

PART C – EASTERN AUSTRALIA ONLINE AND FORWARD CASH TERMS & CONDITIONS

Subject to the Special Conditions, the following terms and conditions apply to the sale of the Commodity by the Supplier named in the Grain Purchase Contract Confirmation (**Supplier**) and CBH Grain Pty Ltd ABN 39 089 394 883 (**Buyer**).

1. DEFINITIONS

Unless otherwise stated:

"Actual or Estimated Price" means the applicable fair market price at which grain meeting the description of the Commodity may be bought on the open market between willing but not anxious vendors and purchasers on the relevant day;

"Business Day" means a day that is not a Saturday, Sunday or public holiday in either the Supplier's state or Melbourne, Victoria;

"CBH" means Co-operative Bulk Handling Limited;

"CBH Debt" means any amount that is due and payable by the Supplier to CBH or any related body corporate of CBH (as that term is defined in section 50 of the *Corporations Act 2001 (Cth)*);

"Charges" means all charges, levies, assessments, taxes or fines levied, assessed or charged on the Commodity by any statutory authority, organisation, fund or government department under any legislative or regulatory authority, custom or trade practice in the industry;

"Commodity" means the grain described in item 2;

"Contract" means the contract evidenced by these terms and conditions, the Special Conditions and the Grain Purchase Contract Confirmation;

"Daily Contract Price" means the price published daily by the Buyer on its 'Daily Contract Price' sheet, as the price per tonne that the Buyer will purchase grain that meets the description of the Commodity on the same terms as contained in these terms and conditions;

"Delivery Period" means the period specified in item 4.1;

"Force Majeure" means strikes, lock-out, national or state-wide labour disputes or industrial action (not being a strike, lock-out or other industrial disturbance or restraint of labour involving only the Supplier and the Supplier's employees), act of public enemy, war involving Australia, blockade, civil commotion, governmental restraint, embargoes, or any other cause which in the opinion of the Buyer is reasonably beyond the parties' control. It does not include inherent, known or real risks that may lead to crop failure, such as the weather;

"Genetically Modified Organism" has the meaning given to that term in the *Gene Technology Act 2000 (Cth)*.

"Grain Purchase Contract Confirmation" means the Buyer's contract confirmation schedule.

"GST" means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST law or otherwise on a supply;

"GST law" means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

"item" means an item of the Grain Purchase Contract Confirmation or corresponding to the Grain Purchase Contract Confirmation in any verbal offer;

"GTA Location Differentials" means the differential rate published by GTA and applicable at the time of delivery that theoretically compensate for the difference in value of the Commodity between the Receival Point and the port in the Nominated Port Zone;

"Net Price" means the price stated in item 3.1 or 3.2, as applicable, which is, in the case of a contract formed under clause 2, the Daily Contract Price on the day that the Contract is formed as adjusted for any Price Variations (if any) specified in item 5, minus all Charges and the GTA Location Differentials;

"Natural Port Terminal Zone / Nominated Port Zone" means the zone specified in item 4.2;

"Nomination" means the choice by the Supplier of the Buyer as the person to whom the Supplier wishes to transfer title to grain.

"Old Season Grain" means Grain that has been harvested and delivered in the Season previous or prior to which the particular grain Nomination or Nominations relates;

"Price Variations" means variations in the contract price for the Commodity as a result of variations in the quality of the Commodity within the Receival Standards upon delivery to the Receival Point as set out:

- (a) for wheat, in the CBH Grain Quality Rewards Matrices;
- (b) for barley, canola, oats, lupins, field peas or chick peas, in the Receival Standards,

details of which are available from the Buyer on request;

"Receiver" means any of the Buyer's approved bulk handlers who operate within the Natural Terminal Port Zone;

"Receival Point" means any site operated by the Receiver accepting the Commodity and deemed by GTA to be within the Natural Terminal Port Zone at the time of delivery;

"Receival Standards" means the standards set for the Commodity, by the Buyer, and as varied by any relevant standards set by the Receiver at a Receival Point from time to time (whether or not the Receiver has notified the Supplier of those standards). A copy of the Receival Standards will be provided to the Supplier by the Buyer upon written request;

"Recipient Created Tax Invoice" includes any document or record treated by the Commissioner of Taxation as a recipient created tax invoice or as a document entitling a recipient to an input tax credit;

"Season" means the grain harvesting and delivery season, generally commencing on 1 November of one year and ending in February of the following year;

"Special Conditions" means the special conditions (if any) specified in item 5; and

"Table" means the table following on from these terms.

"Tonnage" means the tonnage stated in item 2.3.

2. OFFER FOR SALE

2.1 The Supplier offers to sell the Commodity to the Buyer free of all liens and encumbrances for the Net Price on these terms and conditions.

2.2 The offer in clause 2.1 will be deemed to be accepted by the earlier of:

- a. verbal acceptance of the offer by the Buyer and transmission of the Grain Purchase Contract Confirmation by the Buyer to the Supplier; or
- b. execution by the Supplier and Buyer of the Grain Purchase Contract Confirmation,

and these terms and conditions form part of the Contract.

2.3 The Buyer is not obliged to communicate its acceptance of the offer to the Supplier.

2.4 The offer in clause 2.1 remains open for acceptance by the Buyer until rejected in writing by the Buyer or 5:00pm AEST (or AEDT) on the day on which the offer is made, whichever is earlier.

3. STRIKE PRICE

3.1 This clause only applies if the "Strike Price" and the "Strike price offer expires on" panels are completed in item 3.2.

3.2 The Supplier offers to sell the Commodity to the Buyer free of all liens and encumbrances for the Net Price on these terms and conditions subject to the Daily Contract Price equalling or exceeding the Strike Price before the offer expires.

3.3 Upon the Daily Contract Price equalling or exceeding the Strike Price the offer in clause 3.1 is accepted, and these terms and conditions form part of the Contract.

3.4 The Buyer is not obliged to communicate its acceptance of the offer to the Supplier.

3.5 The offer in clause 3.2 remains open for acceptance by the Buyer until rejected in writing by the Buyer or the day specified in item 3.2 as the day the strike price offer expires, whichever is earlier.

4. PAYMENT

4.1 Subject to clauses 4.3 and 4.6 below, the Buyer must pay the Net Price to the Supplier within 7 Business Days from the date of delivery in accordance with clause 6.

4.2 In the event the Contract relates to Old Season Grain, subject to clauses 4.3 and 4.6, the Buyer must pay the Net Price to the Supplier within 21 Business Days of the date of delivery in accordance with clause 6.

4.3 If there are:

- a. outstanding liens or encumbrances affecting the Commodity at the date of delivery;
 - b. liquidated damages owing under clause 8;
 - c. any other monies or liabilities due to the Buyer by the Supplier on any account; or
 - d. an outstanding CBH Debt,
- ("Monies Owing")**, the Buyer may deduct the Money Owing from the Net Price.

4.4 The Buyer is not required to pay the supplier interest on overdue monies.

4.5 Withholding Funds

If the Supplier has a potential liability to the Buyer or any of its Related Bodies Corporate under any other contract, then the Buyer may in its discretion and notwithstanding any other provision of this Contract retain an amount equivalent to the Supplier's potential liability until such time that the Supplier's potential liability has either:

- a. crystallised and been paid; or
- b. ceased to exist.

4.6 Right of set off

Any amounts owing by the Buyer or any of its Related Bodies Corporate to the Supplier whether under this Contract or otherwise, may, at the election of the Buyer, be set off against any amounts owing by the Supplier to the Buyer or any of its Related Bodies Corporate, whether under this Contract or otherwise. The Buyer 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 Buyer under this Contract. The

- Buyer will give notice to the Supplier of any set off effected under this clause.
- 4.7 If the Seller requests payment by cheque, the Buyer is unable to ensure that the cheque will be received within 15 Business Days of the end of the week of delivery.
- 5. FORCE MAJEURE**
- 5.1 If either party is unable by reason of Force Majeure to perform any obligation under this Contract, it must give the other party prompt written notice with full particulars of the Force Majeure and the extent to which it is likely to be unable to perform its obligations.
- 5.2 The obligation of the party giving the notice will be suspended so far and so long as it is affected by the Force Majeure.
- 5.3 The party giving the notice under clause 5.1 must use its reasonable endeavours to mitigate the effects of the Force Majeure.
- 5.4 Neither party will be able to claim Force Majeure under this Contract on the basis of anything that could reasonably be known to exist as at the date of this Contract.
- 5.5 If the Force Majeure continues for more than 6 months from the date of the notice in clause 5.1, the Buyer may, in its discretion, terminate this Contract.
- 6. DELIVERY**
- 6.1 The Supplier must deliver the Commodity to the Receiver at a Receival Point within the Natural Terminal Port Zone into the Buyer's name and quote the number of this Contract within the Delivery Period.
- 6.2 Delivery is deemed to occur upon the issue of a receipt by the Receiver for the Commodity.
- 6.3 Prior to taking delivery of the Commodity, and whenever the Supplier delivers the Commodity, the Receiver may examine the Commodity to determine if it satisfies the Receival Standards. The Supplier must do all things necessary to facilitate the Receiver's examination of the Commodity.
- 6.4 Deliveries which:
- are outside the Delivery Period;
 - do not comply with the Commodity description;
 - do not comply with the Receival Standards;
 - are not delivered within the Natural Terminal Port Zone;
 - are comprised of a transfer from another grain marketer;
 - are not delivered to the Nominated Receival Point (if any); or
 - do not quote the correct contract number and/or supplier number,
- are not deliveries for the purposes of this Contract, unless the Buyer, at its sole discretion, deems the relevant delivery to be compliant and accepts the delivery under this Contract.
- 6.5 If the Receival Point chosen by the Supplier is not able to receive the Commodity, the Supplier must deliver the Commodity to another Receival Point as agreed between the parties.
- 6.6 The Supplier must pay all costs incurred in delivering the Commodity to a Receival Point or any alternate Receival Point.
- 6.7 The weighbridge weights, and the unconditional certification of compliance with the Receival Standards by the Receiver, are final and binding.
- 7. EXCESS TONNES**
- 7.1 If the aggregate deliveries of the Commodity by the Supplier exceed the Tonnage, the Buyer may in its discretion:
- accept the excess tonnes under this Contract;
 - accept the excess tonnes as a delivery under any other agreement between the Buyer and Supplier for the sale and purchase of the Commodity;
 - accept the excess tonnes as a spot sale and purchase, and pay the Supplier the relevant Daily Contract Price (as at the day that the Buyer elects to accept the excess tonnes) for the excess tonnes; or
 - decline to purchase the excess tonnes.
- 7.2 If the Buyer declines to purchase the excess tonnes of the Commodity, the excess tonnes will, where applicable, be delivered to a marketing pool being operated by the Buyer. The Supplier may request alternative arrangements with respect to all other excess tonnes of the Commodity in writing. The Supplier must pay all costs and charges (including transportation, handling and otherwise) incurred with respect to the excess tonnes.
- 8. DEFAULT**
- 8.1 Failure to deliver the Commodity in accordance with the terms and conditions of the Contract is a default by the Supplier.
- 8.2 If the Supplier defaults under this Contract, the Buyer may recover liquidated damages from the Supplier calculated as follows:
- if the Net Price is less than the Actual or Estimated Price, the difference between the Net Price and the Actual or Estimated Price multiplied by the total shortfall in tonnes, the relevant Actual or Estimated Price being either at the time the Supplier advises the Buyer of the default or, in the absence of such advice, on the next Business Day following the end of the Delivery Period. Where such an amount is less than \$200.00, a minimum charge of \$200.00 applies; or
 - if the Actual or Estimated Price is less than the Net Price, \$200.00.
- c. damages for multigrade contracts will be determined on: the F1 price for barley contracts; the APW1 price for wheat contracts; the milling grade for oat contracts; the standard grade for field pea, canola, lupins and faba bean contracts.
- 8.3 The parties acknowledge that the liquidated damages in clause 8.2 represent an accurate estimate of the loss that the Buyer is likely to suffer if the Supplier is in default.
- 8.4 If the Supplier defaults under this contract the Buyer has the right to not enter into further contracts with the Supplier.
- 8.5 If the Supplier fails to make a payment in full on the due date, the Buyer may charge interest on the unpaid amount.
- 8.6 The Supplier must pay interest on all amounts owing to the Buyer on any invoice that remains outstanding upon expiration of the due date expressed in the invoice at a rate 5% above the rate published on the Australian Financial Markets Association webpage BBSW as at 11 am on 31st October each year or as otherwise amended and notified to the Supplier if there is a significant rise in this rate.
- 8.7 Interest will be calculated daily from the due date expressed in the invoice, until all amounts owing on the invoice, including interest, have been paid.
- 8.8 Payments by the Supplier marked specifically for a particular invoice will be applied by the Buyer firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.
- 8.9 Any loss or damage incurred by the Buyer in recovering any outstanding monies shall be paid in full by the Supplier.
- 9. RISK AND TITLE**
- 9.1 The Supplier bears all risk until the Commodity is delivered in accordance with the terms of this Contract.
- 9.2 Title and ownership of the Commodity passes to the Buyer immediately upon delivery in accordance with the terms of this Contract.
- 10. ELECTRONIC TRANSACTIONS**
- 10.1 The Supplier agrees and acknowledges that:
- its entry into this Contract is not invalid for the purposes of any applicable law merely because it took place wholly or partly by means of one or more electronic communications (whether by email, online, SMS or other form of electronic message);
 - the Buyer may rely on any instruction, confirmation or other communication received from the Supplier via electronic communication (whether by email, online, SMS or other form of electronic message) which reasonably appears to have been sent by the Supplier;
 - it is the Supplier's responsibility to:
 - provide the Buyer with true, accurate and complete personal information (including, without limitation, e-mail address and mobile phone number); and
 - notify the Buyer immediately upon becoming aware of any change to that information, or of any actual or suspected breach of security of that personal information (including unauthorised access of the Supplier's email account or mobile phone, or that a mobile phone has been lost, stolen or misused) or that an unauthorised transaction has occurred;
 - the Buyer will rely on the information provided by the Supplier in accordance with clause 10.1(c) for the purposes of entering into this Contract; and
 - without limiting any other right of the Buyer under this Contract, the Supplier will be liable for losses suffered by the Buyer caused by the Supplier's failure to comply with clause 10.1(c) or resulting from any unauthorised transaction caused by the Supplier voluntarily disclosing its personal information to anyone, keeping a record of that personal information without making a reasonable attempt to disguise it or preventing unauthorised access to it, or acting with extreme carelessness in failing to protect that information.
- 10.2 The Buyer may, at its discretion, refuse an instruction, confirmation or other communication received from the Supplier via electronic communication (whether by email, online, SMS or other form of electronic message), in which case the Buyer may require the Supplier to verify the instruction, confirmation or other communication by another means. Failure by the Supplier to verify the instruction, confirmation or other communication to the Buyer's satisfaction will give rise to a right of the Buyer to declare null and void any transaction purported to be entered into by the Supplier.
- 11. SUPPLIER'S WARRANTIES AND INDEMNITIES**
- 11.1 Warranties
- The Supplier warrants to the Buyer that:
- the Commodity meets the Receival Standards;
 - the Commodity is not contaminated with pesticides or herbicides;
 - none of the Commodity is a Genetically Modified Organism (other than as notified to the Buyer, and agreed in writing by the Buyer, prior to delivery)

- d. in entering into the Contract it has relied on its own skill and judgment;
 - e. it has not relied in any way on the Buyer's skill or judgment; and
 - f. it has not relied in any way on any representation made by the Buyer that has not been expressly stated in this agreement or upon any descriptions, illustrations, specifications or information contained in any other documents.
- 11.2 **Indemnities**
The Supplier agrees to indemnify the Buyer (and any related body corporate) from and against all actions, claims, causes of action (whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses the Buyer suffers as a result of:
- a. any of the warranties set out in clause 11.1 being false, incorrect or misleading (whether by omission or otherwise);
 - b. a person claiming an interest in the Commodity regardless of whether the Supplier has notified the Buyer of that claim;
 - c. the death or personal injury of any person that is caused or contributed to by the Supplier or its officers, employees, contractors or agents; and
 - d. any breach of this Contract, including but not limited to a failure to meet the Receival Standards.
12. **AUTHORITY**
- 12.1 Each party warrants its authority and power to enter into this Contract.
13. **LIMIT OF LIABILITY**
- 13.1 The Buyer and the Receiver will not, to the fullest extent permitted by law, be under any liability for any direct, indirect, consequential or any other loss, expenses or damage resulting from the negligence or alleged negligence of the Buyer, the Receiver or any of their servants or agents in the performance of their obligations under the Contract, however it arises.
- 13.2 Except as specified in this Contract, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, by the Buyer and the Receiver, are excluded to the fullest extent permitted by law.
14. **GENERAL**
- 14.1 The Buyer, at its discretion, may offer to amalgamate contracts of the same Commodity under one contract number. The contract, when amalgamated, will replace all previous contracts subject to the amalgamation.
- 14.2 Time is of the essence in every respect.
- 14.3 This Contract is governed by the laws of the State of the Natural Port Terminal Zone and the parties submit to the non-exclusive jurisdiction of the Courts of the State of the Natural Port Terminal Zone and, as applicable, the Commonwealth of Australia.
- 14.4 All notices, requests, demands and other communications under or in connection with this Contract must be in writing, and must be given to the parties at their address or facsimile number shown in the Grain Purchase Contract Confirmation, or as otherwise notified. A notice sent by mail is deemed to have been given 72 hours after being sent in a properly addressed pre-paid envelope.
- 14.5 The Supplier must not assign its rights under, or the benefit of, this Contract. The Buyer has the right to assign its rights under, or the benefit of, this Contract.
- 14.6 **Liability of Supplier**
In this Contract:
- a. if the Supplier is comprised of more than one person in respect of the delivery title, then the obligations of the Supplier will bind all parties listed on the delivery title jointly and severally; and
 - b. if the Supplier enters into this Contract as a trustee, the Supplier shall be liable under this Contract in its personal capacity and in its capacity as trustee of the trust.
- 14.7 The Supplier acknowledges and agrees that any telephone conversation with the Buyer may be recorded and kept as evidence of the Supplier's instructions unless the Supplier objects at the beginning of the telephone conversation.
- 14.8 Except as otherwise provided in this Contract, this Contract may only be varied by agreement in writing.
- 14.9 Except as otherwise provided in this Contract, each party must bear its own legal and other costs and expenses relating to the preparation of, and performance of its obligations under, this Contract.
- 14.10 If any term or part of this Contract is or becomes invalid or unenforceable at law, then that term or part will be deemed to be severed from this Contract. Severance will not affect the remainder of this Contract, and the remainder of this Contract will continue to be valid and enforceable.
- 14.11 Waiver of any power or right arising under this Contract must be in writing and signed by the party granting the waiver. Any failure or delay by a party to exercise a power or right does not operate as a waiver of that power or right.
- 14.12 This Contract may be executed in any number of counterparts, all of which taken together are deemed to constitute one document.

- 14.13 This Contract forms the entire agreement between the parties respect to the sale and purchase of the Commodity.
15. **GST**
- 15.1 **Defined Terms**
Words used in this clause 15 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.
- 15.2 **Consideration exclusive of GST**
Unless otherwise specified, the Consideration does not include GST.
- 15.3 **Supplier's GST liability**
To the extent that the Supplier is required to pay GST on a supply under the Contract:
- a. the Buyer must pay to the Supplier the amount of GST that the Supplier is liable to pay (subject always to the Supplier providing the relevant information to the Buyer); and
 - b. the Buyer must give the Supplier:
 - (1) if the Supplier has provided a valid ABN and is registered for GST: a valid Recipient Created Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that The Buyer is obliged to pay for the supply; or
 - (2) if the Supplier has provided a valid ABN but is not registered for GST: a payment advice setting out the amount paid to the Supplier excluding GST; or
 - (3) if the Supplier has not provided a valid ABN: a payment advice setting out the amount paid to the Supplier excluding GST and subject to any withholding tax in accordance with clause 15.5.
- 15.4 **The Buyer's GST liability**
To the extent that The Buyer is required to pay GST on a supply under the Contract:
- a. the Supplier must pay to the Buyer the amount of GST that the Buyer is liable to pay; and
 - b. the Buyer must give the Supplier a valid Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that the Supplier is obliged to pay for the supply.
- 15.5 **Withholding Tax**
If the Supplier:
- a. does not have an ABN or does not provide a valid ABN to the Buyer; and
 - b. has not provided an executed Statement by a supplier form to the Buyer,
- the Buyer may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.
16. **TOLERANCE**
This is a zero tolerance contract which means that the Buyer is responsible for delivery of the contracted amount and there is no flexibility as to delivered tonnage. Payment for tonnes delivered in excess of the contract tolerance may be delayed.
17. **DISPUTE RESOLUTION**
- 17.1 **Disputes**
All disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 17.
- a. A dispute shall be referred to the CBH Grain Head of Accumulation for resolution. The CBH Grain Head of Accumulation and the Supplier shall meet or confer at least once within one (1) Business Day of the notification of the dispute to discuss the dispute and attempt to resolve the dispute.
 - b. Where the dispute relates to invoiced discretionary Services (as set out in the Table), the Supplier is to inform the CBH Grain Head of Accumulation immediately, and before the due date of that invoice.
- 17.2 **Escalation of Dispute – Executive Resolution**
- a. If no resolution of the dispute can be reached in accordance with clause 17.1, within seven (7) days of the dispute being notified to the CBH Grain Head of Accumulation then the CBH Grain Head of Accumulation shall refer the dispute to the CBH Grain General Manager. The Supplier and the CBH Grain General Manager:
 - (1) will meet or confer at least once at a time mutually convenient no later than five (5) Business Days after the dispute has been referred to him; and
 - (2) may decide on the methods and procedure by which they will resolve the dispute, which may include the obtaining of expert advice.
- 17.3 **Payment of invoices pending resolution of a dispute**
Notwithstanding anything in this Agreement, the Supplier is not entitled to withhold payment of the undisputed amount of any invoice. If the Supplier cannot provide a reasonable estimate of the disputed amount the Supplier will not be entitled to withhold any payment.

18. **EXCLUSION OF GTA TRADE RULES**

The Grain Trade Australia Trade Rules are expressly excluded from this Agreement.

Table	
The following GST exclusive fees apply for discretionary Services required or utilised by or on behalf of a Supplier:	
Column 1 : Service	Column 2 : Fee
Third Party PPSR administration and processing	\$175.00 per Season per transaction
Amounts paid by <ul style="list-style-type: none">- electronic funds transfer to Supplier's nominated account- cheque drawn to Supplier's order	unlimited free transactions \$12.50 each cheque drawn
Replacement Recipient Created Tax Invoice	\$7.50 per electronic invoice \$10.00 per printed invoice
Duplicate RCTI (i.e. copy to nominated adviser or accountant where original sent to Supplier)	\$125.00 per Season