

# STANDARD TERMS AND CONDITIONS OF CENTRE STATE EXPORTS PTY LTD

## 1. THE CONTRACT:

- 1.1 The Seller as defined on the face of the "Confirmation of Contract" document or similar document ("Contract Document"), and any other party as per Clause 2 below, has agreed to sell to Centre State Exports Pty Ltd ("Buyer"), as defined on the same document, the goods as specified thereon ("the Contract").
- 1.2 The parties to the Contract acknowledge that:
  - (i) The Contract expressly incorporates these terms and conditions;
  - (ii) In the event of any inconsistency between the terms and conditions written on the face of the Contract Document and these terms and conditions, the former shall take precedence;
  - (iii) To the exclusion of any inconsistency with either the terms and conditions written on the face of the Contract Document, or these terms and conditions, the Contract also expressly incorporates the Grain Trade Australia (GTA) Trade Rules and the GTA Dispute Resolution Rules, as per the versions of same as at the date of the Contract; and
  - (iv) The GTA Trade Rules and GTA Dispute Resolution Rules are available from CSE by request, and are otherwise freely available from GTA's website [www.graintrade.org.au](http://www.graintrade.org.au).

## 2. LIABILITY OF SELLER:

- 2.1 Where the Seller is a corporation or a body corporate, the person entering into and/or signing the Contract on behalf of the Seller agrees that he/she enters into such Contract for and on behalf of that corporation or body corporate, and that he/she will remain jointly and severally liable for payment as principal debtor of all of the Seller's liabilities to the Buyer under the Contract. He/she further warrants that they have the requisite authority to enter into this Contract on behalf of the Seller, and that both the Seller and they agree to be bound by the terms and conditions of this Contract.
- 2.2 If the Seller enters into this Contract as a trustee of any trust, both the Seller and the subject trust shall be jointly and severally liable for payment as principal debtor of all of the Seller's liabilities to the Buyer under this Contract.

## 3. PRODUCTION FAILURE:

- 3.1 This Contract is for the physical delivery of the Goods described on the face of this document.
- 3.2 Should the Seller suffer production failure and not be able, or anticipate that it will not be able to physically deliver as against the Contract either from its own crops, or from tonnage purchased in, then provided the Seller has given the Buyer prompt notice of any such difficulty, so that the Buyer can manage its risk and potentially purchase in additional grain if necessary, the Buyer may agree, in its absolute discretion, to wash-out the Contract with the Seller.
- 3.3 Should the Buyer agree to wash-out the Contract, the Seller shall be obliged to pay the Buyer a wash-out payment, being the difference between the fair market value of the Goods on the date that the wash-out is agreed, and the total price otherwise payable under this Contract. The fair market value of the Goods shall be determined by the Buyer, with reference to the price being offered by other sellers in the market to replace the quantity of like grain on the date of the wash-out, to which also will be added any other costs that may have been incurred by the Buyer as a result of the Seller's inability to otherwise meet its obligations under this Contract.

## 4. FORCE MAJEURE:

- 4.1 A "Force Majeure Event" is defined as any: (i) war, whether declared or undeclared, revolution or act of public enemies; (ii) riot, ban, strike, lock-out, civil commotion, difference with or between any workmen or industrial action; (iii) contamination arising out of any accidents to, or breakdown or failure of machinery, infrastructure, plant or equipment; (iv) fire, natural disaster, severe weather or flooding, acts of God; (v) terrorism or terrorism prevention; (vi) policies or restrictions of any governments, governmental or semi-governmental authorities, including but not limited to any prohibition or restrictions of exporting or importing; (vii) damage or destruction of machinery, infrastructure, plant or equipment where such damage or destruction is caused by third parties; or (viii) action or inaction in connection with any license, permit or approval, where any of such event/contingency (i.e. per items (i) to (viii) inclusive above) is, or was, beyond the reasonable control of the party asserting the existence of the Force Majeure Event and any alleged consequent impact of same on its obligations under this Contract, and where the requisite notice has been provided or waived in accordance with Clause 4.4 below.
- 4.2 The Seller acknowledges that crop failure, any financial contingency of the Seller, or any event/contingency arising out of, or as a result of an act or omission on the part of the Seller shall not be a "Force Majeure Event".
- 4.3 Save for any liabilities owed as a result of fluctuations in the fair market price of the Goods throughout the duration of any Force Majeure Event, subject to Clause 4.4, neither party shall be liable to the other under this Contract for any delay in its performance of its obligations under, and in accordance with this Contract, if such delay is as a result of a Force Majeure Event.
- 4.4 The party whose performance of any obligation under this Contract is directly affected, or who has reason to believe that its performance may be affected by a Force Majeure Event shall, within 48 hours after the commencement of the Force Majeure Event, or when the party first became aware of the Force Majeure Event or reasonable threat of same, whichever is the earlier, give written notice thereof to the other party to the Contract, and shall take all reasonable measures to remove, overcome or minimise the effects of the Force Majeure Event. Failure to provide such notice shall provide the party not invoking the existence of a Force Majeure Event with the sole discretion to treat any such failure as terminating the other party's ability to rely on a Force Majeure Event, or alternatively, accept the Force Majeure Event regardless.

## 5. DELIVERY:

- 5.1 The Seller may deliver the Goods to any delivery point at which the contracted commodity of the specified quality is being received, provided such delivery point has a GTA location differential from the Port based destination listed on the Contract Document, unless otherwise agreed to by the Buyer. The relevant GTA location differential shall be deducted from the contracted price for up-country deliveries.
- 5.2 If the Seller does not deliver the Goods at the delivery points specified on the Contract Document, the price may vary as determined by the Buyer.
- 5.3 If a delivery point is closed, the Seller shall not be relieved of its obligation to deliver the Goods pursuant to this Contract by the agreed delivery date, and shall be obliged to make delivery by the delivery date at another delivery point as agreed between the parties.
- 5.4 The Seller shall endeavour to strictly comply with the delivery timetable and delivery instructions as agreed between the parties.
- 5.5 The Seller shall be liable to, and fully compensate the Buyer for, any loss or damage sustained by the Buyer as a result of any early delivery, non-delivery, or delayed delivery of the Goods.

## 6. LEVIES & ROYALTIES:

- 6.1 The Seller acknowledges that it may be necessary for certain industry, statutory or government levies, or plant breeder end point royalties to be paid in respect of the supply of the Goods under this Contract. Where any such payments are necessary, the Seller further acknowledges that the Buyer may deduct any such sum(s) due from the Contract price and make remittance of any such sum(s) direct to the appropriate receiving body. A schedule of potential relevant levies and royalties may be requested from the Buyer.

## 7. GST:

- 7.1 The Parties agree that:
  - (i) all payments contemplated under this Contract have been calculated exclusive of GST;

- (ii) if any payment is consideration for a Taxable Supply for which the Seller is liable to GST, the Buyer must pay the GST amount to the Seller, concurrently with the relevant payment unless otherwise agreed in writing;
- (iii) any reference to a cost or expense in this Contract excludes any amount of GST forming part of the cost or expense when the relevant party incurring the cost or expense can claim an Input Tax Credit; and
- (iv) the Seller authorises the Buyer to produce a recipient created tax invoice for GST purposes.

## 8. PESTICIDES:

- 8.1 The Seller warrants that the Goods will comply with all relevant State and Federal pesticide laws and regulations, and shall fully indemnify the Buyer in respect of any losses or damages incurred by the Buyer, directly or indirectly, as a result of such Goods not being compliant.

## 9. GENETICALLY MODIFIED ORGANISM:

- 9.1 The Seller warrants that, unless otherwise expressly agreed between the parties prior to delivery and evidenced in writing, no part of the Goods shall be genetically modified.

## 10. TITLE & RISK:

- 10.1 Unless otherwise noted on the Contract Document, the Seller warrants that, in respect of any Goods delivered as against the Contract, it has unencumbered title to the Goods and that, among others, the Goods are not subject to any mortgage, lien, encumbrance or other charge whatsoever. The Seller shall fully indemnify and hold harmless the Buyer: (i) against any claim or demand as against the Buyer by any person claiming any interest in the Goods that might challenge or defeat the title to the Goods as warranted by the Seller under this Contract; and (ii) for any and all losses or damages incurred by the Buyer as a result of the Buyer having to address any such claim(s), including legal costs on a full indemnity or solicitor/client basis.
- 10.2 Upon delivery of the Goods in accordance with this Contract, risk and title in the goods shall pass to the Buyer, whereupon the Buyer's contractual obligation to pay the Seller the Contract price in accordance with the payment terms as agreed in the Contract shall crystallise.

## 11. EXCESSIVE DELIVERY:

- 11.1 Where the quantity of grain delivered with an intention to meet delivery under this Contract is in excess of the agreed specified tonnage as per the Contract Document (inclusive of any stated acceptable tolerance), the Buyer reserves the right to:
  - (i) allocate sufficient grain from such quantity received to meet the agreed specified tonnage as per the Contract (inclusive of any stated acceptable tolerance); and
    - (a) allocate the excess grain to the Contract at the price agreed in the Contract; or
    - (b) allocate any of the excess grain to any other contract(s) that exist between the Buyer and the Seller for such grain at the prices agreed in any such contract(s); or
  - (ii) purchase the excess tonnage at the relevant daily cash price as at the date the Buyer elects to formally accept the excess tonnage, or any other price as mutually agreed between the parties and reduced to writing; or
  - (iii) reject the excess tonnage, whereupon any and all liabilities and/or expenses incurred in respect of the excess tonnage by the Buyer or other parties will remain the responsibility of, and to the account of, the Seller.

## 12. WEIGHT:

- 12.1 The weight of the Goods purchased under this Contract shall be verified by registered weightnote at destination.

## 13. QUALITY:

- 13.1 Where the grain delivered under this Contract does not conform exactly to the quality specifications as noted on the Contract Document, then even if the Goods are of a superior quality to that contracted for in this Contract, the Buyer reserves the right, at its sole discretion:
  - (i) to accept the grain as against the Contract at the price agreed in the Contract for the Goods; or
  - (ii) to accept the grain on agreement with the Seller as to an appropriate alternative price for same per tonne and/ or for a new destination; or
  - (iii) to reject the grain, whereupon any and all liabilities and/or expenses incurred in respect of the said grain shall be the responsibility of, and to the account of, the Seller.

## 14. DISPUTE RESOLUTION:

- 14.1 Any dispute, controversy or claim arising out of, relating to, or in connection with this Contract shall be resolved by arbitration in accordance with the GTA Dispute Resolution Rules.
- 14.2 If, despite having received a "Grower Notification Letter" in the relevant year from CSE giving notice as to the terms and conditions on which CSE will contract with the Seller, or having accepted these standard terms and conditions either expressly or impliedly, or having ratified this Contract either expressly or impliedly, the Seller:
  - (i) disputes the incorporation into this Contract of these standard terms and conditions, or the GTA Trade Rules, or the GTA Dispute Resolution Rules; or
  - (ii) disputes the jurisdiction of the GTA to hear the dispute; or
  - (iii) disputes the existence of the Contract,and CSE incurs legal costs in relation to addressing such challenges by the Seller, then the Seller acknowledges that the Seller shall be liable to the Buyer for its reasonably incurred legal costs on a full indemnity or solicitor/client basis, as well as penalty interest at 9% on the sum otherwise due to the Buyer from the date of any relevant arbitration award.

## 15. ENTIRE AGREEMENT:

- 15.1 The Contract Document, in conjunction with these standard terms and conditions, and to the exclusion of any inconsistency with same, the GTA Trade Rules and the GTA Dispute Resolution Rules, constitute the whole agreement between the Seller and the Buyer.
- 15.2 No variations, additions or supplementary terms shall be imported into this Contract unless in writing and signed by the parties.
- 15.3 The Seller acknowledges that, in entering into this Contract, it has not relied upon any advice or representation from CSE relating to the Seller's management of risk in respect of any exposure it might have as a result of the Contract, or otherwise.

## 16. TIME:

- 16.1 The parties acknowledge that time shall be of the essence in the discharge of their respective obligations under this Contract.
- 16.2 Notwithstanding Clause 16.1, the Seller shall not be entitled to exercise any right to terminate the Contract, or otherwise seek any other damages or recourse against the Buyer for any breach of this Contract, until such time as the Seller has sent written notice to the Buyer putting it on notice that it is allegedly otherwise in breach of the Contract, and permitting four (4) clear working days for the Buyer to remedy any such alleged breach.

## 17. GOVERNING LAW:

- 17.1 Unless otherwise stipulated, this Contract shall be governed and interpreted according to the laws of the State of South Australia.

## 18. GOVERNMENT REGULATIONS:

- 18.1 The obligations of the Buyer under this Contract shall be subject to any applicable government, export or other regulations.