

# TERMS AND CONDITIONS OF CONTRACT

## 1. DEFINITIONS

"Grain Tech" means Grain Tech Limited of Auckland, New Zealand or any subsidiary or associated company within the meaning of the Companies Act 1955 of New Zealand or amendments thereto. "Customer" means the person to whom this quotation is addressed. "Person" includes firms, companies and corporations.

## 2. FORMATION OF CONTRACT

No order given on this quotation constitutes a contract with Grain Tech unless such order is accepted in writing by Grain Tech who until such acceptance is given may alter or withdraw its quotation. The Customer acknowledges and agrees that these General Conditions of Contract shall form part of the contract between the parties upon receipt of Grain Tech's written acceptance of order.

## 3. PRICE VARIATION

In the event of there being any variation in the cost of materials, fuel, rate of wages, freight, insurance, customs tariffs, or in respect of any other matter whatsoever affecting the quotation, the quotation shall be varied to such variation and the acceptance of any order of the Customer by Grain Tech shall be subject to variation in accordance with this condition.

## 4. VARIATION OF SPECIFICATIONS

Where Grain Tech's quotation is based upon the drawings, specifications, measurements and other information supplied by the Customer, no alterations or additional requirements not advised to Grain Tech prior to date of this quotation will be binding on Grain Tech. Where Grain Tech in supplying this quotation relies solely on the drawings, specifications, measurements and other information provided by the Customer, Grain Tech shall not be obliged to make any onsite inspection or measurement. Any variation required or occurring after the date of this quotation will automatically void the quotation unless Grain Tech deems such variation to be an additional cost to be paid by the Customer. Grain Tech reserves the right to make design or specification changes at any time.

## 5. SUPPLY OF PLANS

All plans, specifications, estimates and like information furnished by Grain Tech to the Customer remain the property of Grain Tech and the customer agrees and declares that he will return same to Grain Tech in the event that an order is not placed by the Customer or if a contract is breached or repudiated by the Customer. The Customer acknowledges the confidentiality of any such plans, specifications, estimates or like information and agrees that it shall not disclose same to any person without Grain Tech's written consent.

## 6. RISK

Unless otherwise agreed in writing prices are quoted ex Works and delivery will be given and taken at that point. Grain Tech will if requested but without incurring responsibility endeavour to arrange freight or other carriage on the Customer's behalf and at the customer's risk and cost, and if so requested in writing will at the Customer's expense arrange insurance. If no such request is received, all goods will be consigned by Grain Tech at the Customer's risk.

## 7. PAYMENT

Unless otherwise stated in writing terms of payment shall be as follows:

- a) For orders below \$5000.00 cash within thirty days of invoice.
- b) For all other orders:
  - 35% of total purchase price with order
  - 65% of total purchase price prior to delivery of equipment items

Interest at the rate of 1% above rate for overdraft accounts from time to time will be charged on all amounts overdue. In the event that the Customer makes default in the payment of the principal amount for a period of one (1) month Grain Tech shall be entitled at its option to either suspend all further deliveries to the Customer until such time as all the amounts owing under the contract, including interest, have been received or to deliver the remainder of the goods only against cash or to terminate the contract and Grain Tech shall be entitled to recover from the Customer the amount of all losses and damages suffered and all expenses incurred by it by reason of any such default. Where prices are quoted in a foreign currency, all payment of both principal and interest are to be made in New Zealand currency at the official exchange rate ruling at date payment is due.

## 8. DELIVERY - FORCE MAJEURE

In the event that Grain Tech is prevented from complying with the time stated for delivery or installation by reason of any strikes, lockouts, fire, non-delivery of materials or parts by other manufacturers, shortage of supply, act of God, war, defence of the commonwealth, tempest, riots, criminal actions, civil commotions, epidemic, accidents to machinery, variation in Awards, Acts of Parliament, Government decisions or Regulations or any other unexpected or exceptional causes beyond Grain Tech's control the time for delivery shall be extended until the cause preventing or delaying delivery has ceased. The failure of Grain Tech to deliver the goods by the date or dates stated in the quotation or the contract for any of the causes referred to in this clause, shall not render Grain Tech liable to damages. Where Grain Tech agrees to deliver the goods by instalments each instalment shall be deemed to be sold under a separate contract. Any failure of Grain Tech to deliver an instalment within the time stated shall not entitle the Customer to repudiate with regard to any other instalment remaining to be delivered. The performance of the contract by Grain Tech shall be subject to all of the matters set out in this clause.

## 9. CANCELLATION OF ORDERS

The Customer agrees that the order made and the contract which has been entered into cannot be cancelled except with Grain Tech's express approval and, without limiting the effect of the foregoing, it is hereby expressly agreed by the Customer that Grain Tech will be under no obligation whatsoever to accept a cancellation of any order or the contract except upon terms which will fully compensate Grain Tech for all work done and materials used to the date of the cancellation, together with any loss of profits which Grain Tech may have reasonably expected to receive by virtue of the order and contract.

## 10. WARRANTIES AND CONDITIONS

Subject to condition 11 all warranties, conditions, representations or terms, express or implied by Common Law Statute or otherwise as to the state, quality, description, merchantability or fitness of goods for any purpose whatsoever are hereby expressly negated and excluded. It is agreed that there are no oral or collateral agreements or conditions of any kind. Any variation or modification of the terms or conditions hereof shall not be binding upon Grain Tech unless the same is consented to in writing by Grain Tech.

## 11. WARRANTY

Grain Tech's manufactured goods are warranted free of defects owing to faulty material or workmanship provided such equipment is properly installed, maintained and operated under normal conditions.

This warranty is for a period of six (6) months from the date of delivery to the Customer.

In the event that the goods supplied pursuant to the Contract are in the opinion of Grain Tech defective in either workmanship or use of faulty material, Grain Tech's obligation under this warranty shall absolutely be limited to the replacement and supply free of charge of the defective part or parts, provided the faulty parts are returned to Grain Tech's store.

Supply and replacement of such defective parts shall constitute fulfilment of all obligations by Grain Tech who shall not be liable for any loss, damage, expenses, loss of profits or orders arising directly or indirectly from the use of its products or from any other cause.

Where the goods are not of Grain Tech's design and manufacture all conditions and warranties are limited in extent by the conditions of sale of the manufacturers or supplier of such goods.

Grain Tech assumes no liability for expenses or repairs made or carried out by any person unless such repairs are made at the instance or with the written consent of Grain Tech.

## 12. INSTALLATION

Where the services of Grain Tech's engineers are made available to the Customer in the supervision, erection, commissioning maintenance or installation of machinery plant or equipment charges will be made as quoted in the body of this specification or otherwise at our current standard rates.

Customer agrees:

That Grain Tech will not be responsible for any depreciation loss or damage of or to machinery or plant after the same has been delivered.

That where Grain Tech is found to be negligent in causing damage or personal injury to property or persons of the Customer, Grain Tech will repair the damage to the customer's property or compensate personal injury provided that no liability shall attach to Grain Tech where the damage or injury arose from the acts or omissions of the Customer or any of its employees or servants or where the damage or injury arose in circumstances beyond which Grain Tech has control.

Grain Tech's total liability in any circumstances shall not exceed \$100,000.00. Grain Tech accepts no responsibility save aforesaid for any loss in profit, orders or other loss or damages which the Customer may sustain due to delays in installation, stoppage of plant or machinery, etc. Any such liability on Grain Tech's part shall cease when its engineers leave the Customer's site.

## 13. STRUCTURAL MODIFICATIONS

The price of the goods does not unless otherwise stated by Grain Tech in writing include the cost of foundations, structural alterations to buildings, builders' work repairing and strengthening floors, laying support for machines, staging for provision of access to machinery, partitions for shutting off machinery, belt drives, machine guarding (except that supplied on the machine itself) steam and hot water piping to the machinery or plant, hot air trunking, lagging of boilers, piping and exhaust trunking, electricity, gas or any other energy supply necessary for the efficient functioning of the machinery or plant. Nor does it include any amount which Grain Tech expends in the modification or alteration of goods required to comply with the instructions of any local government agency instrumentality or other body.

Grain Tech accepts no responsibility whatsoever for the standard or suitability of any structural modifications performed by the Customer or any person on the Customer's behalf or for plans or information which they may supply to enable the installation of the plant and machinery. All plans inclusive of drawings, design, specifications or information supplied, inclusive of details supplied by Grain Tech should be submitted by the customer to his own Architect or Civil Engineer.

## 14. EXISTING MACHINERY

Grain Tech accepts no responsibility for the suitability or condition of any existing plant or machinery or fittings which shall be set to work in conjunction with the machinery supplied by Grain Tech. Unless otherwise stated in writing the cost of repairing, replacing, reconditioning or modifying the Customer's existing machinery, plant or fittings is excluded from the price of the contract and shall be an expense to be borne by the Customer.

## 15. GENERAL

- a) Any terms of conditions contained in the Customer's official order form which in any way purports to limit, modify, add to, vary, amend or contradict any of the terms or conditions herein, shall not bind Grain Tech unless expressly consented to in writing by Grain Tech.
- b) Grain Tech's total liability in any circumstances shall not exceed \$100,000.00. Grain Tech accepts no responsibility save aforesaid for any loss in profit, orders or other loss or damages which the Customer may sustain.
- c) Any contract arising out of the quotation herein shall be construed in accordance with the Laws of New Zealand and the Jurisdiction of any claim, demand, action, suit or proceeding whatsoever arising out of or relating to such contract shall be New Zealand unless Grain Tech nominates another Jurisdiction for any such claim, demand, action, suit or proceeding.
- d) The customer agrees that in the event there is a dispute between the parties including, but not limited to arbitration or litigation that the customer shall pay to Grain Tech Limited all costs involved in such dispute and all other out of pocket expenses, including in each case reasonable legal expenses and the court costs incurred by Grain Tech Limited in such dispute.
- e) In the event that the Customer commits any act of bankruptcy or assigns his estate or makes any arrangements with his creditors or being a company calls a meeting for the purpose of or goes into liquidation or has a winding up petition against it or becomes subject to receivership. Grain Tech may at its option suspend or cancel any uncompleted portion of the within order or require payments in cash before or on delivery or tender notwithstanding the terms of payment or may take over the goods and dispose of same in their interest and Grain Tech shall be entitled to recover from the Customer the amount of all losses and damages suffered and all expenses incurred by it by reason of any such default.
- f) All disputes arising out of or connected with this contract shall be referred to Arbitration pursuant to the laws for the time being in force relating to Arbitration in New Zealand.
- g) In FOB Contracts delivery and/or shipment shall be deemed completed when goods are delivered to the ship's side. In CIF and CIF & E Contracts Grain Tech may tender a certificate of insurance in lieu of a policy and the tender of documents shall be made as soon as reasonable after shipment.
- h) Unless otherwise stated in writing by Grain Tech the price quoted excludes Goods & Services Tax, Sales Tax, Customs Duty, Port Service Charges & Custom Agents Charges.
- i) Where Grain Tech incurs costs in obtaining "By-Law" entry of goods, such costs will be to the Customer's account.
- j) Goods and equipment supplied remain the property of Grain Tech until full payment is made and the customer warrants to ensure that until full payment is made to Grain Tech for the goods the Customer will maintain adequate insurance cover, protection from deterioration for the goods and allow freedom of access for inspection by Grain Tech representatives.