

## FLEXI-STARTER CONDITIONS

### Terms and Conditions

The following terms and conditions ("**Flexi-starter 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) completing and submitting to CBH Grain a Schedule in a manner which specifies CBH Grain as the acquirer of the Grain, the Flexi-starter and the payment method.

#### 1. Definitions and Interpretation

##### 1.1 Definitions

Capitalised terms used in these Flexi-starter 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 Flexi-starter Conditions.

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

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

"**Default**" means any of the events of default set out at clause 3.1.

"**Estimated Final Equity**" means the estimate of Final Equity that CBH Grain calculates, acting reasonably, in the event of Default by the Supplier under clause 3.1.

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

"**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 Flexi-starter Return**" means the amount per Tonne returned by the Flexi-starter after deduction of the Hedging Gains and Losses.

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

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

"**Management Fee**" means 1.00% of the Gross Flexi-starter 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 "Flexi-starter Schedule", the LoadNet® Nomination receipt or the Grain Purchase Contract Confirmation (as the case requires) forming part of the Contract.

##### 1.2 Interpretation

In these Flexi-starter 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 Flexi-starter Conditions;
- c. a reference to these Flexi-starter 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. Tonnage

- a. The Supplier shall have the option of delivering up to twenty percent (20%) less or more than the Tonnage set out in the Schedule, provided that the Supplier notifies CBH Grain during the period set out in item 5 (Special Conditions) of the adjusted number of tonnes that the Supplier agrees to sell.
- b. To the extent that the Supplier issues a notice to CBH Grain under clause 2.a, the tonnes notified by the Supplier to CBH Grain will be the "Tonnage" for the purposes of the Contract.

#### 3. Failure to Nominate Tonnage

##### 3.1 Default

The Supplier is in default if:

- a. The Supplier fails to Nominate the Tonnage in accordance with the terms and conditions of the Contract; or
- b. The Supplier notifies CBH Grain at any time prior to the end of the Delivery Period that it is unable to deliver the Tonnage required under the Contract.

##### 3.2 Entitlement to damages

If:

- a. the Supplier defaults as set out in clause 3.1; and
- b. the Estimated Final Equity is less than or equal to the Market Price, CBH Grain may recover liquidated damages from the Supplier calculated as:

- (1) in the event of Default under clause 3.1(a), 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 number of Tonnes which the Supplier fails to deliver in accordance with the terms and conditions of the Contract (the "**Undelivered Tonnage**");
- (2) in the event of Default under clause 3.1(b), the difference per tonne between the Estimated Final Equity on the day the Supplier notifies CBH that it is unable to deliver the Tonnage required under the Contract and the Market Price on the same day multiplied by the Undelivered Tonnage,
- (3) plus:
  - (i) an amount equal to the amount of the Estimated Costs that would have been payable for the Undelivered Tonnage (had the Undelivered Tonnage been Nominated) as at the next Business Day after the Delivery Period; and
  - (ii) the Underwriting Fee (if CBH Grain has offered underwriting in accordance with the General Terms and Conditions and the Supplier elected the underwriting option) which would have been payable for the Undelivered Tonnage (had it been Nominated).

- c. Liquidated damages payable in accordance with clause 3.2b. will be determined on the:

- (1) APW1 price for wheat contracts;
- (2) BFD1 price for feed barley contracts;
- (3) SPA1 price for malt barley contracts;
- (4) CAN1 price for non-GM canola contracts; and
- (5) CAG1 price for GM canola contracts.

- d. If the Supplier Defaults under this contract CBH Grain has the right to not enter into further contracts with the Supplier.

- e. The Supplier must pay interest on all amounts owing to CBH Grain on any invoice that remains outstanding upon expiration of the due date expressed in the invoice at the Default Rate.
- f. 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.
- g. Payments by the Supplier marked specifically for a particular invoice will be applied by CBH Grain firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.
- h. Any expenses reasonably incurred by CBH Grain in recovering outstanding monies owing to it under the Contract shall be paid in full by the Supplier.
- i. 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.
- j. 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.

### **3.3 Acknowledgement**

The parties acknowledge that the liquidated damages in clause 3.2 represent an accurate estimate of the loss that CBH Grain is likely to suffer if the Supplier Defaults.

### **4. Payment – Distributions Option**

This clause 4 only applies if “Distributions Payment Option” is nominated in item 3.3 of the Schedule.

- a. CBH Grain shall pay the Consideration in the following manner:
  - (1) after 15 January immediately following the Nomination of Grain (or earlier at CBH Grain’s absolute discretion) and within 45 days of 15 January, a first Distribution Instalment (“**January Payment**”); and
  - (2) in April immediately after the first Distribution, a second Distribution Instalment (“**April Payment**”); and
  - (3) 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 Instalment(s) paid under clauses 4(a)(1) and 4(a)(2).
- b. For the avoidance of doubt, the payments specified in clause 4.a:
  - (1) apply in place of the payments specified in clause 8.3 of the General Terms and Conditions; and
  - (2) shall be calculated on a GST exclusive basis.
- c. The Supplier agrees and acknowledges that if the Supplier requests, and CBH Grain agrees, for the Delivery Period to be extended beyond the last day of the Delivery Period specified in item 4.1, then notwithstanding the payment method nominated in item 3.3, the Supplier will be deemed to have nominated the Advance Payment Option.