

Riverina Oils & Bio Energy Pty Ltd Sales Contract Terms

1. Application of these terms

1.1 These terms may be incorporated by reference into any contract, however formed, of sale of any commodity.

2. Grain Trade Australia Trade Rules

2.1 These terms incorporate the January 2019 edition of the Grain Trade Australia Trade Rules (published 1 February 2019), modified as follows:

2.1.1 Extension of definition of Insolvency

(a) the definition of Insolvency Event in respect of a person is extended to include:

(l) stating that it is unable to pay its debts; and

(m) failing to make payment of a debt due and owing by the Buyer to the Seller on a seven-day notice of default served on the Buyer by the Seller.

2.1.2 If an Insolvency Event occurs in respect of a party the party will be deemed to be in default of its obligations under the contract.

2.1.3 Insolvency

(a) If an Insolvency Event occurs in respect of a party the party will be deemed to be in default of its obligations under the contract.

(b) Rule 17.9 is deleted;

(c) Rule 17.10 is deleted and replaced with the following: “

“The Solvent Party may without prejudice to any other right it may have on learning of the (or any prior) Insolvency Event, either:

(i) declare the contract closed-out at either the Fair Market Price on the first business day after the date when the Solvent Party first learned of the Insolvency Event, or at the Fair Market Price on the first business day after the date of the earliest Insolvency Event known to the Solvent Party; or

(ii) terminate the contract by notice in writing”.

2.1.4 Reduced application of Dispute Resolution Rules

(a) Rule 23.0 is deleted if the contract is a contract of sale of oil;

2.1.5 Title may not pass on delivery

(a) each instance of the word “title” at Rules 14(1), 14(2) and 14(3) is deleted and replaced with the word “risk”;

2.1.6 Choice of law

(a) the reference to “New South Wales” at rule 24.1 is deleted and replaced with the word “Victoria”.

3. Priority

3.1 If there is any inconsistency (whether express or implied) between the particular terms of the contract as formed, the provisions of these terms, and the terms of the Grain Trade Australia Trade Rules as modified at clause 2, the terms of contract are to be construed in that order of priority (the first mentioned here being the highest), higher priority terms prevailing to the extent of any inconsistency with lower priority terms.

4. Evidence of contract

4.1 The parties acknowledge that a contract incorporating these terms by reference may be formed by any means including in writing, by email, by fax, by telephone or orally.

4.2 The Seller may issue a written contract “Confirmation”, however described, to the Buyer recording the particular terms of the contract as formed. If the Seller does not issue a written Confirmation the Seller’s written record of the particular terms of the contract as formed will constitute the “Confirmation”.

4.3 The Confirmation is conclusive evidence of the particular terms of contract and shall be binding on the Buyer.

5. Use of terms

5.1 Terms used but not defined in this document have the same meaning as in the Confirmation or in the Grain Trade Australia Trade Rules as modified at clause 2.

5.2 The terms grantor, perfected, proceeds, purchase money security interest, register, secured party, security agreement and security interest have the meanings given to them in the Personal Property Securities Act 1999 (PPSA).

6. Contract of sale

- 6.1 The Seller sells and the Buyer buys the quantity and quality of the commodity specified in the Confirmation for delivery within the Delivery Period at or to the Delivery Location.
- 6.2 The Buyer must take delivery of the commodity as agreed and must pay the agreed price for the commodity in accordance with the Payment Terms (which unless agreed otherwise are Cash on Delivery).

7. Occupational, environmental and other hazards

- 7.1 Each party must comply, and must ensure that its employees, agents and sub-contractors comply, at all times while on the other party's premises with:
 - 7.1.1 all rules, policies and procedures adopted by the other party in relation to the premises or health and safety, environmental and risk management (as advised from time to time or which are displayed at the premises);
 - 7.1.2 all laws; and
 - 7.1.3 any reasonable directions given by the occupier to the visitor from time to time.

8. Seller's warranties and limited liability

- 8.1 The Seller warrants that the commodity complies with all State and Federal Laws and requirements relating to chemical, pesticide residues, Genetically Modified Organisms' (GMO's), varietal declarations and all other conditions required by these Trade Rules, the contract, or law.
- 8.2 The Seller excludes all other 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).
- 8.3 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.
- 8.4 Without limiting clause 8.1 above but despite anything else to the contrary in these terms and conditions, the Seller's maximum liability under or in relation to the contract or its subject matter from any cause whatsoever, whether arising in contract, tort (including negligence), equity or under statute or otherwise, shall not exceed three times the total agreed price of the commodity sold.

9. Title and the Personal Property Securities Act

- 9.1 Legal and beneficial ownership (Ownership) of the commodity remains with the Seller and does not pass to the Buyer until the Buyer:
 - 9.1.1 pays in full and in clear funds any amount it owes the Seller on any account at which time title passes to the Buyer; or
 - 9.1.2 resells the commodity pursuant to a right under these terms at which time title passes the third party purchaser.
- 9.2 While ownership of the commodity remains with the Seller:
 - 9.2.1 the Buyer agrees to maintain the commodity in good order and condition and designate and store the commodity in such a way that it is clearly identified as the property of the Seller; and
 - 9.2.2 the Seller authorises the Buyer in the ordinary course of its business to sell the Commodity for full value however this authority is revoked from the time that:
 - (a) a default occurs; or
 - (b) the Seller notifies the Buyer in writing that this authority is revoked.
 - 9.2.3 the Buyer agrees to:
 - (a) advise the Seller immediately of any default or any action by third parties (including any of its creditors) affecting or which may affect the Seller's interest in the Commodity; and
 - (b) the Seller, as the Buyer's agent, entering the premises where any commodity is or may be stored and removing commodity, without being responsible for any damage caused in doing so and whereupon the Seller may resell any of the Commodity and apply the proceeds of sale in reduction of the amounts owing to the Seller.
- 9.3 If the Buyer resells or uses any Commodity:
 - 9.3.1 before Ownership of the Commodity has passed to the Buyer; or
 - 9.3.2 where Ownership of the Commodity has passed in accordance with clause 9.1.2, the proceeds of such sale or use will be received and held by the Buyer (in whatever form) in trust for the Seller to the extent of the amount owing (where the Seller's interest as beneficiary under that trust will be

that portion of the proceeds which is equivalent of the amount owing to the Seller and the balance of the proceeds (if any) will be the Buyer's beneficial interest under that trust).

9.4 The Buyer charges the commodity (and the proceeds of sale of the commodity) in favour of the Seller as security for all of the Buyer's obligations to the Seller whether or not arising under the contract of sale of the commodity.

9.5 The Buyer waives any right it may otherwise have to receive a copy of or notice of details of any financing statement, financing change statement or verification statement registered in respect of any security interest created under or in connection with these terms.

9.6 Each party agrees not to disclose any information of the kind referred to in s275(1) of the PPSA that is not publicly available.

10. Buyer's failure to take delivery

10.1 If the Buyer fails to take delivery of the Commodity as required during the relevant Delivery Period:

10.1.1 the following carry charges will accrue for each calendar month, or part thereof, that the failure to take delivery continues and are payable on demand:

Meal: No charge in respect of the first month, \$20.00 per metric tonne in respect of the second month and \$5.00 per metric tonne in respect of each month thereafter;

Oil: No charge in respect of the first month and \$25.00 per metric tonne in respect of each month thereafter -

or such other amount as agreed between the parties.

10.1.2 interest is payable on the unpaid price or the price payable had delivery been taken as contemplated by clause 12.

11. Credit

11.1 The Seller in its reasonable discretion may reduce or cancel all credit trading facilities on notice to Buyer, and the contract must be executed and delivered as specified, under revised payment terms.

12. Late Payment

12.1 Interest will accrue daily on any outstanding payments payable by the Buyer to the Seller at a mutually agreed rate in any period of overdue payment. If the interest rate is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily. Any accrued interest that is unpaid at the end of each month of delinquency shall be capitalised.

12.2 If the Buyer fails to make any payment on or before the due date for payment, the Buyer agrees that the Seller may exercise the rights and powers conferred by clause 19.1 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 written notification of the Seller's intention to exercise all or any such rights.

12.3 The Seller may apply any payment received from or on behalf of the Buyer in reduction of any amount owing by the Buyer to the Seller, as the Seller thinks fit.

13. Insolvency

13.1 On the happening of an Insolvency Event,

13.1.1 in relation to the Buyer, the Seller may, without prejudice to any other rights available to it, terminate the contract 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;

13.1.2 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 any time thereafter and refuse to accept any further deliveries/consignments.

14. Disputes

14.1 If the Buyer provides the Seller with written notification of a genuine dispute regarding the amount or calculation of any invoice within 7 days of receiving the invoice from the Seller, it may withhold payment of the disputed amount pending the resolution of the dispute but must pay the undisputed amount of the invoice. If the Buyer fails to give the written notice within the time prescribed, it must pay the invoiced amount pending resolution of any dispute.

14.2 The Buyer is not entitled to set off against the amount of an invoice any other claim that the Buyer has against the Seller.

14.3 If the Buyer fails to pay money owing under this agreement the Seller may sue for the unpaid money immediately without first complying with clause 14.5.

- 14.4 A party may seek urgent interlocutory relief in relation to the actions of the other party without first complying with clause 14.5.
- 14.5 Unless clause 14.3 or 14.4 applies, if a dispute arises out of or relates to the contract (including any dispute as to breach or termination of this agreement) a party may not commence court proceedings relating to that dispute (Dispute) unless:
- 14.5.1 the party claiming the Dispute has arisen has given written notice to the other party specifying the nature of the Dispute (Dispute Notice); and
- 14.5.2 the party has first endeavoured in good faith to resolve the Dispute expeditiously using mediation, applying the procedures and within the timeframes specified in clauses 14.6 and 14.7.
- 14.6 The parties must endeavour to settle any dispute in connection with this agreement by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute or the Chair's designated representative.
- 14.7 The Resolution Institute (ACN 008 651 232) Mediation Rules will apply to the mediation.

15. General

- 15.1 The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise or partial exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.
- 15.2 The Buyer must not assign or transfer any of its rights or novate any of its obligations under the contract 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.
- 15.3 The Seller may assign or transfer any of its rights or novate any of its obligations under the Contract to any person without the Buyer's consent and without providing the Buyer notice.
- 15.4 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 against any sum or obligation (whether or not arising under the contract) owed by the Seller to the Buyer.
- 15.5 If the contract between the Seller and the Buyer is effected through an intermediary or a broker the provisions of these terms 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.
- 15.6 a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
- 15.7 a reference to an individual or person includes a corporation, firm partnership, joint venture, association, authority, trust, state or government and vice versa;
- 15.8 a reference to any party to the contract includes that party's executors, administrators, substitutes, successors and permitted assigns;
- 15.9 In these terms, headings and subheadings are for convenience of reference only and do not affect interpretation.
- 15.10 A notice under the contract may be given by transmission by email to an email address used or notified by the recipient and will be treated as having been given and received on the date the recipient's email server receives the email without the sender receiving an error or "out of office" report, and otherwise may be given by posting the notice to the recipient's registered or last known address and taken to be received the day it would be delivered in the normal course of post.
- 15.11 The parties submit to the exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in respect of any proceedings in connection with the contract.
- 15.12 The rights and liabilities of the parties under the contract are joint and several.
- 15.13 Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this deed and the rights and obligations of the parties under it.