

## Cargill General SALES Contract Terms and Conditions (New Zealand)

1. **Legal Effect:** 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, except rules 19.3 and 24.0 (“**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;
  - (b) these Terms and Conditions (excluding the GTA Trade Rules) and the GTA Trade Rules, the Terms and Conditions (excluding the GTA Trade Rules) prevail to the extent of any such inconsistency.
2. **Definitions:** 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:**
  - (a) 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.
  - (b) 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:
    - (i) telephone whereby; the Seller’s record of such telephone call, including any written confirmation, shall be conclusive and binding on the Buyer; or
    - (ii) email, at the time the Seller accepts the Buyer’s offer by such email sent by the Seller for the purchase of the Commodity, whereby the Seller’s record of such acceptance in such email, shall be conclusive and binding on the Buyer; or
    - (iii) entering into an oral agreement with the Seller or its agents. The Seller’s record of such oral agreement, including any written confirmation, shall be conclusive and binding on the Buyer.
4. **Seller Obligations:** 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 or release the Commodity within the Delivery Period to the Delivery Location.
5. **Buyer Obligations:**
  - (a) In accordance with the Confirmation, the Buyer has agreed to:
    - (i) purchase such quantity and quality of the Commodity from the Seller as specified in the Confirmation;
    - (ii) to pay the Price for the Commodity;
    - (iii) take delivery/collect the Commodity before the end of the Delivery Period from the Delivery Location; and
    - (iv) comply with the Confirmation.
  - (b) If the Delivery Location is the Seller’s Premises, the Buyer will ensure that while it is at the Seller’s Premises, the Buyer will, and will ensure and procure that its employees, agents and sub-contractors (if any) and employees of its agents and sub contractors (if any), at all times comply with:
    - (i) The relevant rules, policies and procedures adopted by the Seller in relation to the Seller’s Premises from which the Buyer is to take delivery or where the Buyer visits for any other reason (as advised to the Buyer from time to time or which are displayed generally at the Seller’s Premises);

- (ii) All relevant policies and procedures of the Seller including, those relating to health and safety, environmental and risk management;
  - (iii) All relevant legislation and regulations in force including, but not limited to, the Health and Safety in Employment Act 1992, and the Resource Management Act 1991; and
  - (iv) Any safety instructions or reasonable directions given to the Buyer from time to time.
6. **Time:** Time shall be of the essence.
7. **Delivery, Weights & Quality:**
- (a) **Ex-store sales:** If the mode of delivery is Ex-Store then the Seller makes the Commodity available for Buyer to collect at the Delivery Location. Delivery shall be made Free on Truck. The Buyer undertakes to advise the Seller as soon as reasonably possible of intended times of collection within the Delivery Period.
  - (b) **Sales on delivered basis:** The Seller undertakes to notify the Buyer of all dispatches as soon as possible after dispatch. Notices should be available at the Delivery Location on or before arrival of delivery vehicles at those premises.
  - (c) **Weight Certificates:** Ex-Store sales and Sales on delivered basis: The parties agree that the Commodity is sold basis Origination Weights unless the Commodity is sold delivered in which case it is sold basis Destination Weights. A receipt for the weight at the time of delivery shall, if required by Seller or driver, be given to the driver of the vehicle.
  - (d) **Quality Certificates:** Ex-Store sales and Sales on delivered basis: The parties agree that the Commodity is sold basis Origination Quality unless the Commodity is sold delivered in which case it is sold basis Destination Quality.
8. **Quantity Tolerances:** 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 set out in the Confirmation.
  - (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 set out in the Confirmation.
  - (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 set out in the Confirmation.
9. **Failure to Take Delivery:**
- (a) 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.
  - (b) 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, howsoever arising, as result of, or in connection with such default and termination including, any loss of profits, and any action to recover any amount payable under these Terms and Conditions;
  - (c) If the Buyer fails to take delivery of the Commodity during the relevant Delivery Period, for any reason whatsoever then:
    - (i) 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:
      - (aa) **Meal and Hull:** \$10.00/mt per month. An additional \$10.00/mt per month applies after two months delinquency (combined total of \$20.00/mt per month);
      - (bb) **Oil:** \$20.00/mt per month;
      - (cc) **Seed and Grain:** \$4.00/mt per month or such other amount as agreed at the time of contract formation;

- (ii) Interest is payable on the unpaid Price in accordance with clause 10 of these Terms and Conditions. Any accrued interest that is unpaid at the end of each month shall be capitalised;
- (d) The Buyer agrees and acknowledges that where the Buyer has failed to take delivery during the relevant Delivery Period/s:
  - (i) the Seller may suspend deliveries/consignments of Commodities under any other contracts the Seller has with the Buyer until the Buyer remedies such default;
  - (ii) regardless of whether the Seller has terminated the relevant contract/s the Buyer agrees that the Seller may, in its absolute discretion, terminate any other contract (including a contract arising from application of clause 20 of these Terms and Conditions) and seek damages, including, loss of profits as a result of such termination;
  - (iii) regardless of whether the Seller has terminated the relevant contract/s 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.
- (e) Termination of a particular contract/contracts:
  - (i) does not affect any other contracts between the parties except to the extent set out in this clause;
  - (ii) is without prejudice to the rights of either party that have accrued prior to the date of termination.

10. **Late Payment:**

- (a) 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.
- (b) 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 15(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 his representative written notification of the Seller's intention to exercise all or any such rights.

11. **Credit:** The Seller in its absolute discretion, acting reasonably, may reduce or cancel all credit trading facilities on notice to Buyer, and all current Confirmation(s) must be executed and delivered as specified, under revised payment terms.

12. **Risk and Title:**

- (a) The risk in the Commodity shall pass to the Buyer upon delivery;
- (b) Title to the Commodity supplied remains with the Seller and will not pass to the Buyer (and the Buyer will be a bailee only in respect of such Commodity) until the Seller has received payment of all monies in full owing by the Buyer to the Seller under the Terms and Conditions;
- (c) Until title to the Commodity passes to the Buyer in accordance with this clause the Buyer will:
  - (i) 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; and
  - (ii) maintain the Commodity in good order and condition and preserve the Commodity in its present form.
- (d) The Seller will be entitled at any time until title to the Commodity passes to the Buyer to demand the return of the Commodity and will be entitled without notice to the Buyer and without liability to the Buyer to enter into any premises occupied by the Buyer in order to search for and remove the Commodity and

the Seller may otherwise exercise any rights in respect of the Commodity, including but not limited to reselling the Commodity. The Buyer will enable the Seller to obtain all necessary access to such premises without delay.

13. **Implied Conditions and Warranties:**

- (a) The Seller excludes all implied conditions and warranties, howsoever arising, 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**);
- (b) The Consumer Guarantees Act 1993 applies. However, where an agreement is made between the Seller and a Buyer who acquires, or holds himself or herself out as acquiring, under the agreement, goods or services for the purposes of a business, the Consumer Guarantees Act 1993 shall not apply. If the Buyer on-supplies the Commodity the Buyer must indicate that the Consumer Guarantees Act 1993 will not apply where the Commodity is on-supplied for business purposes; and
- (c) The provisions of the Sale of Goods Act 1908 will not apply.

14. **Limitation of Liability:** 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 goods or services in respect of which the breach occurred or to supplying those goods and services respectively again or to paying the cost of having those goods and services respectively supplied again. In no circumstances will the Seller be liable for any loss of profits or special, consequential or indirect loss or damage.

15. **Insolvency:** 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.

16. **Force Majeure:**

- (a) 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.
- (b) 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 of 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, or compensate, 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.
- (c) 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 is still in existence and 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 during the further 30 consecutive day extension due to the continuation of the Force Majeure Event, 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.

17. **Amendment of GTA Trade Rules and Dispute Resolution Rules:**

- (a) The reference in Rule 15.2(5) should read as being a reference to Rule 15.2(4) and not Rule 15.1(4).
- (b) For the avoidance of doubt, Rule 16 (Finality) applies only as set out in Rule 15.4 and then only to goods that do not comply with the contract specifications.
- (c) Rule 21 and the definition of "Force Majeure" of the GTA Trade Rules do not apply.
- (d) A dispute or controversy between the Buyer and Seller or a claim made by either of them, is not subject to the Dispute Resolution Rules and does not become a dispute, controversy or claim for the purposes of the GTA Trade Rules, unless either the Buyer or the Seller gives to the other party a notice in writing (**Dispute Notice**) specifying the nature of the dispute and requiring it to be dealt with in the manner prescribed by the Dispute Resolution Rules, together with the Request initiating the Dispute Resolution Rules.
- (e) Notwithstanding any other provision, if the Seller has instituted legal proceedings to enforce its rights and entitlements under the Confirmation and the Terms and Conditions prior to receipt of a Dispute Notice by the Seller, upon receipt of the Dispute Notice by the Seller the parties agree that:
  - (i) they shall apply for a stay of proceedings until the parties have exhausted the dispute resolution process in accordance with the GTA Trade Rules; and
  - (ii) the Buyer shall pay, reimburse and indemnify the Seller on demand for all liabilities, costs, expenses (including legal costs and expenses on a full indemnity basis) the Seller incurs relating to or connected with the matter and the legal proceedings up to and including the date of receipt of the Dispute Notice.

18. **Privacy:**

- (a) 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 the Buyer's personal information) for the purpose of managing the Seller's commercial relationship with the Buyer including:
  - (i) providing the Buyer with 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;
  - (ii) 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
  - (iii) as is otherwise set out in the Summary of Cargill's Privacy Policy located at <http://www.cargill.com.au/en/about> (**Privacy Policy**)
- (b) The Buyer agrees and acknowledges that the Seller:
  - (i) may transfer such information overseas and disclose it to others (including contractors and buyers); and
  - (ii) may collect information from an entity other than the Seller including brokers used by the Seller.
- (c) The Buyer can withdraw its authorisation at any time by emailing [Australiadataprivacyofficer@cargill.com](mailto:Australiadataprivacyofficer@cargill.com). 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.
- (d) 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 18.

19. **Security Interest:**

- (a) The Buyer grants the Seller a security interest in all present and after acquired Commodity supplied and all proceeds of such Commodity, as security for the due payment for such Commodity and of all other amounts owing by the Buyer to the Seller from time to time, and for the performance by the Buyer of all the Buyer's other liabilities and obligations to the Seller from time to time, whether pursuant to these Terms and Conditions or otherwise. For the purposes of section 36(1) of the Personal Property Securities Act 1999 ("**PPSA**") and to ensure maximum benefit and protection for the Seller by virtue of section 36(1)(b)(iii) of the PPSA, the Buyer confirms and agrees that the Buyer intends to and does grant to the Seller, as security for such indebtedness, liabilities and obligations of the Buyer, a security interest in all of the Buyer's present and after acquired property except only for any such property which is or comprises items or kinds of personal property ("**excepted property**");
  - (i) in or to which the Buyer has rights; and
  - (ii) which has not been supplied by the Seller to the Buyer, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by the Seller to the Buyer.
- (b) The Buyer agrees as follows in respect of the security interests created under clauses 12 and 19(a):
  - (i) The Buyer undertakes:
    - (aa) to provide verification of any information relating to the Buyer if required by the Seller;
    - (bb) to sign any further documents and/or provide any further information, such information to be complete, accurate and up to date in all respects, and/or do anything else, which the Seller may reasonably require to ensure each security interest created by these Terms and Conditions is registered in the Personal Property Securities Register ("**PPSR**") and to enable the Seller to obtain a perfected first ranking security interest in the Commodity supplied under the **PPSA**;
    - (cc) to indemnify, and upon demand, reimburse, the Seller for all costs and expenses incurred in registering, maintaining, discharging and/or enforcing the security interest created by these Terms and Conditions;
    - (dd) 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 the Commodity supplied, or permit such Commodity to become an accession, without the Seller's written consent; and
    - (ee) not to change its name without giving the Seller at least seven days' prior notice.
  - (ii) The Buyer waives its right to receive a copy of any verification statement confirming registration of a financing statement or financing change statement under the PPSA.
  - (iii) The Buyer agrees, to the extent permitted by law:
    - (aa) sections 114(1)(a), 133 and 134 of the PPSA will not apply;
    - (bb) the Buyer will have none of the rights listed or described in section 107(2) of the PPSA; and
    - (cc) where the Seller has rights in addition to, or existing separately from, those in Part 9 of the PPSA, Part 3 of the Property Law Act 2007 or otherwise, those rights will continue to apply (and, in particular, will not be limited by section 109 of the PPSA).
  - (iv) The Seller may allocate amounts received from the Buyer in any manner it determines, including in any manner required to preserve

any purchase money security interest (as defined in the PPSA) it has in the Commodity supplied.

- (c) Nothing in these Terms and Conditions shall be construed as:
- (i) an agreement to subordinate the security interest created by these Terms and Conditions in favour of any person;
  - (ii) a consent by the Seller to any other security interest attaching (as that term is used in the context of the PPSA) to, or any other security interest subsisting over, any Commodity supplied; or
  - (iii) a consent by the Seller to any property that is not a Commodity supplied becoming an accession to any such Commodity.

20. **Consignment:**

- (a) 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 in its absolute discretion 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.

21. **General:**

- (a) Any failure by the Seller to insist on strict compliance with any of the Terms and Conditions of 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.
- (b) Any notices or instructions provided by the Buyer must be provided in writing by facsimile, telephone, or electronic mail during normal business hours. An instruction will be accepted by the Seller when the Seller provides the Buyer with written confirmation of the instruction.
- (c) Unless otherwise specified, a notice is regarded as given by the sender and received by the addressee:
- (i) if delivered in person, when delivered to the addressee;
  - (ii) if posted, 5 days from and including the date of posting;
  - (iii) if faxed, when faxed by the sender as evidenced by the fax confirmation receipt indicating successful delivery; or
  - (iv) if emailed at the time of receipt specified in the Electronic Transactions Act 2002.
- but if, in relation to items (c)(i) to (iii) delivery or receipt is on a day which is not a business day or is after 5.00 pm at the place of delivery or receipt, it is regarded as given at 9.00 am on the next day that is a business day.
- (d) Written communications to the Buyer must be sent to the address set out in the Confirmation and may be sent by email to any email address specified by the Buyer from time to time. Written communications to the Seller must be sent to Level 1, Building C, Ascot Office Park, 93 - 95 Ascot Avenue, Greenlane, Auckland, New Zealand or as otherwise notified by the Seller from time to time.
- (e) 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.
- (f) 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.

- (g) A covenant, undertaking, representation, warranty, indemnity or agreement made or given by:
  - (i) two or more parties; or
  - (ii) a party comprised of two or more persons,
 is made or given and binds those parties or persons jointly and severally.
- (h) The Buyer is not entitled to withhold payment of any disputed amount the subject of an invoice issued by the Seller or to set off against the amount of an invoice any other claim that the Buyer has against the Seller.
- (i) 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 transfer or assignment of any rights 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 related obligations.
- (j) The Seller may assign or transfer any of its rights or novate any of its obligations under the Confirmation to any person without the Buyer's consent and without providing the Buyer notice.
- (k) The Confirmation does not create an agency or other fiduciary relationship between the parties.
- (l) In addition to any other right or remedy, the Seller may without prior notice to any person set off any sum or obligation (whether or not arising under this Confirmation and Terms and Conditions) owed by the Buyer to the Seller or any of its Related Bodies against any sum or obligation (whether or not arising under this Confirmation and terms and Conditions) owed by the Seller or any of its Related Bodies to the Buyer.
- (m) The Confirmation and the Terms and Conditions are governed by the laws of New Zealand.
- (n) 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.
- (o) These Terms and Conditions, together with the Confirmation, contain the entire agreement between the Buyer and the Seller in connection with the subject matter and will supersede and prevail over any previous negotiations.

22. **Interpretation:**

- (a) In these terms and conditions, unless the context otherwise requires:

**"Buyer"** means the buyer specified in the Confirmation.

**"Commodity"** means the goods specified in the Confirmation.

**"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.

**"Delivery Location"** means the location specified in the Confirmation.

**"Delivery Period"** means the period of the time set out in the Confirmation.

**"Force Majeure Event"** means any:

- (i) strike, ban, lock-out, riot, civil commotion, difference with or between workmen or other industrial action;
- (ii) accidents to or breakdown of machinery, infrastructure, plant or equipment;
- (iii) blockage, stoppage, accident or hazard;
- (iv) fire, natural disaster, drought, storm, flood, severe weather, acts of God;
- (v) embargo, blockade, sanctions;
- (vi) delay en route;
- (vii) terrorism or terrorism prevention;

- (viii) policies or restrictions of governments including prohibition or restrictions of export or import;
- (ix) action or inaction in connection with any licence, permit or approval;
- (x) war;
- (xi) delay in receipt or shipment of any materials required for production of the Commodity;
- (xii) 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 this contract;
- (xiii) all consequences of any of the above occurrences; or
- (xiv) 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 reasonable control.

**"Insolvency Event"** means if:

- (i) the Buyer being an individual, commits an act of bankruptcy or enters into a creditors proposal or otherwise compounds or compromises with the Buyer's creditors;
- (ii) the Buyer being a company, goes into liquidation by voluntary or court appointment of a liquidator or an application for appointment of a liquidator to the Buyer is filed in the High Court;
- (iii) a receiver, receiver and manager, statutory manager, controller, or voluntary administrator is appointed over any part of the property or assets of the Buyer; or
- (iv) any step is taken to appoint, or with a view to appointing, a statutory manager (including the making of any recommendation in that regard by the Financial Markets Authority) under the Corporations (Investigation and Management) Act 1989 in respect of the Buyer, or the Buyer or any associated person (as that term is defined in that Act) of it is declared at risk pursuant to the provisions of that Act.

**"Price"** means the price as set out in the Confirmation.

**"Related Bodies"** means 'related company' as that term is defined in the Companies Act 1993.

**"Seller"** means Cargill Australia Limited Co no. 2360605 (NZ branch), a corporation incorporated in Australia.

**"Seller's Premises"** means any premises owned, leased, licensed or otherwise occupied by the Seller or any person acting for on behalf of the Seller.

- (b) 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".
- (c) The singular includes the plural and vice versa.
- (d) Words importing a gender include the other genders.
- (e) Other grammatical forms of defined words or phrases have corresponding meanings.
- (f) A reference to "dollar", "\$" or "\$NZD" is a reference to New Zealand currency.
- (g) A reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (h) Headings are for convenience of reference only and do not affect interpretation.
- (i) Unless specified otherwise, "day" means a calendar day.
- (j) Including must not be treated as a word of limitation.

- (k) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (l) 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.
- (m) A reference to “contract” includes a contract arising by reason of application of clause 20 of these Terms and Conditions.