

## **PART C – DELIVERED END USER and EX-FARM CONTRACT TERMS & CONDITIONS**

The following terms and conditions will apply to the sale of the Commodity by the Supplier named in the Grain Purchase Contract Confirmation (**Supplier**) and CBH Grain Pty Ltd ABN 39 089 394 883 (**Buyer**). The Special Conditions will apply to the Contract and will prevail to the extent of any inconsistency between the Special Conditions and these terms and conditions.

### **1. DEFINITIONS**

Unless otherwise stated:

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

**"Approval"** means any certificate, licence, consent, permit, approval or requirement of any Authority having jurisdiction in connection with the activities contemplated by this Contract.

**"Authority"** means any government, semi governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal or other person.

**"Business Day"** means a day that is not a Saturday, Sunday or public holiday in Perth, Western Australia;

**"Buyer Specified Destination"** means the address of the Receiver specified in item 4.4 of the Grain Purchase Contract Confirmation, if any;

**"CBH"** means Co-operative Bulk Handling Limited;

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

**"Carry Charges"** means the charges payable by the Buyer to the Supplier for storing the Commodity on farm;

**"Carry Rate"** means the rate at which Carry Charges will be calculated as set out in item 3.2;

**"Chain of Responsibility Laws"** means the requirements known as the "Chain of Responsibility" provisions under the *Road Traffic (Administration) Act 2008 (WA)*, the *Road Traffic (Vehicles) Act 2012 (WA)*, the *Road Traffic (Administration) Regulations 2014 (WA)*, the *Road Traffic (Vehicles) Regulations 2014 (WA)* and the *Road Traffic (Authorisation to Drive) Regulations 2014 (WA)*.

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

**"Commodity"** means the grain described in item 2;

**"Compliant Delivery"** has the meaning given in clause 5.8;

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

**"Contracted Tonnage"** means the tonnage of the Commodity the Supplier agrees to supply to the Buyer pursuant to this agreement as specified in item 2.3;

**"Crop Lien"** means a charge registered over growing crops under the *Corporations Act 2001 (Cth)*, the *Bills of Sale Act 1899 (WA)*, or equivalent legislation on the east coast;

**"Delivered Tonnage"** means the actual tonnage of Commodity delivered to the Receiver as shown on the original weigh bridge ticket issued by the Receiver;

**"Deemed Delivery Date"** means the date delivery is deemed to occur in accordance with clause 5.10;

**"Delivery Date"** means the date the Commodity is delivered to the Receiver;

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

**"Encumbrance"** means an Irrevocable Notice or any security for the payment of money or the performance of obligations including a Crop Lien, mortgage, charge, lien, pledge, trust or any "security interest" (as that term is defined in the *Personal Properties Securities Act 2009 (Cth)*).

**"Ex-Farm Delivery Period"** has the meaning given to it in clause 5.13.

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

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

**"Grain Commodity Vendor Declaration"** means Grain Trade Australia's Grain Commodity Vendor Declaration form;

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

**"Grain Type"** means the grain type specified in item 2.1;

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

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

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

**"Irrevocable Notice"** means a notice to the Buyer from the Supplier's financial institution that directs the Buyer to pay monies directly to a particular financial institution instead of the Supplier.

**"Law"** means:

(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;

(b) any Approval, including any condition or requirement under it; and

(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

**"Net Price"** means:

(a) in the case of a Compliant Delivery, the applicable price stated in item 3.1 minus all Charges; and

(b) in the case of a Non-Compliant Delivery the price determined by the Buyer in accordance with clause 5.11;

**"Non-Compliant Delivery"** has the meaning given in clause 5.7;

**"Notice"** has the meaning given to it in clause 5.1;

**"Notified Delivery Period"** has the meaning given to it clause 5.2;

**"Party"** means a party to this agreement;

**"Perth Market Zone"** means any destination selected by the Buyer within a 50 kilometre radius of Point Zero at the corner of Cathedral Avenue and St Georges Terrace, Perth, Western Australia.

**"Pick-up Address"** means the address specified in the Grain Purchase Confirmation;

**"Pesticide Residue Declaration"** means the Pesticide Residue Declaration in the form prescribed by the Buyer from time to time;

**"Receiver"** means either the party specified at item 4.3 (if any) or the party who is nominated by the Buyer to the Supplier to receive the Commodity within the Perth Market Zone or within the nominated market zone on the east coast as defined by Grain Trade Australia;

**"Receival Specifications"** means:

(a) if delivered to a Receiver:

- (1) the Commodity Standards set by Grain Trade Australia, and as varied by any relevant or additional standards set by the Receiver at the Buyer Specified Destination from time to time (whether or not the Receiver has notified the Supplier of those standards); and/or
- (2) any special standards for the Commodity specified by the Buyer in the Special Conditions.

(b) if delivered to a CBH or an approved bulk handling site:

- (1) means the receival specifications set for the Commodity by CBH or the relevant bulk handler, a copy of which will be provided to the Supplier by the Buyer upon written request; and/or
- (2) any special standards for the Commodity specified by the Buyer in the Special Conditions.

**"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;

**"Road Safety Laws"** includes any Law relating to road safety, road transport or heavy vehicle transport, including the Chain of Responsibility Laws, and Law relating to:

- (a) vehicle dimensions;
- (b) securing of loads;
- (c) illegal driving;
- (d) occupational health and safety;
- (e) speed limiting;
- (f) vehicle load limits;
- (g) vehicle weight or mass limits;
- (h) route restrictions;
- (i) fatigue management; or
- (j) driving hours.

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

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

**"Special Conditions"** means the special conditions (if any), other than these terms and conditions, specified in item 5;

**"Supplier's People"** means the Supplier's representatives, employees, officers, agents and subcontractors (including freight carriers); and

**"Tolerance"** means the amount by which the Contracted Tonnage may vary from the Delivered Tonnage and is as set out in item 2.4.

### **2. OFFER FOR SALE**

2.1 The Supplier offers to sell the Commodity to the Buyer free of all Encumbrances, unless otherwise agreed by the Buyer, for the Net Price on these terms and conditions.

- 2.2 The offer in clause 2.1 will be deemed to be accepted by the earlier of:
- a. verbal acceptance of the offer by the Buyer and transmission of the Grain Purchase Contract Confirmation by the Buyer to the Supplier; or
  - b. execution by the Supplier and Buyer of the Grain Purchase Contract Confirmation,
- and these terms and conditions shall form part of the Contract.
- 3. PAYMENT**
- 3.1 Subject to clause 3.2 below, if delivery is deemed to occur in accordance with clause 5.10, then the Buyer must pay to the Supplier an amount equal to the Net Price plus the applicable Carry Rate for each tonne of Commodity delivered. Payment must be made within 14 Business Days from the Deemed Delivery Date.
- 3.2 If there are:
- a. outstanding liens or encumbrances affecting the Commodity at the Delivery Date;
  - b. liquidated damages owing under clause 7;
  - c. any other monies or liabilities due to the Buyer by the Supplier on any account; or
  - d. any outstanding CBH Debt, ("Monies Owing"), the Buyer may deduct the Monies Owing from the Net Price.
- 3.3 The Buyer is not required to pay the Supplier interest on overdue monies.
- 3.4 If the Supplier has a potential liability to the Buyer or any of its Related Bodies Corporate under any other contract, to the extent the Supplier makes a request to the Buyer, the Buyer may in its discretion and notwithstanding any other provision of this Contract retain an amount equivalent to the Supplier's potential liability until such time that the Supplier's potential liability has either:
- a. crystallised and been paid; or
  - b. ceased to exist.
- 3.5 Subject to these terms and conditions, any amounts owing by the Buyer or any of its Related Bodies Corporate to the Supplier whether under this Contract or otherwise, may, at the election of the Buyer, be set off against any amounts owing by the Supplier to the Buyer or any of its Related Bodies Corporate, whether under this Contract or otherwise provided that the Buyer 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. The Buyer holds the benefit of this clause and may exercise the rights under this clause on its own behalf and for and on behalf of each of its Related Bodies Corporate but nothing in this clause obliges such Related Bodies Corporate to perform any of the obligations of the Buyer under this Contract.
- 4. FORCE MAJEURE**
- 4.1 If either Party is unable by reason of Force Majeure to perform any obligation under this Contract, it must give the other Party prompt written notice with full particulars of the Force Majeure and the extent to which it is likely to be unable to perform its obligations.
- 4.2 The obligation of the Party giving the notice will be suspended so far and so long as it is affected by the Force Majeure.
- 4.3 The Party giving the notice under clause 4.1 must use its reasonable endeavours to mitigate the effects of the Force Majeure.
- 4.4 Neither Party will be able to claim Force Majeure under this Contract on the basis of anything that could reasonably be known to exist as at the date of this Contract.
- 4.5 If the Force Majeure continues for more than 3 months from the date of the notice in clause 4.1, either Party may, in its discretion, terminate this Contract.
- 5. DELIVERY**
- 5.1 The Seller will, by providing notice to the Supplier during the Delivery Period, identify the Buyer Specified Destination and the Receiver ("Notice").
- 5.2 The Supplier will be required to deliver the Contracted Tonnage to the Receiver at the Buyer Specified Destination no later than 5 days later than the Notice is provided ("Notified Delivery Period"), except if Buyer exercises its rights pursuant to 5.13. Risk in the Commodity passes to the Receiver upon delivery.
- 5.3 The Supplier will provide the Buyer with a completed and signed Grain Commodity Vendor Declaration and a Pesticide Residue Declaration at least two Business Days prior to the date the Commodity is scheduled to be delivered. If the Buyer is not satisfied with any matters stated on the Grain Commodity Vendor Declaration or Pesticide Residue Declaration, the Buyer may cancel the delivery of the Commodity and may also elect to terminate this agreement without any further liability to the Supplier.
- 5.4 Upon delivery to the Receiver the Commodity will be weighed and sampled to ascertain the Delivered Tonnage and whether or not the Commodity complies with the Receival Specifications applicable to that Grain Type.
- 5.5 The Delivered Tonnage will be determined:
- a. In the absence of manifest error, from the Receiver's original weigh bridge tickets provided to the Buyer; or
  - b. if a weighbridge is not available at the Receiver site, the original loading point weights will determine the Delivered Tonnage.
- 5.6 The unconditional certification of compliance with the Receival Specifications issued by the Receiver, is final and binding.
- 5.7 If:
- a. upon delivery to the Receiver it is found that the Commodity:
    - (1) does not comply with the Receival Specifications applicable for that Commodity;
    - (2) has been treated with pesticides, chemicals or other substances in a manner that is prohibited by law for grains intended for stockfeed, human consumption or industrial purposes;
    - (3) contains residues of pesticides, chemicals or other substances in concentrations that are not permitted by law for grains intended for stockfeed, human consumption or industrial purposes;
    - (4) does not conform to the Grain Commodity Vendor Declaration and Pesticide Residue Declaration most recently provided to the Buyer; or
  - b. the delivery results in the Delivered Tonnage exceeding the Contracted Tonnage by more than the Tolerance;
  - c. the delivery is delivered outside the Notified Delivery Period, then such delivery constitutes a "**Non-Compliant Delivery**" and the Buyer has sole discretion to accept or reject such a delivery.
- 5.8 If:
- a. the delivery complies with the Receival Specifications applicable for that Commodity;
  - b. the final delivery under this agreement results in the Delivered Tonnage falling within the Tolerance,
- then the delivery is deemed to be a "**Compliant Delivery**".
- 5.9 The Buyer must elect either to accept or reject a Non-Compliant Delivery within 10 Business Days of the Delivery Date, otherwise it is deemed to be accepted.
- 5.10 Delivery is deemed to occur ("**Deemed Delivery Date**") on the earlier of:
- a. the Delivery Date if the delivery is a Compliant Delivery;
  - b. the date a Non-Compliant Delivery is accepted; or
  - c. 10 Business Days from the Delivery Date if the delivery is a Non-Compliant Delivery and no election is made pursuant to clause 5.9.
- 5.11 If the Buyer accepts a Non-Compliant Delivery, the Supplier agrees to accept payment from the Buyer at the price payable by the Buyer for such a Commodity of the same type and quality as at the date on which the Buyer determines the Commodity was a Non-Compliant Delivery. Acceptance by the Buyer in these circumstances does not constitute a waiver of its rights under clause 13.10.
- 5.12 If the Buyer rejects a Non-Compliant Delivery, the Supplier will be deemed to be in default of its obligations under this agreement. In these circumstances, the Supplier must pay the Buyer:
- a. for any costs incurred by the Buyer as a result of the Supplier's default; and
  - b. liquidated damages for default pursuant to clause 7.
- 5.13 **EX-FARM**
- a. If the Buyer elects to collect the Commodity Ex-farm during the Delivery Period, the Buyer will give the Supplier 5 days' notice of its intention to pick up the Commodity ("**Ex-Farm Delivery Period**") and will arrange for the Buyer's freight contractor to pick up the Commodity from the Pick-up Address.
  - b. The Supplier agrees to make the Commodity available for collection by the Buyer's freight contractor during the Ex-Farm Delivery Period.
  - c. At the time the Commodity is collected, each party is responsible for inspecting the vehicles of the Buyer's freight contractor to ensure that they are clean and free from contaminants. If the Supplier determines that the vehicles are not clean and free from contaminants, the Supplier will immediately notify the Buyer to arrange alternative vehicles.
  - d. Clauses 5.3 to 5.12 (inclusive) will also apply for Ex-farm delivery under clause 5.13.
- 6. ROAD SAFETY LAWS**
- 6.1 At all times in connection with the performance of this Contract, the Supplier must comply, and must ensure the Supplier's People comply, with all Road Safety Laws.
- 6.2 The Supplier must ensure that the Supplier's People are aware of all relevant provisions of the Road Safety Laws and are adequately trained to comply with the Road Safety Laws in connection with this Contract.
- 6.3 The Supplier must notify the Buyer immediately if the Supplier considers a Grain Purchase Contract Confirmation or any other direction issued by the Buyer or Receiver in relation to the transport of the Commodity may, if complied with, cause any person to breach any Road Safety Law.
- 6.4 The Supplier must maintain all information and documents necessary to substantiate the Supplier's compliance with the Road Safety Laws in connection with this Contract and must make such material available to

- the Buyer when reasonably required by the Buyer to audit the Supplier's compliance with the Road Safety Laws. This obligation survives termination of this Contract.
- 6.5 Without limiting any other right or remedy of the Buyer, if the Supplier breaches this clause 6 the Buyer may terminate this Contract with immediate effect by written notice to the Supplier.
- 7. DEFAULT**
- 7.1 Failure to deliver the Commodity in accordance with the terms and conditions of the Contract is a default by the Supplier.
- 7.2 If the Supplier defaults under this Contract, the Buyer may recover liquidated damages from the Supplier calculated as follows:
- if the Net Price is less than the Actual or Estimated Price, the Buyer may recover liquidated damages from the Supplier in an amount equal to the difference between the Net Price and the Actual or Estimated Price multiplied by the total shortfall in tonnes not delivered by the Supplier (calculated on the basis of the tonnage specified in item 2.3, and not taking into account any tolerance specified in item 2.4), the relevant Actual or Estimated Price being either at the time the Supplier advises the Buyer of the default or, in the absence of such advice, on the next Business Day following the end of the Deemed Delivery Period. Where such an amount is less than \$200.00, a minimum charge of \$200.00 applies; or
  - if the Actual or Estimated Price is less than the Net Price, \$200.00.
- Liquidated damages payable in accordance with clause 7.2 for multigrade contracts will be determined on: the feed price for barley contracts; the APW1 price for wheat contracts; the feed price for oat contracts; the standard grade for field pea, canola, lupins and faba bean contracts.
- 7.3 The parties acknowledge that the liquidated damages in clause 7.2 represent an accurate estimate of the loss that the Buyer is likely to suffer if the Supplier is in default.
- 7.4 If the Supplier defaults under this contract the Buyer has the right to not enter into further contracts with the Supplier.
- 7.5 The Supplier must pay interest on all amounts owing to the Buyer on any invoice that remains outstanding at a rate 5% above the rate published on the Australian Financial Markets Association webpage BBSW as at 11 am on 31st October each year.
- 7.6 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.
- 7.7 Payments by the Supplier marked specifically for a particular invoice will be applied by the Buyer firstly in reduction of the interest outstanding and accruing on the invoice and then on any amount outstanding on the invoice.
- 7.8 Any loss or damage incurred by the Buyer in recovering any outstanding monies owing to it under this Contract shall be paid in full by the Supplier.
- 7.9 The Buyer will not be entitled to recover under this clause any liability incurred as a result of its gross negligence, wilful default or fraud.
- 7.10 The Buyer will be entitled to recover under this clause any amount for which it receives compensation under any other provision of the Contract.
- 8. TITLE**
- 8.1 Title and ownership of the Commodity passes to the Buyer on the Deemed Delivery Date.
- 9. ELECTRONIC TRANSACTIONS**
- 9.1 The Supplier agrees and acknowledges that:
- its entry into this Contract is not invalid for the purposes of any applicable law merely because it took place wholly or partly by means of one or more electronic communications (whether by email, online, SMS or other form of electronic message);
  - the Buyer may rely on any instruction, confirmation or other communication received from the Supplier via electronic communication (whether by email, online, SMS or other form of electronic message) which reasonably appears to have been sent by the Supplier;
  - it is the Supplier's responsibility to:
    - provide the Buyer with true, accurate and complete personal information (including, without limitation, e-mail address and mobile phone number); and
    - notify the Buyer immediately upon becoming aware of any change to that information, or of any actual or suspected breach of security of that personal information (including unauthorised access of the Supplier's email account or mobile phone, or that a mobile phone has been lost, stolen or misused) or that an unauthorised transaction has occurred;
  - the Buyer will rely on the information provided by the Supplier in accordance with clause 9.1(c) for the purposes of entering into this Contract; and
  - without limiting any other right of the Buyer under this Contract, the Supplier will be liable for losses suffered by the Buyer caused by the Supplier's failure to comply with clause 9.1(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.
- 9.2 The Buyer may, at its discretion, refuse an instruction, confirmation or other communication received from the Supplier via electronic communication (whether by email, online, SMS or other form of electronic message), in which case the Buyer may require the Supplier to verify the instruction, confirmation or other communication by another means. Failure by the Supplier to verify the instruction, confirmation or other communication to the Buyer's satisfaction will give rise to a right of the Buyer to declare null and void any transaction purported to be entered into by the Supplier.
- 10. SUPPLIER'S WARRANTIES AND INDEMNITIES**
- 10.1 Warranties**
- The Supplier warrants to the Buyer that:
- the Commodity meets the Receival Specifications;
  - at the time of each delivery that the Commodity complied with the matters stated on the most current Grain Commodity Vendor Declaration and Pesticide Residue Declaration provided to the Buyer;
  - the Commodity is not contaminated with pesticides or herbicides;
  - none of the Commodity is a Genetically Modified Organism (unless declared in writing to, and agreed in writing by, the Buyer prior to delivery)
  - the Supplier and the Supplier's People will comply with all Road Safety Laws in connection with the delivery of the Commodity to the Receiver;
  - in entering into the Contract it has relied on its own skill and judgment;
  - it has not relied in any way on the Buyer's skill or judgment; and
  - it has not relied in any way on any representation made by the Buyer other than a representation expressly stated in this agreement or a representation that is implied by law that may not be excluded and it has not relied upon any descriptions, illustrations, specifications or information contained in any other documents.
- The Supplier acknowledges that the Buyer, 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 10.1. 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, the Buyer 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.
- 10.2 Indemnities**
- The Supplier agrees to indemnify the Buyer (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 the Buyer (or its Related Bodies Corporate) suffers as a result of:
- Having regard to clause 10.1, any of the warranties set out in clause 10.1 being false, incorrect or misleading (whether by omission or otherwise);
  - a person claiming an interest in the Commodity regardless of whether the Supplier has notified the Buyer of that claim other than as a result of the actions of the Buyer;
  - the death or personal injury of any person that is caused or contributed to by the Supplier or its officers, employees, contractors or agents; and
  - any breach of this Contract, including but not limited to a failure to meet the Receival Specifications.
- The indemnity in this clause 10.2 does not apply to any actions, claims, causes of action (whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses the Buyer (or its Related Bodies Corporate) suffer as a result of the Buyer's (or its Related Bodies Corporate) gross negligence, wilful misconduct or fraud.
- 11. AUTHORITY**
- 11.1 Each Party warrants that it has the authority and power to enter into this Contract.
- 12. LIMIT OF LIABILITY**
- 12.1 Subject to clause 10.1, neither the Buyer, the Receiver nor the Supplier will, to the fullest extent permitted by law, be under any liability for any direct, indirect, consequential or any other loss, expenses or damage resulting from the negligence or alleged negligence of the Buyer, the Receiver, or the Supplier or any of their servants or agents in the performance of their obligations under the Contract, however it arises.
- 12.2 Except as provided by law or as expressly set out in any other provision of this Contract, the maximum liability of the Buyer and its Related Bodies Corporate to the Supplier under or in connection with this Contract is limited to the Net Price of the Commodity under this Contract.

12.3 Except as specified in this Contract, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, by the Buyer and the Receiver, are excluded to the fullest extent permitted by law.

**13. GENERAL**

- 13.1 Time is of the essence in every respect.
- 13.2 This Contract is governed by the laws of the State 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.
- 13.3 All notices, requests, demands and other communications under or in connection with this Contract must be in writing, and must be given to the parties at their address shown in the Grain Purchase Contract Confirmation, 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.
- 13.4 The Supplier must not assign its rights under, or the benefit of, this Contract without the prior written consent of the Buyer and the payment of the applicable fee set out in the Table. The Buyer must not assign its rights under, or the benefit of, this Contract without the Supplier's prior written consent unless the assignment, transfer or disposal is to any of the Buyer's Related Bodies Corporate.
- 13.5 **Liability of Supplier**  
In this Contract:
  - a. if the Supplier is comprised of more than one person then the obligations of the Supplier will bind such persons jointly and severally; and
  - b. if the Supplier enters into this Contract as a trustee, the Supplier shall be liable under this Contract in its personal capacity and in its capacity as trustee of the trust.
- 13.6 The Supplier acknowledges and agrees that any telephone conversation with the Buyer may be recorded and kept as evidence of the Supplier's instructions unless the Supplier objects at the beginning of the telephone conversation.
- 13.7 Except as otherwise provided in this Contract, this Contract may only be varied by agreement in writing.
- 13.8 Except as otherwise provided in this Contract, each Party must bear its own legal and other costs and expenses relating to the preparation of, and performance of its obligations under, this Contract.
- 13.9 If any term or part of this Contract is or becomes invalid or unenforceable at law, then that term or part will be deemed to be severed from this Contract. Severance will not affect the remainder of this Contract, and the remainder of this Contract will continue to be valid and enforceable.
- 13.10 Waiver of any power or right arising under this Contract must be in writing and signed by the Party granting the waiver. Any failure or delay by a Party to exercise a power or right does not operate as a waiver of that power or right.
- 13.11 This Contract may be executed in any number of counterparts, all of which taken together are deemed to constitute one document.
- 13.12 This Contract forms the entire agreement between the parties in respect to the sale and purchase of the Commodity. For the avoidance of doubt, nothing stated in any document created by a broker which in any way relates to the sale of the Commodity by the Supplier to the Buyer (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.

**14. GST**

**14.1 Defined Terms**

Words used in this clause 14 which have a defined meaning in the GST law have the same meaning as in the GST law unless the context otherwise indicates.

**14.2 Consideration exclusive of GST**

Unless otherwise specified, the Consideration does not include GST.

**14.3 Supplier's GST liability**

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

- a. the Buyer must pay to the Supplier the amount of GST that the Supplier is liable to pay (subject always to the Supplier providing the relevant information to the Buyer); and
- b. the Buyer must give the Supplier:
  - (1) if the Supplier has provided a valid ABN and is registered for GST: a valid Recipient Created Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that the Buyer is obliged to pay for the supply; or
  - (2) if the Supplier has provided a valid ABN but is not registered for GST: a payment advice setting out the amount paid to the Supplier excluding GST; or
  - (3) if the Supplier has not provided a valid ABN: a payment advice setting out the amount paid to the Supplier

excluding GST and subject to any withholding tax in accordance with clause 14.5.

**14.4 The Buyer's GST liability**

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

- a. the Supplier must pay to the Buyer the amount of GST that the Buyer is liable to pay; and
- b. the Buyer must give the Supplier a valid Tax Invoice that states the amount of the GST that the Supplier is liable to pay, at the same time that the Supplier is obliged to pay for the supply.

**14.5 Withholding Tax**

If the Supplier:

- a. does not have an ABN or does not provide a valid ABN to the Buyer; and
  - b. has not provided an executed Statement by a supplier form to the Buyer,
- the Buyer may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

**15. DISPUTE RESOLUTION**

- 15.1 If a difference or dispute between the Parties arises out of or related to the terms and conditions of this Contract, then any Party (the "Disputer") may give the other Party (the "Disputee") a written notice of dispute adequately identifying and providing details of the dispute ("Notice of Dispute").
- 15.2 Within five Business Days of service of a Notice of Dispute, the Disputee must give the Disputer a notice setting out brief details of the Disputee's position on the Dispute ("Reply Notice").
- 15.3 Within a maximum of ten Business Days of service of a Reply Notice, senior representatives from each Party, with authority to settle the dispute, are to meet and use their reasonable endeavours acting in good faith to resolve the dispute by joint discussion.
- 15.4 If the dispute is not resolved within 30 days after the date of the Notice of Dispute, a party may seek to refer the dispute to mediation in accordance with the following procedure:
  - a. the mediation shall be conducted before a mediator convened for that purpose;
  - b. the mediation shall be governed by the rules for mediation adopted from time to time by the Resolution Institute of Australia;
  - c. the mediation shall be conducted within 30 days of the referral of the dispute to mediation; and
  - d. while a matter is in dispute, the parties shall continue any activity authorised by this Contract, unless such activity is the subject of the dispute.
- 15.5 If the parties are unable to resolve the dispute following the mediation conducted in accordance with clause 15.4, either party may give notice to the other party to refer the dispute to arbitration in accordance with the Grain Trade Australia Dispute Resolution Rules in force at the date of the notice. Nothing in this clause 15 prevents a party from seeking injunctive or similar interim relief from a court at any time.

| <b>Table of GST exclusive fees</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  | \$250.00 per Season per transaction                          |
| Amounts paid by<br>- electronic funds transfer to Supplier's nominated account<br>- cheque drawn on Supplier's order      | unlimited free transactions<br>\$12.50 each cheque drawn     |
| Replacement Recipient Created Tax Invoice   | \$7.50 per electronic invoice<br>\$10.00 per printed invoice |
| Duplicate RCTI (i.e. copy to nominated adviser or accountant where original sent to Supplier)                             | \$125.00 per Season  |
| Notice of assignment of payment to Third Party  | \$250 per notice   |
| Correction / Amendment of details provided by the Supplier associated with Notice of assignment of payment to Third Party | \$150 per request  |