

1. DEFINITIONS

In these Terms, the following expressions have the following meanings:

“ACL” means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

“Aggregator” means an entity responsible for collecting Used Cooking Oil from one or more UCO Producers, consolidating or aggregating the collected Used Cooking Oil, and supplying it to Auscol.

“Agreement” means the agreement consisting of the Cover Page and these Terms.

“Auscol” means Auscol Pty Ltd and includes its agents, successors and permitted assigns.

“Charge” means the total amounts payable for the Service, any Equipment costs and any associated expenses specified on the Cover Page.

“Commencement Date” means the date specified as such on the Cover Page.

“Contaminated” means that Used Cooking Oil is contaminated with material other than fats or oils of vegetable or animal origin used to cook food for human consumption, including, but not limited to, the following in quantities exceeding:

- (a) 0% by weight or volume: Prohibited Materials;
- (b) 5% by weight or volume: water; or
- (c) 5% by weight or volume: free fatty acids.

“Consequential Loss” means any:

- (a) loss of profit, loss of revenue, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunity, or damage to credit rating; and
- (b) any loss that does not arise naturally or according to the usual course of things from a breach of the Agreement or other event giving rise to liability, whether or not such loss was in the contemplation of both parties, at the time they made the Agreement, as the probable result of the relevant breach or other event.

“Customer” means the person identified as such in the Cover Page.

“Data” means data relating to the Used Cooking Oil, including its composition, volume (in litres or tonnes), source of origin, collection site address, date, time, collection GPS coordinates, storage, transport, and logistics.

“Equipment” means any equipment supplied by Auscol to Customer, including, amongst other items, containers provided by Auscol and used to facilitate the provision of the Service, and any substitute and replacement equipment provided by Auscol.

“Force Majeure Event” means any incident, event, circumstance, act or omission beyond the reasonable control of the affected party, including any acts of God, strikes, civil strife, riots, wars, fire, explosion, storm, flood, earthquake, acts of war, acts of public enemies, riots, civil commotions, strikes, restraints of labour or other similar acts, shortages of labour or materials, inability to obtain contractors, acts or omissions of Government or local authority,

failure of communications networks, subsidence, pandemics or epidemics.

“Initial Term” means the period specified as such on the Cover Page.

“ISCC” means the International Sustainability & Carbon Certification.

“Prohibited Materials” means motor oil, paint/solvents, gloves, towels, foil wrappers, food scraps, cleaning rags, food packaging and other hazardous substances.

“Relief Event” means

- (a) any breach of this Agreement by Customer;
- (b) any act or omission of a third party that is not a subcontractor or personnel of Auscol engaged in connection with this Agreement; or
- (c) a Force Majeure Event.

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

“Service” means the services to be performed by Auscol as specified on the Cover Page, which may include the provision of Equipment, collection and/or receipt of delivered Used Cooking Oil, processing or other handling of Used Cooking Oil.

“Traceability Solution” means the Veriflux traceability solution accessible at <https://portal.veriflux.io/> and the associated mobile application (and any replacement solution made available by Auscol).

“UCO Producer” means an entity that produces Used Cooking Oil as a by-product of its primary activities or production processes, where the Used Cooking Oil is not the intended output and would otherwise be discarded or disposed of if not recovered, reused, or managed through alternative means.

“Used Cooking Oil” means fats or oils of vegetable or animal origin used to cook food for human consumption.

2. EXCLUSIVITY

2.1 Subject to clause 2.2, Customer must not (directly or indirectly) enter into any agreement, arrangement or understanding for services that are the same as, or substantially similar to, the Service (including the rental of any Equipment), in respect of Used Cooking Oil located in Australia, from any person other than Auscol during the term of this Agreement.

2.2 Customer’s exclusivity obligation in clause 2.1 does not apply to the extent that:

- (a) Customer is already party to agreements for such services as at the Commencement Date;
- (b) Auscol is unable to provide the Service to Customer for any reason;
- (c) Auscol has consented to Customer obtaining such services from a third party; or
- (d) Customer is required by law or regulatory authority to obtain such services from a third party.

- 2.3 Customer acknowledges that its exclusivity obligation in this clause 2 is reasonable in scope and duration, and is not greater than necessary to protect Auscol's legitimate business interests.

3. SERVICE CONDITIONS

- 3.1 Auscol agrees to provide the Service to Customer subject to these Terms, including Customer's compliance with all conditions applicable to use of the Service.
- 3.2 Auscol will provide the Service in accordance with these Terms at the addresses specified by Customer on the Cover Page.
- 3.3 Auscol will provide the Service during its standard operating hours being 6:00am to 4:00pm, or as otherwise agreed between the parties. If Customer requests the Service to be provided outside such hours, Auscol may comply with such request provided that Customer has agreed in writing to pay Auscol's reasonable, additional, substantiated costs of doing so.
- 3.4 Customer will provide Auscol with full and free access to the Equipment and the Site at all times to enable the Service to be provided. In the event that Auscol's access is prevented for any reason outside Auscol's control and Auscol is unable to provide the Service, Customer shall pay to Auscol the reasonable costs of Auscol's failed Service attempt.
- 3.5 Where applicable, the Customer will obtain all third party consent to ensure Auscol is granted access in accordance with clause 3.4.
- 3.6 Auscol shall be entitled to reject any Used Cooking Oil which is Contaminated or not fit for provision of the Services as determined by Auscol (acting reasonably).
- 3.7 Customer acknowledges and that any dates or times for performance of the Services are estimates only. If Auscol is delayed, or unable to perform, the Services due to a Relief Event, then:
- (a) any dates or times for performance of the Services will be automatically extended by a period equal to that delay; and
 - (b) where the Relief Event is caused by Customer, Auscol may recover from Customer its reasonable, additional and substantiated costs incurred as a result of the delay.
- 3.8 The Customer may add or remove sites specified on the Cover Page by providing Auscol with no less than 30 days prior written notice. Changes to the listed sites will only take effect once an addendum has been prepared which sets out the details regarding the addition or removal of sites and the addendum has been signed by both parties

4. TRACEABILITY SOLUTION AND DATA

- 4.1 This clause 4 only applies where the Customer is an Aggregator.

- 4.2 Where required by Auscol to use the Traceability Solution, Customer acknowledges and agrees that the Customer's use of the Traceability Solution is an essential condition for maintaining the Service and Auscol's access to global Used Cooking Oil markets.
- 4.3 Customer must enter complete, accurate and current Data into the Traceability Solution and ensure that Data remains complete, accurate and current at all times.
- 4.4 Customer must at all times comply, and ensure its personnel comply, with all applicable terms governing the use of the Traceability Solution when entering Data into or otherwise accessing the Traceability Solution.
- 4.5 Customer warrants that it has obtained all consents, licences and approvals and given all notifications necessary to enable Auscol, its sub-processors and their respective personnel to process the Data as necessary to provide the Service and on-supply the Used Cooking Oil to third parties.
- 4.6 Customer grants Auscol, its sub-processors and their respective personnel the right to process all Data entered into the Traceability Solution by Customer as necessary to provide the Service and on-supply the Used Cooking Oil to third parties (including auditing of Data by such third parties).
- 4.7 Customer acknowledges and agrees that Auscol has the right to use and otherwise process Data which is de-identified and used in an aggregated form, with other data or on its own, in whole or in part, for Auscol's product development, services to customers, marketing Auscol's services or any other purpose. This clause 4.7 survives termination or expiry of this Agreement.

5. PRICE AND PRICE VARIATION

- 5.1 Customer agrees to pay the Charge for use of the Equipment and Auscol's provision of the Service (as applicable) calculated in the manner specified on the Cover Page.
- 5.2 Auscol will render invoice/statements to Customer from time to time stating the amount owing by Customer to Auscol, the GST amount applicable and the terms for payment of the total amount. Customer will pay such amount in accordance with the terms stated in the invoice/statement, or if no such time is stipulated, within fourteen (14) days of receipt of such invoice/statement.
- 5.3 Auscol may, acting reasonably, adjust the Charge twice in any 12 month period on giving thirty (30) days' written notice to Customer, taking into account increases to the costs of providing the Service, including increases to disposal costs, fuel costs, government taxes, charges and levies, administrative and operational costs, and any increased cost of providing the Service as a result of a change in law or regulation.
- 5.4 In the event Auscol notifies Customer of its intention to adjust the Charge:

- (a) Customer may dispute a proposed Charge adjustment by giving Auscol written notice at least fourteen (14) days prior to the proposed Charge adjustment;
 - (b) Auscol and Customer will discuss the disputed Charge adjustment to try and resolve the disputes; and
 - (c) where the parties are unable to reach an Agreement on the Charge adjustment within thirty (30) days of Customer's dispute notice, Customer may terminate this Agreement by giving sixty (60) days' written notice to Auscol.
- 5.5 Customer's obligation to pay the rental use of the Equipment is not affected in any way by the inability of Auscol from time to time to provide the Service.

6. REBATES

- 6.1 Where Auscol offers Customer a rebate in respect of resources recovered from the Used Cooking Oil and such rebate is calculated by reference to the commodity prices, Auscol may adjust the rebate on a quarterly basis (or such other basis as may be agreed with Customer in writing) to take account of any change in commodity prices and will provide written evidence to Customer of changes to those commodity prices.
- 6.2 Where applicable, Auscol will pay rebates in accordance with this Agreement to Customer via a recipient created tax invoice.
- 6.3 An ullage allowance of 9% (or as otherwise specified on the Cover Page) will be applied against the total volume of Used Cooking Oil collected by Auscol in accordance with the applicable Service (**Ullage Allowance**), which means the rebate payable to Customer will be calculated at the rate specified on the Cover Page per tonne of Used Cooking Oil collected less the Ullage Allowance in tonnes.
- 6.4 Auscol reserves the right to deduct from rebates owing to Customer any Charges that remain due five (5) days after written notice has been provided by Auscol to Customer that the relevant Charge is now overdue.

7. PAYMENT DEFAULT

- 7.1 If Customer does not pay a Charge by the date it falls due, and still does not pay that Charge within five (5) days from written notice from Auscol, then Auscol may, in addition to any other remedy available to it:
- (a) charge Customer interest at a rate of 2% per annum compounding daily above the standard variable interest rate published by the Reserve Bank of Australia for the period from the due date until the date of payment in full;
 - (b) require Customer to pay Auscol's costs of collection of the payment (including, where applicable, costs of repossessing the Equipment); and/or
 - (c) suspend the Service until payment is made in full.

8. USE OF EQUIPMENT CONDITIONS

- 8.1 This clause 8 only applies to the extent Auscol is supplying the Customer with Equipment.
- 8.2 The Customer acknowledges that title to the Equipment remains with Auscol at all times and that the Customer has only a right of possession to the Equipment under this clause 8. For the avoidance of doubt, nothing in this clause 8 shall be taken to grant to the Customer any right or option to acquire title to the Equipment or authority to transfer title or possession to any other person.
- 8.3 Auscol grants to Customer the right to use the Equipment for the term in accordance with the terms of this Agreement.
- 8.4 Auscol may at any time replace all or any of the Equipment with similar equipment as Auscol may consider necessary or desirable following written notice from Auscol to Customer.
- 8.5 Customer must keep the Equipment in proper working order and in good condition (fair wear and tear excepted). Customer must not place in the Equipment (without Auscol's prior approval), any material which is corrosive, reactive, toxic, viscous or any material which is in the process of combustion or likely to combust including but not limited to medical waste, hydro-carbons and hazardous waste.
- 8.6 Auscol will have the right at any time to carry out inspections of the Equipment and, where Auscol believes (acting reasonably) that there is evidence of neglect or abuse of, or damage to, the Equipment, to terminate this Agreement. Upon such termination, any repairs or maintenance Auscol considers necessary are to be carried out at the cost of Customer, without prejudice to Auscol's other remedies. For the purpose of facilitating the exercise by Auscol of its rights under this clause 8.6, Customer authorises Auscol to enter any land or premises upon which Equipment is situated.
- 8.7 Customer shall pay to Auscol the fee (if any) for the use of the Equipment specified on the Cover Page.
- 8.8 From the time of delivery of the Equipment to Customer until the Equipment is collected by Auscol, Customer must, at its own expense:
- (a) maintain the Equipment in a clean and sanitary condition and comply with the provisions of any laws governing the storing of waste;
 - (b) use, store and operate the Equipment in accordance with any instructions given by Auscol and the provisions of applicable laws, codes of practice and standards; and
 - (c) supply any electricity needed to operate the Equipment and provide suitable storage for the Equipment.
- 8.9 Customer is responsible for maintaining the cleanliness of the Equipment as well as any damage, loss or destruction of the Equipment while on its premises or in its possession. Customer will report any damage to or malfunction of Equipment for whatever reason to Auscol immediately.

- 8.10 Customer will not make any alterations or additions to the Equipment or attach any trademarks or sign writing or in any way alter the appearance of the Equipment or remove from the Equipment any attachments or fittings or trademark, insignia or other identification of Auscol without the prior written consent of Auscol.
- 8.11 If the Equipment needs to be replaced, repaired or serviced as a result of Customer's breach of clauses 8.5, 8.8, 8.9 and 8.10, then in addition to any other right of Auscol, Customer will pay Auscol either the cost of replacing the Equipment, servicing the Equipment or restoring/repairing the Equipment to its original condition, which ever is the lesser.
- 8.12 All Equipment shall remain in the possession of and under the control of Customer and the use or possession of such Equipment shall not be sublet or passed on to any other person, business, corporation or entity without the prior written consent of Auscol.
- 8.13 Customer agrees not to use the Equipment for any purpose other than the depositing and storage of Used Cooking Oil as set out on the Cover Page for the collection and recycling by Auscol.
- 8.14 Customer acknowledges they are responsible for ensuring the Equipment is tested and tagged in accordance with the relevant legislative requirements in that jurisdiction, after 6 months of installation.
- 8.15 To the extent a security interest is created in the Equipment under the terms of this Agreement in favour of Auscol:
- (a) Auscol may perfect such security interest including by registration a financing statement on the Personal Property Securities Register in relation to such security interest, and the Customer agrees to, at its own cost, do anything required by Auscol to ensure such security interest is enforceable, perfected and has first priority;
 - (b) to the extent the law permits, for the purposes of section 115(1) and 115(7) of the *Personal Property Securities Act 2009 (PPSA)*, Auscol need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA, and sections 142 and 143 of the PPSA are excluded, and for the purposes of section 115(7) of the PPSA, Auscol need not comply with sections 132 and 137(3) of the PPSA;
 - (c) Auscol is not required to give any notice under the PPSA (including a notice of verification statement under section 157 of the PPSA) unless a requirement to provide notice under the PPSA cannot be excluded; and
 - (d) neither party may disclose any information of the kind referred to in section 275(1) of the PPSA (including any information or document in connection with any "security" as defined under the PPSA).

9. USED COOKING OIL CONDITIONS

- 9.1 Customer warrants that all Used Cooking Oil:
- (a) composition complies with the requirements stipulated by Auscol to Customer from time to time or if no such requirements are stipulated by Auscol, complies with the requirements of this clause 9;
 - (b) does not contain any material that is classified as dangerous good by the Australian Code for the Transport of Dangerous Goods by Road and Rail;
 - (c) complies with the "National Standard for the Collection and Recycling of Used Cooking Oils and Fats" 2008 from <https://www.ausrenderers.com.au/>;
 - (d) has been stored in containers previously used for food grade products;
 - (e) has been stored in lidded containers free of holes;
 - (f) has been treated and handled as a food product; and
 - (g) is not Contaminated and is free from oil of unknown origin, mineral oil, transformer oil, heating oil, automotive fuels or lubricants, added water, washing detergents, any contact with toxic chemicals such as insecticides, pesticides or other chemicals on the premises, or save all fats that have been collected from grease traps or from other tanks that have effluent lines from other forms of sludge.
- 9.2 In the event that there is a breach of the foregoing warranties, Auscol may, in addition to any other remedy it may have at law, in its absolute discretion determine to:
- (a) refuse to accept the Used Cooking Oil;
 - (b) return the Used Cooking Oil to Customer who must accept it immediately;
 - (c) transport the Used Cooking Oil to any site which will accept the Used Cooking Oil; or
 - (d) subject the Used Cooking Oil to any treatment;
 - (e) withhold payment of any rebates due under clause 6.
- 9.3 To the extent applicable, where Equipment needs to be turned on to heat up the Used Cooking Oil, Auscol will give Customer notice to do so via a phone call or email the day before collection and Customer must turn on the Equipment for the Service to be rendered on the scheduled Service day. Customer acknowledges and agrees that Customer is liable for the Not Switched On Fee set out in the Cover Page for any failure to comply with this clause 9.3.

10. ISCC SELF-DECLARATION

- 10.1 Where Customer is an UCO Producer, Customer agrees that by signing a Service Agreement, the ISCC Self-Declaration, as published on Auscol's website, applies for each Point of Origin stated in the Service Agreement, and is a valid part of this Agreement for the Initial Term. If no objection is made by the Customer up to twelve days before the expiry of each calendar year of this Agreement, the self-declaration is confirmed for the following year.
- 10.2 Where Customer is an Aggregator, the Customer warrants that all Used Cooking Oil collected will comply with all requirements of the ISCC Self-Declaration.

11. RISK AND TITLE

- 11.1 Risk and title in Used Cooking Oil passes from Customer to Auscol upon that Used Cooking Oil being collected by, or delivered to, Auscol.
- 11.2 Risk in the Equipment passes from Auscol to Customer upon that Equipment being collected by, or delivered to, Customer. Title in the Equipment remains with Auscol at all times.

12. LIABILITY

- 12.1 A party is not liable to the other for any delay in, nor any failure to perform, its obligations under the Agreement to the extent such delay or failure is caused by a Force Majeure Event.
- 12.2 If the Force Majeure Event prevents performance of all, or substantially all, of the Agreement for a continuous period exceeding three (3) months, then either party may terminate this Agreement by providing written notice to the other.
- 12.3 Customer indemnifies Auscol and its Related Bodies Corporate against any loss or damage suffered, paid or incurred by any of them arising under or in connection with a breach by Customer of clause 4, 8 or 9.
- 12.4 Except as expressly stated in this Agreement, any term, condition, guarantee or warranty express or implied by statute or otherwise in relation to the Service and/or this Agreement is excluded to the full extent permitted by law. If any such term, condition, guarantee or warranty cannot be excluded at law, then to the extent permitted by law, Auscol's liability for breach of such term, condition, guarantee or warranty is limited (at Auscol's option) in the case of:
- (a) the Service, to resupply of the Service or payment of the cost of the same; and
 - (b) the Equipment, to the repair or replacement of the Equipment, supply of equivalent equipment, or payment of the cost of the same.
- 12.5 Nothing in this Agreement excludes, restricts or modifies the application of the ACL, as amended, consolidated, supplemented or replaced, except to the extent permitted under the ACL.

12.6 In no event will the aggregate liability of a party for all claims and losses, arising out of or in connection with the Agreement in any calendar year, exceed an amount equal to the Charge paid or payable by Customer in that calendar year, subject to clause 12.7.

12.7 The limitation of liability in clause 12.6 does not apply to the liability of a party:

- (a) under any indemnity given by that party in the Agreement which is limited to \$5 million;
- (b) to pay Charges that are due and payable;
- (c) for any matter in respect of which liability may not be limited at law; or
- (d) for death, personal injury and damage to third party property.

12.8 To the full extent permitted by law, neither party is liable for any Consequential Loss arising out of or in connection with the Agreement.

12.9 The limitations and exclusions of liability in this Agreement apply to the maximum extent permitted by law and whether claim is made in contract, tort (including negligence) or any other basis in law or equity.

13. CUSTOMER WARRANTIES

- 13.1 Customer represents and warrants to Auscol that Customer has the power and lawful authority to execute and deliver this Agreement and to consummate and perform its obligations under this Agreement.
- 13.2 Auscol will have no obligation to enquire as to whether a person agreeing to the supply of the Services on behalf of Customer is properly authorised.

14. TRUSTS

- 14.1 Where Customer enters this Agreement in its capacity as trustee for a trust (**Trust**), Customer represents and warrants that:
- (a) it has entered this Agreement in its capacity as trustee for the Trust;
 - (b) no action has been taken or proposed to remove it as trustee of the Trust or to terminate or resettle the Trust;
 - (c) it has the power, and has complied with all requirements under the relevant Trust deed, to enter into and perform its obligations under this Agreement in its capacity as trustee of the Trust; and
 - (d) it has the right to be indemnified out of the Trust assets in respect of its obligations and liabilities under and in connection with this Agreement.
- 14.2 Customer must not, without the consent of Auscol, except as required by law or the Trust deed:
- (a) permit its right to be indemnified out of the Trust assets to be reduced or extinguished;
 - (b) permit a variation to the Trust deed which would have a material adverse effect on Auscol's rights and entitlements under this Agreement; or
 - (c) terminate or resettle the Trust.

15. TERM, DEFAULT and TERMINATION

- 15.1 This Agreement commences on the Commencement Date and continues for the Initial Term unless terminated earlier in accordance with its terms.
- 15.2 Either party can end this Agreement effective at the expiry of the Initial Term by giving written notice to the other party at least sixty (60) days prior to the expiry of the Initial Term. If no such notice has been given, this Agreement will automatically renew for successive one-year terms following the expiry of the Initial Term unless terminated by either party giving at least sixty (60) days written notice to the other party.
- 15.3 A party may terminate the Agreement with immediate effect by giving written notice to the other party if the other party:
- (a) commits a material breach of the Agreement and fails to remedy that breach within twenty one (21) days of receipt of a notice specifying the breach and requiring it to be remedied, subject to the parties meeting to discuss the breach, in good faith, and agree to the remedial steps required by the other party. To avoid doubt, a breach by Customer of clauses 4, 8 or 9 is a material breach for the purposes of this clause; or
 - (b) becomes subject, or threatens to become subject, to any form of insolvency or bankruptcy proceeding, appoints a liquidator, receiver or administrator, enters into an arrangement with its creditors, ceases to trade or do business in the ordinary course or is otherwise unable to pay its debts as and when they fall due.
- 15.4 On termination or expiry of the Agreement:
- (a) Customer's rights to access and use the Traceability Solution immediately cease;
 - (b) Customer must immediately pay Auscol Charges due and payable as at the date of termination or expiry less the amount of any rebates payable by Auscol;
 - (c) Customer must return, or permit Auscol to collect, the Equipment (and for this purpose Customer authorises Auscol to enter any land or premises upon which the Equipment is situated).

16. GENERAL

- 16.1 The entire Agreement between the Customer and Auscol for the Services provided by Auscol is constituted by:
- (a) these Conditions;
 - (b) any other terms and conditions incorporated by reference in the Service Agreement Cover Page;
 - (c) any other terms and conditions which are imposed by law and which cannot be excluded; and
 - (d) any agreed written variation, addendum or annexure.
- 16.2 This Agreement constitutes the entire agreement between the parties in respect of its subject matter and supersedes and replaces all previous arrangements and agreements between them (whether written or unwritten) in respect of that subject matter.
- 16.3 Unless otherwise agreed by the parties in writing, these Terms cannot be varied or substituted by any other terms and conditions.
- 16.4 Neither party may assign its rights under the Agreement without the consent of the other party, except that Auscol may assign its rights or novate its obligations under this Agreement without consent to any of its Related Bodies Corporate. Auscol may subcontract its obligations under the Agreement without Customer consent.
- 16.5 A party waives a right under the Agreement only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- 16.6 If a provision of the Agreement is held invalid or unenforceable, the provision will be read down to the extent necessary to avoid that result and if the provision cannot be read down to that extent, it will be severed without affecting the validity and enforceability of the remainder of the Agreement.
- 16.7 The parties are and will remain independent contractors. Nothing contained in the Agreement will be construed to create an agency, joint venture, partnership or other relationship between the parties.
- 16.8 The laws of New South Wales, Australia govern this Agreement and the parties agree to the non-exclusive jurisdiction of the courts in New South Wales.

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