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## SRI CONDITIONS OF SALE

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### 1. DEFINITIONS

#### 1.1. In these Conditions:

- 'Agreement'** means the agreement between the parties constituted by the Proposal and the Conditions;
- 'Business Day'** means a day other than a Saturday, Sunday or public holiday in Brisbane, Australia or in the place the Services are performed;
- 'Client'** means the person, company, firm or entity identified as the client in the Proposal;
- 'Conditions'** means these conditions of sale and any written variation to them agreed by the parties;
- 'Dollars', 'AUD' or '\$'** means the currency of Australia unless otherwise specified in the Proposal;
- 'Fee'** means the fee for the supply of the Products or Services (or both) as set out in the Proposal plus any reimbursable expenses or additional amounts payable by the Client as set out in the Proposal or these Conditions;
- 'Intellectual Property Right'** means any intellectual or industrial property right including (without limitation):
- Patent, trade mark or service mark (whether registered or not), computer programs, copyright, design (whether registered or not), trade secret, invention, which are capable of protection at law; or
  - Any licence or other right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;
- 'Material'** means all information, data, results, reports, documents or other material in written, oral or electronic form provided to the Client by SRI in the course of providing the Services;
- 'Products'** means the goods and products to be supplied by or on behalf of SRI as referred to in the Proposal;
- 'Proposal'** means the document entitled "*Proposal from SRI to...*" setting out or confirming the Products or Services (or both) to be supplied by SRI to the client;
- 'Services'** means the services to be undertaken by SRI as referred to in the Proposal; and
- 'SRI'** means Sugar Research Limited ABN 76 191 979 201 trading as Sugar Research Institute and includes its successors and assignees.

#### 1.2. Terms defined in the Incoterms Rules 2010 have the same meaning when used in these Conditions.

### 2. GENERAL

- 2.1. These Conditions are deemed to be incorporated in any order placed by the Client.
- 2.2. The acceptance of a Client's order by SRI will be deemed subject to the acceptance by the Client of these Conditions.
- 2.3. These Conditions override and replace any other conditions of SRI or the Client.

### 3. TERMS OF SALE

All Products or Services sold or supplied by SRI are sold or supplied on these Conditions.

### 4. PROPOSALS AND ORDERS

- 4.1. A Proposal is not an offer or obligation to sell. A Proposal includes only such Products and Services as are specified in it.
- 4.2. A Proposal is only valid for 30 days from issue, unless extended in writing by SRI.
- 4.3. SRI reserves the right to reject any order which SRI has not expressly or by conduct accepted.

### 5. FEE

- 5.1. Unless the Proposal states otherwise, the Client must pay the Fee as follows:
- a) Where the total Fee in the Proposal is \$10,000 or less, the Client must pay the Fee in full within 2 Business Days of being advised the Products and Services are available for delivery;
  - b) Where the total Fee in the Proposal is more than \$10,000 but less than \$100,000, the Client must pay 40% of the Fee when placing the order or accepting the Proposal and the balance in full within 2 Business Days of being advised the Products and Services are available for delivery;
  - c) Where the total Fee in the Proposal is \$100,000 or more the Client must pay a deposit in the amount set out in the Proposal when placing the order or accepting the Proposal and the balance in full within 2 Business Days of being advised the Products and Services are available for delivery.
- 5.2. Where the total Fee in the Proposal is \$100,000 or more, SRI *may* require the Client to provide a letter of credit for the balance payment at the same time as the deposit is paid. This requirement may be set out in the Proposal or be advised by notice in writing from SRI.



- 5.3. If a letter of credit is required, the letter of credit must:
- a) Be confirmed, irrevocable, transferable (but only by SRI) letter of credit established by the Client in favour of SRI. All payments to be made to SRI shall not be reduced by taxes (withholding or other), bank charges and transfer duties. Payments are to be made by electronic funds transfer to SRI's account number 22 988 1053 with the National Australia Bank (branch number 084-004), 308-322 Queen Street, Brisbane 4000, Queensland, Australia (telephone +61 7 3226 5400 and fax +61 7 3234 5950). Swift Code NATA AU 3303M.
  - b) Be valid for the period specified in the Proposal or if no period is specified, the period specified in writing by SRI; and
  - c) Allow for partial drawing.
- 5.4 SRI will consider Client requests for payment arrangements via a letter of credit. Acceptance of such arrangements are at SRI's sole discretion, and a processing fee of \$4,000 will be payable by the Client at order acceptance.

## 6. TAX AND EXCHANGE RATES

- 6.1. The prices quoted do not include sales or goods and services tax unless specifically stated.
- 6.2. The Client must pay for goods and services tax and other duties, taxes or government charges whether imposed within or outside Australia ("Taxes"). All Taxes (if any) included in the Proposal are based upon the rates of those Taxes at the time of quotation. All variations in the rates of such Taxes will be to the Client's account.
- 6.3. Variations in rates of exchange on imported Products or components affecting the amount paid by SRI for Products or Services supplied will be to the Client's account.

## 7. FREIGHT

Products and Services are sold EXW Brisbane Australia (Incoterms 2010) unless otherwise stated in the Proposal.

## 8. INTEREST

- 8.1. If payment for Products or Services is not made when due, the Client *may be required to*:
  - a) Pay interest at the rate charged from time to time to SRI by National Australia Bank Limited on overdraft accommodation during the period any amount remains unpaid, calculated on a daily basis. A certificate signed by a manager of SRI's bank will be conclusive evidence of the rate charged by the bank to SRI for overdraft accommodation; and
  - b) Reimburse SRI for all costs including legal costs on a full indemnity basis incurred by SRI in collecting any late payments.
- 8.2. The imposition of interest charges or a late payment fee will not be regarded as allowing any time for payment of any amount owing. All overdue amounts remain immediately due and payable to SRI and SRI may take steps at any time for recovery of any overdue amounts.

## 9. VARIATIONS

If the Client requests a variation in the Products or Services set out in the Proposal, then:

- 9.1. SRI is not obliged to consider or to agree to any variation;
- 9.2. If SRI agrees to consider a variation, SRI will prepare a scope for the variation;
- 9.3. Following preparation of the scope of the variation and before the variation takes effect, the parties must first agree, in good faith, a change in the Fee;
- 9.4. If the parties cannot agree a change in the Fee, there will be no variation to the Proposal;
- 9.5. Regardless of whether or not the variation proceeds, SRI may charge the client an additional amount for determining the scope of the variation calculated on the basis of SRI's standard consultancy rates.

## 10. DELIVERY

- 10.1. Any delivery dates or periods are for information purposes only and do not form part of the Agreement unless specifically agreed in writing to be of the essence of the Agreement. In the absence of a specific agreement, SRI accepts no liability for any loss or damage of whatever nature and however arising which may be suffered by the Client as a result of any failure on the part of SRI to deliver Products or Services on or within the dates or periods.
- 10.2. SRI may at its option deliver the Products or Services (or both) to the Client in any number of instalments. If SRI delivers by instalments and any one of those instalments is defective for any reason:
  - a) It is not a repudiation of the Agreement; and
  - b) The defective instalment is a severable breach that gives rise only to a claim for compensation.

## 11. ACCEPTANCE

- 11.1. The Client must inspect and test the Products and Material immediately upon delivery and must within seven (7) days from the date of inspection give written notice to SRI of any alleged defect in the Products and Services, or other alleged breach of contract by SRI.



- 11.2. The Client waives any claim for shortage of any Products or Material delivered if a claim in respect of short delivery has not been received by SRI within 7 days from the date of receipt of the Products or Material by the Client.

## **12. DAMAGE OR LOSS IN TRANSIT**

- 12.1. SRI is not responsible to the Client or any person claiming through the Client for any loss or damage to Products or Material in transit caused by any event of any kind by any person (whether or not SRI is legally responsible for the person who caused or contributed to that loss or damage).
- 12.2. SRI will assist the Client by providing documentation in making a claim on a carrier if the Client:
  - a) Notifies SRI and the carrier in writing immediately after loss or damage is discovered on receipt of the Products or Material; and
  - b) Lodges a claim for compensation on the carrier within three (3) days of receipt of the Products or Material.

## **13. SPECIFICATIONS**

- 13.1. Subject to clause 13.2, all Products and Services are as described on the Proposal and the description on that Proposal prevails over all other descriptions including any specification or enquiry of the Client.
- 13.2. SRI will not be taken to have agreed to comply with any specifications or drawings referred to in any order unless the specifications or drawings have been produced to SRI prior to the delivery of the Products and Services and are signed or otherwise acknowledged by SRI.
- 13.3. Unless the Client is a consumer for the purposes of the *Competition and Consumer Act 2010* in relation to the supply under this Agreement, the Client must make its own enquiries and satisfy itself that the Products and Services are suitable for the Client's proposed application and that the Products are compatible with the Client's processes and equipment.

## **14. INTELLECTUAL PROPERTY**

All Intellectual Property Rights in the Material, the Products or any computer software supplied by SRI to the Client under the Agreement remain vested in SRI who is the sole owner of them.

## **15. PRODUCT DESIGN**

SRI engages in a policy of continuous development and improvement of its Products and Services. SRI reserves the right to alter the design and/or specifications of any Products and Services without notice and without incurring liability.

## **16. LIABILITY**

- 16.1. The only conditions and warranties which are binding on SRI in respect of the state, quality or condition of the Products or Services supplied to the Client are those described in clause 17 and those imposed and required to be binding by statute (including the *Competition and Consumer Act 2010*)
- 16.2. SRI's liability for failure to comply with a consumer guarantee under the *Australian Consumer Law* (other than a guarantee under section 51, 52 or 53) is limited to any one or more of the following:
  - a) The replacement of the Products or Services or the supply of equivalent Products or Services;
  - b) The repair of the Products;
  - c) The payment of the cost of replacing the Products or Services or of acquiring equivalent Products or Services; or
  - d) The payment of the cost of having the Products repaired.
- 16.3. The limitation in 16.2 will not apply if the Client establishes, in accordance with the *Australian Consumer Law*, that it is not fair or reasonable for SRI to rely on this term, having regard to all the circumstances of the case.
- 16.4. Where Chapter 3, Part 3-2 of the *Australian Consumer Law* does not apply to the supply then, except as set out in clause 17, SRI will not be liable to the Client for any liability, (including liability in negligence) loss or damage of whatever nature, consequential or otherwise, however suffered or incurred by the Client, caused by or resulting directly or indirectly from the supply or manufacture of the Products or Services.
- 16.5. The Client indemnifies and will keep SRI, its officers and employees indemnified against all actions, claims, proceedings and demands whatsoever (whether based in contract, tort or otherwise) which may be made or brought by any person against it or by them or any of them in respect of any loss or damage (including death and consequential loss) arising out of the Client's performance or breach of this Agreement or the Client's publication or use of any information, data or results expressed in any Material, whether or not such loss, injury or damage is attributable to the negligence of the Client, its officers, employees, agents or contractors.



## **17. PRODUCT AND SERVICE WARRANTY**

- 17.1. Subject to clause 17.3, SRI warrants that all Products manufactured by or specifically for SRI and sold by SRI to the Client will be free from defects caused by faulty workmanship and faulty materials for a period of twelve (12) months from the date of despatch to the Client.
- 17.2. Subject to clause 17.3, SRI warrants that all Services supplied by SRI to the Client will be supplied with due skill and care.
- 17.3. The warranties in clauses 17.1 and 17.2 do not apply in any of the following cases:
  - a) Where the Client fails to give notice of a claim for breach of warranty to SRI within 14 days of the breach being discovered (or the date it ought reasonably to have been discovered) and in that circumstance, SRI will have no liability of any kind to the Client;
  - b) claims arising from materials, directions or instructions supplied by the Client or from a design requested or altered by the Client;
  - c) claims arising from:
    - i) Fair wear and tear;
    - ii) Damage or injury caused by lack of care or insufficient maintenance by the Client;
    - iii) Improper use or installation of the Products or use of the Materials other than for the purpose supplied; or
    - iv) Alterations or repairs (not made by SRI);
  - d) claims arising from an event outside of SRI's control such as fire, flood, earthquake or other natural calamity, motor vehicle or other accident, strike, civil unrest, terrorism or war.
- 17.4. SRI's obligation under the warranty in clause 17.1 is limited to repairing or exchanging EXW Brisbane (Incoterms 2010), any part, assembly or portion of the Products found to be defective.
- 17.5. SRI assumes no responsibility for the labour costs involved in the removal of defective parts, installation of new parts or related service charges.
- 17.6. SRI may require the return of the defective part or Products (transportation prepaid by the Client) to establish the claim.
- 17.7. To the extent permitted by law (and subject to clause 16.2), SRI's obligation to the Client in any way in connection with this Agreement (whether in negligence or otherwise), including without limitation a breach of any warranty or condition, is limited to the lesser of \$100,000 or 10% of the amount paid to SRI by the Client for the Services.

## **18. DETERMINATION AND DAMAGES**

- 18.1. If:
  - a) Any distress, execution or other legal process is levied upon any of the Client's assets; or
  - b) The Client enters into any arrangement or composition with its creditors, commits any act of bankruptcy or being a company, a controller (as defined in the Corporations Act) is appointed to the whole or any part of its assets, enters into liquidation or has a winding up petition presented against it or calls a meeting of its creditors; or
  - c) Payment of the Fee or any part of it is not made when due; or
  - d) The Client breaches any material provision of the Agreement,Then, without prejudice to its rights under any other clause or at law, SRI may (but is not bound to do so):
  - e) Terminate the Agreement; and/ or
  - f) Suspend delivery to the Client of all or any outstanding orders; and/ or
  - g) Require payment on delivery for all Products or Services delivered or to be delivered after the relevant event; and/ or
  - h) Require immediate payment for any Products or Services delivered and not paid for by the Client prior to the event.
- 18.2. If SRI terminates the Agreement in accordance with clause 18.1 or there is any repudiation of the Agreement by the Client, SRI may recover damages from the Client including, but not limited to:
  - a) The value of any work in progress completed or Products manufactured at the date of determination;
  - b) The value of any work in progress begun or Products begun to be manufactured but not completed at the date of determination including the costs of material, labour, overheads and profits in connection with them; and
  - c) The sum representing any further profit which SRI would have made on the Agreement but for its determination.
- 18.3. A certificate signed by SRI's then accountant as to the damages recoverable under clause 18.2 is prima facie evidence of those damages.

## **19. SET OFF**

The Client may not withhold or set off payment of any amount due to SRI under the Agreement whether in respect of any claims of the Client in respect of faulty or defective Products or Services or any other reason.



## 20. FORCE MAJEURE CLAUSE

In the event of:

- 20.1. War, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power; or
- 20.2. Any change in statute, rules or regulations; or
- 20.3. Any order or requisition issued by any government department, council or other duly constituted authority; or
- 20.4. Strikes, lockouts, breakdowns of plant or any other causes (whether or not of a like nature) beyond SRI's control; or
- 20.5. The variation or cancellation of a visa or failure to issue a visa to personnel of SRI by the country in which the project which is the subject of the agreement is situated; or
- 20.6. The existence of economic trade or humanitarian sanctions that limit or prohibit SRI's ability to perform this Agreement or to receive payment under this Agreement; or
- 20.7. The identification of any activity that may implicate SRI in any breach of Australia's obligations under the Conventions of Combating Bribery of Foreign Public Officials in the International Business Transaction (the Anti-Bribery Convention) or the United Nations Convention against Corruption.

SRI will be relieved of its obligations under the Agreement wherever and to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence of any such event.

## 21. PASSING OF RISK, RETENTION OF TITLE AND PPS

21.1. For the purpose of this clause 21:

**'Excluded Interest'** means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;

**'PPSA'** means the *Personal Properties Securities Act 2009 (Cth)*;

**'PPS Register'** means the Personal Property Securities Register;

**'Purchase Money Security Interest'** has the same meaning as under the PPSA;

**'Security Interest'** has the same meaning as under the PPSA.

- 21.2. The Products and Material supplied by SRI are at the Client's risk immediately on delivery to the Client or into the custody of the carrier or anyone acting on the Client's behalf whichever is the sooner.
- 21.3. Whilst the risk in the Products and Material passes as set out in clause 21.2, legal and equitable title remains with SRI until payment in full of all amounts owed by the Client to SRI is received by SRI. Payment will not be deemed to be received until any cheque in payment has been honoured.
- 21.4. Until SRI has received payment in full of all amounts owed by the Client to SRI, it reserves the following rights:
  - a) The right to enter the Client's premises and retake possession of the Products and Material;
  - b) The right to keep or resell any Products and Material repossessed under clause a); and
  - c) Any other rights it may have at law or under the PPSA.
- 21.5. Until SRI has received payment in full of all amounts owed by the Client to SRI:
  - a) The Client takes the Products and Material as bailee for SRI;
  - b) The Client must:
    - i) Insure the Products and Material against all usual risks to their full replacement value;
    - ii) Note the interest of SRI on that insurance policy; and
    - iii) Receive on trust for and pay to SRI any insurance monies received by the Client in respect of the Products or Material (or both);
  - c) The Client must, where reasonably possible, store each delivery of Products and Material separately, clearly identified as SRI's property and in a manner to enable the Products and Material to be identified and cross-referenced to particular invoices; and
  - d) The Client must not sell or part with possession of the Products or Material.
- 21.6. Without limiting the generality of SRI's rights in this clause 21, if payment for the Products or Services is not made by the Client when due or SRI terminates the contract under clause 18, then the Client must return all Products and Material to SRI on demand. If the Client does not return all Products and Material to SRI within 48 hours of receipt of the demand, SRI may for the purposes of recovery of possession of the Products and Material, enter forcibly, if necessary, upon any premises where the Products and Material are stored or where they are reasonably thought to be stored and may repossess, remove and resell the Products and Material.
- 21.7. The Client is liable for all costs associated with the exercise by SRI of its rights under this clause 21, which costs are payable on demand.



- 21.8. The Client acknowledges that SRI has:
  - a) A Purchase Money Security Interest which attaches over the Products, the Material and their proceeds until SRI has received payment for those Products and Services in full; and
  - b) A Security Interest over the Products, the Material and their proceeds in relation to other amounts owed by the Client to SRI.
- 21.9. SRI may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration.
- 21.10. The Client must not grant any other person a Security Interest in respect of the Products, the Material or their proceeds.
- 21.11. The Client must now allow an Excluded Interest to exist over the Products or the Material.
- 21.12. The Client agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) at any time which SRI asks and considers necessary for the purpose of:
  - a) Ensuring that a Security Interest created under the Agreement is enforceable, perfected and otherwise effective; and
  - b) Enabling SRI to apply for any registration, or give any notification, in connection with a Security Interest created under the Agreement so that the Security Interest has the priority required by SRI, including anything SRI reasonably asks the Client to do in connection with the PPSA.
- 21.13. To the extent permitted by law, if the PPSA applies, the Client irrevocably waives any rights the Client may have to:
  - a) Receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - b) Redeem the Products under section 142 of the PPSA;
  - c) Reinstate the Agreement under section 143 of the PPSA; and
  - d) Receive a verification statement (as defined in the PPSA).
- 21.14. Nothing in this clause prevents SRI from taking action against the Client at any time to recover amounts owing to SRI.

## 22. CONFIDENTIALITY

- 22.1. SRI will keep confidential:
  - a) Any information provided to SRI by the Client pursuant to the Agreement which would reasonably be regarded as confidential (but the Client acknowledges that receipt by SRI of this information will not in any way limit or restrict SRI's ability to produce services or products containing similar information); and
  - b) The confidential information contained in any report prepared or confidential information provided as part of the Services and will not disclose that confidential information without the prior written approval of the Client.
- 22.2. **'SRI Confidential Information'** means the Material and all information which relates, directly or indirectly to the Services or the Products and which is disclosed or communicated by or on behalf of SRI to the Client or created, ascertained, discovered or derived by the Client directly or indirectly from such information, whether or not such information is recorded in some tangible form, but does not include any information which:
  - a) At the time of the first disclosure to or observation by the Client was already in the lawful possession of the Client (other than from SRI);
  - b) Is or has become publicly available otherwise than due to disclosure in breach of these Conditions; or
  - c) Is received from a third party and was not acquired directly or indirectly from either party in breach of an obligation of confidence.
- 22.3. The Client must:
  - a) Only use the SRI Confidential Information for the purposes set out in the Proposal; and
  - b) Keep the Confidential Information confidential except for disclosures required by law or to employees whose duties require such disclosure and who have been directed and who agree to keep the Confidential Information confidential; and
  - c) Ensure that any employee to whom the Client discloses the Confidential Information keeps the Confidential Information confidential and only uses it for the purpose permitted in the Proposal; and
  - d) Return any Confidential Information on request to SRI.
- 22.4. The parties acknowledge that SRI may collect personal information regarding the Client or its employees and agents and that such personal information will be maintained in accordance with the privacy policy published from time to time on SRI's website.

## 23. PUBLICITY

The Client must not use the Material or any part of it, or use the names SRI, Sugar Research Institute, Sugar Research International or Sugar Research Limited in direct, or in indirect advertising or publicity without the prior written consent of SRI.



**24. MATERIAL**

The Client must only use the Material for the purpose set out in the Proposal and must not use the Material and must not disclose the Material to any person without the prior written consent of SRI.

**25. SAMPLES**

- 25.1. The Client acknowledges that SRI will not retain samples unless specifically requested in writing by the Client and agreed by SRI.
- 25.2. All costs of preservation, storage, transportation and disposal of samples will be to the Client's account.
- 25.3. The Client acknowledges that even where samples are agreed to be stored by SRI, samples may be damaged or destroyed and that SRI is not liable to the Client in any circumstances for loss of or damage to samples.

**26. ASSIGNMENT**

The Client may not assign the Agreement without the prior written consent of SRI.

**27. APPLICABLE LAW**

The Agreement is governed by the law of Queensland (but not the terms of the United Nations Convention on Contracts for the International Sale of Goods) and the parties must submit to the jurisdiction of the Courts of that State.

**28. DISPUTES**

Any dispute arising in connection with the Agreement which cannot be settled by negotiation between the parties will be submitted to arbitration in Brisbane, Australia in accordance with the rules for the conduct of commercial arbitrations for the time being of the Institute of Arbitrators and Mediators Australia.

**29. NOTICES**

Any notice given under the Agreement must be delivered by hand, sent by registered post or sent by facsimile to the address of the parties specified on the Proposal.