

HARVEST POOL CONDITIONS

Terms and Conditions

The following terms and conditions ("**Harvest Pool Conditions**") are incorporated as the "Pool Conditions" into the Contract made between the Supplier and CBH Grain Pty Ltd ABN 39 089 394 883 ("**CBH Grain**") and formed upon the Supplier (or its representative) either:

- a. Nominating CBH Grain as the acquirer of the Grain and specifying the Harvest Pool and the payment method; or
- b. completing and submitting to CBH Grain a Schedule in a manner which specifies CBH Grain as the acquirer of the Grain, the Harvest Pool and the payment method.

1. Definitions and interpretation

1.1 Definitions

Capitalised terms used in these Harvest Pool conditions which are defined in the General Terms and Conditions have the meaning given in the General Terms and Conditions unless otherwise defined in these Harvest Pool Conditions.

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

- a. these Harvest Pool Conditions;
- b. the Schedule;
- c. the CBH Record; and
- d. the General Terms and Conditions

"**General Terms and Conditions**" means the general terms and conditions for CBH Grain's pool contracts which are current at the date of the formation of the Contract, as published on the Web Site.

"**Gross Harvest Pool Return**" means the amount per tonne returned by the Harvest Pool after deduction of the Hedging Gains and Losses.

"**Harvest Pool**" means the Pool so named by CBH Grain to which the Supplier agrees to deliver the Tonnage pursuant to the Contract.

"**Hedging Gains and Losses**" means gains or losses that the Harvest Pool incurs or benefits from through the hedging activities conducted on behalf of the Harvest Pool by CBH Grain and/or associated parties.

"**Management Fee**" means 0.75% of the Gross Harvest Pool Return.

"**Market Price**" means the applicable fair market price on a free in store basis at the Port which grain meeting the description of the Grain may be bought on the open market between willing but not anxious vendors and purchasers on the relevant day as determined by CBH Grain.

"**Schedule**" means the CBH Grain form entitled "Harvest Pool Schedule", the LoadNet® Nomination receipt or the Grain Purchase Contract Confirmation (as the case requires) forming part of the Contract.

"**Tolerance**" means the amount specified in the Special Conditions on the Schedule.

1.2 Interpretation

In these Harvest Pool 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 Harvest Pool Conditions;
- c. a reference to these Harvest Pool Conditions or any other instrument includes any variation or replacement of them;
- d. 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; and
- e. the singular includes the plural and vice versa.

2. Failure to Nominate Tonnage

2.1 Default

Failure to Nominate at least the Tonnage (less any applicable Tolerance) in accordance with the terms and conditions of the Contract ("**Wash Out**") is a default by the Supplier.

2.2 Entitlement to liquidated damages

If the Supplier defaults as set out in clause 2.1, CBH Grain may recover liquidated damages ("**Wash Out Fee**") from the Supplier calculated as follows:

- a. if the Supplier Washes Out on or before the 31st of October (if the Nominated Port Zone is Geraldton or Kwinana) or on or before the 30th of November (if the Nominated Port Zone is Albany or Esperance) immediately following the submission of the Schedule to CBH Grain the Washout Fee is \$25 (or such lesser amount as is specified by CBH Grain, in its discretion) multiplied by the number of Tonnes which the Supplier fails to Nominate in accordance with the terms and conditions of this Contract (the "**Undelivered Tonnage**");
- b. if the Supplier Washes Out after the 31st of October (if the Nominated Port Zone is Geraldton or Kwinana) or the 30th of November (if the Nominated Port Zone is Albany or Esperance) immediately following the submission of the Schedule and the Estimated Final Equity is less than the Market Price, the Wash Out Fee will be the difference per tonne between the Estimated Final Equity on the next Business Day after the end of the Delivery Period and the Market Price on the same day multiplied by the Undelivered Tonnage plus:
 - (i) an amount equal to the amount which the Estimated Costs would have been payable for the Undelivered Tonnage (had the Undelivered Tonnage been Nominated) as at the day after the Delivery Period; and
 - (ii) the Underwriting Fee (if any) which would have been payable for the Undelivered Tonnage (had it been Nominated).
- c. Liquidated damages payable in accordance with clause 2.2b. will be determined on the:
 - (1) APW1 price for wheat contracts;
 - (2) ANW1 price for noodle wheat contracts;
 - (3) BFD1 price for feed barley contracts;
 - (4) SPA1 price for malt barley contracts;
 - (5) CAN1 price for non-GM canola contracts;
 - (6) CAG1 price for GM canola contracts;
 - (7) OAT1 price for oat contracts; and
 - (8) LUP1 price for lupins contracts.
- d. CBH Grain will not be entitled to recover under this clause any liability incurred as a result of its gross negligence, wilful default or fraud.
- e. CBH Grain will not be entitled to recover under this clause any amount for which it receives compensation under any other provision of the Contract.

2.3 Acknowledgement

The parties acknowledge that the liquidated damages in clause 2.2 represent an accurate estimate of the loss that CBH Grain is likely to suffer if the Supplier Washes Out.