably, suspects the Buyer represents a credit risk, MSM in its absolute discretion, may immediately reduce or cancel all Credit Trading Facilities. All open contracts must be executed and delivered as specified by MSM, under any revised payment terms.

## 5. FREIGHT ADJUSTMENT COST

- 5.1 Freight Adjustment Costs may apply where an increase or decrease in freight costs are incurred by MSM due to an increase or decrease in the price of diesel fuel (Terminal Gate Price or TGP).
- 5.2 Where a Freight Adjustment Cost charge is applied, MSM will ensure that the Freight Adjustment Cost is fair, transparent, and in place only for as long as is necessary.

## 6. DELIVERY

- 6.1 **Delivery:** MSM 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 MSM which includes the action or inaction of any third parties.
- 6.2 **Terms:** All sales (for example: EXW (Ex-works), DAP (Delivered at Place) or CIF (Cost, Insurance and Freight)) will occur according to standard INCO® terms.
- 6.3 **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.
- 6.4 **Weight Certificates for all sales:**
- (a) The parties agree that the Commodity is sold based on Origination Weights unless the Confirmation specifies that the Weight Final is 'at destination', in which case it is sold based on Destination Weights.

- 6.5 **Quantities:** All contracts are based on units (for example: Litres, Drums, Loads, Bottles, BIBs, Tonnes, FCLs etc). 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.
- 6.6 **Quality Certificates for all sales:** The parties agree that the Commodity is sold based on Origination Quality unless the Confirmation specifies that the quality condition final is 'at destination', in which case it is sold based on Destination Quality.

## 7. TOLERANCES

- 7.1 MSM shall have the option to deliver at the Price:
- (a) Oil:
    - (i) Bulk delivery to the nearest truckload, more or less than the quantity contracted.
    - (ii) Small format delivery the volume will be rounded to the nearest whole truckload or whole pallet/container.
  - (b) Meal and Stockfeed:
    - (i) Bulk delivery to the nearest truckload, more or less than the quantity contracted.

## 8. FAILURE TO TAKE DELIVERY

- 8.1 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 MSM to terminate the contract.
- (a) If, after allowing the Buyer 14 days to remedy the default by taking delivery, the Buyer is still in default of its obligations under this clause 8.1, MSM may suspend all future deliveries of Commodities until the Buyer remedies such default.
- 8.2 If the Buyer fails to take delivery during the contracted Delivery Period/s, in addition to any amount payable by the Buyer to MSM as damages, the Buyer agrees to pay and reimburse on demand, all direct costs, expenses and liabilities of MSM, incurred as result of, or in connection with such failure.
- 8.3 If the Buyer fails to take delivery of the Commodity during the relevant Delivery Period:
- (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) For bulk oil formats: storage costs at the amount of \$45/t per month or part thereof.
    - (ii) For small formats: storage costs as the equivalent of \$45/t per month or part thereof, converted back into a cost per unit.

## 9. NON-COMPLIANT COMMODITIES

- 9.1 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.
- 9.2 Where Non-Compliant Commodities have been supplied and notified:
- (a) The Buyer must, at MSM's election, either arrange for the certified destruction of the Non-Compliant Commodities or return the Non-Compliant Commodities to MSM; and
  - (b) MSM must, if requested by the Buyer, supply replacement compliant Commodity as soon as reasonably practicable.
  - (c) The applicable undertakings in 9.2 will be conducted:

- (i) at the Buyer's expense, if the non-compliance was not caused by a defect arising from an act or omission of MSM; or
- (ii) otherwise, at MSM's expense.

## **10. COMMODITY RECALL**

- 10.1 Each party must notify the other at once by telephone, and confirm in writing, if it becomes aware of any circumstances that might necessitate a recall of any of the Commodity.
- 10.2 The buyer will give MSM all and any assistance that shall reasonably be required to recall, as a matter of urgency, Commodity from the market.
- 10.3 Notwithstanding anything to the contrary herein, if MSM 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 MSM from and against all loss, cost, damage, and expense incurred by MSM as a result of such failure or refusal.
- 10.4 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 MSM unless the Defects were caused by Buyer, in which case the Commodity recall will be at the cost of Buyer.
- 10.5 In the event of a Commodity recall or customer complaint, Buyer will not make any press or other announcement or release any information without MSM'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.
- 10.6 MSM 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 if MSM provides Buyer with a reasonable opportunity to review and provide input into the form of that notification or advice.
- 10.7 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.

## **11. OWNERSHIP AND PPSA**

- 11.1 Legal and beneficial ownership (Ownership) of the Commodity remains with MSM and does not pass to the Buyer until the Buyer:
  - (a) pays in full and in clear funds any amount it owes to MSM on any account at which time title passes to the Buyer.
  - (b) or resells the commodity pursuant to a right under these terms at which time title passes to the third-party purchaser.
- 11.2 While ownership of the commodity remains with MSM:
  - (a) the Buyer agrees to maintain the commodity in good order and condition and designate and store the commodity in such a way that it is clearly identified as the property of MSM; and
  - (b) the MSM authorises the Buyer in the ordinary course of its business to sell the Commodity for full value however this authority is revoked from the time that:
    - (i) a default occurs; or
    - (ii) MSM notifies the Buyer in writing that this authority is revoked.
  - (c) the Buyer agrees to:
    - (i) advise MSM immediately of any default or any action by third parties (including any of its creditors) affecting or which may affect MSM's interest in the Commodity; and
    - (ii) MSM, as the Buyer's agent, entering the premises where any commodity is or may be stored and removing commodity, without being responsible for

any damage caused in doing so and whereupon MSM may resell any of the Commodity and apply the proceeds of sale in reduction of the amounts owing to MSM.

- 11.3 If the Buyer resells or uses any Commodity:
- (a) before Ownership of the Commodity has passed to the Buyer; or
  - (b) where Ownership of the Commodity has passed in accordance with clause 11.1(b):
    - (i) the proceeds of such sale or use will be received and held by the Buyer (in whatever form) in trust for MSM to the extent of the amount owing (where MSM's interest as beneficiary under that trust will be that portion of the proceeds which is equivalent of the amount owing to MSM and the balance of the proceeds (if any) will be the Buyer's beneficial interest under that trust).
    - (ii) The Buyer charges the commodity (and the proceeds of sale of the commodity) in favour of MSM as security for all the Buyer's obligations to MSM whether arising under the contract of sale of the commodity.
    - (iii) The Buyer waives any right it may otherwise have to receive a copy of or notice of details of any financing statement, financing change statement or verification statement registered in respect of any security interest created under or in connection with these terms.
    - (iv) Each party agrees not to disclose any information of the kind referred to in s275(1) of the PPSA that is not publicly available.

## **12. IMPLIED CONDITIONS AND WARRANTIES**

- 12.1 MSM 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).

## **13. LIMITATION OF LIABILITY**

- 13.1 To the extent permitted by law, MSM's liability to the Buyer for breach of any Non-Excludable Condition is limited, at MSM'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.
- 13.2 In no circumstances will MSM be liable for any damage to property (including contamination of goods or property), losses from business interruption, loss of profit or anticipated, loss of revenue, loss of use, loss of future contracts, downtime, overhead expenses, loss of production, loss of or damage to goodwill, loss of reputation, third party claims, loss of opportunity or loss of savings howsoever caused or arising whether by contract, tort, breach of duty or other legal doctrine or principle and whether or not foreseeable at the time of contract formation.
- 13.3 The Buyer acknowledges and agrees with MSM that:
- (a) use of the Commodities supplied are beyond the control of MSM; and
  - (b) MSM 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 MSM, 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.

- 13.4 To the extent permitted by law, MSM's maximum liability under these Terms and Conditions or otherwise, from any cause whatsoever shall be the lesser of the value of the purchase, or \$100,000 in aggregate.

#### **14. INSOLVENCY**

14.1 On the happening of an Insolvency Event:

- (a) In relation to the Buyer, MSM 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 MSM. MSM may also cancel and/or suspend any or further deliveries/ consignments.
- (b) In relation to MSM, the Buyer shall have the right, without prejudice to any other rights available to it, to terminate its contract/s at any time thereafter and refuse to accept any further deliveries/consignments.

#### **15. FORCE MAJEURE**

15.1 A Force Majeure Event includes, but is not limited to, any:

- (a) strike, ban, lock-out, riot, civil commotion, difference with or between workers 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 or war.
- (f) delay enroute.
- (g) malicious damage, cyber-attacks, disruption to infrastructure.
- (h) terrorism or terrorism prevention.
- (i) national emergencies, government directives or restrictions, epidemics, pandemics (including but not limited to COVID 19), policies or restrictions of governments including prohibition or restrictions of export or import.
- (j) action or inaction in connection with any licence, permit, or approval.
- (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 MSM and any of its suppliers and customers which may impact upon the performance of MSM's obligations under these Terms and Conditions.
- (m) all consequences of any such occurrences; or
- (n) any other contingency (whether of a similar kind to the occurrences or contingencies mentioned in this clause) which is beyond MSM's and its Related Bodies' (as applicable) reasonable control which causes MSM to fail to perform on time any of its obligations under this agreement.

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

- (a) The Buyer recognises that MSM will incur significant costs in storage of either oil or seed should the Buyer rely on clause 15.2 to delay performance of their contract, and that should this delay extend to more than 30 (thirty) consecutive days, MSM at its discretion, would be entitled to seek recompense for cost of storage of the seed or oil.
- 15.3 Performance of MSM's obligations is suspended to the extent to which MSM is affected by the Force Majeure Event and for the duration MSM is affected by the Force Majeure Event. MSM 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 MSM 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.
- 15.4 Notwithstanding clause 15.2(a), if delivery is delayed for more than 30 (thirty) 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 (thirty) consecutive days. If delivery under this clause is prevented by the end of the further 30 (thirty) 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 MSM for delay or non-delivery under this clause, provided that MSM shall have supplied to the Buyer, if required, evidence justifying the delay or non-fulfilment.
- 15.5 This clause replaces both Rule 21 (Force Majeure) and the definition of "**Force Majeure**" of the GTA Trade Rules.

## 16. PRIVACY

- 16.1 Subject to any law to the contrary, and subject to the conditions imposed within the Australian Privacy Act 1988 (Cth), provided the Buyer has not indicated otherwise, the Buyer authorises MSM 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 MSM's commercial relationship with the Buyer including but not limited to:
  - (a) investigating the credit worthiness of the Buyer 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 MSM information concerning the Buyer's credit worthiness which is within their possession, and which is requested by MSM;
  - (b) providing the Buyer Commodities, products, or services which the Buyer has agreed to obtain from MSM and/or for any other purposes relating to MSM's business operations and its dealings with the Buyer.
  - (c) for the purpose of any dispute resolution proceeding relating to the Confirmation or a contract between the Buyer and MSM or a Related Body of the MSM.
- 16.2 The Buyer agrees and acknowledges that MSM:
  - (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 Buyer including brokers used by MSM.

## **17. CONSIGNMENT**

- 17.1 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 MSM may appropriate, allocate and apply any payments received from the Buyer against any amounts the Buyer owes to MSM in respect of any other consignment.

## **18. GENERAL**

- 18.1 Any failure by MSM 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 MSM.
- 18.2 MSM reserves the right to change any of these Terms and Conditions at any time.
- 18.3 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.
- 18.4 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 MSM will prejudice, affect or in any way limit the personal liability of the trustee on its own account as a party under the Confirmation.
- 18.5 The Buyer must not assign or transfer any of its rights or novate any of its obligations under the Confirmation without MSM'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 MSM, to assume and to be bound by the obligations assigned.
- 18.6 Other than a purported assignment of MSM's obligations under these Terms and Conditions, for which MSM will require the Buyer's prior consent, MSM 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 MSM may novate the Confirmation to any Related Body on the basis that MSM and the Related Body have the same rights, entitlements, and obligations as if the Related Body was a party to the Confirmation initially.
- 18.7 MSM 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.
  - (a) MSM warrants that any Commodity manufactured by any third party under clause 18.7 will be of the same specifications and quality as if it was produced in any of its own facilities.
- 18.8 The Confirmation does not create an agency or other fiduciary relationship between the parties.
- 18.9 In addition to any other right or remedy, MSM may, without prior notice to any person, set off any sum or obligation owed by the Buyer or any of its Related Bodies, to MSM or any of

its Related Bodies, against any sum or obligation owed by MSM or any of its Related Bodies, to the Buyer or any of its Related Bodies.

- 18.10 The Buyer may, after providing MSM 5 Business Days written notice, set off any sum owed by MSM 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 MSM or any of its Related Bodies.
- 18.11 The Confirmation is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of courts in that State.
- 18.12 If the contract between MSM and the Buyer is affected 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 MSM. MSM enters any such contract subject to these Terms and Conditions.
- 18.13 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.
- 18.14 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 MSM 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 MSM except as expressly provided in these Terms and Conditions or the Confirmation.