

SALE CONTRACT

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

“**Actual or Estimated Price**” means the applicable fair market price at which fertiliser meeting the description of the Product may be bought on the open market between willing but not anxious vendors and purchasers on the relevant day.

“**Approval**” means any certificate, licence, consent, permit, approval or requirement of any Authority having jurisdiction in connection with the activities contemplated by this Contract.

“**Authority**” means any government, semi governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or other person.

“**Business Day**” means any day other than a Saturday, Sunday or officially recognised and / or legal holidays at the Location.

“**Buyer**” means the person described in the Schedule, and where applicable includes its officers, successors, permitted assigns and authorised agents and contractors.

“**CBH**” means Co-operative Bulk Handling Limited.

“**CBH Group Debt**” means any amount that is due and payable by the Buyer to the Seller or a Related Body Corporate of the Seller.

“**Chain of Responsibility Laws**” means the requirements known as the “Chain of Responsibility” provisions under the Road Traffic (Administration) Act 2008 (WA), the Road Traffic (Vehicles) Act 2012 (WA), the Road Traffic (Administration) Regulations 2014 (WA), the Road Traffic (Vehicles) Regulations 2014 (WA) and the Road Traffic (Authorisation to Drive) Regulations 2014 (WA).

“**Collect**” or “**Collection**” means collection of the Product by the Buyer at the Location in accordance with this Contract.

“**Contract**” means the agreement between the Seller and the Buyer for the sale of the Product on these terms and conditions and includes the Contract Confirmation.

“**Contract Confirmation**” means the confirmation issued to the Buyer by the Seller detailing the Product, Price, Payment Terms, Location, Pickup Period, Quantity, Special Conditions and addresses for notices.

“**Contract Interest Rate**” means the rate 5% above the rate published on the Australian Financial Markets Association webpage BBSW as at 11 am on 31st October each year.

“**Corporations Act**” means the Corporations Act 2001 (Cth).

“**Deliver**”, “**Delivered**” or “**Delivery**” means delivery of Product by the Seller at the Location.

“**Esperance**” means the site located at Flinders Circuit, Chadwick WA or such other location as the Seller may notify from time to time.

“**Force Majeure Event**” means any occurrence which delays or prevents a Party performing its obligations under this Contract including but not limited to:

- (a) acts of God;
- (b) extremes of weather, cyclones, storms, floods, lightning strikes, earthquakes, landslides or other natural phenomenon;
- (c) wars, hostilities (declared or not declared), blockades or embargoes;
- (d) civil or military insurrection, revolution, civil disturbances, riots, acts of foreign enemies, terrorist acts
- (e) acts or orders or directives, requirements or injunctions of governments or government authorities;
- (f) boycotts, strikes, lockouts, labour stoppages or go-slows, labour disturbances or other industrial action;
- (g) fire, explosion or catastrophic event;
- (h) epidemic or quarantine;
- (i) accidents to, or closing or congestion of, the Location, railroads, harbours, docks, canals, channels or other assistances to or adjuncts of transport, shipping or navigation;
- (j) closure whether temporarily or permanently of the Location for any reason whatsoever;
- (k) breakdown of facilities or machinery not due to or arising from a negligent act or omission of the affected Party; or
- (l) failure of supply materials including power, electricity and fuel,

which are beyond the control on the part of the Party affected and which, by the exercise of reasonable diligence, the affected Party is unable to reasonably prevent or provide against, provided that an inability by a Party to pay any money due under the Contract cannot itself constitute a Force Majeure Event.

“**Geraldton**” means the site located at 114 Goulds Road, Narngulu WA or such other location as the Seller may notify from time to time.

“**Good Operating Practices**” means recognised and sound practices, methods and acts, together with the exercise of the degree of care and skill, diligence, prudence and foresight that reasonably would be expected from internationally recognised storage and handling operators (including, without limitation, freight service providers), under comparable conditions, in light of known facts, or facts which should reasonably have been known at the time, and consistent with applicable Laws, regulations, consents, licences or directives from Authorities, and having regard to the need for adequate materials and equipment, suitable personnel, appropriate procedures and safe operating procedures.

“**Kwinana**” means the site located at either 303 Mandurah Road, Rockingham WA or Lot 110 Rockingham Beach Road, Rockingham WA or such other location as the Seller may notify from time to time.

“**Law**” means:

SALE CONTRACT

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

“**Location**” means the location listed in the column entitled “Location” in the Contract Confirmation.

“**Loss**” means any liability, loss, damage, outgoing, cost or expense of whatever description and howsoever arising recoverable at law.

“**Nomination**” means a nomination in respect of taking Collection of the Product or any part thereof made by the Buyer to the Seller in accordance with clause 3.1(a).

“**PPSA**” means the Personal Property Securities Act 2009 (Cth).

“**PPS Register**” has the same meaning as given to the term “register” at section 10 of the PPSA.

“**Party**” means a party to this Contract, being the Buyer or the Seller.

“**Payment Terms**” means the terms of payment specified in the Contract Confirmation.

“**Pickup Period**” means the period specified in the Contract Confirmation, as extended in accordance with clauses 3.2(a), 3.2(b), 10.1(b) or 20 (if applicable).

“**Pickup Date**” has the meaning given in clause 3.1(a)(i).

“**Price**” means the amount (per metric tonne) specified in the column entitled “Unit Price (AUD)” in the Contract Confirmation payable in respect of the Products by the Buyer to the Seller under this Contract, in Australian dollars, exclusive of GST.

“**Product**” means each product listed in the column entitled “Product Description” in the Contract Confirmation.

“**Quantity**” means the quantity of a Product in metric tonnes listed in the column entitled “Qty (mt)” in the Contract Confirmation.

“**Related Bodies Corporate**” has the meaning given to that term in section 50 of the Corporations Act 2001 (Cth).

“**Road Safety Laws**” includes any Laws relating to road safety, road transport or heavy vehicle transport, including Laws relating to:

- (a) vehicle dimensions;
- (b) securing of loads;
- (c) illegal driving;
- (d) occupational health and safety;
- (e) speed limiting;
- (f) vehicle load limits;
- (g) vehicle weight or mass limits;
- (h) route restrictions;
- (i) fatigue management; and
- (j) driving hours.

“**Safety Laws**” means:

- (a) the Road Safety Laws;
- (b) the Chain of Responsibility Laws; and
- (c) any:
 - (i) standard, specification, policy or process, including any induction policy;
 - (ii) safety and environmental management plan;
 - (iii) applicable Law; and
 - (iv) reasonable and lawful direction or order,

provided to the Buyer in connection with this Contract.

“**Seller**” means CBH (WA) Pty Ltd ACN 008 671 421 and where applicable includes its officers, successors, permitted assigns and authorised agents.

“**Site**” means the relevant Location at which Delivery of the Product takes place.

“**Special Conditions**” means the special conditions (if any) specified in the Contract Confirmation.

“**Specification**” means the product nutrient specification for a Product available at <https://www.cbh.com.au/cbh-fertiliser>, as at the date of the Contract.

“**Storage and Handling Costs**” means any and all costs and charges associated with the storage and handling of the Products, including (without limitation) all insurance costs in relation to the Products and other normal carrying expenses, reasonably incurred by a Party or by a Party’s agents, contractors or employees.

“**Tolerance**” has the meaning given in clause 4.

“**Uncollected Product**” has the meaning given in clause 3.2(b).

1.2 Interpretation

- (a) When the day or last day for doing an act is not a Business Day in the place where the act is to be done, the day or last day for doing the act will be the next following Business Day in the place where the act is to be done.

SALE CONTRACT

- (b) Except as otherwise expressly provided or unless the context otherwise requires, plural terms include the singular and vice versa.
- (c) If a word or phrase is specifically defined in this Contract, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) Words and expressions used in clause 28 which are not defined in this Contract but which have a defined meaning in the PPSA have that same meaning.
- (e) A reference to dollars or \$ is to Australian currency.

2. SUPPLY AND PURCHASE OF PRODUCT

- 2.1 The Buyer agrees to purchase and Collect from the Seller, and the Seller agrees to sell to the Buyer and Deliver, at the Location, the Quantity of each Product at the relevant Specification during the Pickup Period on the terms and conditions of this Contract (subject to any Special Conditions).
- 2.2 The Seller's obligation to supply the Product within the Pickup Period, and the Buyer's right to Collect any Product, is subject to the Buyer having made a Nomination for that Product in accordance with clause 3.1.

3. COLLECTION OF PRODUCT

3.1 Collection on Pickup Date

- (a) The Buyer must, not less than 14 days prior to the commencement of the Pickup Period, nominate to the Seller:
 - (i) the date(s) within the Pickup Period on which the Buyer wishes to Collect the Product (each a **Pickup Date**); and
 - (ii) the type and amount of Product of which the Buyer wishes to Collect on each nominated Pickup Date,and, subject to clause 3.1(b), the Buyer must Collect the nominated type and amount of Product at the Location on the relevant nominated Pickup Date.
- (b) The Seller may within 7 days of receiving a nomination under clause 3.1(a), in its discretion and without liability, reject a Nomination and request the Buyer to nominate an alternate Pickup Date, in which case, subject to the Seller accepting that alternate Pickup Date, the Buyer must Collect the nominated type and amount of Product at the Location on the nominated alternate Pickup Date.
- (c) The Buyer may, not less than 14 days prior to a Pickup Date, notify the Seller that it wishes to reschedule the relevant Pickup Date, in which case the parties will use their best endeavours to agree a new Pickup Date within the Pickup Period and the Nomination will be deemed to be amended to refer to any agreed new Pickup Date.
- (d) If the Buyer fails to Collect the nominated amount of Product in accordance with its Nomination, or fails to notify the Seller of its request to reschedule a Pickup Date in accordance with clause 3.1(c), then the Buyer must collect the nominated amount of Product during the remaining part of the Pickup Period at a time to be notified by the Seller to the Buyer and as reasonably agreed with the Buyer.

3.2 Failure to collect within / extension to Pickup Period

- (a) The Buyer may, not less than 14 days prior to the end of the Pickup Period, request an extension to the Pickup Period, in which case the parties will use their best endeavours to agree an extension to the Pickup Period.
- (b) If the Buyer fails to Collect any Product before the end of the Pickup Period (**Uncollected Product**), then the Seller may, without prejudice to any other right or remedy of the Seller under this Contract, extend the Pickup Period for some or all of the Uncollected Product by giving notice to the Buyer of such extension no later than 7 days after the end of the original Pickup Period, specifying the extended Pickup Period for the relevant Uncollected Product. If the Seller does not give the Buyer such notice then the Seller is deemed to have cancelled any Nomination for the Uncollected Product and the Pickup Period is deemed to have expired, and the Buyer is in default under this Contract.
- (c) Without limiting any other right of the Seller under this Contract, the Seller may charge the Buyer (in addition to any other amounts payable under this Contract, such as the Price and any interest accruing on any unpaid amounts in accordance with clause 9) Storage and Handling Costs of Product that has not been Collected by the Buyer from the end of the Pickup Period until the earlier of Collection of the Product by the Buyer, or the Seller exercising its rights in accordance with clause 15.

4. TOLERANCE

The Seller may Deliver an amount of the Product which varies by the lesser of five percent (5%) of the Quantity or twelve (12) metric tonnes more or less than the Quantity, and the Buyer must pay for the amount of Product which is Delivered. For the avoidance of doubt, in the event of more than one Delivery being made, the Tolerance applies to the Quantity (ie. the total of all Deliveries making up the Quantity) and does not separately apply to each Delivery.

5. PAYMENT

- 5.1 The Buyer must pay the Price (or must procure that the Price is paid) in respect of each Collection, as specified in the Seller's invoice, strictly by cash or by electronic transfer of cleared funds to the Seller's specified account (as specified on the Seller's invoice), against a faxed or emailed copy of Seller's invoice, in accordance with the Payment Terms unless otherwise notified by the Seller in writing.
- 5.2 The Buyer must make any other payments due and payable under this Contract by paying the amount which is due or payable to the Seller in accordance with its payment instructions issued from time to time.

SALE CONTRACT

6. OWNERSHIP, RISK AND TITLE

- 6.1 Risk in the Product passes from the Seller to the Buyer on Delivery, to the extent of the proportion of the Product which is Delivered. The Seller is not liable to the Buyer for any loss or damage or deterioration of any Product after Delivery.
- 6.2 Title to the Product passes from the Seller to the Buyer, to the extent of the proportion of the Product which is Delivered:
- (a) on Delivery, subject to all amounts payable under this Contract for that Product having been received in cleared funds strictly in accordance with clause 5;
 - (b) if all amounts payable under this Contract for that Product have not been received in cleared funds by Delivery, upon all such amounts payable for that Product having been received in cleared funds in accordance with clause 5.
- 6.3 If title to the Product passes in accordance with clause 6.2(b) above, in the period after Delivery but before passing of title to the Product:
- (a) the Buyer and the Buyer's agents, contractors and employees hold the Product as bailees for the Seller only; and
 - (b) the Buyer may on-sell, deal or otherwise dispose of the Products in the normal course of trade provided that, until such time as title to the Product has passed to the Buyer in accordance with clause 6.2, the Buyer agrees and acknowledges:
 - (i) that it on-sells, deals or otherwise disposes of the Product as a fiduciary agent and bailee for the Seller;
 - (ii) to hold, at the Seller's election, on trust for the Seller, the entire proceeds from the sale of the Product in a separate account or an equivalent amount of the Product, meeting the Specifications, in separate storage;
 - (iii) the right to on-sell, deal or otherwise dispose of the Product in the normal course of trade may be revoked at any time by the Seller and shall automatically cease if:
 - (A) any of the events mentioned at clause 11 occur in respect of the Buyer; or
 - (B) the Buyer is in default of any of its obligations under this Contract;
 - (c) the Buyer remains fully responsible for any loss or damage to the Product whatsoever and howsoever caused following Delivery; and
 - (d) the Buyer must maintain adequate records of the storage and dealings with the Product to enable the Seller to determine with accuracy the Product in which the Seller retains title, such records to be made available to the Seller upon request.
- 6.4 The Seller has the right to trace any proceeds of sale of the Product by the Buyer required to be held by the Buyer under clause 6.3(b)(ii) into any moneys or property held by or for the Buyer.

7. LEVIES AND TAXES

The Buyer must pay to the Seller any amounts required in respect of any industry, statutory or government levies (including GST) relevant to the Product which are not included in the Price as soon as possible following a request from the Seller.

8. GST

- 8.1 For the purposes of this clause 8, the following expressions shall have the following meanings:
- (a) "GST" means any tax imposed on the supply of goods or services which is imposed or assessed under GST Law; and
 - (b) "GST Law" means A New Tax System (Goods and Services Tax) Act 1999 (as amended) and all related ancillary legislation which provides for a broad-based consumption tax on the supply of Goods and Services.
- 8.2 Unless clearly indicated to the contrary, all amounts referred to in this Contract, other than this clause, are GST exclusive.
- 8.3 If any supply under or in respect of this Contract is subject to GST, and if the recipient of the consideration is liable to GST in relation to any supply under this Contract, the Parties agree that the amount payable for any supply under or in respect of this Contract by any Party shall be adjusted by the amount of the GST, and, if required in accordance with clause 7, the Buyer must pay any amount of GST (including any related fines, fees, interest and penalties suffered or incurred by the Seller arising out of or in connection with a failure by the Buyer to comply with this clause 8) on demand by the Seller.
- 8.4 Each Party agrees to do all things, including providing invoices or other documentation in such form and detail that may be necessary to enable or assist the other Party / ies to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Contract or in respect of any supply under this Contract.

9. INTEREST AND SET OFF

- 9.1 If the Buyer fails to make any payment in full, as required under this Contract, to the Seller by the due date for payment (which in the case of payments that must be made upon demand is the date that the demand is made by the Seller), the Buyer will pay the Seller interest on the unpaid amount at the Contract Interest Rate in force on the due date for payment and calculated daily from the due date until payment is received by the Seller.
- 9.2 Subject to this Contract, the Buyer agrees that any amount owing by the Seller or its Related Bodies Corporate to the Buyer whether under this contract or otherwise (including a grain sale contract or freight) may, at the election of the Seller, be set off against any CBH Group Debt, including any amounts owing under this Contract. The Seller will give the Buyer prior written notice of its intention to effect any set-

SALE CONTRACT

off together with sufficient details to allow the Buyer to identify the amounts to be set off. The Seller holds the benefit of this clause and may exercise the rights under this clause on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of the Seller under this Contract.

10. FORCE MAJEURE

- 10.1 The Seller will not be responsible for the delay in Delivery of the Products or any part thereof occasioned if a Force Majeure Event occurs and the:
- (a) obligations of the Seller under this Contract will be suspended for the duration of the Force Majeure Event; and
 - (b) Pickup Period will be extended to reasonably accommodate the impact of the Force Majeure Event.
- 10.2 Upon the Seller becoming affected by a Force Majeure Event upon which it intends to rely, it will notify the Buyer as soon as reasonably practicable and subject to the other terms of this clause 10, both Parties will use their respective reasonable endeavours to overcome the Force Majeure Event or to minimise the impact that Force Majeure Event has upon this Contract or its performance.
- 10.3 If the Force Majeure Event which affects the Seller is related to boycotts, strikes, lockouts, labour stoppages or go slows, labour disturbances or other industrial action then the obligations upon the Seller under clause 10.2 do not extend to obliging the Seller to settle or resolve such industrial action unless the Seller at its discretion elects so to do having regard to all relevant matters that may affect its decision making in that respect or unless the Seller is obliged to do so in accordance with a binding determination of any relevant tribunal, court or other authority (judicial, arbitration, conciliation, mediation or otherwise).
- 10.4 The Buyer acknowledges that the Seller sources fertiliser from third party suppliers to meet the Seller's fertiliser supply obligations and that:
- (a) the Seller has entered into or will enter into a contract to purchase the Product (or an element of the Product) from a third party supplier for the purpose of on-sale and Delivery to the Buyer under this Contract; and
 - (b) if for any reason not caused by the Seller the third party supplier or the vessel owner is delayed or prevented in delivering the Product (or an element of the Product) to the Seller (including, but not limited to, any occurrence listed in paragraphs (a) to (l) of the definition of Force Majeure Event or any breach by the third party supplier or the vessel owner of their obligations to deliver the Product (or an element of the Product) to the Seller),
- a Force Majeure Event is deemed to have occurred under this Contract and the Seller is not required to purchase replacement Product (or an element of the Product) from another third party supplier to overcome or minimise the impact of that Force Majeure Event.
- 10.5 If a Force Majeure Event continues for a period of 60 days or more, either party has the option to terminate this Contract by notice in writing to the other party. Except in relation to any accrued liability, neither party will have any further liability to the other under this Contract following such termination.

11. INSOLVENCY

Notwithstanding any other provision of this Contract, a Party may terminate this Contract by notice in writing to the other Party if that other Party:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is "insolvent" within the meaning given to that term by section 9 of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of an event set out in section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) has an administrator appointed or any step preliminary to the appointment of an administrator is taken;
- (f) has a receiver, trustee, receiver and manager, administrator, liquidator, provisional liquidator or other controller (within the meaning of section 9 of the Corporations Act) or similar officer appointed to all or any part of its property;
- (g) has proceedings commenced, a resolution passed or proposed in a notice of meeting, an application to, or order of, a court made or other steps taken against or in respect of it for its winding up, deregistration or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- (h) any event that is substantially similar or analogous to any of the events listed in clauses 11(a) to 11(g).

12. WEIGHT AND QUALITY: The weight and quality of the Products will be determined at the Location in accordance with one the following options, as notified in writing by the Seller to the Buyer:

- (a) by the Seller (or its agents, contractors or employees); or
- (b) by an independent surveyor; and

in any case, by appropriately qualified staff using appropriately certified equipment and in accordance with Good Operating Practices.

13. REJECTION OF PRODUCT

- 13.1 If the Buyer considers that the quality of the Product Delivered to the Buyer does not meet the Specifications or that there are any other defects in the Product, the Buyer must notify the Seller in writing within 7 days of Delivery.

SALE CONTRACT

- 13.2 To the extent permitted by law, the Seller shall not be liable for any defects in the Product if the Buyer does not notify the Seller, in writing, within 7 days of Delivery in accordance with clause 13.1.
- 13.3 The Seller must respond within 14 days of a notice given by the Buyer in accordance with clause 13.1 that it either accepts or rejects the claim in the notice.
- 13.4 If the Seller accepts the Buyer's claim, the Seller must, at its option:
- (a) replace the Product or resupply the equivalent to the Product, together with the payment of any reasonable additional delivery costs; or
 - (b) refund the Price paid by the Buyer to the Seller,
- and in either case, if requested by the Seller, the Buyer will return the defective Products to the Seller (at the Seller's cost) on the resupply or refund.

14. MANIFEST ERROR

No apparent clerical error or incompleteness in documents will entitle the Buyer to reject or delay them or delay payment to the Seller, but the Seller will be liable for any reasonable loss or expense caused to the Buyer by reason of such error or incompleteness.

15. BUYER DEFAULT

- 15.1 If the Buyer defaults in the performance of its obligations under this Contract (and, if the default is capable of remedy, has not remedied that default within 7 days or such other reasonable period determined by the Seller), then, without limitation to any other right or remedy of the Seller under this Contract or at law, the Seller may, in its discretion:
- (a) terminate this Contract by giving to the Buyer a notice of termination in writing, in which case all Nominations for Product for which Delivery has not yet occurred are cancelled and the Pickup Period is deemed to have expired as at the date of termination, and any amounts owing by the Buyer to the Seller under this Contract are due and payable on the basis that such Pickup Period has expired;
 - (b) withhold Delivery of the Products (or any other services or products under any other contract between the parties) Nominated but not Delivered until the Buyer has remedied the default;
 - (c) re-take possession of any Products that have been Delivered but have not been properly paid for by the Buyer, in which case the Buyer acknowledges that title to the Products does not pass from the Seller to the Buyer in accordance with clause 6 and the Seller has the right to retain or resell any such Products repossessed, and the Buyer must pay for all of the Seller's reasonable costs associated with re-taking possession of the Products; and/or
 - (d) if the Seller exercises its rights under clause 15.1(a) or 15.1(c), sell the Product for which Nominations have been cancelled or in respect of which possession has been re-taken to a third party. If the Price is less than the Actual or Estimated Price, the Seller may recover liquidated damages from the Buyer in an amount equal to the difference between the Price and the Actual or Estimated Price, the relevant Actual or Estimated Price being either at the time the Buyer advises the Seller of the default or, in the absence of advice, on the next Business Day following the Seller's exercise of its rights under clause (a) or (c), and in addition, any proven additional expenses which would directly and naturally result in the ordinary course of events from the Buyer's breach of contract (including but not limited to any Storage and Handling Costs and wasted freight costs).
- 15.2 Termination of this Contract does not affect any rights accrued prior to termination.

16. LIMITATION OF LIABILITY AND INDEMNITY

- 16.1 To the extent permitted by law, the Seller's liability for any loss or claim arising under or in connection with this Contract is limited to the liability set out in clauses 16.2 to 16.4.
- 16.2 To the extent permitted by Law, the Seller's liability to the Buyer for any loss or claim arising under or in connection with this Contract is limited, at the Seller's option, to one or more of the following:
- (a) replacing the relevant proportion of Product or supplying the equivalent to the relevant proportion of Product, and the payment of any reasonable additional delivery costs; or
 - (b) a refund of the Price paid by the Buyer to the Seller,
- and in either case, if requested by the Seller, the Buyer will return the defective Products to the Seller (at the Seller's cost) on the resupply or refund.
- 16.3 To the extent permitted by Law, the Seller is not liable to the Buyer for any Loss (including any consequential Loss, or any loss of revenue or profits, loss of opportunity, or Loss arising from business interruption) suffered by the Buyer howsoever arising, including by any default or negligence of the Seller.
- 16.4 Except as provided by law and other than as set out in clause 16.2, the Seller's maximum liability to the Buyer under or in connection with the Contract (under contract, tort (including negligence), statute or otherwise) will be limited to the Price paid by the Buyer for that Product.
- 16.5 The Buyer indemnifies the Seller against any loss suffered, sustained or incurred by the Seller arising from or in connection with any claim arising from or in connection with:
- (a) the use of the Products by the Buyer or a third party authorised by the Buyer to use the Products or to whom the Buyer sells the Products; or

SALE CONTRACT

- (b) any negligence, wrongful act or omission, or breach of statutory duty by the Buyer or its employees, contractors, officers or agents arising under or in connection with this Contract or the Products.

The indemnity in this clause 16.5 does not apply to any loss which is caused by the Seller's gross negligence, wilful misconduct or fraud.

- 16.6 To the extent permitted by Law, the Buyer will not be liable to the Seller for any consequential Loss, or any loss of revenue or profits, loss of opportunity, or Loss arising from business interruption suffered by the Seller howsoever arising, including by any default or negligence of the Buyer.

17. SAFETY LAWS AND SITE ACCESS

- 17.1 At all times in connection with the performance of this Contract, the Buyer must, and must procure that its agents, contractors or employees (including freight carriers) will:
 - (a) comply with all Safety Laws;
 - (b) follow all reasonable necessary directions of the Seller's personnel or third party personnel at the Site, including departure from the Site; and
 - (c) not create any hazard or cause any contamination on the Site (including as a result of the condition of a vehicle).
- 17.2 The Buyer warrants that it is, and must procure that its agents, contractors or employees (including freight carriers) are, aware of all relevant provisions of the Safety Laws and adequately trained to comply with the Safety Laws in connection with this Contract.
- 17.3 If required, the Buyer must, and must procure that its agents, contractors or employees (including freight carriers) will, undertake a site specific induction for the Site prior to Collection in accordance with any induction policy provided to the Buyer.
- 17.4 The Buyer must notify the Seller immediately if the Buyer considers any direction issued to the Buyer in relation to the Collection or transport of the Product may, if complied with, cause any person to breach any Safety Law.
- 17.5 The Buyer must maintain all information and documents necessary to substantiate the Buyer's compliance with the Safety Laws in connection with this Contract and must make such material available to the Seller when reasonably required by the Seller to audit the Buyer's compliance with the Safety Laws. This obligation survives termination of this Contract.
- 17.6 The Buyer acknowledges that the Seller, its Related Bodies Corporate and its staff have certain obligations under the Chain of Responsibility Laws in connection with the performance of this Contract, including as a consignor, consignee, packer, and/or loader. Without limiting clauses 17.1 to 17.5, so as to facilitate each of the Seller and the Buyer complying with their respective obligations under the Chain of Responsibility Laws:
 - (a) each of the parties must co-operate with the other in relation to their compliance with the Chain of Responsibility Laws;
 - (b) each of the parties must co-operate with the other in relation to the application of, and any audit of, a party's Chain of Responsibility Laws compliance policies; and
 - (c) the Buyer must comply with all directions from the Seller, its Related Bodies Corporate and its staff, and provide any information reasonably requested by the Seller or its Related Bodies Corporate in connection with the compliance of any vehicle or any of the Buyer's representatives with the Chain of Responsibility Laws in relation to the performance of this Contract.
- 17.7 Nothing in clause 17.6 limits or otherwise affects a party's own responsibility to ensure that it complies with the requirements of the Chain of Responsibility Laws which are applicable to that party.
- 17.8 The Buyer will not be reimbursed for any time spent by it or its agents, contractors or employees in complying with its obligations under this clause 17.
- 17.9 Without limiting any other right or remedy of the Seller, if the Buyer breaches this clause 17, the Seller may terminate this Contract with immediate effect by written notice to the Buyer.
- 17.10 The Buyer agrees and acknowledges that the Buyer or its agents, contractors or employees may be refused access to the Location for purposes of Collection if there are reasonable grounds for suspecting that the Buyer has not complied with this clause 17.

18. ACKNOWLEDGEMENT

- 18.1 The Buyer acknowledges that the Product consists of variable sized material and may segregate when unloaded into storage, particularly when belt conveyors and augers are used during Delivery.
- 18.2 To the extent permitted by law, the Seller will not be liable to the Buyer in respect of Product quality changes as a result of segregation, whether occurring during Delivery or otherwise.

19. WARRANTIES

- 19.1 The Seller warrants, in relation to any Product, that it is free from any Encumbrance, that the Seller has good title to it, and that it conforms to the Specifications and is of merchantable quality.
- 19.2 Except for the warranties expressly made in this Contract, all conditions, warranties, undertakings, guarantees or representations express, implied or applied, arising by statute, general law or otherwise, are expressly excluded to the extent permitted by law.

20. RIGHT TO SUSPEND SERVICES

SALE CONTRACT

If the Seller, acting in good faith, considers it necessary to do so for reasons concerned with safety, security, environmental protection, damage to anything or for reasons connected with any emergency or hazard that is perceived by the Seller, then the Seller may suspend the provision of services under this Contract (including permitting a Buyer to take Collection of the Product), in which case the suspension will continue until such time as the Seller considers that the suspension is no longer necessary and the Pickup Period may be extended by the Seller, by notice in writing to the Buyer, for the period of the suspension as notified by the Seller to the Buyer. The Seller will endeavour to keep any suspension time to a minimum. If a suspension continues for a period of 60 days or more, either party has the option to terminate this Contract by notice in writing to the other party. Except in relation to any accrued liability, neither party will have any further liability to the other under this Contract following such termination.

21. ASSIGNMENT

21.1 The Seller must not assign any of its rights or obligations under this Contract without the Buyer's prior written consent unless the assignment is to any of the Seller's Related Bodies Corporate.

21.2 The Buyer must not assign any of its rights or obligations under this Contract, without the prior written consent of the Seller.

22. SEVERANCE

If at any time a provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair the legality, validity or enforceability:

- (a) in that jurisdiction of any other provision of this Contract; or
- (b) under the Law of any other jurisdiction of that or any other provision of this Contract.

23. EXECUTION AND COUNTERPARTS

23.1 This Contract may be signed and delivered electronically. The words "execute," "execution," "signed," "signature," and similar words used in this Agreement will be deemed to include electronic signatures, and electronic signatures will be of the same legal effect, validity or enforceability as provided for in any applicable law.

23.2 Without limiting clause 23.1, the Buyer may elect to execute this Contract and return a copy to the Seller or, in its sole discretion, appoint a CBH representative as its agent solely for the purpose of electronically executing the Contract. In appointing the agent the Buyer acknowledges and agrees that:

- (a) during all discussions with the Buyer, the CBH representative is acting as the agent for the Seller for the purpose of negotiating the Contract and facilitating agreement;
- (b) the CBH representative only acts as agent for the Buyer on conclusion of the negotiations and when the Buyer has made its own independent decision to enter into the contract;
- (c) the CBH representative has no duty to explain any terms of the Contract to the Buyer and the Buyer has obtained its own legal and commercial advice as to the terms of the Contract; and
- (d) the CBH representative is appointed for the exclusive purpose of signing the Contract electronically on the Buyer's behalf.

23.3 This Agreement may be executed in any number of counterparts and by the Parties in separate counterparts. Each counterpart constitutes an original of the Agreement, and all together constitutes one Agreement.

23.4 The counterparts of this Agreement may be signed and delivered electronically in accordance with clause 23.1.

24. CHOICE OF LAW / JURISDICTION

This Contract shall be governed by and shall be construed in accordance with the Laws of Western Australia and, subject to clause 25, each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract, and waives any right it might have to claim that those courts are an inconvenient forum.

25. ARBITRATION

25.1 Any dispute arising out of this contract, including any question of law arising in connection herewith shall be referred to arbitration in accordance with the IAMA Provisions for Arbitration in the Australian Fertilizer Industry in force at the date of this contract and of which both Parties are deemed to be cognisant.

25.2 Notwithstanding any other provision of this Contract, nothing in this clause 25 prevents or restricts a Party from commencing legal proceedings (in accordance with this clause 25) for interlocutory, injunctive and other equitable relief if considered necessary and appropriate by a Party having regard to the circumstances then existing.

SALE CONTRACT

26. AMENDMENT

No amendment or variation of this Contract is valid or binding on a party unless made in writing between the parties.

27. ENTIRE AGREEMENT

This Contract contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with their subject matter.

28. PPSA

28.1 (Acknowledgement): The Buyer acknowledges that the Seller may have a purchase money security interest in the Products.

28.2 (Payments): The parties acknowledge that, except as otherwise agreed in writing by the parties, any payments made by the Buyer to the Seller must be applied in accordance with section 14(6)(c) of the PPSA.

28.3 (Proceeds): The Buyer acknowledges that the Seller's rights and interest in proceeds derived from the Products constitute a security interest in such proceeds.

28.4 (Financing statements): The Seller may register any security interest contemplated by this Contract on the PPS Register in any manner it chooses (including by registering one or more financing statements in relation to its interest in the Products, with such expiry dates as the Seller determines in its absolute discretion). The Buyer must provide the Seller with any information it requires for the purposes of giving effect to such registration.

28.5 (Seizure provisions): Without limiting any other provision of this Contract, the Buyer is in default under this Contract for the purposes of section 123(1) of the PPSA if any other secured party:

- (a) seizes the Products (whether under section 123 of the PPSA or otherwise) for the purposes of enforcement; or
- (b) becomes entitled to seize the Products.

28.6 (Verification statements): For the purposes of section 157(3) of the PPSA, the Buyer irrevocably and unconditionally waives its right to receive any notice from the Seller in connection with the registration of a financing statement or a financing change statement in respect of the Products.

28.7 (Warranty): The Buyer warrants to the Seller that the Products are inventory of the Buyer.

28.8 (Costs): The Buyer agrees that any action taken by the Seller in relation to the Seller's security interest in the Products is at the cost of the Buyer.

28.9 (Enforcement): The parties agree that for the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any collateral arising from or in connection with this Contract:

- (a) section 121(4) (notice by secured party of enforcement of security interest in liquid assets);
- (b) section 125 (obligation of secured party to dispose of or retain collateral after seizure);
- (c) section 130, to the extent that it requires the Seller to give any notice to the Buyer (notice by secured party of disposal of collateral);
- (d) section 132(3)(d) (obligation of secured party to show amounts paid to other secured parties in statement of account);
- (e) section 132(4) (statement of account by secured party if it does not dispose of collateral within prescribed period); and
- (f) section 135 (notice by secured party of retention of collateral).

28.10 (Further assurances): The Buyer must take any steps the Seller reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest granted to it under this Contract, including, at the request of the Seller:

- (a) obtaining and giving any consents;
- (b) producing and providing any receipts or information in respect of the Products;
- (c) signing or procuring the signing of any documents;
- (d) facilitating registration of any security interest on the PPS Register;
- (e) facilitating the giving of notice to any person, including any person who also has, or appears to have, a security interest over the Buyer or the Products; and
- (f) facilitating the exercise of the Seller's right in enforcing any security interest.

29. CONFIDENTIALITY

29.1 The parties agree that other than the existence of a security interest in any Products, and details of the relevant Products, and the amount (if any) owing by the Buyer to the Seller from time to time in relation to any Products, all other information relating to this Contract is subject to a duty of confidence, and must not be disclosed to any party other than:

SALE CONTRACT

- (a) to a related body corporate of the Seller or the Buyer;
- (b) to an advisor, employee, banker, auditor or other consultant of the Seller or the Buyer; or
- (c) as required by any law (other than section 275 of PPSA) or by any government body or stock exchange.

29.2 These obligations of confidentiality survive termination of the Contract.

30. NOTICES

30.1 Any notice, consent, information or request that must or may be given or made to a Party under this Contract:

- (a) In the case of the Buyer is only given or made if it is delivered, posted or emailed to the postal address or email address, respectively, specified in the Contract Confirmation.
- (b) In the case Seller, must be addressed as shown below:

Name: CBH Fertiliser
Address: Level 6, 240 St Georges Terrace, Perth WA 6000
Telephone no: 1800 199 083
+61 8 9237 9600
Email: fertiliser@cbh.com.au

Copy:
Name: David Pritchard
Address: Level 6, 240 St Georges Terrace, Perth WA 6000
Telephone no: +61 8 9216 6037
Email: David.Pritchard@cbh.com.au

30.2 However, if a Party gives another Party three (3) Business Days written notice of a change of that, or a subsequent, address or email address, any notice, consent, information or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address or the latest email address.

30.3 A notice, consent, information or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, ten (10) Business Days after it is posted; or
- (c) if it is sent by email, as soon as the receiving Party has acknowledged receipt of the email from the sender.

30.4 If a notice, consent, information or request is delivered, or an error free transmission report in relation to it is received, or an acknowledgement of receipt of the email is received after 5.00pm (Seller's local time), it is to be treated as having been given or made at the beginning of the next Business Day.