

# Wilmar BioEthanol Terms and Conditions of Sale



## Conditions of Sale

### 1. DEFINITIONS

In these terms and conditions:

**“Buyer”** means the person making the application or entering into a Contract with Wilmar BioEthanol;

**“Contract”** means any contract for the sale or supply of Goods entered into between Wilmar BioEthanol and the Buyer;

**“Goods”** means all products and services agreed to be supplied by Wilmar BioEthanol or a supplier which has entered into an arrangement with Wilmar BioEthanol to supply products or services or both products and services to the Buyer under any contract, arrangement or understanding between Wilmar BioEthanol and the Buyer;

**“Purchase Order”** means a purchase order for Goods made by the Buyer to Wilmar BioEthanol;

**“Quoted Date”** means the date of delivery as agreed between the Buyer and Wilmar BioEthanol; and

**“Wilmar BioEthanol”** means Wilmar BioEthanol (Australia) Pty Ltd ABN 85 009 660 191 and its agents, servants and employees and any related bodies corporate as defined in the *Corporations Act 2001 (Cth)* (if such related body corporate is named as the party making or accepting the Buyer’s order of Goods).

### 2. FORMATION OF CONTRACT

(a) Each Purchase Order or order for Goods made by the Buyer and which is accepted by Wilmar BioEthanol pursuant to paragraph 2(b) will constitute a Contract subject only to these terms and conditions together with the terms of the application and the Guarantee and Indemnity. Each such Contract is separate from every other Contract.

(b) No Contract is accepted or will come into existence until Wilmar BioEthanol issues a written or verbal confirmation of order to the Buyer or, if earlier, Wilmar BioEthanol delivers the Goods.

### 3. APPLICATION OF TERMS

These terms and conditions together with the terms of the application and (if applicable) the Guarantee and Indemnity:

(a) are the only terms and conditions to which Wilmar BioEthanol will be bound, unless Wilmar BioEthanol otherwise agrees in writing and the Buyer irrevocably agrees that these terms and conditions will in all circumstances prevail over any terms and conditions of the Buyer;

(b) supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the commercial credit account and the supply of the Goods; and

(c) may be varied at any time by Wilmar BioEthanol on written notice to the Buyer. If they are varied, the varied terms will apply to all subsequent Contracts formed under these terms and

conditions but not any existing Contracts already formed but not yet fully performed at the date the variation takes effect.

### 4. DELIVERY

(a) Delivery will take place when the Goods are first presented for delivery at the address provided by the Buyer.

(b) Delivery will be effected by Wilmar BioEthanol:

- (i) loading (which shall include discharging) the Goods into the Buyer’s own or nominated transport, container or storage facility; or
- (ii) leaving the Goods at the address for delivery; or
- (iii) where Wilmar BioEthanol is applying the Goods to the Buyer’s land or crop, upon the Goods being discharged and applied to the Buyer’s crop,

provided that if Wilmar BioEthanol considers that such loading or application would be hazardous or would be contrary to Wilmar BioEthanol’s policies, industry practice or statutory requirements, then Wilmar BioEthanol will notify the Buyer and the Buyer must arrange an alternative delivery.

(c) If the Buyer will not accept delivery when the Goods are ready for delivery or Wilmar BioEthanol is unable to effect delivery because of a reason in paragraph (b) above or because the Buyer has not provided Wilmar BioEthanol with appropriate instructions, documents, licences or authorisations, risk in the Goods passes to the Buyer, the Goods will be deemed delivered, and Wilmar BioEthanol may store the Goods until actual delivery, in which case, the Buyer will be liable to Wilmar BioEthanol for all related costs, such as transport, storage and insurance.

(d) Wilmar BioEthanol will make all reasonable efforts to have the Goods delivered to the Buyer on the Quoted Date, but Wilmar BioEthanol will not be liable for any failure to deliver or delay in delivery for any reason, and time will not be made of the essence by notice from the Buyer.

(e) Deliveries may be totally or partially suspended by Wilmar BioEthanol during any period in which Wilmar BioEthanol may be prevented or hindered from manufacture, delivery or supply though any circumstances outside Wilmar BioEthanol’s reasonable control, including but not limited to strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery software, hardware or communication network. Wilmar BioEthanol will not incur any liability to the Buyer in respect of such suspension. If the suspension lasts for more than 25 days from the Quoted Date, the Buyer is entitled to terminate the applicable Contract to which the suspension relates by written notice to Wilmar BioEthanol.

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## 5. ACCEPTANCE OF GOODS

The Buyer will examine the Goods for defects and shall notify Wilmar BioEthanol of any defects in writing within 30 days of delivery. If the Buyer does not notify Wilmar BioEthanol within 30 days of delivery the Buyer shall be deemed to have accepted the Goods.

## 6. RISK

- (a) Unless otherwise provided in these terms or agreed in writing by Wilmar BioEthanol, all risk in and to the Goods passes to the Buyer on delivery to the Buyer or its agent or to a carrier commissioned by the Buyer.
- (b) Without in any way limiting the operation of the foregoing, on delivery of the Goods to the Buyer or its agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Wilmar BioEthanol that, in the storage and handling of the Goods, the Buyer and its agents and carriers must comply with all relevant environmental laws and regulations, and will comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and its agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

## 7. TITLE

- (a) Title to and property in the Goods will not pass to the Buyer and is reserved to Wilmar BioEthanol until all amounts owing under a Contract have been paid in full.
- (b) Wilmar BioEthanol is the legal owner entitled to possession and control at all times of the Goods. The Buyer will have no title, property interest in, or claim to, the Goods. The Buyer irrevocably and unconditionally waives any present or future entitlement or right to claim or exercise a right of lien over the Goods.
- (c) The Buyer undertakes to do all things necessary, and as reasonably directed in writing by Wilmar BioEthanol on occasion, to ensure:
  - (i) Wilmar BioEthanol has first priority over any interest, claim or right of any other person regarding the Goods; and
  - (ii) Wilmar BioEthanol is able to perfect and enforce that first priority over any such person, including, entering into a specific security agreement for the Goods and/or assisting Wilmar BioEthanol register a security interest for the Goods on the personal property securities register against the Buyer.

## 8. PRICE

- (a) Unless otherwise agreed in writing, the price charged for the Goods will be the price stipulated by Wilmar BioEthanol in its order acknowledgment or that ruling at the date of dispatch if no order acknowledgment is given.
- (b) Any price indications or price lists are subject to alteration prior to formation of a Contract.
- (c) All prices for Goods are exclusive of GST which is payable by the Buyer in accordance with the relevant invoice.

## 9. PAYMENT

- (a) Unless otherwise agreed by Wilmar BioEthanol in writing, payment must be made by the Buyer in Australian Dollars by the date stipulated in Wilmar BioEthanol's invoice or as otherwise demanded.
- (b) The Buyer agrees it is not entitled to set off or counterclaim amounts due to Wilmar BioEthanol or to withhold or refuse payment on any ground, unless Wilmar BioEthanol agrees otherwise in writing or the Buyer has a valid court order to do so.
- (c) Time for payment of any amount owing by the Buyer to Wilmar BioEthanol under these terms and conditions or any Guarantee and Indemnity is of the essence.
- (d) The Buyer will be liable to Wilmar BioEthanol for any additional costs or expenses incurred by Wilmar BioEthanol seeking to enforce its rights in, or recover any outstanding sums due under, a Contract or the Guarantee and Indemnity (if applicable).

## 10. LAWFUL USE OF THE GOODS

- (a) The Buyer undertakes to Wilmar BioEthanol:
  - (i) that it will acquaint itself with the requirements of all relevant Government and Statutory or other authorities, bodies or corporations relating to the Goods and to the application to which the Goods are put;
  - (ii) that at all times whilst the Goods are in the Buyer's possession or under its control it will comply with such requirements;
  - (iii) that it will procure that any person to whom it sells or gives the Goods will also acquaint themselves with and comply with such requirements; and
  - (iv) that it will indemnify Wilmar BioEthanol on demand against any liability resulting from a breach of such requirements.
- (b) The Buyer undertakes that it will comply with Wilmar BioEthanol safety instructions as notified from time to time by Wilmar BioEthanol relating to the Goods.

## 11. BULK CONTAINERS

- (a) If Wilmar BioEthanol provides bulk containers to the Buyer in the delivery of Goods this clause will apply.

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- (b) It is the Buyer's responsibility to return empty returnable bulk containers in the same condition as they were supplied (fair wear and tear excepted) to the location from which they were supplied or other location nominated by Wilmar BioEthanol. At all times bulk containers supplied by Wilmar BioEthanol will remain the property of Wilmar BioEthanol and must not be used for any commodity other than that contained in the bulk containers at the time of delivery.
- (c) The period of use for bulk containers will be such reasonable time as determined by Wilmar BioEthanol, having regard to the circumstances in which the bulk containers are supplied. The Buyer will pay rental charges as determined by Wilmar BioEthanol from time to time on all containers which are not returned within the time determined by Wilmar BioEthanol pursuant to this clause.
- (d) The Buyer will be liable for bulk containers not returned in the same condition as they were supplied (fair wear and tear excepted) and will be charged on an indemnity basis the replacement value or repair cost, whichever is applicable.

## 12. STATUTORY PROVISIONS

These terms and conditions shall be subject to the provisions of the *Competition and Consumer Act 2010* (Cth) ("ACL"), any statutory amendment or re-enactment thereof for the time being in force and any other applicable State and/or Commonwealth legislation ("the Statutory Provisions").

## 13. WARRANTIES

Subject to any applicable Statutory Provisions:

- (a) Wilmar BioEthanol warrants that the Goods supplied are of merchantable quality and comply with the description and specifications as set out on the label or other product documentation for the Goods published by Wilmar BioEthanol or the supplier;
- (b) Wilmar BioEthanol's liability for breach of subclause 13(a) or a condition or warranty implied into this Contract by law including without limitation the Statutory Provisions (other than a condition implied by sections 51-53 of the ACL) is limited to any one of the following, as solely determined by Wilmar BioEthanol:
  - (i) the replacement or re-performance of the Goods or the supply of equivalent Goods; or
  - (ii) the refund of the price paid by the Buyer for the Goods.
- (c) Wilmar BioEthanol will not be liable to the Buyer if:
  - (i) the Goods are mixed with any other goods or any chemical is added to the Goods;
  - (ii) the defect in the Goods arises because the Buyer failed to follow Wilmar BioEthanol's written or oral instructions or good trade practices as to storage or use of the Goods.

## 14. LIMITATION OF LIABILITY

To the maximum extent permitted by law and notwithstanding any other clause of these terms and conditions, Wilmar BioEthanol's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise, arising in connection with the performance or contemplated performance of a Contract is limited to the total price payable by the Buyer under that Contract.

## 15. EXCLUSION FOR CONSEQUENTIAL LOSSES

To the extent the law permits and notwithstanding any other clause of these terms and conditions, Wilmar BioEthanol will not be liable to the Buyer arising out of or in any way connected with a Contract for any consequential or indirect losses, damages or expenses of any kind, howsoever arising, and whether caused by a breach of statute, breach of contract, negligence or other tort, by Wilmar BioEthanol or its officers, employees, agents, contractors or supplier. Consequential or indirect losses, damages and expenses includes, without limitation and for the avoidance of doubt, any loss of reputation, and any other loss, damage or expense being a probable result of a breach of Contract in the reasonable contemplation of the parties at the date of entering into that Contract.

## 16. ADVICE

Any advice, recommendation, information, assistance or service given by Wilmar BioEthanol in relation to Goods is given by Wilmar BioEthanol in good faith on the information available to it or given to it by the Buyer at the relevant time. Subject to any applicable Statutory Provisions, any liability arising out of or in respect of such advice, recommendation, assistance or service provided by Wilmar BioEthanol is excluded.

## 17. BUYER DEFAULT

- (a) If the Buyer does not pay Wilmar BioEthanol any amount due under a Contract, Wilmar BioEthanol will be entitled to charge an overdue account fee on the amount outstanding as liquidated damages at the rate of 16.75% pa, pro rated over a 365 day period for each day of delay (or such other rate as Wilmar BioEthanol may publish from time to time in lieu of that rate).
- (b) If any of the events set out in (i) to (v) below occur, Wilmar BioEthanol may, at its sole option, withhold further deliveries or cancel a Contract without notice to the Buyer and without prejudice to any other action or remedy which Wilmar BioEthanol has or might otherwise have had, and all monies owing and outstanding to Wilmar BioEthanol on any account whatsoever and irrespective of whether the due date on any statement of account has occurred or passed will become immediately due and payable to Wilmar BioEthanol by the Buyer:

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- (i) the Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due;
  - (ii) the Buyer being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Buyer's estate or any part of the Buyer's property or assets;
  - (iii) the Buyer being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
  - (iv) a receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Buyer;
  - (v) the Buyer experiences any analogous events having substantially similar effects to any of the events specified above.
- (c) Without prejudice to its other rights under these terms or otherwise, Wilmar BioEthanol may, in its sole discretion and without giving any reasons, alter or terminate the Buyer's credit limit or payment terms on written notice to the Buyer.

## 18. GENERAL LIEN

In addition to any right of lien to which Wilmar BioEthanol may be entitled under the common law, Wilmar BioEthanol will be entitled to exercise a general lien over all items in its possession belonging to the Buyer until the Buyer has paid in full for all Goods supplied by Wilmar BioEthanol to the Buyer. Wilmar BioEthanol may in its sole discretion sell any item that is subject to that lien, provided that Wilmar BioEthanol pays to the Buyer any surplus proceeds that are realised by it from a sale of any of those items after discharging in full all monies outstanding to Wilmar BioEthanol and all reasonable costs of sale incurred by Wilmar BioEthanol in respect of those items sold under this clause.

## 19. SEVERANCE

If any provision of these terms and conditions or its application to any person or circumstance is or becomes invalid, illegal or unenforceable, the provision will, so far as possible, be read down to such extent as may be necessary to ensure that it is not invalid, illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it will be deemed to be void and severable and the remaining provisions of these terms and conditions will not in any way be affected or impaired.

## 20. TRANSACTION TAX

Where a transaction tax, including a goods and services tax ("GST") and any transaction taxes that come into existence after the date of these terms and conditions, applies to any supply made under a Contract or any Guarantee and Indemnity, Wilmar BioEthanol may recover from the Buyer an additional amount on account of that transaction tax in

accordance with clause 8 or the Guarantee and Indemnity, as the case may be.

## 21. PATENTS

No right or licence is granted to the Buyer under any patent, copyright, registered design or other industrial property right except the right to resell to Goods in the ordinary course of business.

## 22. SET-OFF BY WILMAR BIOETHANOL

Wilmar BioEthanol in its sole and unfettered discretion may at any time set-off any amount owing by Wilmar BioEthanol to the Buyer on any account whatsoever, including any monies held by Wilmar BioEthanol for or on account of the Buyer, against any amount owing by the Buyer to Wilmar BioEthanol in respect of the Goods supplied by Wilmar BioEthanol whether or not that amount has become due and payable.

## 23. ASSIGNMENT

No Contract or any Guarantee and Indemnity is assignable by the Buyer without the prior written consent of Wilmar BioEthanol, which it may withhold in its sole discretion without giving reasons. Wilmar BioEthanol may assign or subcontract all or any part of its rights and obligations under a Contract.

## 24. NOTICES

- (a) All notices given under a Contract or any Guarantee and Indemnity must be in written English and be sent by registered sign for post by Australia Post within Australia, by tracked, registered airmail by an international courier if sent internationally, by fax, or by email to the then current registered address, fax number or email address published by the recipient party or as otherwise notified by the recipient party to the sending party from time to time.
- (b) All such notices will be deemed delivered (in the absence of earlier proof of receipt and if sent in accordance with paragraph (a) above) on the second business day of the recipient if sent by post within Australia, on the fifth business day of the recipient if sent internationally by courier airmail, or at 9am on the next business day of the recipient if sent by fax or email. For these purposes, a business day does not include any Saturday or Sunday or a public holiday in the jurisdiction of the recipient.

## 25. GOVERNING LAW

The Contract shall be governed and construed in accordance with the law in force in the State of Queensland. The Buyer and Wilmar BioEthanol hereto irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of any of the courts of the State of Queensland as Wilmar BioEthanol may elect with respect to any legal action or proceedings which may be brought at any time relating in any way to this Contract.