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**Cory Johnston (Aust.) Pty. Ltd.**

A.C.N. 010 083 020 A.B.N 22 010 083 020

DOMESTIC & INTERNATIONAL TRADERS OF MEAT,  
MEATWORKS BY-PRODUCTS & GRAIN

PO BOX 325  
MORNINGSIDE 4170  
QUEENSLAND, AUSTRALIA.

### **Cory Johnston (Aust) Pty Ltd ABN 22 010 083 020 - Terms and Conditions of Sale**

These terms and conditions together with the Credit Application, quotation, order or proposal and the credit policy to which these terms are attached or in which these terms are referred, together make up a legally binding agreement between Cory Johnston (Aust) Pty Ltd ABN 43 22 010 083 020 and the person(s) or company named as the customer in the Credit Application (Customer) in the attached or previously signed or submitted credit application, quotation, order or proposal.

#### **1. Definitions**

In these Terms and Conditions:

<b>Confidential Information</b>	means	any information supplied to a party (Receiving Party) by the other party (Supplying Party) relating to these Terms and Conditions (whether in writing or otherwise) and notified by the Supplying Party as confidential will be the Supplying Party's confidential information unless it is:  (a) public knowledge at the time of its supply to the Receiving Party;  (b) in the Receiving Party's lawful possession prior to its supply to the Receiving Party; or  (c) required to be disclosed by law or court proceedings.
<b>Cory Johnston</b>	means	Cory Johnston (Aust) Pty Limited ABN 22 010 083 020.
<b>Credit Account</b>	means	an agreement whereby Cory Johnston agrees to supply credit to the Customer to purchase Goods and Services, subject to these Terms and Conditions.
<b>Credit Application</b>	means	the Customer's application for a Credit Account as the case may be.
<b>Customer</b>	means	any person or persons, company or business entity to whom Cory Johnston sells or supplies, or proposes to sell or supply, Goods or Services.
<b>Customer's Address</b>	means	the Customer's address listed in the Credit Application, or any other address (electronic or otherwise) notified by the Customer to Cory Johnston from time to time.
<b>Director's Guarantee</b>	means	means the Deed of Guarantee and Indemnity contained in the Credit Application.
<b>Goods</b>	means	the goods or products supplied or sold by Cory Johnston to the Customer from time to time.
<b>Services</b>	means	any services provided by Cory Johnston to the Customer from time to time.
<b>Quotation</b>	means	means a quotation or proposal submitted by Cory Johnston to the Customer.

#### **2. Acceptance**

The Terms and Conditions may be accepted by the Customer signing the Credit Application, accepting a Quotation or placing an order with Cory Johnston for Goods and/or Services.

### **3. Grain Trade Rules**

3.1 Each contract under which Cory Johnston agrees to supply grain to the Customer incorporates:

- (a) these Terms and Conditions;
- (b) the contract specific details as agreed between the Customer and Cory Johnston;
- (c) the version of the Trade Rules of Grain Trade Australia (**GTA Trade Rules**) currently in effect; and
- (d) the latest version of the Dispute Resolution Rules of Grain Trade Australia (**GTA Dispute Resolution Rules**) currently in effect.

3.2 In the event of any inconsistency between the GTA Trade Rules, GTA Dispute Resolution Rules, these Terms and Conditions and the contract specific details as agreed between the Customer and Cory Johnston, the documents will prevail in the following order:

- (a) the contract specific details as agreed between the Customer and Cory Johnston;
- (b) these Terms and Conditions;
- (c) the GTA Trade Rules and GTA Dispute Resolution Rules.

### **4. Privacy**

4.1 By signing the Credit Application, the Customer consents and authorises Cory Johnston:

- (a) To obtain any information about the Customer's credit or business history or from any source (including a credit reporting agency) for the purposes of assessing the Application, or in connection with the Director's Guarantee and to disclose information to a credit reporting agency or mercantile agent; and
- (b) Unless otherwise prevented by law to collect from, store, use, disclose to or exchange with any entities that collect or use credit information.

### **5. Trading Accounts**

5.1 A Credit Account may be provided to the Customer only after approval of the Credit Application.

5.2 Cory Johnston reserves the right to terminate the Credit Account at any time at its sole discretion

### **6. Price**

6.1 The Customer agrees that:

- (a) Upon acceptance by Cory Johnston of a purchase order or the like from the Customer, Cory Johnston will supply the Goods and/or Services to the Customer. Cory Johnston reserves the right to refuse to accept cancellations or alterations to a Customer's order after its acceptance;
- (b) Cory Johnston may supply a Quotation for the price of the Goods and/or Services. The quotation is valid for 30 days from its day of issue. Ultimately, the prices charged for the Goods and/or Services will be those agreed to and acknowledged by Cory Johnston in its sole discretion upon acceptance of a purchase order from the Customer. Prices are subject to change without notice to the Customer;
- (c) It must pay Cory Johnston without set-off or deduction, the price of the Goods and/or Services, costs And charges for freight and handling, and any other extras and allowances as determined by Cory Johnston in its sole discretion, and listed on Cory Johnston's invoice and/or invoices provided to the Customer for those Goods and/or Services;
- (d) If a goods and services tax or any similar tax (**GST**) is imposed in Australia and has application to any supply made under these Terms and Conditions, Cory Johnston may, in addition to any amounts payable

by the Customer, recover from the Customer an additional amount on behalf of GST, such amount to be calculated by multiplying the amount payable by the Customer for the supply by the prevailing GST rate.

## **7. Terms of Payment**

- 7.1 Cory Johnston will issue a tax invoice to the Customer upon supply of the Goods and Services (**Invoice**).
- 7.2 The Customer agrees that any Invoice sent to the Customer's Address is deemed to have been received by the Customer;
- 7.3 Unless Cory Johnston otherwise agrees in writing, payment for each Invoice is due within seven (7) days of the date of the Invoice (**Due Date**).
- 7.4 Cory Johnston reserves the right to extend the Due Date, upon any terms and conditions, in its sole discretion.
- 7.5 The Customer is not entitled to avoid, suspend or set-off payment due to Cory Johnston under the Terms and Conditions for any reason.
- 7.6 If money payable by the Customer is not paid by the Due Date, interest will be payable by the Customer on any outstanding amount from the Due Date at the rate of 12% per annum.

## **8. Title and Security**

- 8.1 The ownership of Goods will be transferred to the Customer when the Customer has made payment in full for the Goods and any amounts that are owing to Cory Johnston by the Customer. Until that time, the Goods will be held by the Customer as the fiduciary agent and bailee of Cory Johnston.
- 8.2 The Customer must store the Goods in such a way that it is clearly the property of Cory Johnston.
- 8.3 For the purposes of this clause, "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended from time to time. Where a particular section or term from the PPSA is used in these Terms and Conditions, it is deemed to be that section or term as defined or used in the PPSA.
- 8.4 The Customer acknowledges and agrees that by signing the Credit Application, a security interest is created in Goods and/or Services for the purposes of the PPSA. The Customer further agrees and acknowledges that Cory Johnston may, at its sole discretion, register its security interest in the Goods and/or Services on the Personal Property Security Register at its own cost.
- 8.5 The Customer acknowledges and agrees that these Terms and Conditions constitute a security agreement in relation to the Supplier's security interest in all present and after-acquired property for the purposes of the PPSA.
- 8.6 The Customer agrees to grant a "Purchase Money Security Interest" in respect of the Goods supplied to the Customer by the Cory Johnston under these Terms and Conditions. The Customer acknowledges Cory Johnston may register a Purchase Money Security Interest in the Personal Property Securities Register in respect of the Goods.
- 8.7 For the avoidance of doubt, the Customer acknowledges and agrees that it grants to Cory Johnston a security interest in all goods supplied by Cory Johnston, services rendered by Cory Johnston and other costs and charges owing by the Customer to Cory Johnston (whether now or in the future) and in any proceeds from the sale of the Goods.
- 8.8 To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of these Terms and Conditions:
  - (a) sections 95 (notice of removal of accession), to the extent that it requires Cory Johnston to give a notice to the Customer, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
  - (b) section 130 (notice of disposal), to the extent that it requires Cory Johnston to give a notice to the Customer;
  - (c) section 132(3)(d) (contents of statement of account after disposal);

- (d) section 132(4) (statement of account if no disposal);
- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral);
- (g) section 143 (reinstatement of security agreement).

8.9 To the extent permissible at law, the Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relation to a Security Interest granted by the Customer, as Grantor to Cory Johnston.

8.10 If the Customer makes new goods or components from the Goods or Services, mixes them with other goods or components or they become a constituent of other goods or objects (**New Goods**) Cory Johnston will be given the ownership to the New Goods as surety for full payment by the Customer.

8.11 In the event of sales to a third party by the Customer of the Goods or New Goods, Cory Johnston will have a right to any claims the Customer may have against third parties emanating from the sale of the goods or materials or New Goods.

## **9. Default**

9.1 In the event that the Customer fails to comply with these Terms and Conditions, including but not limited to failure to make payment to Cory Johnston by the Due Date (**Default**) the whole of any outstanding balance owing to Cory Johnston on any account will become immediately due and payable by the Customer to Cory Johnston and Cory Johnston (or its agent) may:

- (a) refuse to supply the Customer with any further goods and/or Services;
- (b) enter the Customer's premises for the purpose of recovering and reselling the Goods in satisfaction (or part satisfaction) of any monies owing to Cory Johnston; and/or
- (c) commence proceedings against the Customer for any monies owing to Cory Johnston under these Terms and Conditions as a debt due and owing to Cory Johnston.

## **10. Charge**

10.1 The Customer charges the Customer's present and future beneficial interests in all of its real and personal property to secure the payment of all monies due from the Customer to Cory Johnston in respect of the Goods and/or Services supplied to the Customer and irrevocably and unconditionally consents to lodgment by Cory Johnston of a caveat noting the interest given by this charge on the title of any property of the Customer whenever Cory Johnston so wishes.

## **11. Costs**

11.1 The Customer agrees to pay all of Cory Johnston's costs, charges and expenses incurred due to the Customer's Default of these Terms and Conditions, including Cory Johnston's legal costs on the indemnity basis.

## **12. Quality of Goods and Services**

12.1 The Customer shall inspect the Goods immediately on delivery and, with twenty four (24) hours of delivery, give notice to Cory Johnston of any defect or allegation that the Goods and/or Services are not satisfactory. If the Customer fails to give such notice within that time, the Goods and/or Services shall be deemed to be in all respects satisfactory and the Customer is bound to accept and pay for the Goods and/or Services.

12.2 Notwithstanding that any sample of the Goods and/or Services has been inspected by the Customer, it is agreed that such sample was so inspected solely to enable the Customer to judge for themselves the quality of the Goods and/or Services and, not so as to constitute a sale by sample. The Customer takes the Goods and/or Services at their own risk.

### **13. Delivery and Risk of Loss**

- 13.1 The Goods will be delivered to the Customer's Address or as otherwise notified to the Cory Johnston at the time of order.
- 13.2 Delivery dates specified by Cory Johnston will be approximate, and Cory Johnston will incur no liability for failure to deliver on such dates.
- 13.3 Risk of loss on all Goods and/or Services will pass to the Customer upon time of dispatch from Cory Johnston's facilities, whether or not the Goods conform to the purchase order.
- 13.4 From the time of dispatch from the Seller's premises and until delivery, the risk of any loss or damage to or deterioration of the Goods for whatever cause arising shall be borne by the Customer unless the Supplier arranges delivery or is otherwise agreed by the Supplier and Customer.

### **14. Confidential Information**

- 14.1 The Customer agrees (at its own expense):
- (a) to ensure that at all times, it keeps confidential the Confidential Information;
  - (b) notifies Cory Johnston if it becomes aware of any suspected or actual unauthorised use, copying or disclosure of Confidential Information;
  - (c) immediately take steps to prevent or stop the suspected or actual unauthorised use, copying or disclosure of Confidential Information; and
  - (d) to indemnify Cory Johnston against all losses, damages, expenses and legal costs (on a solicitor and own client basis and whether incurred by or awarded against that party) that Cory Johnston reasonably sustains or incurs as a result, whether directly or indirectly, of any breach of this clause by it.

### **15. Liability**

- 15.1 These Terms and Conditions do not attempt to exclude, restrict or modify the application of any applicable laws of the Commonwealth, State or Territory which cannot be excluded, restricted or modified.
- 15.2 The Customer acknowledges and agrees that to the extent permitted by law, Cory Johnston will not be liable for, and the Customer releases Cory Johnston in respect of any claim, loss, cost, damage or expense (**Claim**) arising out of any act or omission of Cory Johnston or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of these Terms and Conditions or a warranty by Cory Johnston.
- 15.3 To the full extent permitted by law, any liability for a Claim against Cory Johnston that cannot be excluded will be limited to the lesser of:
- (a) the re-supply or repair of defective Goods and/or Services;
  - (b) the cost of the re-supply or repair by a third party of the defective Goods and/or Services in question; or
  - (c) the contract price for the original supply of the Goods and/or Services.
- 15.4 Notwithstanding the above, the parties agree that Cory Johnston will not be liable for any consequential loss or damage however caused arising out of any matter the subject of or in connection with these Terms and Conditions.

### **16. Force Majeure**

- 16.1 In this clause a Force Majeure event means anything outside reasonable control of a party, including but not limited to:
- (a) power, data or communication outages;

- (b) acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
- (c) a transaction embargo;
- (d) industrial action (including a picket); and
- (e) any legislation or regulation and any action or inaction of any government or government agency.
- (f) if Cory Johnston is wholly or partially unable to perform its under obligations because of a Force Majeure event, then:
- (g) as soon as reasonably practicable after the Force Majeure event arises, Cory Johnston will notify the Customer of the extent to which Cory Johnston is unable to perform its obligations; and
- (h) Cory Johnston's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.

## **17. General Terms**

17.1 The Customer warrants that:

- (a) all information provided to Cory Johnston in relation to the Credit Application is true and complete and acknowledges that Cory Johnston relies on the information in making a decision to grant a credit account.
- (b) it has received, read and understood these Terms and Conditions;
- (c) the company and/or each director, partner, sole trader stated in the Credit Application is solvent and can pay its respective debts as and when due and that no steps have been taken to place any of them into bankruptcy, voluntary administration, liquidation, receivership or management; and
- (d) the person who signs the Credit Application is authorised to do so on behalf of the Customer and hereby binds the Customer.

17.2 These Terms and Conditions and any contract for sale of Goods and/or Services will be governed by the laws of the State of Queensland and the Customer submits to the jurisdiction of the Queensland Courts.

17.3 The invalidity in whole or part of any of these Terms or Conditions will not affect the validity or enforceability of any other term or condition.

17.4 The Customer may not transfer or assign any of its rights or obligations under these Terms or Conditions.

17.5 The paragraph headings in these Terms or Conditions are for convenience only, and form no part of these Terms or Conditions, or any other agreement. Such paragraph headings are without legal effect;

17.6 Cory Johnston's failure to insist, in one or more instances, upon the performance of any of these Terms or Conditions will not be construed as a waiver or relinquishment of Cory Johnston's right to such performance, and the Customer's obligation will continue in full force and effect;

17.7 These Terms and Conditions may be amended only with Cory Johnston's agreement in writing.