

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

STANDARD EXPORT CONDITIONS OF SALE

Revised 3rd October 2017

- 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 Export 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 Export Contract (where applicable) prevail. The definitions contained in the Cheetham Salt Export Contract (where applicable) apply to these Conditions.
- 3 **Orders:** Cheetham may accept or reject orders it receives. 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. The supplies of partial shipments are permitted unless otherwise agreed 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:
 - 4.1 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;
 - 4.2 subject to alteration by Cheetham without notice from time to time; and
 - 4.3 quoted exclusive of all taxes.
- 5 **Pallets:** The Customer is not obliged to return to Cheetham the original packaging of the Products which Cheetham used in delivering the Products to the Customer, or the pallets on which Cheetham placed the Products for transport on the vessel.
- 6 **Payment:** Unless otherwise agreed by Cheetham in writing (including by way of a letter of credit), payment for all Products must be made by the Customer at the time of placing the order. Cheetham will not have any obligation to deliver any Products to the Customer unless and until full payment has been received. If Cheetham does agree to supply Products on credit, unless otherwise agreed 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 CIF. 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.
- 8 **Safety and access:** If Cheetham or its carrier enters 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.
- 9 **Returns:** 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 40 days of the date on which Cheetham delivers the Product to the Port of Export: (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.
- 10 If the Customer advises Cheetham in writing of a fault, damage or defect in the Product within 14 days of delivery then Cheetham may, at its sole discretion accept return of the Product and replace the Product, provided that the Customer has not used the Product and the Product is returned within 30 days of the date of delivery in the same condition as they were delivered and, where appropriate, in the original packaging, and Cheetham will have no additional liability to the Customer. Cheetham may charge a reasonable handling fee for returns.
- 11 **Risk and title (if Products paid for in advance):** Unless otherwise agreed by the parties in writing, if the Customer pays Cheetham for the Products in advance then risk and title in the Product passes from Cheetham to the Customer on delivery.
- 12 **Risk and title (if Products supplied on credit)**

If Products are supplied by Cheetham to the Customer on credit:

 - 12.1 **Risk:** Risk in the Product passes to the Customer on delivery.
 - 12.2 **Insurance after 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.
 - 12.3 **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.
 - 12.4 **Proceeds of sale:** 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.
 - 12.5 **Reservation of rights:** 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.
 - 12.6 **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.
- 13 **Warranties:** Cheetham warrants that the Product sold is free from defective materials and workmanship. This warranty does not apply if (a) the Customer has not notified Cheetham of the defect within the time period specified in clause 9; (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 notify Cheetham of its claim under this clause within 7 days of the defect becoming apparent and return the Product to Cheetham on its request to do so.
- 14 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 ordinarily acquired for personal, domestic or household use or consumption, 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.
- 15 Cheetham makes no representation as to the fitness of the Product supplied by it for any purpose, other than a purpose which has been notified to Cheetham in writing, prior to the date of any Agreement, by the Customer, and confirmed in writing by Cheetham to be applicable.
- 16 **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 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 17 to 41 (inclusive) survive the termination of the Agreement.
- 17 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.
- 18 **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.
- 19 **Security Interest:** 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**). The Security Interest attaches to the Products (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. 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 9).
- 20 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.
- 21 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.
- 22 Any payment made by the Customer to Cheetham may be applied by Cheetham in any manner it sees fit.
- 23 **Confidentiality:** The Customer agrees to maintain in confidence all information and trade secrets (including without limitation, the Intellectual Property Rights and the terms of any agreement between the parties) (**Confidential Information**) and ensure that the Confidential Information is kept confidential.
- 24 The Customer agrees to not at any time divulge any information in relation to Cheetham's affairs or business or method of carrying on business.
- 25 The customer agrees not to use the Confidential Information for any commercial purpose other than pursuant to this Agreement, and further agree not to publish or disclose the Confidential Information to any third person without the prior written consent of Cheetham.
- 26 The Customer agrees to take the same measures (being not less than reasonable measures) to protect the Confidential Information in its possession, as it takes to protect the confidentiality of its own confidential information.
- 27 The Customer acknowledges and agrees that Cheetham is relying on these confidentiality provisions to protect its strategic and other business information.
- 28 Each party may disclose the other party's Confidential Information if:
- 28.1 the disclosure is required by law or the rules of any stock exchange;
 - 28.2 the Confidential Information is already in, or enters into, the public domain for reasons other than by reason of a breach of this Agreement; or
 - 28.3 the disclosure is only to its professional advisors to obtain professional advice and remains confidential.
- 29 The Customer will ensure that any employee to whom any disclosure is necessary to be made to is made aware of and subject to the Customer's obligations under paragraphs 33 to 39 above. The Customer will be responsible to Cheetham for any unauthorised disclosure of Confidential Information by such persons as if the disclosure were a disclosure by the Customer.
- 30 The Customer acknowledges that any breach of these confidentiality obligations by the Customer may cause Cheetham irreparable harm for which damages would not be an adequate remedy. In addition to any other remedy available, Cheetham may seek equitable relief (including injunction or specific performance) against any breach or threatened breach of these confidentiality provisions.
- 31 The Customer must not release public or media statements nor publish material related to the existence of this Agreement without the prior written approval of Cheetham.
- 32 These confidentiality obligations survive the termination or expiration of this Agreement.
- 33 **Intellectual Property:** The Customer must ensure that it and all its agents, distributors and sub-distributors shall not:
- 33.1 without Cheetham's prior written consent, use any of Cheetham's Intellectual Property, trademarks, business names, designs, emblems, visual representations or

- slogans, or any Intellectual Property, trademarks, business names, designs, emblems, visual representations or slogans that are similar to, identical to or resemble those of Cheetham (whether or not they are likely to cause deception or confusion among the public);
- 33.2 register or attempt to register any Intellectual Property, trademarks, business names, designs, emblems, visual representations or slogans that are the same as or are deceptively similar to Cheetham's Intellectual Property;
- 33.3 endanger, infringe, harm or contest the validity or ownership of Cheetham's Intellectual Property; or interfere with, try to stop or delay the use or registration of Cheetham's Intellectual Property.
- 34 **Mediation:** If a dispute arises in relation to this Agreement, either party must first give the other a notice requiring that an attempt be made to resolve the dispute with the help of a mediator to be appointed jointly by the parties. The mediation shall take place in accordance with the current Mediation Rules published by the Resolution Institute (**'Rules'**).
- 35 Unless otherwise agreed in writing, if the parties do not agree on a mediator within 5 Business Days after the notice is given, the mediator is to be appointed by Resolution Institute. Each of the parties must co-operate fully with the mediator. Each of the parties must pay an equal share of the fees and expenses the mediator is entitled to.
- 36 **Arbitration:** If the dispute has not been settled pursuant to the Rules within 60 days following the written invitation to mediate or within such other period as the parties may agree in writing, the dispute shall be resolved by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (**'ICC ADR Rules'**).
- 37 Unless otherwise agreed in writing, all disputes arising out of or in connection with the present contract shall be submitted to the International Court of Arbitration of the International Chamber of Commerce and shall be finally settled under the ICC ADR Rules. The seat of arbitration shall be Melbourne, Australia. The language of the arbitration shall be English. An arbitration clause does not prevent any party from requesting interim or conservatory measures from state courts. The costs of any arbitration shall be shared equally between the parties.
- 38 **Liability for duty, taxes and charges** The Customer agrees to pay Cheetham any duty, tax or charge (except a tax or charge imposed on, or calculated by reference to, the net income of Cheetham) that is payable in relation to this Agreement or the transactions which it records. The Customer must pay immediately it receives a written request to do so.
- 39 **Anti-Bribery:**
- 39.1 The Customer agrees that
- (a) 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;
- (b) this obligation applies in particular to illegal payments to government officials, representatives of public authorities or their associates, families or close friends; and
- (c) 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.
- 39.2 The Customer will notify Cheetham immediately if it:
- (a) becomes aware;
- (b) has reason to believe; or
- (c) has any specific suspicion that there has been or will be a breach of this clause 39 or there was corruption involved with regard to the negotiation, conclusion or performance of this Agreement.
- 39.3 Any breach of this clause 39 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.
- 40 **Miscellaneous:**
- 40.1 Cheetham waives a right under this Agreement only if it does so in writing.
- 40.2 This Agreement is executed in the English language and only the English language version of this Agreement is binding on the parties.
- 40.3 Nothing in this Agreement constitutes the parties as partners or as agents for each other. No party has any authority to bind the other or act on its behalf or to hold itself out as having the authority to do so.
- 40.4 Cheetham may assign or otherwise deal with the benefit of any contract made pursuant to the Agreement.
- 40.5 The rights and remedies provided in these Conditions will not affect any other rights or remedies available to Cheetham.
- 40.6 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>).
- 40.7 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. 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.
- 40.8 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.
- 41 **Governing law and jurisdiction:** This Agreement is governed by the United Nations Convention on Contracts for the International Sale of Goods ('Vienna Convention'). To the extent that such questions are not covered by the Vienna Convention this Agreement will be governed by the law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that place. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conveniens or on any other basis.