

THE RICE MARKETING BOARD FOR THE STATE OF NEW SOUTH WALES



AUTHORISED BUYERS APPLICATION POLICY

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THE RICE MARKETING BOARD FOR THE STATE OF NEW SOUTH WALES

AUTHORISED BUYERS APPLICATION POLICY

1 Application for an Authorised Buyers Licence (ABL)

One of the objects of the Rice Marketing Board for the State of New South Wales (the Board) is to encourage the development of a competitive domestic market for rice. The purpose of the ABL process is to open up the rice growing industry to competition in the buying and selling of New South Wales rice.

To this aim, the *Rice Marketing Act 1983* (the Act) empowers the Board to appoint any person to be an Authorised Buyer of rice.

The Board's policy, consistent with the Act, is to appoint all applicants as Authorised Buyers unless a licence has been revoked in the past two years or there is logically probative material that the buyer would not comply with the ABL conditions. "Logically probative material" is material that tends to logically prove the existence or non-existence of a fact.

2 Board Consideration

2.1 General

The Board will receive and consider each application for an ABL on a case by case basis, on the advice of the ABL Committee.

Where the Board reasonably believes that the applicant would not comply with the ABL conditions to which it would be subject if the appointment were made, a decision to refuse a licence must be supported by logically probative material.

It is the policy of the Board that licences shall be granted unless there are extenuating circumstances, documented by logically probative material, which could not be overcome by imposing appropriate conditions on the licence.

2.2 Conflicts of interest

All ABL applications are considered by the Authorised Buyers Licensing Committee, comprised of the four nominated Board Members. The role of the Committee is to give confidential consideration to ABL applications, seek further information where required, and make recommendations to and/or advise the Board. ABL Committee minutes included in the Board papers are redacted to ensure confidentiality of ABL applicants.

Where a Board Member has a potential conflict of interest in reviewing an application and the supporting material of an applicant, that Board Member will not be provided with the commercially confidential or sensitive information, and will not participate in the consideration of the application.

2.3 Further information

Where the Board or the ABL Committee does not feel it has adequate information in order to make a determination on an application, the Board or the ABL Committee may request further information from the applicant or it may carry out background checks and due diligence.

Such requests for further information must be reasonable and appropriate in the circumstances.

2.4 Factors to be considered in granting a licence

By way of guidance, the Board considers that the following factors are not likely to be, on their own, a sufficient reason to refuse to grant an ABL, however they may be taken into consideration:

- previous operating losses by an applicant;
- an application from a person who previously held an ABL which has been revoked or suspended more than 2 years prior; and/or
- an application from a person who previously held an ABL but who surrendered it.
- An incomplete application.

The Board will not refuse an application from a new entrant into the rice market solely for the reason that they are a new entrant.

3 Standard ABL conditions

The Board has adopted standard terms and conditions for an ABL which are set out in the pro forma licence (attached).

The Board considers these conditions will generally provide sufficient protection to growers from any inability of a licensee to fulfil their obligation under the ABL.

In particular, under the pro forma licence an Authorised Buyer specifically undertakes, amongst other things, to:

- maintain the wholesomeness and purity of the rice it buys;
- pay the grower for the rice it purchases in accordance with the agreement between itself and the grower;
- promptly surrender its ABL if it ceases to carry on a business as an Authorised Buyer of rice, noting the licence is not transferable;
- promptly surrender its ABL where it suffers an insolvency event (as defined in the licence), noting the licence is not transferable;

- if a licence is relinquished, suspended or revoked, all rice on hand must be sold to an authorised buyer
- notify the Board where there is a change in control in the operations of the authorised buyer;
- not act in a manner that is inconsistent with the objectives of the Board;
- annually provide the Board with a signed declaration and proof to the Board's satisfaction, of its good commercial standing; and;
- comply with all applicable legislation and regulations relating to the operation of its business; and
- pay its annual fees promptly.

The Board is satisfied that for most applications the standard ABL conditions, undertakings and representations and warranties will sufficiently protect growers and the industry.

4 Appropriate conditions

The Act empowers the Board to impose appropriate conditions on an Authorised Buyer's Licence.

In exercising this discretion the Board will do so in accordance with the purpose of the ABL process and the objects of the Board.

The Board will consider the necessity for any further conditions based on the evidence and circumstances of each applicant. Any condition imposed on an Authorised Buyer will be appropriate and proportionate in the circumstances.

When considering what conditions are appropriate the Board will make an assessment based on all the evidence it has before it.

The policy of the Board is to issue the standard terms and conditions for each ABL unless there is clear evidence that additions or amendments to the standard conditions are required.

5 Reasons for declining an application

The Act allows an unsuccessful applicant to appeal to the Administrative Decisions Tribunal for a review of any decision made by the Board in relation to the application.

The *Administrative Decisions Tribunal Act 1997 (NSW)* requires the Board to notify the applicant of a decision affecting them and of any review rights they might have. Under this provision the Board is also required to provide reasons for their decisions on request from the applicant.

Consequently, the Board will notify unsuccessful applicants of any decision and inform them of their right to appeal. The Board will provide written reasons for its decision to unsuccessful applicants on request.

Further Information

For further information concerning how the Board handles authorised buyers fees, please contact:

The Secretary
The Rice Marketing Board for the State of New South Wales
PO Box 151
LEETON NSW 2705
Telephone: (02) 6953 3200
Facsimile (02) 6953 7684
E-mail: secretary@rmbnsw.org.au

The Rice Marketing Board

FOR THE STATE OF NEW SOUTH WALES

YANCO AVENUE PO BOX 151 LEETON NSW 2705 AUSTRALIA
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AUTHORISED BUYER'S LICENCE NUMBER.....[*]

Order Appointing Authorised Buyer Under Section 51(1) of the Rice Marketing Act 1983 (the "Act")

1. Appointment

Pursuant to Section 51(1) of the Act, the Rice Marketing Board for the State of New South Wales (the "Board") appoints the person identified in the Schedule as an authorised buyer of rice grown in New South Wales ("the Authorised Buyer") (the "Appointment").

The Appointment:

- (a) is non-exclusive;
- (b) is non-transferable;
- (c) operates solely for the purpose of purchasing rice grown in New South Wales and planted on or after 1 July 2006, on the Authorised Buyer's own account, from a producer of rice (the "Producer") or any other person which that producer or other person is entitled to sell rice to; and
- (d) is subject to the terms and conditions imposed on this Appointment of the Authorised Buyer in accordance with sub-sections 51A(1) and 51A(2) of the Act.

2. Sale of Rice

- (a) Except with the Board's prior written approval, any sale or supply of rice purchased by the Authorised Buyer pursuant to the power conferred by Section 51(2) of the Act to persons outside Australia is prohibited.
- (b) The Authorised Buyer must not sell or supply rice purchased by it pursuant to the power conferred by Section 51(2) of the Act to a person within Australia ("the Purchaser"), other than an authorised buyer appointed by the Board pursuant to section 51(1) of the Act or an end-user, unless the sale or supply is made under a written contract including provisions that:
 - (i) prohibit the Purchaser from selling or supplying any of the rice to persons outside of Australia;

- (ii) prohibit the Purchaser from selling or supplying any of the rice to persons within Australia (the “Subsequent Purchaser”), other than end-users, unless the sale or supply is made under a written contract including provisions that prohibit the Subsequent Purchaser from selling or supplying any of the rice to persons outside of Australia; and
 - (iii) require the Purchaser to ensure that any subsequent sale or supply of any of the rice is made under a written contract including provisions in the same terms, with any necessary changes, to those referred to in paragraphs (a) and (b) of this Condition 2.
- (c) The Authorised Buyer must not sell or supply rice purchased by it pursuant to the power conferred by Section 51(2) of the Act to a person, other than an authorised buyer appointed by the Board pursuant to section 51(1) of the Act, if it is aware that the person intends to sell or supply any of the rice to persons outside of Australia.
- (d) The Authorised Buyer must keep records that correctly record and explain its transactions in quantity terms relating to:
 - (i) rice purchased by the Authorised Buyer pursuant to the power conferred by section 51(2) of the Act;
 - (ii) any sales or supply of such rice to purchasers;
 - (iii) any rice used where the Authorised Buyer is the end user; or
 - (iv) any rice in storage at the end of the financial year (the “relevant year ended 30th June”).
- (e) The Authorised Buyer must allow the Board or its duly authorised agent to inspect the records kept by the Authorised Buyer at all reasonable times.
- (f) The Authorised Buyer must, within 31 days after the relevant year ended 30th June, provide a written report to the Board (in the form provided by the Board) which includes the following particulars:
 - (i) the quantity of rice purchased by the Authorised Buyer pursuant to the power conferred by section 51(2) of the Act in the relevant year;
 - (ii) the quantity of rice sold or supplied to Purchasers;
 - (iii) the quantity of rice used, where the Authorised Buyer is the end user;
 - (iv) the quantity of rice stored as at 30th June of the relevant year; and
 - (v) a statement confirming that the Authorised Buyer is not in breach of any of the conditions of this Appointment.
- (g) Within 31 days of the end of the financial year, the Authorised Buyer must pay to the Board an annual fixed fee of \$550 (inclusive of GST), plus an annual variable fee (on

a per tonne basis) plus GST (if applicable), in respect of the relevant year ending 30th June. The Board will notify the Authorised Buyer of the amount payable in respect of the variable fee in June of the relevant year.

- (h) The Authorised Buyer must not purchase or supply rice which has been derived or developed from an organism which has been modified by gene technology.

For the purposes of this clause, 'gene technology' is defined as:

Any technique for the modification of genes or other genetic material, but does not include:

- (i) sexual reproduction; or
- (ii) homologous recombination.

3. Undertakings

The Authorised Buyer undertakes to the Board that:

- (a) in its handling or storage of the rice, the Authorised Buyer will maintain, as far as practicable, the wholesomeness and purity of the rice, in the interests of public health;
- (b) it will pay the Producer for the rice in accordance with the written agreement between itself and the Producer;
- (c) it will promptly surrender its appointment as an Authorised Buyer if it ceases to carry on business as an authorised buyer of rice;
- (d) it will promptly surrender its appointment as an Authorised Buyer if it suffers an insolvency event, which means the happening of any of the following events in relation to an Authorised Buyer:
 - (i) except for the purposes of a bona fide and solvent reconstruction or amalgamation:
 - (A) an application or an order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or any other corporate action is taken or an application to a court or other steps are taken for the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, official management, bankruptcy, administration, or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of it; or
 - (B) it enters into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them;
 - (ii) it ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of its business;

- (iii) it is, or is deemed under section 95A of the *Corporations Act 2001 (Cth)* to be, unable to pay its debts when they fall due (other than as a result of the failure to pay a debt or claim the subject of a good faith dispute) or stops or suspends or threatens to stop or suspend the payment of all or any class of its debts;
 - (iv) a liquidator, receiver, compulsory manager, administrator, administrative receiver or similar officer is appointed to it or in respect of any of its assets or a distress, attachment or other execution is levied or enforced;
 - (v) it goes into liquidation, dies or commits an act of bankruptcy;
 - (vi) a moratorium is declared in respect of any indebtedness of it;
 - (vii) an event occurs which would result in the crystallisation or enforcement of any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect, over its business, undertaking, property or assets;
 - (viii) it is dissolved; or
 - (ix) it suffers any event which is analogous to any of the events described in paragraphs (i) to (viii) under the laws of the jurisdiction in which it is incorporated;
- (e) it will notify the Board in writing if a change in control occurs in the operations of the Authorised Buyer, which means a change in the corporate structure of the Authorised Buyer or of any company which is a holding company of the Authorised Buyer, which results in a person other than the shareholders of the Authorised Buyer as at the time of the Appointment:
- (i) controlling the composition of the board of directors of the Authorised Buyer;
 - (ii) controlling the voting power of the board of directors or any class of shareholders of the Authorised Buyer, or both; or
 - (iii) holding more than one half of the issued share capital (either beneficially or otherwise of the Authorised Buyer).

For the purposes of this definition control has the meaning set out in section 50AA of the *Corporations Act 2001*.

- (f) it will not act in a manner that it is inconsistent with the objectives of the Board (as set out in the Proclamation published in the New South Wales Government Gazette, dated 28 June 1985 and reproduced in Annexure A);
- (g) on the date of this Appointment and within 31 days of the end of the financial year for each successive 12 month period, it will provide the Board with a signed declaration as to its good commercial standing, along with proof of its good commercial standing

to the Board's satisfaction. This information will form part of the annual return prepared each year by the Authorised Buyers; and

- (h) it will comply with all applicable federal and state legislation and regulations relating to the operation of its business, including all laws relating to state and federal quarantine, occupational health and safety and the environment.

4. Representations and Warranties of the Authorised Buyer

4.1. If the Authorised Buyer is a body corporate, the Authorised Buyer represents and warrants to the Board that:

- (a) it is duly incorporated and validly exists under the laws of its place of incorporation;
- (b) it is not bankrupt or insolvent, and no receiver has been appointed over any part of its assets and no such appointment has been threatened;
- (c) it is not bankrupt or in liquidation, and no proceedings have been brought or threatened for the purpose of winding up the Authorised Buyer;
- (d) to the best of the Authorised Buyer's knowledge and belief, there are no facts, matters or circumstances which give any person the right to apply to liquidate, wind up or have a trustee in bankruptcy appointed to the Authorised Buyer;
- (e) no administrator has been appointed to the Authorised Buyer nor has any deed of company arrangement been executed or proposed in respect of the Authorised Buyer;
- (f) it has not entered into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) it is not (or is not taken to be under applicable legislation) unable to pay its debts, other than a debt or claim the subject of a good faith dispute, and has not stopped or suspended, or threatened to stop or suspend, the payment of all or a class of its debts;
- (h) it is not in default under a document or agreement which relates to the operation of its business as an Authorised Buyer, and nothing has occurred which constitutes an event of default, cancellation event, prepayment event or similar event (whatever called) under those documents or agreements, whether immediately or after notice or lapse of time or both;
- (i) the execution and delivery of this Appointment has been properly authorised by all necessary action of the Authorised Buyer;
- (j) it has full power and lawful authority to execute and deliver this Appointment and to consummate and perform or cause to be performed its obligations under this

Appointment and each transaction contemplated by this Appointment to be performed by the Authorised Buyer;

- (k) this Appointment constitutes a legal, valid and binding obligation of the Authorised Buyer enforceable in accordance with its terms by appropriate legal remedy;
- (l) the execution, delivery and performance by the Authorised Buyer of this Appointment and each transaction contemplated by this Appointment does not or will not (with or without the lapse of time, the giving of notice or both) contravene, conflict with or result in a breach of or default under:
 - (i) any provision of the constitution of the Authorised Buyer;
 - (ii) any material term or provision of any security arrangement, undertaking, agreement or deed; or
 - (iii) any writ, order or injunction, judgement, or law to which it is a party or is subject or by which it is bound; and
- (m) all information provided by the Authorised Buyer to the Board is true in all material respects at the date of this Appointment or, if later, when provided.

4.2. If the Authorised Buyer is an individual, partnership or other entity (that is not a body corporate), it gives the representations and warranties to the Board in 4.1(b) to (m) above.

4.3. The representations and warranties are given as at the date of this Appointment and will survive the execution and delivery of this Appointment.

5. Financial Standing of the Authorised Buyer

On or before the date of this Appointment and thereafter at the Board's discretion, the Board will conduct whatever searches it deems reasonably necessary, and may request whatever information it deems reasonably necessary, in order to establish the Authorised Buyer's financial standing and solvency, and to ensure it has not defaulted on any payment relevant to carrying on business as an Authorised Buyer.

6. Authorised Buyer's dealings with a Producer

- (a) The terms of any agreement between the Authorised Buyer and a Producer, in respect of the sale and purchase of rice, must be set out in writing. These terms must include the delivery and payment obligations of the parties.
- (b) The Authorised Buyer must notify the Producer in any agreement between the Authorised Buyer and the Producer that the Producer is contracting only with the Authorised Buyer and that the Board does not accept any responsibility for the contractual arrangements that the Producer and Authorised Buyer enter into.

7. Release

The Authorised Buyer releases and discharges the Board from all claims, actions, demands and liabilities of any nature (including any costs, whether or not the subject of a court order) arising under this Appointment.

8. Indemnity

The Authorised Buyer must indemnify the Board against all losses, costs, charges, liabilities or expenses which the Board may sustain or incur as a direct or indirect result in connection with:

- (a) all third party claims arising in connection with the terms of the Appointment; and
- (b) its Appointment and any act or omission it makes in its capacity as an Authorised Buyer, or otherwise.

9. Suspension or Revocation

The Board may suspend or revoke the Appointment if the Authorised Buyer is in breach of any term of this Appointment, including without limitation, the undertakings, representations and warranties.

10. Survival of Obligations

Except for paragraph (g) (payment of an annual fixed fee), each of the Authorised Buyer's obligations set out in clause 2 (Sale of Rice):

- (a) is a continuing, separate and independent obligation; and
- (b) survives the surrender, revocation or termination of the Appointment, until the Authorised Buyer has disposed of all rice acquired as an Authorised Buyer under the Appointment and has given written notice to the Board confirming the disposal.

11. Amendment of Terms

The Board reserves the right to amend the terms of the Appointment upon written notice to the Authorised Buyer.

12. Governing Law

The Appointment is governed by New South Wales Law.

Schedule

[Insert name of Authorised Buyer] (ABN [*]), having its registered office at [insert address], accepts the appointment as an Authorised Buyer on the terms and conditions in the Appointment and agrees to be bound by them.

Executed and delivered as a Deed in [*].

Executed as a deed in accordance with s127 of the Corporations Act by affixing the common seal of **The Rice Marketing Board for the State of New South Wales** in the presence of:

Board Member Signature

Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with s127 of the Corporations Act by [*] :

Director Signature

Director/Secretary Signature

Print Name

Print Name