

## TERMS AND CONDITIONS FOR SALES CONTRACT

These Terms and Conditions ("Terms") must be read with the Sales Contract entered into between the Buyer and the Seller, together called the "Parties". The Parties agree that entering into the Sales Contract binds the Parties to these Terms.

### 1. Definitions

**Business Day** means a day which is not a weekend or public holiday in Melbourne, Australia.

**Buyer** means the party acquiring Goods on these Terms.

**Carriage** means the whole or part of the operations and services undertaken by a Liner Carrier in connection with the Goods.

**Carrier or Performing Carrier** means the Liner party undertaking transport of Cargo from one point to another.

**CFR** means Cost and Freight Terms, as it is defined in the Incoterms.

**Company** means the Pentarch Group which includes but is not limited to: Pentarch Holdings Pty Ltd (ABN 21 064 165 635), Pentarch Agricultural Pty Ltd (ABN 45 101 274 613), Pentarch Farms Pty Ltd (ABN 97 123 956 105), Pentarch Hay Pty Ltd (ABN 13 612 122 488), Narrogin Hay Pty Ltd (ABN 73 104 157 593), Mallee Hay Pty Ltd (ABN 78 123 956 089) and its successors and assigns.

**Confidential Information** includes all business, personal, strategic, technical or commercial information or data in any form whatsoever and regardless of whether it has been received directly or indirectly and includes but is not limited to these Terms, the Sales Contract, all information pertaining to the Seller or its affairs, policies, products, property, operations, processes, pricings, personnel, plans, rights or opportunities.

**Default Rate** means 1.5% per month.

**Delivery** means delivery of the Goods by the Seller to the Buyer in accordance with clause 9 of these Terms.

**Discharge Port** means the discharge port specified in Item 7 of the Sales Contract, or as otherwise agreed between the Parties in writing.

**Force Majeure Event** means any strike, ban, lock-out, riot, civil commotion, difference with or between workmen or other industrial action, accidents to or breakdown of machinery, infrastructure, plant or equipment, blockage, stoppage, accident or hazard in navigable waters, natural disaster, drought, storm, flood, severe weather, acts of God, currency restriction, embargo, blockade, sanctions, delay enroute, terrorism or terrorism prevention, policies or restrictions of governments or authorities including prohibition or restrictions of export or import, action or inaction in connection with any license, permit or approval, war, delay in the shipment of the Cargo or the forwarding of the Cargo to the loading point all consequences of any such occurrences or 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.

**GAFTA** means the Grain and Feed Trade Association.

**Goods** mean any commodity specified at Item 1 of the Sales Contract.

**Incoterms** means the International Chamber of Commerce rules for the interpretation of the trade terms 2010.

**Indirect Loss** means loss of profit, loss of revenue, loss of opportunity, loss of reputation or goodwill or loss of savings, whether such loss was direct, indirect or consequential.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or administration, having a controller or similar appointed to it or its property, being taken to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or becoming incapable of managing its affairs for any reason, taking any step that could result in becoming insolvent under administration, entering a compromise or arrangement with, or assignment for the benefit of, its members, creditors or any analogous event.

**Loading Port** means the Loading Port specified in Item 8 of the Sales Contract, or as otherwise agreed between the Parties in writing.

**Quality** means the quality specified in Item 3 of the Sales Contract or otherwise as agreed between the Parties in writing.

**PPSA** means the *Personal Property Securities Act 2009* (Cth) of Australia.

**PPSR** means the Personal Property Securities Register established pursuant to the PPSA.

**Sales Contract** means the contract entered into by both the Seller and the Buyer for the export of particular Goods.

**Secured Property** means all Goods that are supplied to the Buyer by the Seller (whether now or in the future).

**Security Interest** is defined in section 12 of the PPSA.

**Seller** means the Pentarch Group which includes but is not limited to: Pentarch Holdings Pty Ltd (ABN 21 064 165 635), Pentarch Agricultural Pty Ltd (ABN 45 101 274 613), Pentarch Farms Pty Ltd (ABN 97 123 956 105), Pentarch Hay Pty Ltd (ABN 13 612 122 488), Narrogin Hay Pty Ltd (ABN 73 104 157 593), Mallee Hay Pty Ltd (ABN 78 123 956 089) and its successors and assigns.

**Terms** means the terms and conditions in this document.

### 2. General

2.1 The Seller agrees to supply and the Buyer agrees to purchase the Goods in accordance with these Terms and the terms contained in the Sales Contract entered into between the Parties.

2.2 These Terms are deemed to be incorporated into all Sales Contracts between the Seller and the Buyer and will prevail over any inconsistent terms in any of the Buyer's documents and policies unless the Seller otherwise agrees in writing.

2.3 These Terms may be varied by the Seller at any time with written notice to the Buyer. Any purchases made by

the Buyer after such written notice is given, is deemed to be the Buyer's acceptance of the new Terms.

2.4 These Terms will apply to any Goods sold to the Buyer whether or not the Parties have entered into a Sales Contract.

### **3. Termination of Sales Contracts**

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3.1 Sales Contracts cannot be modified or terminated after acceptance by the Buyer except with the Seller's written consent.

3.2 The Seller may immediately terminate any Sales Contract (in whole or in part) by notice to the Buyer and resell the Goods if the Buyer fails to comply with any of its obligations under these Terms or under the Sales Contract, or if an Insolvency Event occurs in respect of the Buyer.

3.3 Should the Seller terminate the Sales Contract pursuant to clause 3.2, then the provisions of clause 6 shall apply.

### **4. Goods**

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4.1 Weight, quality and condition of the Goods to be final at port or port(s) of shipment in Australia as per the Seller's certificates or an independent testing or government body, appointed by Pentarch and the relevant phytosanitary certificate.

4.2 The Buyer has a right to appoint surveyors to attend loading for joint sampling but not to interfere with loading operations. Seller's or independent surveyor's certificates are to prevail. Any consequences and costs of any other certificate or certificates related to weight, quality or condition issued by a surveyor appointed by the Buyer are for the Buyer's account.

4.3 The Seller agrees to sell the Goods of the quality generally described in Item 3 of the Sales Contract. The Seller does not otherwise make any other representation or give any other warranty to the Buyer as to the quality, variety, performance, characteristics or specification or fitness for purposes or description of the Goods and any and all representations or warranties as to the quality, variety, performance, characteristics, specification, fitness for purposes or description of the Goods are specifically excluded other than to the extent to which pursuant to any applicable Statute, any such representation or warranty cannot be excluded, restricted or modified.

4.4 The Buyer must inspect the Goods upon delivery.

4.5 The Buyer must give written notice to the Seller of any claim if the Goods are defective, supplied in error, or if there are any discrepancies in the quantity delivered (including particulars of the claim) within 21 days of delivery to the discharge port specified at Item 7 of the Sales Contract.

4.6 If the Buyer fails to give written notice to the Seller pursuant to clause 4.5 above, then to the extent permitted by law, the Goods are deemed to have been accepted by the Buyer in accordance with these Terms and the Sales Contract.

4.7 Should there be any dispute in regards to weight, quality and condition, clause 15 shall apply.

### **5. Performing Vessel**

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5.1 The terms of the contract of carriage are those set out in the bill of lading to be issued by the shipping line contracted to perform the Carriage as the Performing Carrier and loading and discharging of the Goods unless otherwise agreed in writing to be on a Liner In/Free Out basis.

### **6. Buyer Indemnity**

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6.1 The Buyer indemnifies the Seller (including its officers, employees or agents) against any liability, loss, Indirect Loss, damage, charge, expense, outgoing or cost incurred arising out of:

- (a) the termination of a Sales Contract by the Buyer;
- (b) the Buyer's failure to pay for or take delivery of the Goods;
- (c) the failure of the Buyer to comply with any of its obligations under these Terms or the Sales Contract; or
- (d) the Seller exercising any of its rights under these Terms.

6.2 For the purpose of the indemnity in clause 6.1 and without limiting the generality of the indemnity in clause 6.1, any liability, loss, damage, charge, expense, outgoing or cost incurred by the Seller will include the following:

- (a) any foreign exchange cost;
- (b) any amount paid or payable by the Seller to a third party supplier for the acquisition of the relevant Goods being on sold to the Buyer;
- (c) the cost of relocating or recovering the Goods;
- (d) any import or export duty or tax, subject to clause 6.3;
- (e) storage cost or warehousing costs;
- (f) any freight costs;
- (g) any consular charges;
- (h) any costs of the documents being visaed in Australia;
- (i) any cost not expressly stated in the Sales Contract to be payable by the Seller or for the Seller's account; and
- (j) any costs of any documents other than the shipping documents.

6.3 All export duties, taxes, levies, and licences in the place of shipment are for the Seller's account. All taxes, levies, licenses, imposts of any nature on freight and/or Cargo outside Australia are for the Buyer's account.

6.4 All demurrage and detention costs incurred after any container has been received at the Shipment Point, as specified in Item 6 of the Sale Contract, and any claims for loss and/or damage and/or repairs to any container incurred prior to the container being received at the Shipment Point or any claims for delay in the return or off-hiring of any container are for the account of the Buyer and if any such claims are nonetheless made against the Seller, the Buyer must indemnify and keep the Seller indemnified against all such claims and consequences.

6.5 Without affecting any other provision of the Contract (including without limiting clauses 6 and 11), if at any time after conclusion of the Contract:

- (a) any new law, regulation or requirement of any applicable authority (wherever such authority is situated or exercises jurisdiction); or
- (b) any change in any law, regulation or requirement otherwise in force,

has the effect (or but for this clause would or might have the effect) of imposing on the Seller any more onerous obligation at the time the Sales Contract was concluded, the Buyer must indemnify the Seller and hold the Seller harmless for all consequences of such new or changed law, regulation or requirement.

## **7. Approvals**

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7.1 The Seller shall obtain all licences, certificates, consents, and/or approvals required for exportation of the Goods.

7.2 The Buyer will do the same in respect of carriage of the Goods by sea to the destination port and the importation of the Goods under existing or future law.

## **8. Payment Terms and Default**

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8.1 Subject to this clause 8, the price for the Goods will be the price specified in Item 4 of the Sales Contract.

8.2 The Buyer must pay for the Goods in accordance with the payment terms set out in Items 9 and 10 of the Sales Contract and as set out in these Terms.

8.3 The time for payment of the Goods is of the essence, and all payments must be made on or before the due date as a condition to future deliveries of Goods under these Terms and the terms set out in the Sales Contract.

8.4 The Seller reserves the right to vary the terms of payment and to require additional security at any time prior to delivery of the Goods if the creditworthiness of the Buyer becomes unsatisfactory in the Seller's opinion.

8.5 The Seller may require immediate payment of all amounts outstanding (whether or not then due and payable) if:

- (a) the Buyer does not comply with these Terms or the terms in the Sales Contract;
- (b) the Buyer terminates the Sales Contract;
- (c) the Seller considers that the creditworthiness of the Buyer has become unsatisfactory; or
- (d) one or more Insolvency Events occur.

8.6 If there is a change in the law of the country in which a port is located and the Seller has to comply with such a change in law as part of the provision of the Goods to the Buyer, the Buyer must, when requested by the Seller indemnify the Seller for any additional costs.

8.7 All payments must be made in accordance with the payment terms specified in Items 9 of the Sales Contract, or another method agreed by the Seller in writing from time to time.

8.8 Without limiting any rights of the Seller, any monies owing by the Buyer to the Seller which are not

paid when due will bear interest at the Default Rate, calculated daily and compounded monthly on and from the date such monies first become due to the Seller.

8.9 If the Buyer has not paid the Seller in full any monies owing to the Seller by the due date, the Seller may in its sole discretion without giving the Buyer prior notice terminate the Sales Contract and seek to recover the Goods and resell or dispose of the Goods, without prejudice to any claims for loss or damages against the Buyer. In the event that the Buyer has not paid any monies owing to the Seller by the due date, the Buyer is liable to pay the Seller's reasonable costs with respect to collecting any overdue monies, including without limitation legal fees, debt collection costs and payment of the Seller's administrative costs.

## **9. Acceptance and Delivery**

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9.1 The parties agree that the Goods will be delivered CFR at the location of the port specified in Item 7 of the Sales Contract (**Delivery**).

9.2 The Seller will have the sole and absolute discretion as to the choice of carrier and method of carriage of the Goods. The Seller agrees to work with the Buyer to agree on a mutually beneficial choice of carrier and method of carriage of the Goods at a reasonable cost to the Buyer.

9.3 Any time quoted for delivery is an estimate only. The Buyer must accept the Goods even in the event of a delay in delivery.

9.4 The Seller is not liable to the Buyer for any loss or damage (including Indirect Loss) arising from late delivery of the Goods.

9.5 If any Force Majeure events occur, the Sales Contract may be cancelled by the Seller in its sole and absolute discretion by giving the Buyer 30 days notice in writing of the Seller's intention of doing so.

9.6 Subject to law, if the Sales Contract is terminated, the Buyer will have no claim against the Seller for any loss or damage (including Indirect Loss) arising from the termination.

## **10. Security Interest**

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10.1 The Buyer acknowledges that these Terms create a Security Interest in the Secured Property and the proceeds of sale of the Secured Property, for the purposes of the PPSA or other similar international legislation.

10.2 The Buyer consents to the Seller effecting a registration on the PPSR or other similar international register (as the Seller deems appropriate) in relation to the Security Interest arising under or in connection with these Terms and the Buyer agrees to provide all assistance required by the Seller to facilitate this.

10.3 The Buyer acknowledges and agrees that in relation to the part of the Secured Property that is inventory, the Buyer will not allow any Security Interest to arise in respect of that Secured Property unless the Seller has perfected the Security Interest in the Secured Property prior to the Buyer's possession of the Secured Property.

10.4 If the Buyer makes payments to the Seller at any time whether in connection with these Terms or otherwise, the Seller may in its absolute discretion apply that payment in any manner it sees fit.

10.5 The Buyer agrees to do anything that the Seller requests the Buyer to do (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to provide more effective security over the Secured Property;
- (b) to register in respect of a Security Interest constituted by these Terms at any time;
- (c) to enable the Seller to exercise its rights in connection with the Secured Property; and
- (d) to show the Seller the Buyer has met the Terms.

10.6 The Buyer waives the right to receive any notice under the PPSA or similar international laws (including notice of a verification statement) unless the notice is required by the PPSA or similar international laws and cannot be excluded.

### **11. Limitation of Liability and Indemnity**

11.1 Except as expressly set out in these Terms, in the Sales Contract or as required by law, the Seller makes no warranties or other representations to the Buyer. The Buyer's liability in respect of these warranties is limited to the fullest extent permitted by law.

11.2 The Buyer acknowledges that it has not relied on any representation, description, or statement by the Seller in relation to the Goods, or the skill or judgement of the Seller, its agents, contractors or employees, as to if the Goods are fit for a particular purpose.

11.3 The Buyer acknowledges it has relied solely on its own inspection, skill and judgement in purchasing the Goods.

### **12. Title, risk and insurance**

12.1 Risk in the Goods passes to the Buyer upon loading over the ship's rail at the Loading Port specified in Item 8 of the Sales Contract, or as otherwise agreed between the Parties.

12.2 All Sales Contracts are CFR. As such all Goods are to be covered by the Buyer's insurance at their own risk and expense during Carriage and any general average is for the Buyer's account.

12.3 Damage, loss or delay to the Goods after it has crossed the vessel rail at Loading Port or during transshipment or discharge, affecting quality and/or quantity of the shipment shall be for the Buyer's account and claimed by the Buyer from the Carrier.

12.4 The Seller and its nominated Carrier shall be deemed prima facie to have effected timely delivery of the Goods unless notice of loss, damage or delay to the Goods, indicating the general nature of such loss, damage or delay, shall have been given in writing to the Seller and to the Carrier or to its representative at the Discharge Port before or at the time of removal of the Goods into the custody of the person entitled to deliver thereof under

the bill of lading, or, if the loss or damage is not apparent, within 3 working days thereafter.

12.5 Title in the Goods will not pass to the Buyer until the Buyer has paid the Seller all amounts owing (and all cheques or negotiable instruments have been paid) and the Buyer has met all other obligations due by the Buyer to the Seller in respect of these Terms and all other contracts with the Buyer and the Seller, and until the above obligations have been satisfied, the Buyer acknowledges and agrees that the Buyer:

- (a) holds the Goods as bailee only;
- (b) must store the Goods supplied in a way that it is clear that they are the Seller's property; and
- (c) irrevocably authorises the Seller to enter any premises where the Goods are kept and, if necessary, to use the Buyer's name and to act on the Buyer's behalf to recover the Goods.

### **13. Privacy and Confidential Information**

13.1 The Seller will collect information in relation to the Buyer, for the purpose of providing the Goods to the Buyer in accordance with these Terms, and in accordance with the laws relating to the collection and disclosure of personal information under the Privacy Act 1998 (Cth) as amended from time to time.

13.2 The Parties must hold and keep confidential any Confidential Information and must not disclose it to any third party except with, and on the terms of, prior written consent of the other Party or as required by law. The Parties must ensure that all its officers and employees are aware of the obligations specified in this clause. Any Confidential Information remains the property of the disclosing Party and must be destroyed or returned to the disclosing Party as directed. The terms of this confidentiality clause survive the termination of the Sales Contract for any reason.

13.3 The recipient of Confidential Information under these Terms or the Sales Contract, indemnifies the disclosing Party against any loss or damage suffered by the disclosing Party as a result of a breach of this clause.

### **14. Force Majeure**

14.1 A party is not liable for any failure to comply with these Terms (other than an obligation to pay money), the Sales Contract or any agreement for the sale of Goods (other than an obligation to pay money) if the failure (directly or indirectly) arises by virtue of a Force Majeure Event. If such circumstances occur, the performance of that party's obligations in accordance with these Terms (other than an obligation to pay money) will be suspended for so long as the Force Majeure Event continues or prevails.

14.3 A party is not obliged to remedy such circumstances in respect of a Force Majeure Event.

14.4 If a Force Majeure Event continues for more than 30 days in respect of a Party, the other Party may terminate the Sales Contract by giving 5 Business Days written notice.

14.5 Nothing in this clause 14 releases the Buyer from any obligations to pay the Seller in accordance with these Terms or the Sales Contract for any liability incurred up to the date of the Force Majeure Event.

#### **15. Dispute Resolution**

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15.1 If a dispute arises in connection with these Terms or the Sales Contract, both Parties will attempt to resolve the dispute by negotiating in good faith between them.

15.2 If no agreement can be reached, pursuant to clause 15.1, both parties are to follow the provision under GAFTA 125 Arbitration rules.

15.3 If the agreement can not be resolved online, the Parties agree to convene a meeting at a location to be determined in Singapore.

#### **16. Exclusion of the Vienna Convention**

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16.1 The Parties acknowledge and agree that the rights and obligations of the Parties under these Terms and the Sales Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).