

**Cargill General SALES Contract Terms and Conditions 1 February 2019
(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; or
 - (b) either 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:** 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, whereby the Seller’s record of such oral agreement, including any written confirmation, shall be conclusive and binding on the Buyer.
 - (c) These Terms and Conditions may be amended from time to time. The most recently amended Terms and Conditions will apply in respect of any contract between the parties entered into on or from the date of the most recent amendments.
4. **Seller Obligations:** In accordance with and subject to, the Confirmation and these Terms and Conditions, 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 and subject to, the Confirmation and these Terms and Conditions, 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 At Work Act 2015, 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) **Delivery:** The Seller 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 the Seller which includes the action or inaction of any third parties.
- (b) **Ex-store sales:** If the mode of delivery is Ex-Store then the Seller will use its reasonable endeavours to make 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.
- (c) **Sales on delivered basis:** The Seller undertakes to:
 - (i) notify the Buyer of all dispatches as soon as possible after dispatch; and
 - (ii) provide notice to the Delivery Location on or before arrival of delivery vehicles at those premises.
- (d) **Weight Certificates for 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 requested by Seller or driver, be given to the driver of the vehicle.
- (e) **Quality Certificates for 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 after that default.
- (b) If the Buyer fails to take delivery during the relevant Delivery Period/s, 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 (including payable by the Seller to a third party), howsoever arising, as result of, or in connection with such failure 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 in addition to any amount payable under clause 9(b):
 - (i) 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:
 - (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; and
 - (cc) **Seed and Grain:** \$4.00/mt per month, or such other amount as agreed between the parties;
 - (ii) for any reason whatsoever, 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; and
 - (iii) in respect of an Oilseed Commodity, which is susceptible to deterioration in quality if it is stored for longer periods of time, the Seller accepts no responsibility if the quality of that Oilseed Commodity does not meet the quality as specified in the Confirmation.
- (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 21 of these Terms and Conditions) and seek damages, including, loss of profits as a result of such termination; and
 - (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 9; and
 - (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 17(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. **Non-Compliant Commodities:**

- (a) 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 or otherwise Seller will have no liability to Buyer. Buyer irrevocably waives and releases all claims that are not made within that period.
- (b) Where Non-Compliant Commodities have been supplied and notified pursuant to (a):
 - (i) Buyer must, at Seller's election, either arrange for the certified destruction of the Non-Compliant Commodities or return the Non-Compliant Commodities to Seller; and
 - (ii) Seller must, if requested by Buyer, supply replacement compliant Commodity as soon as reasonably practicable.
- (c) The applicable undertakings in (b) will be carried out:
 - (i) at Buyer's expense, if the non-compliance was not caused by a defect arising from an act or omission of Seller; or
 - (ii) otherwise, at Seller's expense.

13. **Commodity recall:**

- (a) Each party must notify the other immediately by telephone, and confirm in writing, if it becomes aware of any circumstances that might necessitate a recall of any of the Commodity.
- (b) The parties will give each other any assistance that shall reasonably be required to recall, as a matter of urgency, Commodity from the market.
- (c) Notwithstanding anything to the contrary herein, if Seller 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 Seller from and against any and all loss, cost, damage and expense incurred by Seller as a result of such failure or refusal.
- (d) Subject to clause (c) 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 Seller unless the Defects were caused by Buyer, in which case the Commodity recall will be at the cost of Buyer.
- (e) In the event of a Commodity recall or customer complaint, Buyer will not make any press or other announcement or release any information without Seller'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.
- (f) Seller 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, provided that Seller provides Buyer with a reasonable opportunity to review and provide input into the form of that notification or advice.
- (g) 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.

14. **Risk and Title:**

- (a) The risk in the Commodity shall pass to the Buyer upon delivery whenever the Buyer takes delivery during or earlier than the relevant Delivery Period/s. In the event the Buyer takes delivery of the Commodity at any time following the relevant Delivery Period/s, the Buyer will be deemed to have accepted risk in the Commodity, and risk will have passed to the Buyer, from the last date of the relevant Delivery Period/s.

- (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.

15. **Implied Conditions and Warranties:**

- (a) The Seller 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**).
- (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 in terms of section 43(2) of the Consumer Guarantees Act 1993, 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.
- (c) The provisions of Part 3 of the Contract and Commercial Law Act 2017 (Sale of Goods) will not apply.
- (d) If the Buyer uses the Commodity or any other goods or services supplied by the Seller for business purposes, the Buyer agrees that it is fair and reasonable for the Seller and the Buyer not to be bound by sections 9, 12A, 14 and 14(1) of the Fair Trading Act 1986 in accordance with section 5D of that Act.

16. **Limitation of Liability:**

- (a) 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.
- (b) In no circumstances will the Seller be liable for any loss of profits or special, consequential or indirect loss or damage (including, without limitation, any and all loss of profit, loss of revenue, loss of goodwill, loss of reputation, loss of opportunity and loss of savings, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance, whether arising in contract, tort or equity or under statute).
- (c) The Buyer acknowledges and agrees with the Seller that:
 - (i) use of the Commodities supplied are beyond the control of the Seller; and
 - (ii) the Seller 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 the Seller, its employees, servants or agents regarding the Commodities sold and their potential use will not be construed as contractual conditions or warranties.

- (d) 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.
 - (e) Without limiting clause 16(a) above but despite anything else to the contrary in these Terms and Conditions, the Seller's maximum liability under these Terms and Conditions or otherwise, from any cause whatsoever, whether arising in contract, tort (including negligence), equity or under statute or otherwise, shall not exceed three times the total consideration paid for the Commodities as specified in the Confirmation.
17. **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; and
 - (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.
18. **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 the Seller is affected by 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 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 by the end of the further 30 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 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.
19. **Amendment of GTA Trade Rules and Dispute Resolution Rules:**
- (a) For the avoidance of doubt, Rule 16 (Finality) of the GTA Trade Rules applies only as set out in Rule 15.4 of the GTA Trade Rules and then only to goods that do not comply with the contract specifications.
 - (b) Rule 21 and the definition of "Force Majeure" of the GTA Trade Rules do not apply.
 - (c) 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.
- (d) 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.

20. **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) 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 the Seller information concerning the Buyer's credit worthiness which is within their possession and which is requested by the Seller;
 - (ii) 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;
 - (iii) 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
 - (iv) as is otherwise set out in the Summary of Cargill's Privacy Policy located at <https://www.cargill.com.au/en/doc/1432100027007/cargill-australia-privacy-pdf.pdf> (**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) If the Buyer has any queries regarding its privacy, please contact **Australiadataprivacyofficer@cargill.com**.

21. **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 undertakes:
- (i) to provide verification of any information relating to the Buyer if required by the Seller;
 - (ii) 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;
 - (iii) 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;
 - (iv) 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
 - (v) not to change its name without giving the Seller at least seven days' prior notice.
 - (vi) 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.
- (c) To the extent permitted by law and so far as permitted by section 107 of the PPSA:
- (i) The Buyer contracts out of and waives its rights under sections 114(1)(a), 116, 120(2), 121, 125, 126, 127, 129, 131, 133 and 134 of the PPSA;
 - (ii) The Buyer agrees to the Seller exercising its rights under sections 109 and 120 of the PPSA concurrently and to the Seller retaining any repossessed Commodities immediately so that the Seller's rights under section 123 of the PPSA shall become effective immediately upon repossession.
 - (iii) The Buyer agrees that repossession and retention of the Seller's Commodities under sections 120 to 123 of the PPSA will only satisfy so much of the Buyer's debt to the Seller as is equivalent to the Seller's estimation of the market value of the Seller's Commodities in the condition the Seller's Commodities are in at the date of repossession (after deducting the Seller's costs in repossessing) and the repossession and retention will immediately extinguish any rights and/or interest the Buyer has in the Seller's Commodities.
 - (iv) 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).
 - (v) 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.
- (d) 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.

22. **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.

23. **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 Part 4 of the Contract and Commercial Law Act 2017 (Electronic Transactions),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) The Seller shall have the right to manufacture or have manufactured by any third party any product for the Buyer in any of its facilities or the facilities of any third party without the Buyer's prior approval or consent.
- (h) 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.

- (i) 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.
- (j) 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.
- (k) Other than a purported assignment of our obligations, for which the Seller will require the Buyer's prior consent, the Seller may assign, transfer, novate or otherwise deal in any manner with all or any of its rights, remedies, powers, duties under the Confirmation or these Terms and Conditions to any person without the Buyer's consent and without providing the Buyer notice. Without limiting the above, the Buyer agrees that the Seller may novate the Confirmation to any Related Body on the basis that the Seller and the Related Body have the same rights, entitlements and obligations as if the Related Body was a party to the Confirmation initially.
- (l) The Confirmation does not create an agency or other fiduciary relationship between the parties.
- (m) In addition to any other right or remedy, the Seller may without prior notice to any person set off any sum or obligation owed by the Buyer or any of its Related Bodies to the Seller or any of its Related Bodies against any sum or obligation owed by the Seller or any of its Related Bodies to the Buyer or any of its Related Bodies.
- (n) The Confirmation and the Terms and Conditions are governed by the laws of New Zealand.
- (o) 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.
- (p) 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.
- (q) 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.
- (r) 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 the Seller 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 the Seller except as expressly provided in these Terms and Conditions or the Confirmation.
- (s) Unless expressly stated in writing, all amounts quoted by the Seller will be deemed to exclude GST, which will be payable by the Buyer at the same time as the Price and in addition to the Price.

24. **Interpretation:**

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 and its Related Bodies’ (as applicable) reasonable control which causes (whether directly or indirectly) the Seller to fail to perform on time any of its obligations under this agreement.

“GST” means the goods and services tax levied under the Goods and Services Tax Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for such tax.

“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.

“Oilseed Commodity” means canola oil, cotton oil, soybean oil, sunflower oil, canola meal, cotton meal, soybean meal, sunflower meal.

“PPSA” has the meaning given in clause 21.

“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 (NZCN 2198852) (NZ branch), a corporation incorporated in Australia and registered in New Zealand as an Overseas ASIC Company.

“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.

- (a) 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”.
- (b) The singular includes the plural and vice versa.
- (c) Words importing a gender include the other genders.
- (d) Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) A reference to “dollar”, “\$” or “\$NZD” is a reference to New Zealand currency.
- (f) A reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form.
- (g) Headings are for convenience of reference only and do not affect interpretation.
- (h) Unless specified otherwise, "day" means a calendar day.
- (i) Including must not be treated as a word of limitation.
- (j) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (k) 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.
- (l) A reference to “contract” includes a contract arising by reason of application of clause 22 of these Terms and Conditions.