



## Cargill General Short Form Contract Terms and Conditions 2005

1. **General Conditions:** The terms and conditions of this contract form the entire agreement between the parties and will supersede and prevail over any conditions contained in or purporting to apply to any invoice or order issued for the commodity, the subject of this agreement.
2. **Time:** The stipulations in the contract as to time are of the essence of this contract.
3. **Delivery & Weights:**
  - (a) **Ex-farm or ex-store sales.** Delivery shall be made free on vehicles (truck or rail wagon). The Buyer undertakes to advise the Seller of intended times of collection within the delivery period. Where the Buyer collects unweighed grain he shall notify the Seller of the net weight within seven days and will produce a copy or duplicate weight ticket on request.
  - (b) **Sales on delivered basis.** The Seller undertakes to advise the Buyer of all dispatches as soon as possible after dispatch stating the haulers name or railway wagon number and full weight details. Advices should be available at the premises specified by the Buyer on or before arrival of delivery vehicles at those premises. 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. Buyer's weights are final unless other satisfactory evidence is produced. The Buyer shall if required by Seller or driver of the vehicle produce proof of weights received.
4. **Quantity Tolerances:** The Seller shall have the option to deliver at the contract price;
  - (a) **Oil** - twelve [12.00] tonnes or to the nearest truckload, whichever is the lesser quantity, more or less than the contractual quantity.
  - (b) **Meal and Hull** - twelve [12.00] tonnes or to the nearest truckload, whichever is the lesser quantity, more or less than the contractual quantity.
  - (c) **Seed and Grain** - five percent [5.00%] or twelve [12.00] tonnes, whichever is the lesser quantity, more or less than the contractual quantity.
5. **Consignment:** Each delivery or consignment shall stand as a separate contract. When more than one consignment is made, each consignment is to be considered as a separate contract and will itself be subject to the same provisions and tolerances but the margin on the contract quantity is not to be affected thereby.
6. **Failure to Take or Make Delivery:** In the event that a Buyer fails to take delivery of the contracted commodity during the contracted period(s), the Seller may elect to rescind the contract and claim damages, or affirm the contract and claim as liquidated damages the following carrying charges which will accrue for each calendar month, or part thereof, that the delivery is delayed unless other carry charges are stipulated within the contract, and whether or not the Seller actually incurs the said carrying charges;
  - (a) **Meal and Hull:** \$5.00/mt per month plus one month's interest at the ANZ 30 day Bank Bill Swap Rate in effect on the first working day of the month following the contract delivery month. An additional \$5.00/mt per month penalty applies after two months delinquency (combined total of \$10.00/mt plus interest at the ANZ 30 day Bank Bill Swap Rate, per month applicable from the first working day of the third month following the contract delivery month).
  - (b) **Oil:** \$8.00/mt per month plus one month's interest at the ANZ 30 day Bank Bill Swap Rate in effect on the first working day of the month following the contract delivery month.
  - (c) **Seed and Grain:** \$4.00/mt per month plus one month's interest at the ANZ 30 day Bank Bill Swap Rate in effect on the first working day of the month following the contract delivery month.

In the event the Seller fails to make delivery of the contracted commodity during the contracted period(s), the Buyer may elect to rescind the contract and claim damages, or affirm the contract in which case the Seller shall be subject to non-delivery penalty charges equal to the carry charges specified above.

Carrying charges and non-delivery penalties shall be computed on the contract quantity per delivery period less the amounts previously delivered. If it is further expressly agreed that carrying charges and non-delivery penalties as provided herein are to be construed in the nature of liquidated damages and as such no further proof of damages is required in substantiation thereof.

The party not in breach may at any time declare the other in default for the portion that is not delivered, even after affirming the contract.
7. **Transfer of Ownership:** Risk and ownership for the commodity referred to in this contract will transfer to the Buyer when-
  - (a) If sold on a "ex-mill" or "ex-store" or "ex-silo" basis, the commodity having been loaded on to transport, leaves the mill, store or silo premises;
  - (b) If sold on a "delivered into store" basis, discharging or unloading of the commodity is completed at the buyer's store or premises or specified delivery point even if not the buyer's premises.
  - (c) In circumstances not covered by (a) or (b), as mutually agreed between the parties.
8. **Goods and Services Tax:**
  - (a) The price per tonne payable for the product purchased pursuant to this Contract is GST exclusive.
  - (b) Words in this clause 8 have the same meaning as in the GST Law unless the context indicates otherwise.
  - (c) "GST Law" means the same as defined in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
  - (d) Subject to this clause 8, if the Seller is required to charge GST on the supply of the Commodity to the Buyer, the Buyer must pay, in addition to and at the same time as the total Price is payable an additional amount calculated by multiplying the total Price by the prevailing GST rate.
  - (e) The Buyer is not required to pay any amount of GST to Cargill unless Cargill provides the Buyer with a tax invoice. Cargill will issue a tax invoice that complies with GST Law for all supplies which it makes under this contract.

- (f) The parties agree that when Cargill is the buyer of the product:
- (i) the Buyer can issue an RCTI in respect of the supply of any commodity by the Seller to the Buyer under this Contract;
  - (ii) the Seller must not issue a tax invoice in respect of any supply by the Seller to the Buyer under this Contract unless the Buyer notifies the Seller that the Buyer will not be issuing an RCTI for that supply;
  - (iii) the Seller is registered for GST purposes as at the date of entry into this Contract and undertakes to notify the Buyer if it ceases to be registered or ceases to satisfy the requirements for issuing an RCTI as set out in the GST Law or as determined by the Commissioner of Taxation from time to time;
  - (iv) the Buyer is registered for GST purposes as at the date of entry into this Contract and undertakes to notify the Seller if it ceases to be registered or ceases to satisfy the requirements for issuing an RCTI as set out in the GST law or as determined by the Commissioner of Taxation from time to time; and
  - (v) the Buyer indemnifies the Seller for any liability for GST and penalties that may arise from an understatement of the GST payable on any supply to which an RCTI relates.
  - (vi) If the amount of GST recovered by the Seller from the Buyer differs from the amount of GST payable at all by the Seller in respect of any supply under this Contract, the amount payable by the Buyer to the Seller will be adjusted accordingly and an appropriate Adjustment Note issued.
  - (vii) If a payment to satisfy a claim or right to claim under or in connection with this Contract (for example for misrepresentation or for breach of warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay and indemnify the payee on demand against that amount of GST.
  - (viii) The Seller must advise the Buyer at the time of contracting if payment under the Contract is to be considered GST exempt.
- (g) If any party has a claim under or in connection with this Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST, for which that party is entitled to an input tax credit. If a party has a claim under or in connection with this contract, the amount of which depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
9. **Certificates and Analysis:** Any certificates required pursuant to the terms of this contract shall, notwithstanding other provisions of these conditions be final and binding on both parties.
10. **Force Majeure:** Neither party will be liable for delay in delivery of goods or any part thereof or for the non-performance of this contract which is caused by the following "Force Majeure Events", namely, war, embargo, act of government, strike (including dock and/or shipping strike), lock-out, destruction of transport and/or storage and handling infrastructure. For the avoidance of doubt, production risks affecting crops (including flood, fire, drought, pests) do not constitute force majeure.
11. **Arbitration:** If any claims or disputes arise out of or relate to this contract or its breach, termination or subject matter, the party claiming must provide the other with written notice of the nature of the claim within 30 days of the occurrence or non-occurrence of the events giving rise to the claim. Any dispute shall be submitted to and settled by arbitration in accordance with NACMA Arbitration rules in the edition current at the date of the contract, such rules forming an integral part of the contract and of which both parties hereto shall be deemed to be cognisant.
- Neither party to a dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect to any such dispute until arbitrated on in accordance with NACMA Arbitration Rules. Arbitration must be commenced within 12 months of the expiration date for performance of the contract.
12. **Non Payment:** The Seller reserves the right to withhold deliveries under this or any other contract until all and any overdue payments owing to him by the Buyer have been made and reserves a lien upon and the right to sell and otherwise dispose of all of the goods subject of this contract whether appropriate to it or not, in respect of any such payments. Interest will accrue on any outstanding payments at the ANZ 30 day Bank Bill Swap Rate in effect on the first working day that payment is overdue.
13. **Credit:** The Seller at its absolute discretion may reduce or cancel all credit trading facilities, and all open contracts must be executed and delivered as specified, under revised payment terms.
14. **Insolvency:**
- (a) If the Buyer has a Receiver/Administrator/Liquidator appointed to any of his business undertakings or, being an individual trader, is adjudicated bankrupt or makes any composition or enters into any scheme of arrangements with his creditors, or being a body corporate, appoints an Administrator and/or enters into Liquidation by the making of an order or the passing of a resolution for winding up, then, at the Seller's option, the full price of any goods delivered shall be immediately payable notwithstanding any previous arrangements to the contrary and the Seller shall have the right, without prejudice to any other rights and remedies available to him, to cancel and/or suspend any or further deliveries. If the Buyer fails to make any payment as due or dies, the rights conferred on the Seller by this paragraph shall apply, provided that within 28 days after the relevant occurrence the Seller gives the Buyer or his representative written notification of the Seller's intention to exercise all or any such rights.
  - (b) If the Seller has a receiver appointed to any of his property or business undertakings, being any individual trader, dies or is adjudicated bankrupt or makes any composition or scheme of arrangement with his creditors or, being a body corporate, enters into Administration or Liquidation by the making of an order or the passing of a resolution for winding up then the Buyer shall have the right, without prejudice to any other rights available to him, to terminate this contract at anytime thereafter and refuse to accept any further deliveries without payment of compensation to the seller.
15. **Non-Business Days:** Saturdays, Sundays and officially recognised national holidays applicable throughout Australia shall be deemed non-business days for the purpose of giving notices and claims. Any such notice or claim shall be given on the succeeding business day.
16. **NACMA:** This contract is subject to the standard terms and conditions of the National Agricultural Commodities Marketing Association Ltd (NACMA) Trade Rules (incorporating Arbitration Rules). In the event there is an inconsistency between this contract and standard terms and conditions of the NACMA Trade Rules, the terms and conditions of this contract shall apply.