

## General Terms and Conditions - Pool Contracts

The following terms and conditions apply to the sale of the Grain by the person named in the Schedule as the supplier ("**Supplier**") to CBH Grain Pty Ltd ABN 39 089 394 883 ("**CBH Grain**").

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

**"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.

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

**"Advance Percentage"** means the percentage determined by CBH Grain in its absolute discretion.

**"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 specified in the Schedule or, if no Pool is specified in the Schedule, to which the Grain is Nominated or to which the Grain is allocated by CBH Grain in accordance with the Contract.

**"Below the Line Direct Costs"** means CBH's and other 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 Nomination 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 Western Australia.

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

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

**"Carter's Delivery Form"** means the form entitled "Carters Delivery Form" issued by CBH and signed by the Supplier or its representative upon delivery of the Grain to a CBH storage facility.

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

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

**"CBH Delivery and Warehousing Terms"** means the CBH delivery and warehousing terms current at the time at which a Nomination is made, as published on the CBH web site at [www.cbh.com.au](http://www.cbh.com.au).

**"CBH Record"** means the relevant sections of the Carter's Delivery Form and LoadNet® nomination receipt.

**"Charges"** means all charges, 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, clause 7, clause 8 or clause 9.

**"Contaminant"** means a contaminant identified in the CBH Contaminant List published by CBH for the current Season as amended from time to time.

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

- a. these general terms and conditions;
- b. the Schedule;
- c. the CBH Record; and

d. the Pool Conditions.

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

**"Crop Lien"** means a charge registered over growing crops under the *Bills of Sale Act 1899* (WA) or the *Corporations Act 2001* (Cth).

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

**"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

**"Deferred Option Percentage"** means the percentage determined by CBH Grain in its absolute discretion.

**"Delivery Period"** means the period specified in item 4.1.

**"Destination Site"** means the CBH outturn site at which the Supplier Nominates the Grain to CBH Grain.

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

**"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 of the payment of the instalment 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. (to the extent not included in paragraph c.) the Estimated Carrying Costs;
- c. Estimated Direct Costs; and
- d. (to the extent not included in paragraph c.) Estimated Freight.

**"Distributions"** means the amounts paid or payable by CBH Grain in accordance with clause 8.3 or clause 9.4 (as the case may be) for a Nomination of Grain under the Contract.

**"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 a Crop Lien, mortgage, charge, lien, pledge, or trust.

**"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 Nomination of Grain under the Contract, the sum of CBH Grain's estimate of the following amounts:

- a. Charges relating to that Nomination;
- b. Direct Costs relating to that Nomination;
- c. (to the extent not included in paragraph b.) Freight relating to that Nomination; and
- d. (to the extent not included in paragraph b.) interest which is likely to accrue on the Supplier's Loan relating to that Nomination.

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

**"Estimated Pool Return"** means the estimate of the Final Equity that CBH Grain in its absolute discretion calculates from time to time 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 free in store basis at the Port which is published by CBH Grain on the Web Site 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 published by CBH for transporting the Grain from the Receival Point or the Destination Site (as applicable) to the Port.

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

**"Grain"** means the grain specified in the Schedule to be delivered by the Supplier to CBH Grain pursuant to the Contract.

**"Grain Purchase Contract Confirmation"** means the online form of the same name created when the Supplier contracts online through LoadNet® or the Web Site.

**"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 CBH grower 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).

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

**"Harvest Percentage"** means the percentage determined by CBH Grain in its absolute discretion.

**"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.

**"LoadNet®"** means CBH's online grain management interface available to users at [www.loadnet.com.au](http://www.loadnet.com.au).

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

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

**"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 in the Schedule.

**"Nomination"** means a nomination of Grain to CBH Grain via LoadNet® or the CBH Grower Services Centre which effects a transfer of title in the CBH entitlement system from the Supplier to CBH Grain.

**"Nomination Period"** means the period commencing on the day published as the beginning of the Nomination Period for a Pool on the Web Site and ending on the day notified by CBH Grain on the Web Site as the last day on which CBH Grain will accept Nominations to that Pool.

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

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

**"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 8.2c.

**"Pool"** means a grouping of grain treated by CBH Grain as a pool for the purposes of buying grain, grouped according to time of Nomination, location, Nominated Port Zone, quality, grade or variety of grain or such other matters as determined by CBH Grain.

**"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 has received all funds and obtained certainty as to all expenses in relation to those sales.

**"Pool Financing Costs"** means the costs charged by CBH Grain for providing any of the payment options specified in clauses 6 and 7, which are selected by the Supplier, as determined by CBH Grain.

**"Port"** means the port nominated by CBH from time to time as being the port to which grain from the Destination Site is to be delivered.

**"Quality Variations"** means the price variations applicable to the Grain by way of premiums or discounts to the Consideration due to moisture, protein, screening and other quality variations from the Receival Standards as set out in the Receival Standards and if applicable, the CBH Grain Quality Rewards Matrices (details of which are available from CBH Grain on request).

**"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 on the date on which the Supplier Nominates Grain.

**"Receival Point"** means any site operated by CBH accepting the Grain within the Nominated Port Zone.

**"Receival Standards"** has the meaning given in the CBH Delivery and Warehousing Terms.

**"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 grain Nomination or Nominations relate, generally commencing in November of one year and ending in February of the following year.

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

**"Tonnage"** means the Tonnes that the Supplier has agreed to sell to CBH Grain under the Contract being the Tonnes specified in the Schedule.

**"Tonne"** means tonne 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 Advance Payment Option or the Commodity Finance Option.

**"Underwriting Fee"** means the amount per tonne in Australian Dollars set for underwriting by CBH Grain 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 of declining precedence:

- a. the Special Conditions;
- b. the terms in the Schedule other than the Special Conditions;
- c. the Pool Conditions;
- d. these general terms and conditions; then
- e. the CBH Record.

### 1.4 No adverse interpretation

Nothing in the Contract is to be construed adversely against a party because that party prepared or put forward the Contract or any part of the Contract.

### 1.5 Guidance from Web Site

The Contract is to be read in conjunction with the guidance material on the Web Site that relates to the practical management and operation of all Pools. However that guidance material does not form part of the Contract but is made available by way of explanation and example only.

## 2. SUPPLY AND PURCHASE OF GRAIN

The Supplier sells the Tonnage to CBH Grain at the Destination Site and CBH Grain purchases the Tonnage free of all Encumbrances, unless otherwise agreed by CBH Grain, for the Consideration on the terms and conditions of the Contract.

## 3. SUPPLIER ACKNOWLEDGEMENTS

The Supplier acknowledges that:

- a. CBH Grain will conduct the Applicable Pool through the sale of grain within the Applicable Pool (including the Grain) to other CBH Grain Pools, CBH Grain cash books or third parties in CBH Grain's own name at a price or prices and on other terms and conditions determined by CBH Grain at its sole discretion;
- b. for the purposes of determining the Consideration, all proceeds from the sale of grain (including the Grain) from the Applicable 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 Applicable Pool costs and other charges and adjustment for Quality Variations in accordance with the Contract; and
- c. CBH Grain may engage third parties to provide risk management advice in connection with the Applicable Pool, including developing foreign exchange and commodity price risk strategies.

## 4. DELIVERY

### 4.1 Risk and title

- a. The Supplier bears all risk in the Grain until it is Nominated in accordance with the terms of the Contract.
- b. Title to and risk in Grain which is Nominated by a Supplier who is a Grower passes to CBH Grain immediately upon Nomination in accordance with the terms of the Contract.
- c. Title to and risk in Grain which is Nominated in accordance with the terms of the Contract by a Supplier who is not a Grower passes to CBH Grain upon CBH Grain accepting the Nomination.
- d. Unless otherwise specified in the Contract, Nomination is deemed to occur at the time recorded by CBH that the entitlement to each load of the Grain is transferred from the Supplier to CBH Grain. CBH will record that time as soon as practicable after the Nomination is made.

### 4.2 Receival Point

The Supplier must deliver the Grain to the Receival Point.

### 4.3 Allocation to Pools

Unless the Schedule specifies the Pool, when title to the Grain is transferred to CBH Grain, the Grain will be allocated:

- a. to the Pool Nominated by the Supplier; or
- b. if the Nominated Pool has been closed, to an alternative Pool selected by CBH Grain based on the time of Nomination, location, Nominated Port Zone, quality, grade or variety of grain or such other matters as determined by CBH Grain.

The allocation of Grain to a particular Pool is conditional until the quality and variety of the Grain has been conclusively determined by CBH in accordance with clauses 4.5 and 4.6.

### 4.4 Non-conforming deliveries

- a. Nominations which are:
  - (1) outside the Delivery Period;
  - (2) outside the Nomination Period;
  - (3) do not comply with the Grain description;
  - (4) do not comply with the Receival Standards;
  - (5) are not delivered within the Nominated Port Zone or (if the Destination Site is specified in the Schedule) the Destination Site; or
  - (6) do not have the correct contract number and/or Supplier number,
 are deemed not to be Nominated for the purposes of the Contract.
- b. The Supplier must pay to CBH Grain the amount of all costs incurred by CBH Grain in relation to non-conforming deliveries of grain.

### 4.5 Inspection of Grain

Prior to taking delivery of the Grain, and whenever the Supplier delivers the Grain, CBH 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.

### 4.6 Provisional assessment

If any Grain is subject to a quality assessment that cannot be done at the time of delivery, the classification recorded on the weighbridge ticket for that Grain will be provisional and CBH Grain:

- a. is not bound by the classification on the provisional weighbridge ticket; and
- b. may reclassify that Grain.

### 4.7 Certification by CBH

The weighbridge weights and the unconditional certification of compliance with the Receival Standards by CBH are final and binding.

### 4.8 Weight

The weight of any Grain received into a Pool will be determined by CBH Grain or, at CBH Grain's discretion, by an approved weighing facility at the Receival Point.

### 4.9 Costs of delivery

The Supplier must pay all costs incurred in delivering the Grain:

- a. to a Receival Point; and
- b. from the Receival Point to the Destination Site.

## 5. EXCESS TONNES

If the aggregate deliveries of grain by the Supplier exceed the Tonnage, CBH Grain may in its discretion:

- a. accept the excess grain under the Contract;
- b. accept the excess grain under any other agreement between CBH Grain and Supplier for the sale and purchase of grain; or
- c. decline to purchase the excess grain.

## 6. PAYMENT - ADVANCE PAYMENT OPTION

### 6.1 Application of this clause

This clause 6 only applies if "Advance Payment Option" is nominated in item 5.

## 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. (to the extent not included in paragraph d.) Carrying Costs;
- c. (to the extent not included in paragraph d.) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
- d. Direct Costs; and
- e. (to the extent not included in paragraph d.) Freight.

## 6.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. (Advance instalment) within 7 Business Days from the end of the week within which the Supplier Nominates Grain to CBH Grain is completed, a first instalment equal to at least the Advance Percentage of the Nominated Estimated Pool Return per Tonne adjusted for the Advance Percentage of the Quality Variations 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) the Estimated Management Fee;
- (2) (to the extent not included in paragraph (4)) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
- (3) (to the extent not included in paragraph (4)) the Estimated Carrying Costs;
- (4) the Estimated Direct Costs; and
- (5) (to the extent not included in paragraph (4)) the Estimated Freight; and

- b. (Final instalment) by no later than 15 Business Days after the Pool Finalisation, an amount or amounts equal to 100% of 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 Estimated Pool Return):

- (1) the Management Fee;
- (2) (to the extent not included in paragraph (4)) any applicable Underwriting Fee (if underwriting is specified to be available in the Pool Conditions and underwriting is taken);
- (3) (to the extent not included in paragraph (4)) the Carrying Costs;
- (4) the Direct Costs;
- (5) (to the extent not included in paragraph (4)) the Freight;
- (6) the payment made under clause 6.3a.

## 6.4 Underwriting of first instalment

- a. CBH Grain in its absolute 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 payment made under clause 6.3a or, taking into consideration any prior repayment under this clause 6.5, the aggregate of the payments made under clauses 6.3a and 6.3b, in either case, is greater than 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 12.

## 7. PAYMENT - DEFERRED OPTION

### 7.1 Application of this clause

This clause 7 only applies if "Deferred Payment Option" is nominated in item 5.

### 7.2 Consideration

In consideration for the sale of the Grain, CBH Grain shall pay to the Supplier the Final Equity 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. (to the extent not included in paragraph c.) Carrying Costs;
- c. Direct Costs; and
- d. (to the extent not included in paragraph c.) Freight.

### 7.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. (Initial instalment) after the 1 July following the Nomination of the Grain and within 45 days of 1 July, a first instalment being an amount equal to at least the Deferred Option Percentage of the Estimated Pool Return per Tonne, adjusted for at least the Deferred Option Percentage of the Quality Variations 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) (to the extent not included in paragraph (3)) Estimated Carrying Costs;
- (3) Estimated Direct Costs; and
- (4) (to the extent not included in paragraph (3)) Estimated Freight; and

- b. (Final instalment) by no later than 15 Business Days after the Pool Finalisation, an amount or amounts 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) (to the extent not included in paragraph (3)) Carrying Costs;
- (3) Direct Costs;
- (4) (to the extent not included in paragraph (3)) Freight; and
- (5) payment made under clause 7.3a.

### 7.4 Excess payment

The Supplier acknowledges that if either:

- a. the payment made under clause 7.3a; or
- b. taking into consideration any prior repayment under this clause 7.4, the aggregate of the payments made under clauses 7.3a and 7.3b,

in either case, 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 12.

## 8. PAYMENT - DISTRIBUTIONS OPTION

### 8.1 Application of this clause

This clause 8 only applies if "Distributions Payment Option" is nominated in item 5.

### 8.2 Consideration

In consideration for the sale of the Grain, CBH Grain shall pay to the Supplier the Final Equity 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. (to the extent not included in paragraph c.) Carrying Costs;

- c. Direct Costs; and
- d. (to the extent not included in paragraph c.) Freight.

### 8.3 Instalments

CBH Grain shall pay the Consideration in the following manner:

- a. after 1 April immediately following the Nomination of Grain (or earlier at CBH Grain's absolute discretion) and within 45 days of 1 April, a first Distribution Instalment ("**April Payment**");
- b. after 1 July immediately following the April Payment (or earlier at CBH Grain's absolute discretion) and within 45 days of 1 July, a second instalment Distribution Instalment ("**July Payment**");
- c. after 1 October immediately following the July Payment (or earlier at CBH Grain's absolute discretion) and within 45 days of 1 October, a third Distribution Instalment ("**October Payment**");
- d. after 1 January immediately following the October Payment (or earlier at CBH Grain's absolute discretion) and within 45 days of 1 January, 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

### 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 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 any amount remaining (plus relevant GST).
- 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, unless caused by CBH's gross negligence, wilful misconduct or fraud.

### 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 Nominated 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 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 Nomination 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 Nomination x Harvest Percentage x Nominated Estimated Pool Return per Tonne)
PLUS	(Harvest Percentage x Quality Variations for that Nomination, if any)
MINUS	Estimated Costs for that Nomination;
MINUS	(to the extent not included in Estimated Costs) the Underwriting Fee for that Nomination; 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 7 Business Days from the end of the week within which the Supplier Nominated 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 Nomination 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 Nominations 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 registered a valid email address with LoadNet® 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 or any other contract between the Supplier and CBH Grain or any Related Body Corporate of CBH Grain (including CBH).

### 9.11 Application of Drawdowns

The Supplier unconditionally and irrevocably authorises CBH Grain to satisfy any CBH 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, unless caused by CBH Grain's gross negligence, wilful misconduct or fraud.

## 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 by CBH Grain 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 Schedule and the information provided by the Supplier to CBH Grain is true and correct; and
- b. 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 and in the case of a Default referred to in clause 9.19a.(1) or (3), it has not remedied that default within 14 days of its occurrence or within such other period as

agreed by CBH Grain acting reasonably, 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 and in the case of a Default referred to in clause 9.19a.(1) or (3), it has not remedied that default within 14 days of its occurrence or within such other period as agreed by CBH Grain acting reasonably:
    - (1) interest shall be calculated under clause 9.12 at the Default Rate rather than the Rate; and
    - (2) if CBH Grain has exercised its rights under clause 9.19b.(1), 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. PAYMENT – SETTLEMENT OPTION

- a. Where CBH Grain has made an instalment payment or Distribution to the Supplier pursuant to clause 6.3, 7.3, 8.3 or 9.3 (as the case may be), CBH Grain may, before payment of the final instalment payment or Distribution (as the case may be) of the Consideration, make an offer of payment for all or part of the Tonnage bought from the Supplier.
- b. Where CBH Grain has made an offer of payment under clause 10.a but:
  - (1) the offer has not been accepted by every Supplier to whom the offer was made; or
  - (2) the offer was made for part of the Tonnage bought from a Supplier,CBH Grain may, at a later time but before payment of the final instalment or Distribution (as the case may be) of the Consideration, make a further offer or offers of payment for all or part of the Tonnage bought from a Supplier.
- c. Offers of payment under clauses 10.a or 10.b:
  - (1) may, prior to acceptance by the Supplier, be withdrawn by CBH Grain at any time in its absolute discretion; and
  - (2) will be made on terms specified by CBH Grain in its absolute discretion, but must be made on the same terms to all suppliers in the same Pool as the Supplier who have the same entitlement to an instalment payment(s) or Distribution(s).
- d. Acceptance by the Supplier of an offer made under this clause 10 has the effect of extinguishing the Supplier's entitlement to any further Consideration in respect of those Tonnes to which the offer relates.
- e. Any surplus or deficit in a Pool resulting from the extinguishment of the Supplier's entitlement to any instalment payment or Distribution (as the case may be) of the Consideration will be a benefit or cost that accrues to CBH Grain.

## 11. 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.

## 12. 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 delivery of a written notice in accordance with clause 21.4, requiring payment of the Debt, to the Supplier;
- 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 in accordance with clause 15.2.

### 13. ENCUMBRANCES

- a. The Supplier must notify CBH Grain if a Crop Lien or other Encumbrance exists over the Grain.
- b. Subject to clause 9.4a., 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 13.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 13.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, other than a claim caused by CBH's gross negligence, wilful misconduct or fraud.

### 14. FORCE MAJEURE

- a. If either party is unable by reason of an Event of Force Majeure to perform any obligation under the Contract, it must give the other party 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 the party giving the notice will be suspended so far and so long as it is affected by the Event of Force Majeure.
- c. The party giving the notice under clause 14.a must use its reasonable endeavours to mitigate the effects of the Event of Force Majeure.
- d. Neither party will be able to claim an Event of Force Majeure under the Contract on the basis of anything that could reasonably be known to exist as at the date of the Contract.
- e. If the Event of Force Majeure continues for more than six months from the date of the notice given under clause 14.a, either party may, in its discretion, terminate the Contract.

### 15. PAYMENTS

#### 15.1 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.

#### 15.2 Right of set off

- a. Subject to these terms and conditions, 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 provided that CBH Grain will give the Supplier prior written notice of its intention to effect any set-off together with sufficient details to allow the Supplier to identify the amounts to be set-off.
- 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.

### 15.3 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.

### 15.4 Withholding Funds

If the Supplier has a potential liability to CBH Grain or any of its Related Bodies Corporate under any other contract, to the extent the Supplier makes a request to CBH Grain, 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.

### 15.5 Charges

If CBH Grain deducts the Charges from the Consideration CBH Grain will remit the amounts deducted to the relevant authorities.

### 15.6 Overpayment

If, after payment to the Supplier of any amount by CBH Grain in relation to a Contract, CBH Grain calculates, in accordance with this Contract, that 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. If the Supplier fails to repay the amount outstanding within 30 days, the Supplier must pay the amount outstanding plus interest on that amount at the Default Rate from the date that the amount is outstanding until (but not including) the date upon which the amount is repaid.

### 16. DEFAULT

#### 16.1 Events of Default

The Supplier is in default if:

- a. the Supplier fails to deliver the Tonnage in accordance with the Contract ("**Tonnage Default**") and does not remedy that breach within 15 days of its occurrence;
- b. any of the representations and warranties made by it under the Contract are untrue or become untrue and the Supplier does not remedy that breach within 30 days of its occurrence;
- c. it becomes Insolvent;
- d. it fails to pay on time any money payable to CBH Grain under the Contract and the Supplier does not remedy that breach within 5 days of its occurrence; or
- e. the Supplier is otherwise in breach of any of the provisions of the Contract and does not remedy that breach within 30 days of its occurrence.

#### 16.2 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. If a Tonnage Default occurs CBH Grain is entitled to recover liquidated damages from the Supplier in accordance with the Pool Conditions.
- c. 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 16.2a.

#### 16.3 Further contracts

The Supplier acknowledges that if the Supplier defaults, as set out in clause 16.1, CBH Grain may refuse to enter into further contracts with the Supplier.

#### 16.4 Other Rights

CBH Grain's rights under this clause 16 do not limit CBH Grain's other rights in respect of a default by the Supplier.

### 17. SUPPLIER'S WARRANTIES AND INDEMNITIES

#### 17.1 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 Nomination);
- e. the information provided by the Supplier in the Schedule and the CBH Record is true and correct;
- f. the Grain is not subject to any Encumbrance except as is specified in the Schedule;
- 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 of CBH Grain or any of CBH Grain's staff or representatives;
- 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 or a representation that is implied by a law that may not be excluded; and
- k. the Supplier is not a United States person and that no United States person will in any way benefit in connection with the Contract.

The Supplier acknowledges that CBH Grain, in entering into the Contract, and providing equivalent services to other persons, is relying on the accuracy of the warranties given by the Supplier in this clause 17.1. If any warranty is not correct at the time it is made or when it is deemed to be repeated, by reference to the facts and circumstances then subsisting, CBH Grain may not be able to provide some part or all of the services to the Supplier under the Contract, or equivalent services, and may otherwise suffer loss or damage.

## 17.2 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 (or its Related Bodies Corporate) suffer as a result of:

- a. having regard to clause 17.1, any of the warranties set out in clause 17.1 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 other than as a result of the actions of CBH Grain;
- 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.

The indemnity in this clause 17.2 does not apply to any actions, claims, causes of action (whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses CBH Grain (or its Related Bodies Corporate) suffer as a result of CBH Grain's (or its Related Bodies Corporate) gross negligence, wilful misconduct or fraud.

## 18. ELECTRONIC TRANSACTIONS

- 18.1 This Contract may be signed and delivered electronically. The words "execute," "execution," "signed," "signature," and similar words used in this Contract will be deemed to include electronic signatures, and electronic signatures will be of the same legal effect, validity or enforceability as provided for in any applicable law.
- 18.2 Without limiting clause 18.1, the Supplier may elect to execute this Contract and return a copy to CBH Grain or, in its sole discretion, appoint a CBH representative as its agent solely for the purpose of electronically executing the Contract. In appointing the agent the Supplier acknowledges and agrees that:
  - a. during all discussions with the Supplier, the CBH representative is acting as the agent for the Buyer for the purpose of negotiating the Contract and facilitating execution of the agreement;

- b. the CBH representative only acts as agent for the Supplier on conclusion of the negotiations and when the Supplier has made its own independent decision to enter into the Contract;
  - c. the CBH representative has no duty to explain any terms of the Contract to the Supplier and the Supplier has obtained its own legal and commercial advice as to the terms of the Contract; and
  - d. the CBH representative is appointed for the exclusive purpose of signing the Contract electronically on the Supplier's behalf.
- 18.3 This Contract may be executed in any number of counterparts and by the Parties in separate counterparts. Each counterpart constitutes an original of the Contract, and all together constitutes one Contract.
  - 18.4 The counterparts of this Contract may be signed and delivered electronically in accordance with clause 18.1
  - 18.5 The Supplier agrees and acknowledges that:
    - a. 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;
    - b. 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;
    - c. CBH Grain will rely on the information provided by the Supplier in accordance with clause 18.1(b) for the purposes of entering into this Contract; and
    - d. 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 18.5(b) 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.
  - 18.6 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.

## 19. 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.

## 20. LIMIT OF LIABILITY

- a. Except as provided by law or as expressly set out in any other provision of the Contract, the maximum liability of CBH Grain and its Related Bodies Corporate to the Supplier under or in connection with this Contract is limited to a maximum of \$100,000 for a single event and an aggregate of \$250,000.
- b. Subject to clause 17.1, and so far as the law permits neither CBH Grain nor CBH nor the Supplier 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 or CBH, are excluded to the fullest extent permitted by law.



## 21. GENERAL

### 21.1 Time

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

### 21.2 Governing law

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

### 21.3 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.

### 21.4 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, facsimile number or email address shown in the CBH Record or Schedule, or as otherwise notified. A notice sent by mail is deemed to have been given 10 Business Days 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.

### 21.5 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.

### 21.6 Assignment

The Supplier must not assign its rights under, or the benefit of, the Contract without the prior written consent of CBH Grain. CBH Grain must not assign its rights under, or the benefit of, the Contract without the Supplier's prior written consent unless the assignment, transfer or disposal is to any of CBH Grain's Related Bodies Corporate.

### 21.7 Variations

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

### 21.8 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.

### 21.9 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.

### 21.10 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.

### 21.11 Entire agreement

The Contract forms the entire agreement between the parties with respect to the sale and purchase of the Grain. For the avoidance of doubt, nothing stated in any document created by a broker which in any way relates to the sale of the Grain by the Supplier to CBH Grain (including any document with a title such as broker contract, broker note, broker confirmation, contract confirmation or confirmation of sale) is of any legal effect.

### 21.12 Liability

- 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.
- 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; and

- c. The Supplier 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 by the Supplier of any misleading information under or in connection with the Contract, including any false declaration that the Supplier or its signatories had due authority to sign, other than where any such liability arises from CBH Grain's or such other persons gross negligence, wilful misconduct or fraud.

## 22. GST

### 22.1 Defined Terms

Words used in this clause 22 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

### 22.2 Consideration exclusive of GST

Unless otherwise specified, the Consideration does not include GST.

### 22.3 Supplier's GST liability

To the extent that the Supplier is required to pay GST on a supply under the Contract:

- a. CBH Grain 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 CBH Grain); and
- b. CBH Grain 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 CBH Grain 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 22.5.

### 22.4 CBH Grain's GST liability

To the extent that CBH Grain is required to pay GST on a supply under the Contract:

- a. the Supplier must pay to CBH Grain the amount of GST that CBH Grain is liable to pay; and
- b. CBH Grain 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.

### 22.5 Withholding Tax

If the Supplier:

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

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.

## 23. ACKNOWLEDGEMENT OF RISKS OF POOLING

23.1 There are many risks which arise when operating in domestic and global commodity markets. Participants in pools are exposed to these risks through the operations of the Pool.

23.2 As a professional and responsible Pool manager, CBH Grain identifies and manages the risks arising from Pool operations on behalf of Pool participants. Examples of the variety of risks present in pooling, and the way CBH Grain seeks to mitigate these, include:

- a. **Production Risk:** The risk of production and delivery typically sits with the grower. The Pools managed by CBH Grain operate with the purpose of marketing the grain which growers commit to the Pool, and returning this value back to the grower. Such marketing activity could include executing commodity hedging against committed grain, and hedging against fluctuations in the currency. Should a grower default on their commitment to deliver grain into a Pool, this could result in a loss to the Pool

(including loss of profit) arising from marketing activities undertaken on behalf of committed grain. If a grower fails to deliver committed grain, CBH Grain may mitigate its and the Pool's losses including by, at its discretion:

- (1) where the defaulting grower is the Supplier, if CBH Grain does not recover such costs under any of other provision of this Contract, pass on to the defaulting grower any costs associated with the unwinding of pricing and hedging positions, or
- (2) wash out of sales in accordance with the Contract, or
- (3) where the defaulting grower is the Supplier, if CBH Grain does not recover such costs under any of other provision of this Contract, buy grain on behalf of the grower and deliver to the relevant CBH Pool and claim the money so expended plus interest from the defaulting grower.

b. **Price Risk:** Price risk can come from a variety of sources as follows:

- (1) **Commodity Price Risk:** Prices for grain will vary depending on a multitude of factors, including domestic and global market influences. CBH Grain Pool strategy incorporates participation in domestic and global markets, and CBH manages commodity price risk via a mix of domestic and global market sales, including hedging in a variety of related instruments. CBH Grain maintains extensive global supply and demand analysis to form an understanding of the global picture, as well as closely observing pricing behaviour across a multitude of related markets in order to make appropriate risk management decisions in physical and derivative markets. Depending on the state of the market, our activities could include executing sales or derivative strategies designed to protect the pool from loss, or to capture additional value by increasing exposure to the market. At all times, the relevant Pool will operate within the prescribed physical hedging mandate, which is designed to reduce exposure to commodity price risk over time.
- (2) **Currency Risk:** Currency fluctuations can have a significant impact on the overall value of the Pool, whether by influencing domestic market pricing, or via the relative value of sales made which are denominated in foreign currency. CBH Grain actively manages currency risk through the use of foreign exchange derivatives (forward exchange contracts and options). Leveraging a dedicated Derivatives team focused on monitoring international financial markets, CBH Pool management can implement strategy designed to protect the Pool from loss, or to capture additional value through retaining exposure to the exchange rate as required. At all times, the Pool will operate within the prescribed foreign exchange hedging mandate, which is designed to reduce exposure to foreign exchange risk over time.
- (3) **Basis Risk:** Originates when an underlying asset and the method used to hedge that asset do not have perfectly correlated price movements. In grain markets, this is typically a result of physical ownership of grain, and a commodity derivative hedge on a futures exchange. Basis risk then often arises due to the physical grain and the hedging instrument having different characteristics i.e. quality, location, currency of value etc. CBH Grain manages basis risk using the same overarching principles by which it manages commodity price risk and foreign exchange risk. The key factor however, is to execute the physical sales strategy which involves systematically selling down the physical ownership of the Pool over time. At all times, the Pool will operate with the prescribed physical sales mandate, which is designed to reduce exposure to basis risk over time.

c. **Liquidity Risk:** Represents the risk that at any time the Pool does not have adequate funds to meet cashflow requirements.

To mitigate this risk, the Pool utilises the CBH Grain balance sheet which offers competitive funding to facilitate Pool requirements. CBH Grain funds its own balance sheet operations via arrangements with a variety of financial institutions designed to provide competitive rates for all CBH Grain funding requirements.

- d. **Counterparty Risk:** Is the risk that a counterparty to the Pool, be they participants, customers, suppliers, or hedging counterparties, do not perform against their obligations to the Pool. CBH Grain operates a specific credit management department which seeks to identify the degree of credit risk which could be inherent in business dealings with our various counterparties, in order to reduce counterparty risk, or to the extent that this is not possible, to engage in business dealings on terms which minimise the exposure to counterparty risk against that counterparty.
- e. **Supply Chain Risk:** Is the exposure the Pool faces from elements of the supply chain outside of its control. This could manifest in weather conditions, grain quality/availability, equipment failure, incidents and so on. Any interruption to the normal availability of infrastructure or logistical capacity due to such events can have a detrimental impact on the performance of the Pool. To mitigate such risks, the Pool can leverage the inherent flexibility CBH Grain possesses by virtue of its size and position in the industry to source alternative arrangements which minimise the impact of any such disruptions.
- f. **Geopolitical Risk:** An ever-present risk in the global grain market is geopolitical risk, the risk that a particular region is adversely impacted due to political developments, trade restrictions or sanctions, conflict or other developments which restrict access to markets which would otherwise be utilised in global commodity trade. By virtue of CBH Grain's position as a major exporter of grain out of multiple global origins, the Pool can access a well-developed global network of customers with a broad spread across geographies, reducing exposure to the risk of exclusion to a particular market geography.
- g. **Attribution of Sales between Pools:** CBH Grain operates a pooling concept which provides for equal access for all Pool products to those sales in which they are eligible to participate. Eligibility may be determined by consideration of factors such as the type of sale, the term of the Pool, the strategy of the Pool and other such factors which may arise from time to time. Typically, a sale will be allocated proportionately to all eligible Pool products based on their relative size.
- h. **Conflict of Interest:** CBH Grain undertakes grain trading and marketing activities acting on its own behalf, whilst also representing growers' interests by managing Pools. In order to mitigate any conflicts of interest arising where these activities intersect, CBH has a board-approved governance framework in place ensuring that neither Pool interests, nor CBH Grain's interests, gain any material advantage to the detriment of the other. In addition, a well-defined sales allocation policy outlines the process by which all parties are given access to transactions in a fair and equitable manner. To further mitigate any risk of conflict, the cash trading activities and Pool management activities are operated by independent teams with oversight by the CBH General Manager Marketing and Trading.

### 23.3 Pool Governance:

As part of a commitment to offer industry-leading, transparent and fairly operated Pool products, CBH Grain has put in place a strict governance framework which guides the operation of all Pools. This framework incorporates a number of CBH Board approved management policies, and compliance with these policies is reported to the Board. As part of this framework, CBH Grain operated Pools are independently audited with the results made available to all CBH Pool participants (where CBH operates "Retail" Pools which comprise a "Master" Pool, the Master Pool is

independently audited, whereas the Retail Pools are internally audited).

**24. Administrative services fee**

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>Column 1 : Service</b>	<b>Column 2 : Fee</b>
Annual Statement of Grain Payments	\$25.00 per electronically despatched statement  \$30.00 per hard copy despatched statement
Encumbrance processing	\$175.00 per Season per Encumbrance
Advances 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
Irrevocable Notice	\$175 per notice
Correction / Amendment of details provided by the Supplier associated with Notice of assignment of payment to Third Party	\$150 per request