

Southern Quality Produce Co-operative Limited

TERMS OF ISSUE

"A Class Co-operative Capital Units"

These Terms of Issue are issued by Southern Quality Produce Co-operative Limited under Part 10 of the *Co-operatives Act 1996 (Vic)* and rule 26A of its Rules.

1. INTERPRETATION

1.1 Definitions

In these Term:

- (a) **A Class Units** means units of that class in the Trust;
- (b) **Act** means the *Co-operatives Act 1996*;
- (c) **Applicant** means a person:
 - (i) who is eligible to hold CCUAs;
 - (ii) who makes an application for CCUAs by lodging an Application Form; and
 - (iii) whose name will be entered in the Register as the Holder of CCUAs if the Board determines to issue CCUAs to that person;
- (d) **Application Form** means the official form authorised by the Board for the purpose of applying for CCUAs, which is annexed;
- (e) **Board** means the board of the Co-operative;
- (f) **Co-operative** means Southern Quality Produce Co-operative Limited Reg No 121 090 800;
- (g) **CCUA** means an A Class Co-operative Capital Unit in Southern Quality Produce Co-operative Limited;
- (h) **Distribution** means any of the following:
 - (i) any dividend, income, capital or other distribution from the Trust;
 - (ii) any payment upon redemption or cancellation of units in the Trust; or
 - (iii) any interest on or repayment of capital from the Trust;
- (i) **Encumbrance** means any interest or power:
 - (i) reserved in or over an asset; or
 - (ii) otherwise arising in or over any asset under a mortgage, charge, lien, pledge, trust or power

arising by way of security for the payment of any monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.

- (j) **GST** means goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*, as amended;
- (k) **Holder** means a person registered as the holder of CCUAs as recorded in the Register;
- (l) **Initial Issue Period** means the period starting on the date that the special resolution authorising the issue of CCUAs is passed and ending on 30 July 2010;
- (m) **Issue Date** means the date on which the issue of a CCUA is entered in the Register;
- (n) **Issue Price** means \$5,000.00;
- (o) **Ordinary Resolution** means a resolution which is passed if more than 50% of the votes cast are in favour of the resolution;
- (p) **Register** means register of CCUAs and Holders established and maintained in accordance with Clause 5.2 below;
- (q) **Rules** means the Model Rules of the Co-operative;
- (r) **Special Resolution** means:
 - (i) where the special resolution is being considered pursuant to the Act, a special resolution within the meaning of section 192 of the Act; and
 - (ii) in all other cases, a resolution which is passed if 75% or more of the votes cast are in favour of the resolution;
- (s) **Terms** means these Terms of Issue for A Class Co-operative Capital Unit in Southern Quality Produce Co-operative Limited
- (t) **Trustee** means SQP Storage Pty Ltd A.C.N. 141 413 167 or its successor as Trustee of the Trust; and
- (u) **Trust** means the SQP Grain Storage Trust established by Unit Trust Deed dated 11 February 2010.

1.2 Interpretation

Unless expressed to the contrary, in these Terms:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes all other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;

- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it; and
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced; and
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) a reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person of that group;
- (h) a reference to more than one (1) party shall be a reference to each of them jointly and severally; and
- (i) a reference to "dollars" or "\$" is to Australian currency.

1.3 **Headings**

Headings are for ease of reference only and do not affect interpretations.

2. **CCUAs**

2.1 **Membership condition**

No person may apply for, take transfer of or hold CCUAs unless that person is also a member of the Co-operative

2.2 **Rights**

- (a) Each CCUA is issued on and subject to these Terms.
- (b) The rights of the Holders of CCUAs may only be varied by a Special Resolution of Holders.
- (c) The Holders do not have the rights of members of the Co-operative solely by virtue of being Holders of CCUAs.

3. **APPLICATION FOR CCUAs**

3.1 **Application Form**

An application for CCUAs must be made using the Application Form.

3.2 **Payment**

Each Application Form must be accompanied by payment in full (“Application Price”), calculated in accordance with the following:

Application Price = Issue Price x CCUAs applied for

3.3 **Consideration**

- (a) Subject to paragraph (b), the Board must consider each application for CCUAs.
- (b) The Board is not obliged to consider any application for CCUAs that is not:
 - (i) made using the Application Form; or
 - (ii) accompanied by the full Application Price.
- (c) The Board at its sole discretion may accept or reject an application for CCUAs and need not give any reason for its decision.

3.4 **Refund**

If the Board rejects an application for CCUAs, the whole of any money lodged with the Application Form must be refunded to the Applicant without interest.

4. **ISSUE**

4.1 **Issue**

- (a) The Board may issue CCUAs in accordance with these Terms.
- (b) The Board may issue a maximum of 600 CCUAs during the Initial Issue Period.
- (c) If the initial issue is oversubscribed, CCUAs will be issued to Applicants on a pro rata basis.
- (d) If the Board receives subscriptions for less than 600 CCUAs or less during the Initial Issue Period, the Board may, in its discretion:
 - (i) extend the Initial Issue Period for one (1) month;
 - (ii) cancel the issue of CCUAs; or
 - (iii) proceed with the issue of CCUAs based on the number subscribed for.
- (e) After the Initial Issue Period, the Board may issue additional CCUAs if authorised by the Holders in accordance with clause 4.5.

4.2 **Issue Price**

- (a) Each CCUA will be issued for the Issue Price.
- (b) The Issue Price is exclusive of GST. The Board considers that the CCUAs are financial supplies and therefore not subject to GST. If the Board's assessment is incorrect, Holders must pay GST in addition to the Issue Price upon demand by the Board.

4.3 **Issue Date**

CCUAs will be issued on the Issue Date.

4.4 **Maximum Holding**

No Holder may hold more than 20% of the total number of CCUAs on issue at any time.

4.5 **Further issue**

- (a) The Board may not issue further CCUAs unless authorised by a Special Resolution of the Holders.
- (b) Nothing in this clause or any provision of these Terms prevents the Board from issuing other classes of co-operative capital units.

5. **NOTIFICATION, REGISTER & CERTIFICATES**

5.1 **Notification**

The Board must notify the Applicant of an issue of CCUAs and of the date of entry into the Register.

5.2 **Register**

- (a) The Co-operative must establish and maintain a Register of CCUAs and Holders.
- (b) The Board must ensure that the following details are entered into the Register as soon as possible after the Board approves the issue of CCUAs:
 - (i) the name of the Holder;
 - (ii) the number of CCUAs held by the Holder;
 - (iii) the Issue Date;
 - (iv) the Issue Price;
 - (v) the Payment received from the Holder; and
 - (vi) the date of entry into the Register.
- (c) The Holder becomes entitled to exercise the rights attaching to the CCUAs on the date of entry into the Register.

5.3 **Certificates**

The Board may, but is not obliged to, issue certificates to Holders setting out the details entered into the Register in respect of that Holder.

6. **STATUS**

6.1 **A Class Units**

- (a) The Co-operative will apply for and hold, on trust for each Holder, one A Class Unit in the Trust for each CCUA held by that Holder.

- (b) The Board is authorised to invest in A Class Units in the Trust on behalf of Holders.

6.2 Entitlement to repayment of capital

The Holders are only entitled to a repayment of capital to the extent that such capital is solely represented by or is attributable to the A Class Units held by the Co-operative.

6.3 Entitlement to participate in surplus assets

- (a) Subject to paragraph (b), the Holders of CCUAs have no right to participate in surplus assets of the Co-operative.
- (b) The Holders of CCUAs are entitled to share proportionately in any surplus assets of the Co-operative that are solely attributable to the A Class Units held by the Co-operative.

6.4 Entitlement to Distributions

The Co-operative must pay all Distributions received by the Co-operative on A Class Units in the Trust proportionately to the Holders of CCUAs.

6.5 Entitlement to interest on capital

The Holders of CCUAs are not entitled to interest on their CCUAs.

6.6 Winding up

On winding up of the Co-operative CCUAs rank:

- (a) *pari passu* amongst themselves; and
- (b) ahead of all unsecured creditors in respect of income or assets arising from or comprising the A Class Units.

6.7 Silo advisory committee

- (a) The Holders of CCUAs collectively have the right to form an advisory committee of 5 persons (who must be Holders) to advise the Board in the operation of the grain storage facility.
- (b) Each person so appointed shall hold office until the next meeting of Holders.

6.8 Encumbrance

The Holders must not grant or permit the granting of any Encumbrance over any CCUAs.

6.9 Redemption & repurchase

CCUAs are not redeemable but the Co-operative may repurchase CCUAs from Holders. CCUAs repurchased may be reissued.

7. FURTHER RULES RELATING TO CCUAs

7.1 Joint Holders

- (a) CCUAs may be held jointly.

- (b) The Rules relating to jointly held shares in the Co-operative apply to CCUAs as if they were shares.

7.2 **Liability of Holders**

- (a) A Holder is not, as a Holder, under any personal liability to the Co-operative except for the amount, if any, unpaid on the Holder's CCUAs.
- (b) On the death of a Holder, the Holder's estate remains liable as the Holder until some other person is registered in the Holder's place.

7.3 **Forfeiture of CCUAs**

- (a) The Board may declare that the CCUAs of a Holder are forfeited if the Board is entitled to cancel the membership in the Co-operative of that Holder.
- (b) A Holder whose CCUAs have been forfeited remains liable to the Co-operative for any amount unpaid as at the date of forfeiture in respect of the CCUAs forfeited.

7.4 **Sale of CCUAs**

The Co-operative may, but is not obliged to, sell a Holder's CCUAs at the request of the Holder.

7.5 **Transfer and transmission of CCUAs**

Rule 26 of the Rules applies to CCUAs as if a reference to "debenture" in that Rule was a reference to "CCUA".

7.6 **Death of a Holder**

Rule 23 of the Rules applies to CCUAs and Holders as if they were shares and members respectively.

7.7 **Registration as trustee, executor or administrator**

Rule 24 of the Rules applies to CCUAs and Holders as if they were shares and members respectively.

8. **MEETINGS OF CCUA HOLDERS**

8.1 **Convening a meeting**

- (a) The Board must convene a meeting of Holders at least once per annum.
- (b) The Board must, if requested to do so by the Holders of 20% of the total number of CCUAs on issue.

8.2 **Notice of meetings**

Rule 29 of the Rules applies as if a meeting of Holders were a general meeting of members.

8.3 **Quorum**

- (a) No business may be conducted at a meeting of Holders unless the Holders of not less than 20% of the total number of CCUAs are present, in person or by proxy.
- (b) Sub-rules 31(3) and (4) of the Rules apply to meetings of Holders.

8.4 **Meeting procedure**

- (a) The Holders present at a meeting of Holders may elect one of their number to chair the meeting.
- (b) Meetings of the Holders shall, as far as possible, be held in the same manner and according to the same rules and procedures for general meetings of members of the Co-operative, as set out in the Rules, provided however that voting at meetings of Holders is on the basis of one vote per CCUA held.

9. **MEETINGS OF THE CO-OPERATIVE**

Holders are entitled to receive notice of all meetings of the co-operative and all other documents in the same manner as the holder of a debenture of the co-operative