

## SALE & SHIPPING TERMS

### 1 General

---

- (a) These terms (**terms**) apply to the sale and shipping of Products by Ausfine Foods International Pty Ltd (**Ausfine**) to the **Buyer** named on the **Sales Contract** agreed between the parties. These terms together with the Sales Contract and any terms incorporated under it form a binding contract between the parties, with effect from the time the Sales Contract is exchanged and agreed.
- (b) These terms prevail over any inconsistent terms in any document of the Buyer or a third party, such as a printed consignment note, request for quotation, bill of lading, purchase order or terms of sale, including even where one of Ausfine's representatives signs such a document.
- (c) These terms are intended to apply in conjunction with the Incoterms, but if there is any conflict between the provisions of Incoterms and these terms, these terms prevail.

### 2 Delivery and packaging Instructions

---

- (a) The Buyer shall be obligated to issue instructions for delivery fully and at such notice as to enable Ausfine to deliver within the agreed term, observing a call period of 28 working days. If the Buyer fails to issue instructions on time, Ausfine shall be entitled to invoice the Products as of the last delivery day resulting from the purchase and demand payment as if the same had been supplied on said day, provided that Ausfine keeps said goods available for the Buyer at the latter's expense and risk. Alternatively, Ausfine is entitled to cancel the contract under clause 10 and recover its costs.
- (b) It is the responsibility of the Buyer to ensure, and to bear the costs of ensuring, that the Products comply with applicable laws at the places of delivery and distribution, in relation to packaging, certification, weighing, administrative documents and approvals, Product documents and materials, labelling, palletisation, handling, transportation, stamping and like requirements.
- (c) The Buyer must provide clear and complete instructions to Ausfine as to the requirements in (b) (if any), prior to confirmation of the Sales Contract, or promptly on confirmation. If at any time the Buyer's requirements lead to additional work or costs for Ausfine not accounted for in the agreed Sales Contract, the requirements are subject to agreement by Ausfine and Ausfine may charge for the work.
- (d) Ausfine will use reasonable endeavours to meet the Buyer's requirements as agreed by Ausfine, but does not accept liability or responsibility for any shortfall. The Buyer must check compliance and may advise Ausfine of any shortfalls. Where Ausfine has failed to meet agreed requirements, the Buyer's sole remedy is to require Ausfine to re-perform the work at no additional charge. Otherwise, Ausfine may charge for work done.

### 3 Sampling and Analysis

---

The Buyer may, prior to delivery, have an attested sampler take samples in triplicate in the customary manner. The Buyer and Ausfine may stipulate that said sampling be monitored. If the Buyer and Ausfine fail to reach agreement on designating an attested sampler, the Buyer shall undertake to have the samples taken by one of the following controlling authorities: Qlip; SGS: Société Générale de Surveillance; Bureau Veritas; Intertek.

### 4 Risk and Title to Product

---

- (a) The risk in Products shall pass to the Buyer in accordance with the relevant provision of Incoterms or where Incoterms do not for any reason apply, immediately upon delivery of the Products by Ausfine to the Buyer at the destination for delivery shown in the Sales Contract.
- (b) Title in the Product shall not pass to the Buyer until Ausfine has received payment in full of all charges under these terms applying to the Product. Until then, the Buyer agrees that:
  - (i) the Buyer holds the Product as bailee only;
  - (ii) the Buyer must store the Product supplied in such a way that it is clear that it is Ausfine's property;
  - (iii) the Buyer irrevocably authorises Ausfine and its representatives to enter any premises where the Product is kept and recover the Product and, if necessary, to use the Buyer's name and to act on the Buyer's behalf to do so;
  - (iv) if the Buyer sells the Product, the sale is by the Buyer as agent for and on behalf of Ausfine, and the proceeds of sale are held for the benefit of Ausfine and must first be applied to paying Ausfine the charges for the Product; and
  - (v) this clause 4 applies in full regardless of any transformation, processing or treatment of the Products.
- (c) The Buyer acknowledges that these terms create a security interest in the Products and all proceeds of sale of the Products, from the time of delivery until the time that title passes to the Buyer under this clause. The security is effective under the Personal Property Securities Act 2009 (Cth) (PPSA) for Products located in Australia, and under applicable laws in other jurisdictions.
- (d) The Buyer consents to Ausfine registering its security interest under the PPSA and other applicable laws, and the Buyer agrees to provide all assistance required by Ausfine to facilitate this.
- (e) Whether or not Ausfine registers its security in the Products, the Buyer must not offer or create any interest in the Products to the benefit of itself or a third party, and must take all steps necessary to separately manage and hold the Products and identify them as property of Ausfine until title passes.

## **5 Shipment**

---

- (a) Ausfine will use its best commercially reasonable efforts to comply with the shipment period and other arrangements for delivery set out in the Sales Contract or otherwise provided by Ausfine, but such arrangements are estimates only and no guarantee is given. The Buyer must accept and pay for Products in full even in the event of a delay or any other variation to the arrangements for delivery.
- (b) Ausfine shall accept no liability (including liability for loss and damages and including consequential loss and damage) of any nature whatsoever for failure to meet delivery dates and such failure shall not entitle the Buyer to repudiate or cancel the agreement.
- (c) Ausfine may in its sole discretion deliver the Products in instalments. Each instalment is a separate sale in respect of the quality and other properties of the Products delivered as well as payment, and these terms and the charges apply. A failure of Ausfine to deliver any instalment is not a breach of these terms and will not entitle the Buyer to cancel the whole or any remaining part of the Sales Contract..

## **6 Delivery and Demurrage**

---

The Buyer is responsible for accepting delivery and collection of the Product at the destination shown in the Sales Contract or another destination agreed with Ausfine. The Buyer is liable to pay the cost of demurrage, if any, that is charged by the relevant charter party or authority under any shipping agreement or fixture recap. applying to the delivery. Any demurrage paid by Ausfine on the Buyer's behalf will be payable to Ausfine within 2 days of demand for same.

## **7 Payment of Purchase Price**

---

- (a) The Buyer must pay to Ausfine the charges set out in the Sales Contract or otherwise agreed or applicable under these terms, in accordance with Ausfine's terms of payment.
- (b) The charges for the Product are as set out in the Sales Contract except to the extent varied under this clause. Ausfine may notify a variation due to a change in the market price of a Product, freight and other third party costs, or currency fluctuations at any time before date of delivery. The Buyer agrees that the change shall not release the Buyer from its obligation to pay the entire amount of the charges for the Product.
- (c) If there is a change to either party's credit rating, insurance coverage, trading terms or terms of finance, Ausfine may adjust the payment terms set out in the Sales Contract by notifying the Buyer in writing.

## **8 Notice of Defect of Products**

---

- (a) All claims for faulty, incomplete, incorrect or defective Products must be submitted in writing (**Defect Claim**) by the Buyer to Ausfine no later

than five business days after the date the Product is delivered.

- (b) Upon receiving a Defect Claim, Ausfine will assess it and, if the Defect Claim is established, use its best endeavours to ensure that the defect is rectified to the Buyer's reasonable satisfaction, without additional cost to the Buyer. The Buyer agrees to provide information, co-operate and assist Ausfine in doing so, at no cost to Ausfine.
- (c) If the Buyer does not provide a Defect Claim within five business days of delivery, the Buyer will be deemed to have accepted the Product.
- (d) To the extent that some Products are not delivered at all, or that a defect cannot be rectified, the amounts payable by the Buyer are reduced in proportion to the non-delivery or reduced value attributable to the defect.

## **9 Cargo Insurance**

---

If cargo insurance is provided by Ausfine, it will terminate on the expiry of 15 days from the date of arrival of the Products at the end destination for which the cargo insurance is taken out. If an extension to this insurance is required, Ausfine must be notified in writing prior to the 15th day.

## **10 Rights of Ausfine to Terminate**

---

Ausfine may immediately by notice terminate the sale of Product to the Buyer, and/or these terms, without prejudice to either party's rights existing immediately prior to termination:

- (a) if the Buyer fails to pay, when due, any amount payable to Ausfine;
- (b) if the Buyer fails to observe or comply with anything required to be done by the Buyer under these terms; or
- (c) if the Buyer becomes affected by one or more Insolvency Events,

provided that if the termination is for breach, and the breach is capable of being rectified, Ausfine has provided the Buyer with a breach notice requiring rectification within a reasonable period of at least 10 days, and the breach remains unrectified after that period.

## **11 Rights of Buyer to Terminate**

---

The Buyer may immediately by notice terminate its purchase of Products, and/or these terms, without prejudice to either party's rights existing immediately prior to termination:

- (a) if Ausfine has not delivered any Products at all, by the date 6 months after the estimated date for delivery in the Sales Contract; or
- (b) if Ausfine becomes affected by one or more Insolvency Events.

## **12 Damages and Indemnity**

---

- (a) The Buyer acknowledges that it must pay to Ausfine on demand the full cost of any damages arising from or in connection with breach by the Buyer of these terms, and indemnifies Ausfine in full against all loss, damage, claim or expense so arising.
- (b) Without limiting any other rights of Ausfine, any monies owing under these terms which are not paid when due will bear interest at the rate of 7% per annum (or another rate notified by Ausfine from time to time), calculated daily and compounded monthly on and from the date such monies first become due to Ausfine.
- (c) The Buyer will also be liable for all of Ausfine's reasonable costs arising in connection with a breach by the Buyer, including legal expenses and the cost incurred in the collection of monies overdue (on a full indemnity basis).
- (d) The Buyer indemnifies Ausfine against any third part claims, unless the Buyer demonstrates that a claim is the direct result of a breach of these terms by Ausfine

## **13 Final and Binding Arbitration**

---

- (a) A dispute that has not been resolved by the parties within 10 Business Days after one party notifies the other party of a dispute must be decided by way of arbitration under the Commercial Arbitration Act 2011 (Vic).
- (b) This clause does not prejudice the rights of a party at any time to seek injunctive, declaratory or other interlocutory relief (including for specific performance) against the other parties in order to protect or preserve its rights under these terms.

## **14 Notice and Service of Process**

---

- (a) Any notice, consent, instruction or other communication to be given by either the Buyer or Ausfine in connection with these terms shall be effective only if given in English and in writing, signed and delivered either:
  - (i) personally;
  - (ii) by mail; or
  - (iii) by e-mail,to the recipient's place of business.
- (b) Any notice shall be taken to have been received, if:
  - (i) served personally, the same day;
  - (ii) mailed, 3 business days after it is posted;
  - (iii) emailed, at the time of successful receipt by the recipient (which may be evidenced by the transmission of an automatic electronic read receipt).

## **15 Limitation of Ausfine's liability**

---

- (a) Other than as expressly provided for in these terms in no event shall Ausfine, its employees,

contractors and/or agents be responsible for any direct, indirect, or consequential damages, including loss of anticipated profits, loss of time, or any other losses incurred by the Buyer in respect of, related to, or arising out of the purchase of the Product, even if due to the negligence of Ausfine, its employees and/or agents.

- (b) So far as the law permits, the liability of Ausfine under these terms is limited, at Ausfine's option, to: the replacement of the Products; the supply of equivalent Products; or the cost of replacing the Products or of acquiring equivalent Products.
- (c) The Buyer acknowledges that it has relied solely upon its own inspection and skill and judgement in purchasing the Products.

## **16 Covenants**

---

- (a) Ausfine does not permit its products to be used directly or indirectly to supply or benefit any person, country or territory that are subject to economic sanctions programs by Australia, Canada, the United States of America, the United Kingdom or the EU.
- (b) The Buyer represents that it will not directly or indirectly cause products purchased from Ausfine to be used to supply, fund or facilitate any activities or business or be diverted for the use, sale or benefit of any person or country/territory that, at the time of use, is subject to economic sanctions programs by Canada, the United States of America, the United Kingdom or the EU.

## **17 Right of set-off**

---

Ausfine is authorized to the fullest extent permitted by law, to set-off and apply any amount owed to it from the Buyer under any agreement or arrangement, against any amount which it owes to the Buyer.

## **18 Force Majeure**

---

- (a) If Ausfine is affected, or likely to be affected, by a Force Majeure Event:
  - (i) Ausfine must immediately give the Buyer prompt notice of that fact including full particulars of the Force Majeure Event and an estimate of its likely duration; and
  - (ii) the obligations of Ausfine under these terms are suspended to the extent to which they are affected by the relevant Force Majeure Event as long as the Force Majeure Event continues.
- (b) Ausfine must use its best endeavours to remove, overcome or minimise the effects of the Force Majeure Event as quickly as possible. However, this does not require Ausfine to settle any industrial dispute in any way it does not want to.
- (c) If a Force Majeure Event continues for a period of 30 days or more, then either party may terminate this agreement by giving 10 days notice.
- (d) For the purposes of this clause 18, Force Majeure means any cause(s) beyond the reasonable control of the party affected including but not limited to acts

of God, civil disorder, embargoes, quarantine, war, labour disputes, material shortages, damage to plants, equipment or facilities necessary to produce the Product, interruptions to, restrictions or shortages of carriage or transportation, or acts or omissions of public authorities including local, state or federal governments (including changes in laws, statutes or regulations).

## **19 Taxes**

---

- (a) Except for income taxes imposed directly on Ausfine in its place of establishment, the Buyer shall pay and indemnify Ausfine in respect of any and all taxes, imposts, tariffs, port charges, export and import charges, levies, duties, withholding taxes, goods and services or value added taxes, stamp duty and other taxes and charges applying to the sale and shipment of the Products (**Taxes**).
- (b) If Taxes are assessed against Ausfine, Ausfine may include in its invoice and the Buyer must pay to Ausfine an amount that ensures that Ausfine receives the same amount, after such Taxes, as it would have received had such Taxes not been assessed.
- (c) If Taxes are assessed against the Buyer, on request the Buyer shall provide Ausfine with a certificate evidencing the Buyer's discharge of such Taxes.
- (d) The Sales Contract may vary the terms of this clause.

## **20 Assignment**

---

The Buyer must not assign its benefits or novate its obligations under these terms without the prior written consent of Ausfine in writing. Ausfine may assign its rights and novate its obligations under these terms to another person without the consent of the Buyer.

## **21 Variation**

---

Ausfine is entitled to vary these terms at any time by posting the varied terms on Ausfine's website or giving the Buyer 14 days prior written notice, in which event the varied terms take effect for any Sales Contract entered into after that date.

## **22 Entire agreement**

---

These terms, the Sales Contract and materials incorporated by express reference constitute the entire agreement between Ausfine and the Buyer and supersede all prior representations, contracts, statements and understandings, whether verbal or in writing.

## **23 Governing Law**

---

These terms will be governed by and shall be construed in accordance with the laws in force in Victoria, Australia.

## **24 Definitions**

---

**Insolvency Event** means being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason.

**Incoterms** means the international commercial terms for the interpretation of trade terms of the International Chamber of Commerce as in force at the date of the Sales Contract.

**Products** means the products, goods and services described on the Sales Contract between the parties, and any other products sold by Ausfine to the Buyer.