

# CBH Grain Eastern Australia General Terms and Conditions - Pool Contracts

Subject to the Special Conditions, the following terms and conditions apply to the sale of the Grain by the Supplier named in the Schedule ("Supplier") to CBH Grain Pty Ltd ABN 39 089 394 883 ("CBH Grain").

## 1. TERMS AND CONDITIONS

The following terms and conditions are incorporated into the CBH Grain Pool Contract made between the Supplier and CBH Grain and formed upon the Supplier (or its representative) signing and completing documentation in a manner which specifies CBH Grain as the acquirer of the Grain and the payment method.

### 1.1 Definitions

Unless otherwise stated:

**"Above the Line Direct Costs"** means direct costs charged to the Applicable Pool in relation to the Grain including the recovery of Operational Costs, all gains and losses, costs, charges, expenses, bank charges, liabilities and outgoings of CBH Grain which it determines to be attributable to the sale, risk management and disposal of the Grain, the buying of grain, the buying of grain to cover any short positions and the overall management of the Applicable Pool, whether incurred within or outside Australia.

**"Adjustment Note"** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.

**"Advance Percentage"** means the percentage specified as the "Advance Percentage" in the Pool Conditions.

**"Amount Owing"** means, at any time, the amount the Supplier owes CBH Grain at that time for all Loans provided to the Supplier in respect of all the Supplier's deliveries of Grain, together with all fees, costs, charges and expenses and all accrued but unpaid interest on those Loans which is payable by the Supplier to CBH Grain.

**"Applicable Pool"** means the Pool to which the Grain is delivered or to which the Grain is allocated by CBH Grain in accordance with the Contract.

**"Below the Line Direct Costs"** means the direct costs charged to CBH Grain in relation to the Grain associated with the receipt, storage, handling, delivery and other activities of the Applicable Pool, including where applicable the delivery of the Grain into the Applicable Pool and all other overheads, gains or losses, costs, charges, expenses, bank charges, liabilities and outgoings of CBH Grain which it determines to be attributable to the sale, risk management and disposal of the Grain, the buying of grain to cover any short positions and the overall management of the Applicable Pool, whether incurred within or outside Australia, which are not Above the Line Direct Costs.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

**"Carrying Costs"** means the sum of the:

- a. Pool Financing Costs; and
- b. Charges.

**"CBH"** means Co-operative Bulk Handling Limited ABN 29 256 604 947.

**"CBH Group Debt"** means any amount that is due and payable by the Supplier to CBH or any Related Body Corporate of CBH.

**"Charges"** means all charges, levies, assessments, taxes or fines levied, assessed or charged on the Grain by any statutory authority, organisation, fund or government department under any legislative or regulatory authority, custom or trade practice in the industry, including any end point royalties payable to PBR holders in respect of the Grain.

**"Commodity Finance Option"** means the agreement between the Supplier and CBH Grain on the terms set out in clause 9.

**"Consideration"** means the consideration payable by CBH Grain to the Supplier for the Grain calculated in accordance with clause 6.2, 7.2, 8.2 or 9.3.

**"Contract"** means the contract constituted by:

- a. these general terms and conditions; and

- b. the Schedule; and
- c. the Pool Conditions.

**"Credit Limit"** means the maximum principal amount that CBH Grain will lend the Supplier in respect of a delivery of Grain under the Commodity Finance Option which is calculated in accordance with clause 9.8.

**"Default"** in relation to the Commodity Finance Option has the meaning given in clause 9.19.

**"Default Rate"** means the 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.

**"Deferred Payment Option"** means the payment option specified in clause 7.

**"Delivery Period"** means the period commencing on the day published as the beginning of the delivery period for the Applicable Pool on the Web Site (or through such other means as CBH Grain may determine) until the day CBH Grain gives notice on the Web Site (or through such other means as CBH Grain may determine) that it no longer offers the Applicable Pool.

**"Delivery Site"** means the relevant authorised bulk handler's site at which the Supplier elects to deliver the entitlement to the Grain to CBH Grain.

**"Delivery Ticket"** means the relevant authorised bulk handler's delivery ticket documentation confirming, amongst other things, the tonnage delivered, quality of the Grain, acquirer of the Grain and payment method selected which is provided to the Supplier at the Delivery Site.

**"Direct Costs"** means the Above the Line Direct Costs and the Below the Line Direct Costs.

**"Distributions"** means the amounts paid or payable by CBH Grain in accordance with clause 8.3 or clause 9.3 for a delivery of Grain under the Contract.

**"Distribution Instalment"** means a proportion of the Estimated Pool Return determined by CBH Grain in its absolute discretion adjusted for Quality Variations (if any) on a load by load basis at the time the payment of the instalment is made and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return) the:

- a. Estimated Management Fee;
- b. Estimated Carrying Costs;
- c. Estimated Direct Costs; and
- d. Estimated Freight.

**"Distributions Payment Option"** means the payment option specified in clause 8.

**"Drawdown"** means each principal amount provided or to be provided as a Loan under the Commodity Finance Option.

**"Encumbrance"** means any security for the payment of money or the performance of obligations including (without limitation) a mortgage, charge, lien, pledge, or trust.

**"Estimated Management Fee"** means the estimate of the Management Fee that CBH Grain in its absolute discretion calculates immediately prior to a Payment Instalment.

**"Estimated Carrying Costs"** means the estimate of the Carrying Costs that CBH Grain in its absolute discretion calculates immediately prior to a Payment Instalment.

**"Estimated Costs"** means, in relation to a delivery of Grain under the Contract, the sum of CBH Grain's estimate of the following amounts:

- (a) Charges relating to that delivery;
- (b) Direct Costs relating to that delivery;
- (c) Freight relating to that delivery (which will be based on the GTA Location Differentials); and
- (d) (where applicable) interest which is likely to accrue on the Supplier's Loan relating to that delivery.

**"Estimated Direct Costs"** means the estimate of the Direct Costs that CBH Grain in its absolute discretion calculates immediately prior to a Payment Instalment.

**"Estimated Freight"** means the estimate of the Freight that CBH Grain in its absolute discretion calculates immediately prior to a Payment Instalment.

**"Estimated Pool Return"** means the estimate of Final Equity that CBH Grain in its absolute discretion calculates from time to time by and publishes on the Web Site.

**"Event of Force Majeure"**:

- a. means (subject to paragraph b.) war, riot or civil commotion, act of God, fire or explosion, flood or storm, landslide, lightning or earthquake, act of governmental or municipal authority, damage to or destruction of plant or equipment, strike or other industrial disturbance or any other cause which, by the exercise of due diligence, a party is unable to prevent or overcome;
- b. does not include the loss of or failure to produce Grain due to production risks (for example due to weather, frost, hail, flood, fire, drought, disease or pests).

**"Final Equity"** means the amount per tonne on a track basis at the Port which is published by CBH Grain on the Website following Pool Finalisation as the return for the Applicable Pool.

**"Flexi Loan Option"** means the option to flexibly drawdown up to the Credit Limit if the Customer selects this as part of the Commodity Finance Option.

**"Freight"** means the cost for transporting the Grain from the Delivery Site to which the Supplier delivers it to the destination nominated by CBH Grain from time to time as being the destination to which the Grain from that Delivery Site is to be delivered.

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

**"Grain"** means the grain described on the Delivery Ticket.

**"Grower"** means a person who, in the reasonable opinion of CBH Grain, produces grain grown on a property owned or leased by that person and who:

- a. has a National Grower Registry (NGR) number; and
- b. is not acting in a capacity as a trader or acquirer of grain that was not produced by that person.

**"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).

**"GTA"** means Grain Trade Australia.

**"GTA Location Differentials"** means the differential rate published by GTA as applicable at the time of delivery that theoretically compensates for the difference in value of the Grain between the Delivery Site and the Natural Terminal Port in the Nominated Port Zone.

**"Harvest Loan Option"** means the option to automatically drawdown the full amount of the Credit Limit in respect of deliveries of Grain under the Commodity Finance Option.

**"Harvest Payment Option"** means the payment option specified in clause 6.

**"Harvest Percentage"** means the percentage specified as the "Harvest Percentage" in the Pool Conditions.

**"Indirect or Consequential Loss"** means indirect, consequential or remote loss or any loss in the nature of loss of production, loss of profit, loss of opportunity, loss of markets or access to markets, loss of use of money, goods or other property, or loss of goodwill or business reputation.

**"Insolvent"** means bankrupt, unable to pay debts as and when they fall due, in receivership, in liquidation, under any form of administration, wound up or subject to any arrangement, assignment or composition with creditors.

**"Irrevocable Notice"** means a notice to CBH Grain from the Supplier's financial institution that directs CBH Grain to pay one or more Payment Instalments directly to a particular financial institution instead of the Supplier.

**"item"** means an item in the Schedule or corresponding to the Schedule in any verbal offer by the Supplier.

**"Loan"** means the loan provided to the Supplier by CBH Grain in respect of a delivery of Grain under the Commodity Finance Option.

**"Management Fee"** has the meaning given in the Pool Conditions.

**"Natural Terminal Port"** means the Natural Terminal Port specified by GTA as applicable to a particular Delivery Site.

**"Nominated Estimated Pool Return"** means the nominated estimated pool return for a particular Pool as shown on the Web Site.

**"Nominated Port Zone"** means the Port Zone specified by GTA as applicable to a particular Delivery Site.

**"Operational Costs"** means the amount charged by CBH Grain to recover the actual overhead costs incurred in operating its Pools.

**"Payment Instalment"** means each of the payment instalments referred to in clauses 6.3a, 6.3b, 7.3a, 8.3a, 8.3b, 8.3c and 8.3d.

**"Payment Option"** means either the Harvest Payment Option, Deferred Payment Option, Distributions Option or Commodity Finance Option.

**"PBR"** means PBR in a plant variety as those terms are defined in section 3 of the *Plant Breeder's Rights Act 1994* (Cth).

**"Pool"** means a grouping of grain treated by CBH Grain as a pool for the purposes of buying grain, grouped according to time of delivery, location, quality, grade or variety of grain or such other matters as determined by CBH Grain, including any Pool established in accordance with clause 3.1.

**"Pool Conditions"** means the standard terms and conditions for the Applicable Pool which are current at the date of formation of the Contract, as published on the Web Site.

**"Pool Finalisation"** means when CBH Grain has sold all Grain delivered to the Applicable Pool and received all funds from those sales.

**"Pool Financing Costs"** means the costs charged by CBH Grain for providing the payment options specified in clauses 6 and 7. Such costs are determined by CBH Grain in its absolute discretion.

**"Quality Variations"** means the price variations applicable to the Grain by way of premiums or discounts to the Consideration as determined by CBH Grain which are due to moisture, protein, screening and other quality variations from the various Receival Standards published from time to time by CBH Grain.

**"Rate"** means the interest rate specified from time to time by CBH Grain (in its discretion) on its Web Site as applicable to a Loan.

**"Receival Standards"** means the standards set for the Grain by the relevant authorised bulk handler from time to time.

**"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.

**"Related Bodies Corporate"** has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth).

**"Repayment Notice"** means a notice in the form prescribed from time to time by CBH Grain of an early repayment under the Commodity Finance Option.

**"Schedule"** has the meaning given in the Pool Conditions.

**"Season"** means the grain harvesting and delivery season to which a particular delivery or deliveries relate, generally commencing in August of one year and ending in March of the following year.

**"Special Conditions"** means the special conditions (if any) specified in the Schedule.

**"Special Pool"** means the Pool so described in clause 3.1.

"**Special Pool Contract**" means the contract between a Supplier who delivers grain to the Special Pool and CBH Grain which contains Special Conditions.

"**Stock Transfer System**" means either the telephone or online stock transfer system used by the relevant authorised bulk handler.

"**Supplier**" means the party specified on the Delivery Ticket or via the Stock Transfer System (as the case requires) as the supplier of the Grain.

"**Tax Invoice**" includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;

"**Tonnage**" means the Tonnes that have been contracted between CBH Grain and the Seller as specified on the Delivery Ticket or through the Stock Transfer System.

"**Tonne**" means tonne (or metric ton) of Grain.

"**Total Credit Limit**" has the meaning given in clause 9.7.

"**Underwriting Election Form**" means the form so entitled which is prescribed by CBH Grain and most recently completed and returned by the Supplier to CBH Grain by which the Supplier elects to take out underwriting in relation to either the Harvest Payment Option or the Commodity Finance Option.

"**Underwriting Fee**" means the amount per tonne in Australian Dollars set for underwriting by the Applicable Pool in relation to deliveries within the same Season and published on the Web Site.

"**Web Site**" means the web site [www.cbh.com.au](http://www.cbh.com.au).

## 1.2 Interpretation

In these general terms and conditions unless the contrary intention appears:

- a. a reference to a person includes a reference to a body corporate;
- b. a reference to a paragraph or clause is a reference to a paragraph or clause in these general terms and conditions;
- c. a reference to these general terms or conditions or any other instrument includes any variation or replacement of them;
- d. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- e. if a word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- f. "includes" in any form is not a word of limitation; and
- g. the singular includes the plural and vice versa.

## 1.3 Inconsistency

In the event of any inconsistency between the provisions of the documents which constitute the Contract, the following documents will prevail in the following order:

- a. the Schedule;
- b. the Pool Conditions; then
- c. these general terms and conditions.

## 2. SALE AND PURCHASE OF GRAIN

The Supplier sells the Grain to CBH Grain and CBH Grain purchases the Grain free of all Encumbrances for the Consideration on the terms and conditions of the Contract.

## 3. POOLS FOR MARKETING GRAIN

### 3.1 Pools

CBH Grain may establish pools for marketing of Grain including the following pools:

#### Special Pools:

barley, lupins, canola, wheat and oats delivered under a Special Pool Contract - opening and closing for deliveries on the dates specified on the Web Site or through such other means as CBH Grain may determine (subject to clause 3.4).

#### Harvest Pools:

barley, lupins, canola, wheat and oats opening and closing for deliveries on the dates specified on the Web Site or through such

other means as CBH Grain may determine (subject to clauses 3.3b and 3.4).

#### Post-harvest Pools:

barley, lupins, canola, wheat and oats opening and closing for deliveries on the dates specified on the Web Site or through such other means as CBH Grain may determine (subject to clause 3.4).

## 3.2 Acknowledgements by Supplier

The Supplier acknowledges that:

- a. CBH Grain will conduct the Pools through the sale of grain within the Pools (including the Grain) to other CBH Grain Pools or third parties in its own name at a price or prices and on other terms and conditions determined by CBH Grain at its sole discretion; and
- b. for the purposes of determining the Consideration payable to the Supplier, all proceeds from the sale of grain from the relevant Pool will be averaged on a per tonne basis and the Supplier will be entitled to receive that average per tonne price after deduction of the Pool costs and other charges and adjustment for Quality Variations in accordance with the Contract.
- c. CBH Grain may engage third parties to provide risk management advice, including developing foreign exchange and commodity price risk strategies.

## 3.3 Deliveries into Pools

- a. Suppliers who are Growers may deliver grain into Harvest Pools, Post-harvest Pools, or (if the Supplier has entered into a Special Pool Contract) Special Pools. CBH Grain may in its absolute discretion decline to accept deliveries by a Supplier who is not a Grower.
- b. Grain may be delivered to Harvest Pools between 1 February and the following 31 May only by arrangement made with CBH Grain before the 31 January during the Season. Suppliers wanting to make these arrangements must send a request to CBH Grain by post, fax or e-mail specifying the classification and quantity of Grain to be Nominated and the approximate nomination date. CBH Grain may (but is not obliged to) accept the request. Arrangements will be valid only if acceptance is confirmed by post, fax or e-mail by the 31 January during the Season. All Nominations must conform to the specifications in the request or the Grain will not be accepted for the Harvest Pools.

## 3.4 Delivery Periods

- a. CBH Grain will specify the Delivery Period for each Pool and may change any Delivery Period in its discretion.
- b. CBH Grain may close a Pool to further receivals at any time.

## 3.5 Payment Methods

CBH Grain will, in its discretion, determine the appropriate Payment Option based on the information provided by the Supplier on the Delivery Ticket or through the Stock Transfer System.

## 4. DELIVERY

### 4.1 Delivery

- a. Delivery is deemed to occur at the time recorded by the relevant authorised bulk handler that title to each load of Grain is transferred from the Supplier to CBH Grain.
- b. Prior to taking delivery of the Grain, and whenever the Supplier delivers the Grain, CBH Grain's authorised bulk handler may examine the Grain to determine if it satisfies the Receival Standards. The Supplier must do all things necessary to facilitate CBH's examination of the Grain.
- c. Deliveries which:
  - (1) are outside the Delivery Period;
  - (2) do not comply with the Grain description;
  - (3) do not comply with the Receival Standards;
  - (4) are not within the relevant Nominated Port Zone (if applicable); or
  - (5) do not quote the correct Contract Number (if applicable) or Supplier Number,

are deemed not to be delivered for the purposes of the Contract and no Contract shall arise between the Supplier and CBH Grain in relation to that grain.

- d. The weighbridge weights, and the unconditional certification of compliance with the Receival Standards by the relevant authorised bulk handler, are final and binding.

#### 4.2 Receival Capacity

Except where CBH Grain specifies a Delivery Site, if the Delivery Site chosen by the Supplier is unable to receive the Grain, the Supplier must deliver the Grain to another Delivery Site as agreed between the Parties.

#### 4.3 Costs of Delivery

The Supplier must pay all the costs incurred in delivering the Grain to the relevant Delivery Site.

### 5. RISK AND TITLE

- a. The Supplier bears all risk until the Grain is delivered in accordance with the terms of the Contract.
- b. Title and ownership of the Grain passes to CBH Grain immediately upon delivery in accordance with the terms of the Contract.

### 6. PAYMENT – HARVEST PAYMENT OPTION

#### 6.1 Application of this clause

This clause 6 will only apply if the "Harvest Payment" payment option is nominated on the Delivery Ticket or through the Stock Transfer System.

#### 6.2 Consideration

In consideration for the sale of the Grain, CBH Grain shall pay to the Supplier the Final Equity per Tonne adjusted for Quality Variations (if any) on a load by load basis and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Final Equity):

- a. the Management Fee;
- b. Carrying Costs;
- c. any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
- d. Direct Costs; and
- e. Freight.

#### 6.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. within 15 Business Days of the week of delivery of the Grain by the Supplier to CBH Grain, a first instalment equal to at least the Advance Percentage of the Nominated Estimated Pool Return per Tonne adjusted for at least the Advance Percentage of the Quality Variations (if applicable) on a load by load basis at the time of payment and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return):
  - (1) Estimated Management Fee;
  - (2) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
  - (3) the Estimated Carrying Costs;
  - (4) the Estimated Direct Costs; and
  - (5) the Estimated Freight.
- b. after the 1 July following the delivery of the Grain, a second instalment being an amount equal to at least 75% of the Estimated Pool Return per Tonne, adjusted for at least 75% of the Quality Variations (if applicable) on a load by load basis at the time of payment and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return) the:
  - (1) the Estimated Management Fee;
  - (2) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
  - (3) the Estimated Carrying Costs;
  - (4) the Estimated Direct Costs;
  - (5) the Estimated Freight; and
  - (6) the payment made under clause 6.3a.

- c. within 15 Business Days of the Pool Finalisation, a third instalment being an amount equal to 100% of the Final Equity per Tonne adjusted for all Quality Variations (if applicable) on a load by load basis and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return):

- (1) the Management Fee;
- (2) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
- (3) the Carrying Costs;
- (4) the Direct Costs;
- (5) the Freight; and
- (6) the payments made under clauses 6.3a and 6.3b.

#### 6.4 Underwriting of first instalment

- a. CBH Grain in its discretion may offer underwriting to the Supplier for the first instalment payable by CBH Grain under clause 6.3a.
- b. If underwriting is to be offered, CBH Grain will notify the Supplier by posting the relevant information on the Web Site.
- c. If the Supplier wishes to obtain underwriting, it must do so by completing and signing the Underwriting Election Form and returning it to CBH Grain by the due date specified on that form. Upon completing, signing and returning the Underwriting Election Form, the Supplier will be bound by the terms and conditions of the underwriting as set out on the form.

#### 6.5 Excess payments

The Supplier acknowledges that if the aggregate of the payment made under clauses 6.3a and 6.3b exceeds the Consideration due to the Supplier then:

- a. if underwriting applies to the Contract pursuant to clause 6.4c, the amount of the excess, to the limit of the amount set out on the Underwriting Election Form;
- b. if underwriting does not apply to the Contract pursuant to clause 6.4c, the amount of the excess, constitutes a debt due by the Supplier to CBH Grain ("**Debt**") and shall be dealt with in accordance with clause 11.

### 7. PAYMENT - DEFERRED PAYMENT OPTION

#### 7.1 Application of this clause

This clause 7 only applies if the "Deferred" payment option is nominated on the Delivery Ticket or through the Stock Transfer System.

#### 7.2 Consideration

In consideration for the sale of the Grain CBH Grain shall pay to the Supplier the Final Equity per Tonne adjusted for Quality Variations (if applicable) on a load by load basis and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Final Equity) the:

- a. Management Fee;
- b. Carrying Costs;
- c. Direct Costs; and
- d. Freight.

#### 7.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. after the 1 July following the delivery of the Grain, a first instalment being an amount equal to at least 75% (as determined by CBH Grain in its discretion) of the Estimated Pool Return per Tonne adjusted for at least 75% of the Quality Variations (if applicable) on a load by load basis at the time of payment and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return) the:
  - (1) Estimated Management Fee;
  - (2) Estimated Carrying Costs;
  - (3) Estimated Direct Costs; and
  - (4) Estimated Freight;

b. within 15 Business Days of the Pool Finalisation, a second instalment being an amount equal to 100% of the Final Equity per Tonne, adjusted for Quality Variations on a load by load basis and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Estimated Pool Return) the:

- (1) Management Fee;
- (2) Carrying Costs;
- (3) Direct Costs;
- (4) Freight; and
- (5) payment made under clause 7.3a.

#### 7.4 Excess payment

The Supplier acknowledges that if the payment made under clause 7.3a is greater than the Consideration due to the Supplier then the amount of the excess constitutes a debt due by the Supplier to CBH Grain ("Debt") and shall be dealt with in accordance with clause 11.

### 8. PAYMENT - DISTRIBUTIONS PAYMENT OPTION

#### 8.1 Application of this clause

This clause 8 only applies if the "Distributions Payment" payment option or the "Commodity Finance Option" option is nominated on the Delivery Ticket or through the Stock Transfer System (as the case requires).

#### 8.2 Consideration

In consideration for the sale of the Grain CBH Grain shall pay to the Supplier the Final Equity per Tonne adjusted for Quality Variations on a load by load basis and after deducting (to the extent that the applicable fee or cost has not been deducted in determining the Final Equity) the:

- a. Management Fee;
- b. Carrying Costs;
- c. Direct Costs; and
- d. Freight.

#### 8.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. after 1 April immediately following the delivery of Grain (or earlier at CBH Grain's absolute discretion), a first Distribution Instalment ("April Payment");
- b. after 1 July immediately following the April Payment (or earlier at CBH Grain's absolute discretion), a second Distribution Instalment ("July Payment");
- c. after 1 October immediately following the July Payment (or earlier at CBH Grain's absolute discretion), a third Distribution Instalment ("October Payment");
- d. after 1 January immediately following the October Payment (or earlier at CBH Grain's absolute discretion), a fourth Distribution Instalment;
- e. by no later than 15 Business Days after the Pool Finalisation, a final instalment being an amount equal to the Consideration less the total amount of the Distribution Instalments paid under clauses 8.3a, 8.3b, 8.3c and 8.3d.

### 9. PAYMENT – COMMODITY FINANCE OPTION

#### 9.1 Application of this clause

This clause 9 only applies if the Supplier has selected the Commodity Finance Option. If the Supplier selects the Commodity Finance Option, the Supplier must also select either the Harvest Loan Option or the Flexi Loan Option.

#### 9.2 Commodity Finance Option

- a. By selecting either the Harvest Loan Option or the Flexi Loan Option, the Supplier applies to CBH Grain for a loan facility of up to the Credit Limit for each Nomination of Grain under the Contract and CBH Grain agrees to make available to the Supplier that credit facility on the terms of this clause 9.
- b. The Commodity Finance Option is a single credit contract in respect of the Total Credit Limit and covering all Drawdowns.

#### 9.3 Payment for Grain

In consideration for the sale of Grain delivered under the Commodity Finance Option CBH Grain shall make the Distributions in the manner set out in clause 8.3 except that:

- a. no Pool Financing Costs are payable by the Supplier; and
- b. the Distributions shall be paid by CBH Grain in accordance with clause 9.4.

#### 9.4 Payment of Distributions

a. The Supplier unconditionally and irrevocably directs CBH Grain to pay Distributions (plus relevant GST) in respect of all Grain delivered by the Supplier in a Season under the Commodity Finance Option as follows:

- (1) firstly, to satisfy any Encumbrance over that Grain which has priority at law;
- (2) secondly, to pay or repay on the Supplier's behalf any amount by which the Amount Owing exceeds the Total Credit Limit at each date on which the Distributions are paid by CBH Grain;
- (3) thirdly, to pay any other CBH Group Debt (including, for the avoidance of doubt, any applicable Underwriting Fee);
- (4) fourthly, to satisfy any other Encumbrance over that Grain; and
- (5) when the amounts in clauses 9.4a(1) to 9.4a(4) (inclusive) have been satisfied in full, to pay to the Supplier the amount remaining (plus relevant GST (if any)).

b. CBH Grain is not responsible to the Supplier for any loss suffered because of delay in payment of a Distribution or any relevant GST.

#### 9.5 Encumbrances

CBH Grain is not required to but may (in its absolute discretion) make available the credit facility described in clause 9.2 if an Encumbrance exists in respect of the Grain delivered by the Supplier.

#### 9.6 Loan facility

The Supplier may ask CBH Grain to provide it with Drawdowns up to a total amount equal to the Supplier's Total Credit Limit in accordance with this clause 9.

#### 9.7 Total Credit Limit

The Supplier's Total Credit Limit at any time under the Commodity Finance Option is the total of all of the Supplier's Credit Limits for deliveries of Grain under the Commodity Finance Option MINUS the total of all Distributions up until that time.

#### 9.8 Credit Limit and Drawdown

a. In respect of each delivery of Grain by the Supplier, CBH Grain shall provide the Supplier with a credit facility of up to the Credit Limit which shall be calculated as follows:

Credit Limit =	(Tonnage of that delivery x Harvest Percentage x Nominated Estimated Pool Return per Tonne)
PLUS	(Harvest Percentage x Quality Variations – if applicable - for that delivery)
MINUS	Estimated Costs for that delivery;
MINUS	the Underwriting Fee for that delivery; and
MINUS	the amount required to discharge any Encumbrance over the Grain.

b. Subject to clause 9.9 the Credit Limit shall be made available to the Supplier within 15 Business Days from the end of the week of the date when the Supplier delivered the relevant load of Grain.

c. For the avoidance of doubt, the Supplier's Credit Limit will be calculated on a GST exclusive basis.

#### 9.9 Increase to Credit Limit

- a. CBH Grain may increase the Supplier's Credit Limit in respect of a delivery of Grain.
- b. The timing and amount of any increase to the Supplier's Credit Limit is at CBH Grain's absolute discretion.
- c. If the Supplier's Credit Limit is increased, CBH Grain will notify the Supplier of any resulting increase to the Supplier's Total Credit Limit.

#### 9.10 Preconditions to Drawdowns

CBH Grain is only required to provide a Drawdown in respect

of deliveries of Grain under the Commodity Finance Option if:

- a. the Supplier has requested a Drawdown not less than 5 Business Days before the Business Day on which the Supplier wishes the Drawdown to be paid;
- b. the Supplier has lodged a password with CBH Grain in accordance with CBH Grain's security procedures as specified from time to time;
- c. at the time of the Supplier's request for a Drawdown, the security details and password provided by the Supplier are the same as those previously recorded by CBH Grain;
- d. the Drawdown requested is equal to or greater than \$2,000 and is a multiple of \$1,000 or such other amount as is agreed by CBH Grain in its discretion;
- e. the Drawdown is the only Drawdown paid in that week;
- f. the total amount of all the Supplier's outstanding Drawdowns will not exceed the Total Credit Limit immediately after the Drawdown provided;
- g. the Supplier's request is made before 1 February in the year following that Season or such later date as CBH Grain may determine in its discretion preceding the date of Pool Finalisation; and
- h. the Supplier is not in default under the Contract.

#### 9.11 Application of Drawdowns

The Supplier unconditionally and irrevocably authorises CBH Grain to satisfy any CBH Group Debt (including any applicable Underwriting Fee) and any Encumbrance over any Grain from the proceeds of the Drawdowns and directs CBH Grain to then pay any remaining amount to the Supplier. CBH Grain is not responsible to the Supplier for any loss suffered because of delay in payment of any of the Drawdowns.

#### 9.12 Interest

- a. The Supplier shall pay to CBH Grain interest at the Rate on the Loan over the term of the Loan.
- b. Interest shall be calculated on the Supplier's daily Loan balance and accrued but unpaid interest shall be capitalised and added to the Loan on the last Business Day of each month.
- c. Amounts of unpaid interest that have not yet been capitalised shall be deducted from Distributions (plus relevant GST) in accordance with clause 9.4.

#### 9.13 Underwriting

- a. CBH Grain in its discretion may offer underwriting to the Supplier.
- b. If underwriting is to be offered, CBH Grain will notify the Supplier by posting the relevant information on the Web Site.
- c. If the Supplier wishes to obtain underwriting, it must do so by completing and signing the Underwriting Election Form and returning it to CBH Grain by the due date specified on that form. Upon completing, signing and returning the Underwriting Election Form, the Supplier will be bound by the terms and conditions of the underwriting as set out on the form.

#### 9.14 Repayment of Amount Owing

The Amount Owing:

- a. will be repaid automatically from Distributions (plus relevant GST) in accordance with clause 9.4a(2); and
- b. may be repaid earlier by the Supplier in accordance with clause 9.15 ("Early Repayment").

#### 9.15 Early Repayment

The Supplier may repay the Amount Owing in respect of a Season at any time if:

- a. the Supplier notifies CBH Grain that it wishes to make an Early Repayment and of the details of that Early Repayment by completing and delivering to CBH Grain a Repayment Notice (or such other method as is specified by CBH Grain from time to time) before making the Early Repayment; and
- b. the amount of the Early Repayment is equal to or greater than \$5,000 and is a multiple of \$1,000 or is the outstanding Amount Due in respect of a Season. Notwithstanding the preceding provisions of this clause 9.15, where the amount of the Early Repayment is greater than an amount set by CBH Grain from time to time, CBH Grain may require the Supplier

to give 2 clear Business Days prior notice of the Early Repayment.

#### 9.16 Fee for Early Repayment

CBH Grain may charge the Supplier a fee for an Early Repayment. Any such fee will be an amount calculated in CBH Grain's discretion to compensate for the costs to CBH Grain of the Early Repayment.

#### 9.17 Redraw

CBH Grain may in its discretion permit the Supplier to redraw amounts the subject of an Early Repayment if:

- a. the requirements set out in clause 9.10 are satisfied; and
- b. the total of all the Supplier's outstanding Drawdowns will not exceed the Total Credit Limit immediately after the Drawdown of the redraw amount is paid.

#### 9.18 Representations and warranties

The Supplier represents and warrants to CBH Grain each time that CBH Grain provides a Drawdown that:

- a. the warranties set out in clause 16 are true and correct;
- b. the Schedule and the information provided by the Supplier to CBH Grain is true and correct and
- c. all Drawdowns will be used by the Supplier wholly or predominantly for business or investment purposes.

#### 9.19 Default

- a. The Supplier is in Default if:
  - (1) any of the representations and warranties it makes under clause 9.18 are or become untrue;
  - (2) it becomes Insolvent; or
  - (3) it is otherwise in breach of the terms of the Commodity Finance Option or the Contract.
- b. If the Supplier is in Default, CBH Grain may at its discretion:
  - (1) notwithstanding the provisions of clause 9.14, require at any time by notice to the Supplier immediate repayment of the Amount Owing and if such a notice is given the Supplier shall immediately repay the Amount Owing;
  - (2) immediately suspend, cancel or terminate the credit facility made available to the Supplier under the Commodity Finance Option; and/or
  - (3) terminate the Contract.
- c. If the Supplier is in Default:
  - (1) interest shall be calculated under clause 9.12 at the Default Rate; and
  - (2) the Supplier shall pay to CBH Grain on demand all legal and other costs incurred by CBH Grain in seeking to enforce repayment of the Amount Owing.

#### 10. INTEREST ON CONSIDERATION

CBH Grain will use its best endeavours to make each payment of the Consideration by the due date and in this regard time shall not be of the essence. CBH Grain may at its discretion pay interest to the Supplier on any overdue payment of the Consideration.

#### 11. EXCESS PAYMENT

If a Debt arises pursuant to clause 6.5 or clause 7.4:

- a. the Debt is due by the Supplier to CBH Grain and is payable 28 days after the posting of a written notice, requiring payment of the Debt, to the Supplier at the address of the Supplier in the records of CBH Grain;
- b. CBH Grain and the Supplier will each complete all required invoices and returns to effect any necessary GST adjustments arising from the GST paid or payable with respect to the excess of the advance payments; and
- c. if money is due or payable by CBH Grain to the Supplier on any account whatsoever, CBH Grain may set off that money against the Debt and give the Supplier written notice of that set-off.

## 12. ENCUMBRANCES

- a. The Supplier must notify CBH Grain if a crop lien or other Encumbrance exists over the Grain.
- b. The Supplier unconditionally and irrevocably:
  - (1) directs CBH Grain to deduct from the Consideration:
    - (i) the amount secured by any Encumbrance over any Grain and pay the amount deducted to the holder of the Encumbrance before paying any amount to the Supplier; and
    - (ii) all reasonable costs and expenses incurred by CBH Grain in dealing with any Encumbrance;
  - (2) authorises CBH Grain to rely on any information supplied by the holder of an Encumbrance regarding the amount secured by the Encumbrance over the Grain in making the payments referred on in clause 12.b(1); and
  - (3) releases and discharges CBH Grain from any liability to the Supplier relating in any way to any deductions from the Consideration or payments made by CBH Grain to the holder of any Encumbrance under this clause 12.b.
- c. The Supplier agrees to CBH Grain charging an Encumbrance processing fee as specified in clause 24, which to the extent not paid by the Encumbrance holder, will be a debt owing to CBH Grain by the Supplier.
- d. The Supplier indemnifies CBH Grain against any claim or demand by any person claiming any interest in the Grain, regardless of whether the Supplier notified CBH Grain of that interest.

## 13. FORCE MAJEURE

- a. If CBH Grain is unable by reason of an Event of Force Majeure to perform any obligation under the Contract, it must give the Supplier prompt written notice with full particulars of the Event of Force Majeure and the extent to which it is likely to be unable to perform its obligations.
- b. The obligation of CBH Grain will be suspended so far and so long as it is affected by the Event of Force Majeure.
- c. CBH Grain must use its reasonable endeavours to mitigate the effects of the Event of Force Majeure.
- d. CBH Grain cannot claim Force Majeure under the Contract on the basis of anything that could reasonably be known to exist as at the date of the Contract.

## 14. PAYMENTS

### 14.1 Payments by Supplier

All payments by the Supplier to CBH Grain must be made free and clear of taxes and without any set-off or deduction.

### 14.2 Right of set off

- a. Any amounts owing by CBH Grain or any of its Related Bodies Corporate to the Supplier whether under the Contract or otherwise, may at the election of CBH Grain, be set off against any amounts owing by the Supplier to CBH Grain or any of its Related Bodies Corporate, whether under the Contract or otherwise.
- b. CBH Grain holds the benefit of this clause and may exercise the rights under this clause on its own behalf and for and on behalf of its Related Bodies Corporate, but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of CBH Grain under the Contract.
- c. CBH Grain will give notice to the Supplier of any set off effected under this clause.

### 14.3 Late Payment

- a. If the Supplier fails to make a payment due under the Contract in full on the due date CBH Grain may charge interest on the unpaid amount at the Default Rate.
- b. The interest will accrue daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- c. The Supplier shall pay interest under this clause on demand from CBH Grain.

- d. Any loss or damage incurred by CBH Grain in recovering any outstanding monies shall be paid in full by the Supplier.

### 14.4 Withholding Funds

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

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

### 14.5 Charges

- a. CBH Grain may deduct the Charges (if any) from the Consideration.
- b. If CBH Grain deducts the Charges from the Consideration CBH Grain will remit the amounts deducted to the relevant authorities.

### 14.6 Overpayment

If, after payment to the Supplier of any amount by CBH Grain in relation to a Contract, CBH Grain decides that for any reason the Supplier had no right to some or all of that amount (including, where the Supplier is overpaid) then, despite any other provision of that Contract, CBH Grain may recover from the Supplier that amount plus interest on that amount at the Rate at that time plus three per cent per annum calculated daily from the date that the amount is paid or advanced until (but not including) the date upon which the amount is repaid.

## 15. DEFAULT

### 15.1 Events of Default

The Supplier is in default if:

- a. any of the representations and warranties made by it under these general terms and conditions are untrue or become untrue;
- b. it becomes Insolvent;
- c. it fails to pay on time any money payable to CBH Grain under the Contract; or
- d. the Supplier is otherwise in breach of any of the provisions of the Contract.

### 15.2 Consequences of default

- a. If the Supplier is in default CBH Grain may declare at any time by notice that any amount owing to CBH Grain under the Contract is immediately due for payment and (without limitation to CBH Grain's rights at law) CBH Grain may take action to recover any such amount.
- b. The Supplier shall pay to CBH Grain on demand all legal and other costs incurred by CBH Grain in seeking to enforce payment under clause 15.2a.

### 15.3 Further contracts

The Supplier acknowledges that if the Supplier defaults under the Contract CBH Grain may refuse to enter into further contracts with the Supplier.

### 15.4 Other Rights

CBH Grain's rights under this clause 15 do not limit CBH Grain's other rights in respect of a default by the Supplier.

## 16. SUPPLIER'S WARRANTIES

### 16.1 Warranties

The Supplier warrants to CBH Grain that:

- a. the Supplier owns the Grain
- b. the Grain meets the Receival Standards;
- c. the Grain does not contain or include any Contaminant;
- d. none of the Grain is a Genetically Modified Organism (other than as notified to CBH Grain, and agreed in writing by CBH Grain, prior to delivery);
- e. the information provided by the Supplier on the Delivery Ticket or through the Stock Transfer System is true and correct;
- f. the Grain is not subject to any Encumbrance;
- g. it is not Insolvent;



- h. in entering into the Contract it has relied on its own skill and judgment;
- i. it has not relied in any way on the skill or judgment or representations of CBH Grain or any of CBH Grain's staff or representatives; and
- j. it has not relied in any way on any representation made by CBH Grain that has not been expressly stated in the Contract or the Web Site.

## 16.2 Indemnity

The Supplier agrees to indemnify CBH Grain (and its Related Bodies Corporate) from and against all actions, claims, causes of action (whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses CBH Grain suffers as a result of:

- a. any of the warranties set out in clause 16.1 being false, incorrect or misleading (whether by omission or otherwise);
- b. a person claiming an interest in the Grain regardless of whether the Supplier has notified CBH Grain 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; or
- d. any breach of the Contract, including but not limited to a failure to meet the Receival Standards.

## 17. ELECTRONIC TRANSACTING

17.1 The Supplier agrees and acknowledges that:

- a. 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);
- b. CBH Grain 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;
- c. it is the Supplier's responsibility to:
  - (1) provide CBH Grain with true, accurate and complete personal information (including, without limitation, e-mail address and mobile phone number); and
  - (2) notify CBH Grain 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;
- d. CBH Grain will rely on the information provided by the Supplier in accordance with clause 17.1(c) for the purposes of entering into this Contract; and
- e. without limiting any other right of CBH Grain under this Contract, the Supplier will be liable for losses suffered by CBH Grain caused by the Supplier's failure to comply with clause 17.1(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.

17.2 CBH Grain 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 CBH Grain 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 CBH Grain's satisfaction will give rise to a right of CBH Grain to declare null and void any transaction purported to be entered into by the Supplier.

## 18. AUTHORITY

- a. Each party warrants that it has the authority and power to enter into the Contract.

- b. The Supplier expressly authorises CBH Grain, CBH and CBH Grain's financiers, to exchange such information about the Supplier as is necessary and convenient to give effect to the Contract.

## 19. LIMIT OF LIABILITY

- a. Neither CBH Grain nor CBH will be under any liability for any direct, indirect, consequential or any other loss, expenses or damage resulting from the negligence or alleged negligence of CBH Grain, CBH or any of their servants or agents in the performance of their obligations under the Contract, however it arises.
- b. So far as the law permits neither CBH Grain nor CBH will be under any liability for any Indirect or Consequential Loss.
- c. Except as specified in the Contract, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, by CBH Grain are excluded to the fullest extent permitted by law.

## 20. GENERAL

### 20.1 Amalgamation of contracts

CBH Grain, 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.

### 20.2 Time

Except as otherwise specified in the Contract, time is of the essence in every respect.

### 20.3 Governing Law

This Contract is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria and, as applicable, the Commonwealth of Australia.

### 20.4 Supervening legislation

Any present or future legislation which operates to vary the Supplier's obligations in relation to the Contract with the result that CBH Grain's rights or obligations are adversely affected is excluded except to the extent that its exclusion is prohibited or rendered ineffective at law.

### 20.5 Notices

All notices, requests, demands and other communications under or in connection with the Contract must be in writing, and must be given to the parties at their address or facsimile number or email address shown on the Delivery Ticket or provided via the Stock Transfer System, 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. A notice sent by email is deemed to have been given at the time that is 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.

### 20.6 Telephone conversations

The Supplier acknowledges and agrees that any telephone conversation with CBH Grain may be recorded and kept as evidence of the Supplier's instructions unless the Supplier objects at the beginning of the telephone conversation.

### 20.7 Assignment

The Supplier must not assign its rights under, or the benefit of, the Contract. CBH Grain has the right to assign its rights under, or the benefit of, the Contract.

### 20.8 Variation

Except as otherwise provided in the Contract, the Contract may only be varied by agreement in writing.

### 20.9 Costs

Except as otherwise provided in the Contract, each party must bear its own legal and other costs and expenses relating to performance of its obligations under the Contract.

### 20.10 Severability

If any term or part of the Contract is or becomes invalid or unenforceable at law, then that term or part will be deemed to be severed from the Contract. Severance will not affect the



remainder of the Contract, and the remainder of the Contract will continue to be valid and enforceable.

#### **20.11 Counterparts**

The Contract may be executed in any number of counterparts, all of which taken together are deemed to constitute one document.

#### **20.12 Waiver**

Waiver of any power or right arising under the 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.

#### **20.13 Entire Agreement**

This Contract forms the entire agreement between the parties with respect to the sale and purchase of the Grain.

#### **20.14 Liability**

In the 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 the Contract as a trustee, the Supplier shall be liable under the Contract in its personal capacity and in its capacity as trustee of the trust.
- c. The Supplier and each of the Supplier's signatories indemnifies CBH Grain and each of its directors against any claim, action, damage, loss, liability, cost or charge they may suffer or incur or be liable for as a result of the disclosure of any misleading information in the Contract, including any false declaration that the Supplier or its signatories had due authority to sign.

#### **20.15 Interest**

If the Supplier fails to pay any amount to CBH Grain required under the Contract by the due date then the Supplier agrees to pay CBH Grain interest on that amount outstanding at the Rate + 3% calculated from the due date in the manner set out in clause 9.12 as if the outstanding amount was a Loan.

### **21. GST**

#### **21.1 Consideration exclusive of GST**

Unless expressly included, the Consideration does not include GST.

#### **21.2 Definitions and interpretation**

Words used in this clause 21 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

#### **21.3 GST pass on**

If GST is or will be imposed on a supply made under or in connection with the Contract, the supplier may, to the extent that the consideration otherwise provided for that supply under the Contract is not stated to include an amount in respect of GST on the supply:

- a. increase the consideration otherwise provided for that supply under the Contract by the amount of that GST; or
- b. otherwise recover from the recipient the amount of that GST.

#### **21.4 Tax Invoices / Adjustment Notes**

The right of the supplier to recover any amount in respect of GST under the Contract on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of the Contract, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.

#### **21.5 Recipient Created Tax Invoice**

Subject to a Recipient Created Tax Invoice (RCTI) Agreement being in place between CBH Grain and the Supplier, CBH Grain will issue:

- a. If the Supplier has provided a valid ABN and is registered for GST: a valid RCTI that states the amount of GST the Supplier is liable to pay, at the same time that CBH Grain is obliged to pay the Supplier;
- b. 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

- c. 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 21.8.

#### **21.6 Later adjustment to price or GST**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:

- a. may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
- b. must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

#### **21.7 Reimbursements**

Costs required to be reimbursed or indemnified under the Contract must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

#### **21.8 Withholding Tax**

If the Supplier:

- a. does not have an ABN or do not provide a valid ABN to CBH Grain; and
- b. does not provide an executed Statement by a supplier form to CBH Grain,
- c. CBH Grain 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.

### **22. DISPUTE RESOLUTION**

#### **22.1 Disputes**

All disputes arising out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 22.

- a. A dispute shall be referred to the CBH Grain Manager Eastern Australia for resolution. The CBH Grain Manager Eastern Australia and the Customer 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 Customer is to inform the CBH Grain Manager Eastern Australia immediately, and before the due date of that invoice.

#### **22.2 Escalation of Dispute – Executive Resolution**

- a. If no resolution of the dispute can be reached in accordance with clause 22.1, within seven (7) days of the dispute being notified to the CBH Grain Manager Eastern Australia then the CBH Grain Manager Eastern Australia shall refer the dispute to the CBH Grain General Manager. The Customer 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.

#### **22.3 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.

### **23. EXCLUSION OF GTA TRADE RULES**

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

**24. ADMINISTRATIVE SERVICES**

The Supplier must pay to CBH Grain the following GST exclusive fees for the following services utilised by or on behalf of a Supplier:

<b>Table</b>	
The following GST exclusive fees apply for discretionary Services required or utilised by or on behalf of a Supplier:	
<b>Column 1 : Service</b>	<b>Column 2 : Fee</b>
Third Party PPSR administration and processing	\$175.00 per Season per transaction
Amounts paid by - 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 (ie copy to nominated adviser or accountant where original sent to Supplier)	\$125.00 per Season
Notice of assignment of payment to Third Party	\$175 per notice
Correction / Amendment of details provided by the Supplier associated with Notice of assignment of payment to Third Party	\$150 per request