

CHEETHAM SALT LIMITED A.B.N. 81 006 926 487 ('Cheetham')

STANDARD CONDITIONS OF SALE

Revised 24th September 2022

- 1 **General:** These terms and conditions as updated from time to time and which can be found at Cheetham's website (<http://www.cheethamsalt.com.au>) (**Conditions**), together with the Cheetham Salt Supply Contract between Cheetham and its customer (**Customer**) (where applicable) and all documents specified on it, constitute the entire terms of the Agreement to supply Product to the Customer (**Agreement**). The Conditions exclude and supersede all prior discussions, representations, and arrangements and any other oral or written terms and conditions whether or not they are endorsed on, delivered with, or referred to in any purchase order or other document delivered by the Customer to Cheetham.
- 2 In the event of ambiguity, conflict or confusion between the documents constituting the Agreement, the terms of the Cheetham Salt Supply Contract (where applicable) prevail. The definitions contained in the Cheetham Salt Supply Contract (where applicable) apply to these Conditions.
- 3 **Orders:** Cheetham may accept or reject orders it receives. Each accepted order is a separate Agreement between Cheetham and the Customer. Subject to clause 5, accepted orders cannot be cancelled without Cheetham's consent which may be refused or given with conditions. The supply of Product is subject to availability. Cheetham may dispatch partial shipments and the Customer must not reject such partial shipments unless otherwise agreed by the parties in writing. Cheetham reserves the right to suspend or discontinue the supply of Product to the Customer. If Cheetham is unable to supply all of the Customer's order, the Agreement continues to apply to any part of the order supplied.
- 4 **Price:** Unless otherwise agreed by Cheetham in writing, prices for Product are:
 - (a) those stated in a written quotation or in the Contract Pricing Schedule attached to the Agreement (where applicable) – to the extent of any inconsistency in pricing of a particular Product, the document which is dated the latest prevails;
 - (b) subject to the price variation by Cheetham in accordance with clause 5 from time to time; and
 - (c) quoted exclusive of GST and all taxes.
- 5 **Price Variation:** Cheetham has the right to vary prices for Product from time to time provided that if an order is accepted by Cheetham, Cheetham must notify the Customer of any variation of the prices at least 14 days before issuing an invoice for the Product using the varied prices (**Price Variation Notice**). The Customer has the right to cancel an order that is subject to a price variation by giving Cheetham a written notice within 7 days after the Price Variation Notice is given (**Cancellation**). If the Customer fails to give the Cancellation within 7 days after the Price Variation Notice is given, the Customer is deemed to have accepted the varied price and Cheetham is entitled to issue an invoice for the Product ordered using the varied Price.
- 6 **Payment:** Unless otherwise agreed by Cheetham in writing, the terms of payment for the Product are 30 days from end of the month of date of invoice without deduction or set off. Time is of the essence. Invoices shall be issued and will be payable in respect of every delivery notwithstanding that the balance of the order has not been nor will be delivered for any reason. Where any payment is not made by the due date, Cheetham may charge interest on any overdue portion from the date the payment was due until the date payment is made (both dates inclusive) at a rate equal to 1% above the indicator lending rate for the time being advised by Commonwealth Bank.
- 7 **Delivery:** Unless otherwise stated, delivery of the products shall be FIS. All quoted delivery or consignment dates are estimates only. Cheetham is not obliged to meet such dates and will not be liable to the Customer by reason of delays caused by any reason whatsoever. If there are any discrepancies in the quantity of Product delivered, the Customer must notify Cheetham promptly. If the Customer does not notify Cheetham of any discrepancy in writing within [2] days of delivery the Customer is deemed to have accepted that the quantity of Product delivered is the same quantity as the quantity that was ordered by the Customer and invoiced by Cheetham.
- 8 **Chep and Loscam Pallets:** In the event that Products are delivered on Chep or Loscam hire pallets the Customer agrees and hereby authorises Cheetham to transfer the Chep or Loscam hire charge from Cheetham's Chep or Loscam hire account to the Customer's Chep or Loscam pallet hire account. If the Customer does not have a Chep or Loscam pallet hire account, the Customer agrees to open such an account at Cheetham's request and acknowledges that no delivery will be placed until such an account is open or the Customer provides replacement Chep or Loscam pallets on a one for one basis on each and every delivery. The Customer indemnifies and must pay Cheetham on demand for all actions, claims, fees, costs, liabilities, damages and expenses, howsoever arising, (including Chep and Loscam hire charges, and all legal fees, all on a full indemnity basis) incurred or suffered by Cheetham or its subsidiaries in connection with the loss or non-return of any Chep or Loscam hire pallets delivered to the Customer or the failure by the Customer to comply with this clause 7.
- 9 **Safety and access:** If Cheetham or its carrier enter the Customer's premises to deliver or collect Product, the Customer must provide full and safe access and will be liable for, and indemnifies Cheetham against the cost of all loss, damage to the property and injury to persons, occurring directly or indirectly as a result of the failure by the Customer to ensure the said full and safe access. The Customer is responsible for providing adequate labour and/or material handling equipment for the loading and unloading of Product at its premises. Where Cheetham agrees to collect Product from the Customer's premises, the Customer must ensure that the Product is all available for collection at an easily accessible central point and that it is ready for loading at the time Cheetham or its carrier arrives to collect them.
- 10 **Acceptance of Product:** If the Customer does not advise Cheetham in writing of any fault, damage or defect in the Product or failure of the Product to comply with the terms of a contract made pursuant to this Agreement within 30 days of delivery (a) the Customer is deemed to have accepted the Product and is deemed to agree that the Product is not faulty, damaged or defective or non-compliant; and (b) the Customer releases and discharges Cheetham from and against any claims, actions, loss or liability relating to any fault, damage or defect in the Product. If you are a consumer for the purposes of the Australian Consumer Law, this is in addition to your rights under the Australian Consumer Law.
- 11 **Defects:** If the Customer advises Cheetham in writing of a fault, damage or defect in the Product within 30 days of delivery, to the extent permitted by law, then Cheetham may, at its sole discretion, carry out an inspection of the relevant Product and if it is satisfied that the Product is defective, Cheetham has the right to offer the Customer a return and replacement of the part of the Product affected by the defect or a refund for the part of the Product affected by the defect, provided that the Customer has not used the Product affected by the defect other than a reasonable proportion of the Product that has been used to determine whether the Product is defective. This clause 11 sets out the sole remedy that the Customer has with respect to defective Product. To the maximum extent permitted by law, Cheetham disclaims any other liability to the Customer. Cheetham may charge a reasonable handling fee for returns if after its inspection, Cheetham has not detected any defect with the Product.
- 12 **Risk:** Risk in the Product passes to the Customer on delivery. The Customer must insure the Product at its cost, from delivery until paid for in full, against such risks as are usual or common to insure against in a business of a similar nature to the Customer. The Customer holds the proceeds of that insurance on trust for Cheetham up to the amount it owes Cheetham in respect of that Product and must keep such proceeds in a separate account until the liability to Cheetham is discharged and must immediately pay that amount to Cheetham on demand.
- 13 **Title:** Until all monies owing by the Customer to Cheetham are paid in full for the Product and notwithstanding any credit granted to the Customer, legal and equitable title to the Product is retained by Cheetham. Until then, the Customer is a bailee of the Product. The Customer (a) holds the Product as bailee and fiduciary agent of Cheetham; and (b) must keep it in its possession and control, in good repair and condition, excluding fair wear and tear and stored separately and marked so that the Product is clearly and easily identifiable as Cheetham's property and inform Cheetham of the location of the Product, if requested. Should the Product be lost or damaged after delivery to the Customer and prior to payment the Customer shall indemnify Cheetham for such loss or damage.
- 14 If the Customer sells the Product before payment in full to Cheetham or if the Customer uses the Product in a manufacturing or preparation process of its own or some third party, it must hold all of the proceeds of any sale or dealing in the Product on trust for Cheetham, and must keep such proceeds in a separate account as the beneficial property of Cheetham and the Customer must pay such amount to Cheetham on demand.
- 15 Notwithstanding any other provision to the contrary, Cheetham reserves the following rights in relation to the Product until all amounts owed in respect of the Product and all other Product supplied to the Customer by Cheetham at any time are fully paid (a) legal and equitable ownership of the Product (b) to retake possession of the Product and (c) to keep or resell any of the Product repossessed.

- 16 **Repossession:** The Customer hereby grants full leave and irrevocable licence to Cheetham and any person authorised by Cheetham to enter upon any premises of the Customer where the Product is stored for the purpose of retaking possession of the Product. The Customer agrees that (a) it will be liable for all expenses incurred or suffered by Cheetham (whether direct or indirect) as a result of Cheetham retaking possession of the Product or otherwise exercising its rights under this clause; and (b) it will indemnify Cheetham for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecution, actions, demands, claims or proceedings brought by or against Cheetham in connection with retaking possession of the Product or the exercise by Cheetham of its rights under this clause, and the Customer must repay all such fees, costs, losses, damages, expenses or any other sums of money on demand.
- 17 **Warranties:** Cheetham warrants that the Product sold is free from defective materials and workmanship. In order to claim under this warranty, the Customer must notify Cheetham of any claim in writing within 30 days after the date of delivery in accordance with clause 10. This warranty does not apply if (a) the Customer fails to notify Cheetham of the defect within 30 days after the date of delivery in accordance with clause 10; (b) the Product has not been stored in accordance with the instructions issued by Cheetham; (c) the Product has been subject to any alteration by any person other than authorised in writing by Cheetham; or (d) the Customer fails to return the Product to Cheetham on its request to do so. Cheetham may comply with a valid claim under this warranty by taking any of the actions described at clause 11. Cheetham's business address is Level 6/565 Bourke St, Melbourne, VIC 3000. Its telephone number is 1800 032 046. Its email address is sales@cheethamsalt.com.au. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 18 All other conditions and warranties of any type in relation to the Product are excluded to the maximum extent allowed by the law. In respect of Product which is not subject to consumer guarantees under the Australian Consumer Law, the liability of Cheetham for a breach of any condition or warranty implied by law is limited at Cheetham's option to the repair of Product, or supply of a replacement, or payment of the cost of replacing the Product or of acquiring equivalent goods or payment of the cost of having the Product repaired.
- 19 Cheetham makes no representation as to the fitness of the Product supplied by it for any purpose unless Cheetham otherwise agrees to make such representation in the Agreement.
- 20 **Limitation of liability:** Except for any rights and remedies that the Customer may have in respect of the Product which cannot be lawfully excluded, restricted or modified, Cheetham excludes any liability for any indirect or consequential loss including but not limited to any loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, loss of future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity or any other loss or damage suffered by the Customer or any other person in connection with an act or omission of Cheetham and its employees or contractors and limits its total aggregate liability to the total cost of the Product supplied under this Agreement. For the avoidance of doubt, nothing in this clause or this Agreement is intended to limit Cheetham's obligations pursuant to Division 1 of Part 3-2 of the Australian Consumer Law (**ACL**), save as permitted by section 64A of the ACL.
- 21 **Termination:** Cheetham may by written notice to the Customer terminate the Agreement if (a) the Customer fails to perform any of its obligations under the Agreement; (b) the Customer dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business; (c) anything happens that reasonably indicates that there is a significant risk that the Customer is or will become unable to pay debts as they fall due; or (d) a step is taken to have a receiver, receiver and manager, provisional liquidator or administrator appointed to that person or any of its assets. Clauses 13 to 16, 20 to 30, 34, 36 and 38 survive the termination of the Agreement.
- 22 If the Agreement is ended because of the Customer's default and the Customer owes Cheetham money, the money is immediately payable to Cheetham and bears interest and Cheetham is entitled to enter the Customer's premises and repossess any Product in the Customer's possession or control.
- 23 **Force Majeure:** Cheetham will not be liable for any loss incurred as a result of delay or failure to make any supply of Product or to observe any provisions of this Agreement due to an event of force majeure, being any cause or circumstance beyond Cheetham's reasonable control, including but not limited to, any lack of production capacity or raw materials, strikes, lockouts, labour disputes, fires, floods, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery or restrictions or prohibitions by any government or any semi-governmental authorities or embargoes. During the continuance of an event of force majeure Cheetham's obligations under this Agreement will be suspended. The Customer must accept delivery of the Product notwithstanding any delay in delivery caused by any force majeure event.
- 24 **PPSA** The supply of Products by Cheetham to the Customer from time to time creates a security interest (**Security Interest**) in favour of Cheetham over the Products and the proceeds of sale of the Products (together the **Collateral**) in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**). The Security Interest attaches to the Products in accordance with the PPSA (and it is not agreed that it will attach at a later time) and continues in the Products even if they are mixed or commingled with other products. For the purposes of the PPSA, the Agreement (including in particular this document which contains the Security Interest) comprises the security agreement. This document is adopted by the Customer when it signs this Agreement and each time the Customer takes physical possession of Products (irrespective of any rights the Customer may have to return the Products under clause 11). The Products the subject of the security agreement are more particularly described in the relevant purchase documents.
- 25 The Customer must, immediately on request, do whatever Cheetham requires of the Customer to enable Cheetham to better exercise its rights pursuant to the Security Interest, to ensure the Security Interest is fully enforceable, perfected, has the priority required by Cheetham and to enable Cheetham to apply for any registration, give any notification in connection with the Security Interest or exercise any rights over the Collateral.
- 26 Cheetham may apply for any registration, or give any notification, in connection with the Security Interest and for whatever class of collateral Cheetham determines. The Customer consents to any registration or notification by Cheetham and agrees not to make any amendment demand. The Customer indemnifies, and on demand will immediately reimburse, Cheetham for its costs, charges and expenses (excluding fees for registration of the Security Interest) incurred in connection with anything Cheetham does to perfect, preserve, enforce or protect or otherwise deal with the Security Interest.
- 27 The Customer further agrees (to the extent permitted by law) that: (a) Cheetham does not have to comply with any of the requirements of, and the Customer waive its rights under, sections 95, 120, 121(4), 123, 125, 129, 130, 132(3)(d), 132(4) 134(2), 135 and 137(2) of the PPSA or any other provision of the PPSA notified by Cheetham to the Customer from time to time; (b) the Customer may not exercise any rights under sections 142 and section 143 of the PPSA; and (c) Cheetham or any receiver (or receiver manager) appointed by Cheetham does not have to give any notice required under the PPSA (including a notice of verification statement).
- 28 The Agreement is confidential. The Customer must only use the confidential information disclosed by Cheetham for the purpose of performing this Agreement and must not disclose Cheetham's confidential information to a third party unless required by law or with Cheetham's written consent. The Customer will not request any disclosure be made, disclose or authorise the disclosure, of any information of the kind mentioned in section 275(1) of the PPSA, unless section 275(7) of the PPSA applies and in that case only Cheetham is entitled to make the disclosure.
- 29 Any payment made by the Customer to Cheetham may be applied by Cheetham in any manner it sees fit.
- 30 **Anti-Bribery:** The Customer agrees that:
- it shall not commit, authorise or permit any action which would cause Cheetham to be in violation of any applicable anti-bribery laws or regulations including;
 - this obligation applies in particular to illegal payments to government officials, representatives of public authorities or their associates, families or close friends; and
 - it will never offer or give, or agree to give, to any employee, representative or third party acting on Cheetham's behalf nor accept, or agree to accept from any employee, representative or third party acting on Cheetham's behalf, any gift or benefit, be it monetary or otherwise, that could breach any law or policy applicable to Cheetham.
- 30.1 The Customer will notify Cheetham immediately if it:
- becomes aware;
 - has reason to believe; or
 - has any specific suspicion that there has been or will be a breach of this clause 30 or there was corruption involved with regard to the negotiation, conclusion, or performance of this Agreement.

- 30.2 Any breach of this clause 30 by the Customer, its employees, agents or sub-contractors (whether with or without the knowledge of the Customer will be deemed a material breach of this Agreement, and will entitle Cheetham to recover from the Customer the amount of any loss resulting from such material breach and to recover from the Customer the amount or value of any such gift, consideration or commission.
- 31 **Miscellaneous:** Cheetham waives a right under this Agreement only if it does so in writing.
- 32 Cheetham may assign or otherwise deal with the benefit of any contract made pursuant to the Agreement.
- 33 The rights and remedies provided in this Agreement will not affect any other rights or remedies available to Cheetham.
- 34 This Agreement is governed by and must be interpreted in accordance with the laws of Victoria and the parties irrevocably submit to the exclusive jurisdiction of the courts of Victoria.
- 35 Cheetham may amend or vary this Agreement by notifying the Customer in writing of the amendment or variation, or (in the case of the Conditions) by uploading the amended Conditions onto Cheetham's website. Each time the Customer places an order with Cheetham and on each day during the term of the Agreement, the Customer acknowledges either receiving, or having the opportunity to review, a copy of the Conditions which can be found at Cheetham's website (<http://www.cheethamsalt.com.au>). For the avoidance of doubt, any amendments made to these terms only apply to orders placed after the date on which those terms were published on Cheetham's website.
- 36 If any provision of this Agreement is unenforceable, illegal, or void, that provision is severed and the other provisions of this Agreement remain in force.
- 37 Any notice to be given to a party under the Agreement must be in writing and must be sent by post, facsimile, or email to the address of that party shown in the quotation, purchase order or order acknowledgement. Notice is deemed to have been given at the time it would have been received in the normal course of post if sent by post, or if otherwise given at the time it was actually received.
- 38 The Customer indemnifies Cheetham from and against, and must pay Cheetham on demand for, all actions, costs, claims, demands, losses, expenses and liabilities howsoever arising (including those brought by third parties) sustained or incurred by Cheetham or its related entities or their respective officers, employees, consultants and agents as a result of any breach of the Agreement, negligence, wilful misconduct or fraud by the Customer or its related entities or their respective officers, employees, consultants and agents.