

## Standard Terms and Conditions of Sale

### 1 Definitions

1.1 In these Conditions:

- (a) **Act** means the *Rice Marketing Act 1983 (NSW)*;
- (b) **"Anti-Bribery Laws"** means all legislation and regulations and any policies with the force of law in any jurisdiction relating to anti-bribery and anti-corruption, being all laws around the world that generally prohibit bribery of governmental officials or any other giving or receiving of bribes between private commercial parties in connection with conducting business, including Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth) (Australia).
- (c) **Anti-Bribery Policy** means the Ricegrowers New Zealand Limited Anti-Bribery and Corruption Policy available at  
<https://www.sunrice.com.au/corporate/policies-and-documentation/anti-bribery-corruption-policy/>
- (d) **Agreement** means any written agreement between the Company and the Buyer for the sale of the Goods which is in force and includes these Conditions;
- (e) **Authorised Buyer** means an Authorised Buyer appointed under the Act;
- (f) **"Business Ethics Laws"** means the laws applicable to the Supplier in relation to: fundamental human rights and in particular the prohibition of (a) using child labour and any form of forced or compulsory labour and (b) organising or supporting any form of discrimination amongst its employees or towards its suppliers and subcontractors; labour, immigration and prohibition of illegal work; and anti-money laundering.
- (g) **Buyer** means the purchaser of Goods from the Company;
- (h) **CFR** means Cost and Freight as defined by the Incoterms;
- (i) **Company** means Ricegrowers New Zealand Limited (NZBN: 9429047541283);
- (j) **Conditions** means these terms and conditions;
- (k) **Confidential Information** means information, however held or recorded, relating to either of the parties, their business or assets including financial or taxation information, information relating to customers or suppliers, present and future business and marketing plans, particulars of employees or contractors, product formulations and manufacturing processes, the terms of the Agreement and any other information which either party identifies as confidential but does not include information which is available in the public domain unless that information enters the public domain as a result of a breach of confidence by the other party;
- (l) **Credit Account** means an arrangement (if any) approved (and not withdrawn) by the Company that permits the Buyer to pay for Goods after delivery in accordance with these Conditions;
- (m) **Goods** means the goods supplied or to be supplied by the Company to the Buyer;
- (n) **FOB Destination** means that the Company will pay shipping costs and remain responsible for the Goods until the Buyer takes possession at the nominated destination point;
- (o) **Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, trade marks, designs, circuit layouts, trade secrets, know-how, confidential information, plant breeders rights, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;
- (p) **NSW Rice** means rice grown in New South Wales;
- (q) **Order** means a request from the Buyer to the Company for the supply of Goods;
- (r) **Personnel** means all employees, agents, consultants and subcontractors of a party.
- (s) **PPSA** means Personal Property Securities Act 1999 (NZ);
- (t) **Proceeds** has the meaning in the PPSA and for the avoidance of doubt, includes all present and after-acquired property of the Buyer which it acquires as a result of selling or otherwise disposing of the Goods;
- (u) **Quotation** means a written or verbal quotation from the Company relating to the supply of Goods to the Buyer;
- (v) **Related Body Corporate** has the same meaning as in the *Corporations Act 2001* (Cth);

(w) **Specifications** mean specifications as to the type and quality of Goods set out in an Order accepted by the Company or otherwise agreed to by the Company in writing; and

(x) **Security Interest** has the meaning in the PPSA.

### 2 Supply of Goods and Term

2.1 The Company agrees to supply and the Buyer agrees to purchase the Goods on the terms and conditions set out in these Conditions.

2.2 These Conditions commence on the Commencement Date set out in any Agreement, or otherwise when the Buyer places an Order and, unless terminated earlier in accordance with clause 7, will end on any expiry date set out in any Agreement or Order, or otherwise when the Buyer ceases to purchase Goods from the Company ("Term").

### 3 Orders

3.1 From time to time during the Term, the Buyer may submit an Order to the Company for Goods. All Orders must comply with the requirements set out in the Agreement or otherwise notified by the Company in writing.

3.2 Unless the parties have entered into an Agreement, a binding separate and independent contract for the supply of Goods by the Company to the Buyer comes into existence when the Company accepts an Order for the Goods or the Company supplies the Goods in response to an Order. The acceptance of one Order does not oblige the Company to accept any other Order.

3.3 The Company will acknowledge receipt of an Order and unless the Company notifies the Buyer that it is unable to supply that Order, it will be taken to have accepted the Order.

3.4 Once the Company has acknowledged an Order, the Buyer cannot change or cancel the Order without the prior written consent of the Company.

3.5 A Quotation is not an offer to supply the Goods referred to in the Quotation. Unless the Company has agreed to set prices for specified periods of time, all Quotations lapse 30 business days after issue and may be withdrawn or changed by the Company at any time.

3.6 The Company's brochures and catalogues are published as sources of general information only and do not constitute an offer to supply Goods.

3.7 These Conditions and any Agreement between the parties will prevail to the extent of any inconsistency with any Order.

3.8 The Company may accept an Order in whole or in part.

### 4 Price and payment

4.1 The price of Goods will be as agreed in writing by the Company in the Agreement, in an Order or otherwise.

4.2 Unless otherwise agreed in writing by the Company, the Company may change the price of Goods from time to time and is under no obligation to apply the price agreed in respect of an Order to any other Order.

4.3 Unless otherwise agreed in writing by the Company, prices quoted in the Company's published price lists are subject to change on four weeks' notice (for Australian Buyers) or on six weeks' notice (for New Zealand Buyers).

4.4 Unless otherwise agreed in writing by the Company, all prices for Goods delivered by ship are on a CFR basis, and prices for all other Goods are on a FOB Destination basis.

4.5 Unless otherwise expressly stated, the price of Goods is exclusive of GST. If sale of Goods to the Buyer constitutes a taxable supply, the Buyer must pay the GST applicable to that sale, subject to the Company providing a tax invoice. If the supply is in Australia, the terms **GST, supply and tax invoice** have the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). If the supply is in New Zealand, the terms **GST, supply and tax invoice** have the same meaning as under the *Goods and Services Tax Act 1985* (NZ).

4.6 Subject to these Conditions, if the Buyer has a Credit Account with the Company, the Goods supplied by the Company must be paid for within 30 days of the date of invoice.

4.7 If the Buyer does not have a Credit Account with the Company, then the Buyer must pay for Goods before they are supplied.

4.8 The Company may, acting reasonably, cancel a Credit Account at any time by notice to the Buyer.

4.9 Unless otherwise agreed, all payments are to be made by cash or electronic funds transfer of cleared funds in Australian dollars.

4.10 Without prejudice to any other rights, the Company may charge interest on any overdue payments at an annual rate equal to 2% above the then current ANZ Bank's lending rate.

4.11 The Buyer indemnifies the Company on demand against all costs, charges and expenses incurred by the

## 5 Delivery and risk

5.1 The Goods will be delivered by the Company to the place and on the dates set out in the Order.

5.2 The Company is not obliged to deliver Goods under an accepted Order unless payment for the Goods has been made or a Credit Account is in place.

5.3 Risk in the Goods delivered by ship will pass to the Buyer when they pass over the ship's rail, and risk in all other Goods will pass when the Goods are delivered to the destination nominated by the Buyer.

5.4 Delivery dates quoted by the Company are estimates only and while the Company will use its best endeavours to meet those dates, it does not guarantee to do so. The Company will notify the Buyer as soon as practicable if it is unable to meet any delivery dates.

5.5 To the extent permitted by law, the Company shall not be liable for any losses, damages or expenses sustained by the Buyer, or any other person, due to non-delivery of the Goods or a delay in delivery or collection of the Goods.

## 6 Title

6.1 The Company will retain title to Goods supplied to the Buyer until the purchase price of the Goods has been received in full by the Company.

6.2 Until title passes to the Buyer:

- (a) the Buyer will hold the Goods as bailee and agent for the Company only;
- (b) the Buyer will insure the Goods against all usual risks to full replacement value and hold any insurance monies received by the Buyer for Goods on trust for the Company;
- (c) the Buyer will store the Goods separately, clearly identified as the Company's property and in a manner to enable them to be identified and cross-referenced to particular invoices where reasonably possible;
- (d) the Buyer will not pledge or allow any lien, charge or other encumbrance to arise over the Goods;
- (e) the Buyer may use or sell Goods in the ordinary course of business, provided that the Buyer will be agent for the Company in any sale if Goods are sold. The Buyer must account to the Company for part of the proceeds of any such sale equal to the amount owing by the Buyer to the Company for those Goods and must hold those proceeds in a separate bank account on trust for the Company. However any such agency will only extend to the obligation to account for proceeds. The Company will not be bound by any contract between the Buyer and the Buyer's purchaser;
- (f) if the Buyer uses the Goods in a manufacturing or value-added process of its own or a third party, then the Buyer will hold such part of the proceeds of the manufacturing or value-added process as relates to the Goods in trust for the Company. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to the Company for those Goods at the time of receipt of such proceeds; and
- (g) after giving 24 hours notice to the Buyer the Company is entitled to enter upon the Buyer's premises between 9am and 5pm to inspect the Goods.

6.3 The Company's other rights as an unpaid seller will not be affected by the Company retaining title to Goods supplied until the Goods have been paid for in full by the Buyer.

6.4 The Buyer acknowledges and agrees that:

- (a) the retention of title in clause 6 creates a Security Interest in the Goods and their Proceeds in favour of the Company and that Security Interest is a Purchase Money Security Interest;
- (b) it will not allow anything to be done or act in a way that might adversely affect the Security Interest in the Goods that is granted to the Company by virtue of clause 24 and this clause;
- (c) it will provide any consents, authorities, information or documents that are reasonably necessary for the Company to effect registration of its Security Interest on the Personal Property Securities Register, if requested by the Company; and
- (d) it will and hereby does indemnify the Company for all of its direct costs associated with enforcing its Security Interest.

## 7 Termination

7.1 Either party may terminate the Agreement or these Conditions in any of the following circumstances:

- (a) the other party enters into bankruptcy, liquidation or a composition with its creditors, has a receiver or manager appointed over all or any part of its assets, to the extent permitted by law enters into administration, becomes insolvent; or

(b) the other party is materially in breach of its obligations under the Agreement or these Conditions and does not remedy that breach within 10 business days after receiving notice from the other party to do so.

7.2 Termination by either party under this clause is without prejudice to that party's other remedies or the Company's right to recover payment from the Buyer for any Goods previously supplied by the Company.

7.3 If the Company terminates the Agreement or these Conditions under clause 7.1:

- (a) the Buyer must immediately return to the Company any Goods to which the Company holds title and are in the Buyer's possession or control ("Company Goods"); and
- (b) if the Buyer does not comply with clause 7.3(a) and provided that the Company gives the Buyer reasonable notice, the Company may without prejudice to its other rights, enter the Buyer's premises and recover Company Goods.

## 8 Warranties

8.1 The Company warrants to the Buyer that:

- (a) the Goods are new and unencumbered and comply with all applicable laws, unless otherwise agreed between the parties in writing;
- (b) the Goods comply with the Specifications and are of acceptable quality; and
- (c) it has all necessary licences, consents and authorisations required to produce, package and supply the Goods under these Conditions.

8.2 The Buyer warrants that:

- (a) it has received adequate information regarding the Goods to ensure their safe use, handling and storage; and
- (b) it will ensure that the Goods are properly used so that they are free from risk to health and safety.

8.3 Each party warrants to the other that it has the power and authority to enter into this agreement and be bound by the conditions set out herein.

8.4 To the extent permitted by law, all conditions and warranties that are not expressly set out in these Conditions are excluded. This does not limit any applicable statutory guarantees which by law cannot be limited or excluded.

8.5 The Company and the Buyer agree that the Goods are supplied for the purposes of a business and that the *Consumer Guarantees Act 1993 (NZ)* does not apply.

## 9 Defects and liability

9.1 The Buyer will comply with all laws in the importation, handling, selling or otherwise dealing with the Goods.

9.2 The Buyer must inspect the Goods on delivery. All claims in respect of defective Goods must be notified to the Company as soon as possible and in any event not more than 30 days following delivery, and the Buyer must include the purchase order number as well as the Company sales order number with their claim. The Buyer must comply with any request from the Company in relation to the return of Goods that are alleged to be defective.

9.3 If the Goods do not comply with clause 8.1(b), the Company's liability to the Buyer is, to the extent permitted by law, limited at the Company's option, to an obligation to supply or pay the cost of replacement Goods.

9.4 Despite any other provision of these Conditions and to the extent permitted by law, the maximum liability of the Company to the Buyer for breach of contract, negligence or otherwise in connection with these Conditions or the Goods is limited to the amount paid or payable by the Buyer for the Goods to be supplied under these Conditions.

9.5 Neither party will be liable to the other party or any other person for indirect or consequential losses or damages and for any loss of profits, loss of business, opportunity costs and damage to reputation.

9.6 Each party's liability under this Agreement will be reduced to the extent that the relevant loss or damage was caused or contributed to by the other party.

## 10 Export of NSW Rice

10.1 The Buyer acknowledges that the Act regulates the sale and purchase of NSW Rice within Australia. If the Agreement or any Order relates to the sale and purchase of NSW Rice and the Buyer is not an Authorised Buyer or an end-user of the NSW Rice, the following provisions apply:

- (a) The Buyer must not sell or supply any of the NSW Rice to persons outside of Australia.
- (b) The Buyer must not sell or supply any of the NSW Rice to persons (subsequent buyers) within Australia, other than end-users of the NSW Rice, unless the sale or supply is made under a written contract including provisions that prohibit the subsequent buyer from selling or supplying any of the NSW Rice to persons outside of Australia.
- (c) The Buyer must ensure that any subsequent sale or supply of any of the NSW Rice is made under a written contract including

**provisions in the same terms, with any necessary changes, to those referred to in paragraphs (a) and (b) of this clause.**

**10.2 If the Agreement or any Order relates to the sale and purchase of NSW Rice within Australia and the Buyer is not an Authorised Buyer of the NSW Rice, the Buyer acknowledges that the Company is prohibited from selling or supplying NSW Rice to the Buyer if the Company is aware that the Buyer intends to sell or supply any of the NSW Rice to persons outside of Australia. Notwithstanding any other provision of these Conditions, any refusal to sell or supply to the Buyer in accordance with this restriction will not be a breach of these Conditions.**

## **11 Confidential Information and Intellectual Property Rights**

**11.1 Neither party may, without the prior written consent of the other party:**

- (a) disclose Confidential Information to any other person; or
- (b) use Confidential Information for any reason other than the furtherance of the business relationship between the Buyer and the Company,
- (c) except where required by law or the rules of a stock exchange or disclosure to that party's legal, financial or other advisers.

**11.2 Both parties must, upon termination of the Contract, deliver to the other party all copies of the Confidential Information in their care or control.**

**11.3 Neither the Company nor the Buyer transfers any right, title or interest in any Intellectual Property Rights of the respective party to the other. Each party is prohibited from using the other party's Intellectual Property Rights (including but not limited to trademarks) unless authorised in writing by the owning party.**

**11.4 Neither party will cause or permit anything that may amount to misuse, interference with, damage or endangerment to the Intellectual Property Rights of the other party or their suppliers, or assist or allow others to do so. Each party undertakes to advise the other party immediately if it becomes aware of any unauthorised use or attempted use by any person of the other party's Intellectual Property Rights. Clauses 43 and 44 will survive termination of these clauses.**

## **12 Force Majeure**

**12.1 The Company will not be liable if the Company is delayed or prevented from delivering Goods, or otherwise performing any of its contractual obligations, due to any cause or circumstance beyond its reasonable control including acts of God, floods, storms, natural disasters, acts of war or terrorism, sabotage, acts of government or regulatory authority, strikes or other industrial disputes, court orders, breakdown of equipment or the failure by the Company's suppliers to deliver to the Company.**

## **13 Anti-Bribery and Corruption**

**13.1 The Buyer represents and warrants that it will comply (and ensure its Personnel comply) with the Business Ethics Laws and Anti-Bribery and Corruption laws during the Term. When carrying out its obligations under the Agreement, the Buyer must comply with the Anti-Bribery Policy available online at the following address**

<https://www.sunrice.com.au/corporate/policies-and-documentation/anti-bribery-corruption-policy/>

**13.2 The Buyer must ensure that its Personnel comply with the Anti-Bribery and Corruption Laws and Business Ethics Laws during the Term.**

**13.3 The Buyer will promptly notify the Company in the event that it becomes aware of a breach or potential breach of this clause 13.**

## **14 General**

**14.1 These Conditions are governed by the laws of New Zealand and the Company and the Buyer submit to the non-exclusive jurisdiction of the Courts of New Zealand.**

**14.2 Except as otherwise agreed in writing by the parties, any Agreement between the parties, these Conditions, together with any Order accepted by the Company, constitute all of the terms of the contract for the sale of the Goods by the Company to the Buyer. All other terms and conditions, express or implied, including any alternate terms proposed by the Buyer, are excluded to the fullest extent permitted by law. These terms can only be amended or varied in writing signed by the parties.**

**14.3 Any provision of these Conditions that is illegal, void or unenforceable will be severed without affecting the other provisions.**

**14.4 If either party does not enforce, or delays the enforcement of any obligation of the other party under these Conditions, it will not waive any breach of that obligation or preclude that party's right to subsequently enforce that or any other obligation of the other party.**

**14.5 Whenever any sum of money shall be recoverable from or payable by the Buyer under these Conditions, the same may be deducted from any sum then due or which at any time thereafter may become due to the Buyer under these Conditions with the Company or its Related Body Corporates. Exercise by the Company of its rights under this clause shall be without prejudice to any other rights or remedies available to the Company under the contract, or otherwise at law or in equity.**

**14.6 Neither party may assign all or any of its rights or obligations under these Conditions without the prior written consent of the other party.**