

DailyGrain Online Grain Trading Platform

User Agreement

1. Introduction

This User Agreement applies to all use of DailyGrain's Services. By accepting this User Agreement you agree to be bound by the terms of this User Agreement, the Terms and Conditions and the Policies ("**Agreement**"). If you do not accept the terms of this Agreement, you must not use the Services.

2. Definitions and Interpretation

2.1 Definitions:

In this Agreement the following terms have the following meanings:

- (a) "**Buyer**" means a grain buyer that has registered to use the Services;
- (b) "**Buyer Bid**" has the meaning given in clause 0(h)(ii);
- (c) "**Buyer Forward Bid**" means a Buyer Bid which offers to forward buy either a fixed grade or a specific grade from a fixed multi grade spread on the Platform within a future delivery period.
- (d) "**Buyer's Terms**" has the meaning given in clause 0(k)(ii);
- (e) "**Claim**" means any claim, demand, action, suit or proceeding of any nature, howsoever arising and whether present or future, fixed or unascertained, actual or contingent and whether at law, in equity, under statute, contract, tort or otherwise;
- (f) "**Consultant**" means an agricultural consultant or representative that has been appointed by a Seller to use the Platform to buy or sell grain on the Seller's behalf as the Seller's agent;
- (g) "**DailyGrain**" means CBH Domestic Pty Ltd (ACN 129 806 444) and its related entities (where applicable), trading as DailyGrain;
- (h) "**Direct Loss**" means, to the extent permitted by any applicable law, the following:
 - (i) any damage, loss (excluding consequential loss), liability, compensation, cost, charge expense or other obligation, whether at law, in equity, arising under contract, statute, tort or otherwise; and
 - (i) any loss of profits that arises as a direct and reasonably foreseeable consequence of a breach of this Agreement. "**Force Majeure Event**" means any event beyond our reasonable control including equipment failure;
- (j) "**Seller Forward Offer**" means a Seller Offer which offers to forward sell a fixed grade or a fixed multi grade spread on the Platform within a future delivery period.
- (k) "**LoadNet**" means the CBH Group's on-line system that allows users to track deliveries by a Seller at a CBH delivery site;

- (l) **“Loss”** means Direct Loss and any indirect or consequential loss including loss of profits, loss of business revenue, lost opportunity or incidental loss, whether caused directly or indirectly;
- (m) **“Member”** means a person that has registered to be a member of DailyGrain under clause 3.1 and has paid the applicable membership fee;
- (n) **“On-Platform Contract”** has the meaning given in clause 0(h)(iii);
- (o) **“Off-Platform Transactions”** has the meaning given in clause 0(c)(i);
- (p) **“On-Platform Transactions”** has the meaning given in clause 0(c)(ii);
- (q) **“Platform”** means the website operated by DailyGrain at <http://www.dailygrain.com.au> (and all sections of the website) and mobile applications operated by DailyGrain to facilitate trading of grain sales between Seller and Buyers;
- (r) **“Policies”** means DailyGrain’s policies displayed on the Platform, including the “Privacy Policy”, the “Operational Policy” and Collection Statement;
- (s) **“Seller”** means a grain grower or a Consultant appointed by that Seller (if applicable);
- (t) **“Seller Offer”** has the meaning given in clause 0(h)(i);
- (u) **“Services”** means the access to and use of the Platform;
- (v) **“Terms and Conditions”** means the general terms and conditions at <http://www.dailygrain.com.au/disclaimer.asp>;
- (w) **“User”** means a Member that uses the Services;
- (x) **“User Information”** means any item or information a User posts on the Platform as well as any information a User provides to us or other Users, via any method, platform or forum made available by or connected to the Platform and includes any express or implicit representation that a User has made at any stage during formation or performance of a contract that was formed using the Platform with another User; and
- (y) **“we”, “us” and “our”** mean DailyGrain.

2.2 Interpretation

In this Agreement unless inconsistent with the context:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a person includes a reference to an individual, firm, partnership, government or public body, company, association or unincorporated body;
- (c) 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;

- (d) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (e) “**under**” includes by, by virtue of, pursuant to, and in accordance with;
- (f) if an individual person enters into this Agreement on behalf of a corporation, that individual will be agreeing to be bound by this Agreement as though they were the corporation and their obligations and undertakings to us were joint and several with those of the corporation; and
- (g) a reference to an agreement, document or policy means that agreement, document or policy as amended from time to time.

3. Membership

3.1 Membership Eligibility and Registration

- (a) The categories of membership are:
 - (i) Basic (Grower)
 - (ii) Premium (Grower)
 - (iii) Buyer;
 - (iii) Consultant;
 - (iv) Corporate Member; and
 - (v) such other categories as may be determined by us from time to time.
- (b) To become a Member, a person must select the category of membership that they want to apply for and:
 - (i) complete the relevant online registration form on the Platform; and
 - (ii) pay any applicable membership fee set out in our pricing .
- (c) Membership is not transferrable and may not be dealt with any way. In particular, Member’s must not allow others to use their membership and must not transfer or sell their membership to another party.
- (d) Members must ensure that their registration details are true, complete and accurate at all times and must notify us of any change in their registration details.
- (e) Members must pay any annual membership fees set out in our pricing. Failure to pay any annual membership fee may result in a Member’s membership being suspended or terminated by us.

4. Consultant

- (a) A Seller may appoint a Consultant. Once a Seller has appointed a Consultant the identity of the Consultant will be displayed under the MyAccount section of the Platform.

- (b) A Seller may cancel a Consultant's authority to buy or sell grain on the Seller's behalf at any time on the MyAccount section of the Platform.
- (c) A person may be appointed as a Consultant by more than one Seller.
- (d) When a Seller appoints a Consultant, that Consultant will be able to do everything that the Seller can do on the Platform. A Seller should not provide its own User login information to its Consultant.
- (e) A Seller is responsible for all actions of its Consultant acting in its capacity as Consultant for that Seller including where the Consultant makes an error in buying or selling grain on the Seller's behalf.
- (f) If a Consultant makes an error in buying or selling grain the Seller hereby releases us from any Claim connected with the use of the Platform and the Services by the Consultant unless the error arose solely and directly as a result of fraud or wilful misconduct by us.

5. Buyer

- (a) Buyers are required to pay a fee for using the Services as set out in the Operational Policy or as otherwise agreed with us.
- (b) If a Buyer fails to pay an invoice by the date set out in the invoice, the Buyer will be liable to pay interest to us from the date the payment was due until payment is made. The terms of payment of the interest and the rate of interest are set out in the invoice sent to the Buyer.

6. General Obligations of Users

- (a) Users must keep their login information confidential and safe.
- (b) A User is responsible for any actions of an unauthorised user using that User's login information on the Platform unless the unauthorised user gained access to the Platform as a direct result of any fraud or wilful misconduct by us.
- (c) If a User considers that its user name or password may have been compromised or made public the User may update the password on the Platform or immediately inform us so that we may re-issue the User with new login details.
- (d) All intellectual property in the Platform vests in us and Users have no ownership in any intellectual property in the Platform. Users must not copy, reproduce, alter, modify, create derivative works, or publicly display any intellectual property in the Platform without our prior written permission.
- (e) Users are responsible for paying all fees associated with using the Platform and all applicable taxes (including any goods and services or value added taxes, which will be added to amounts billed to Users, if applicable).
- (f) If we introduce a new service, the fees for that service are effective at the launch of the service. Unless otherwise stated, all fees are quoted in Australian dollars.
- (g) Users must only use the Platform for business purposes, and must not use the Platform for any personal, household or domestic purposes.

7. The Contracting Process

Overview

- (a) The Platform acts as an online venue that facilitates transactions between Users for the sale and purchase of grain.
- (b) Users acknowledge that we:
 - (i) are not a party to any contract formed between the Users;
 - (ii) do not act as an agent in any capacity for any User;
 - (iii) are not responsible for the performance by either the Buyer or the Seller of a contract formed using the Platform; and
 - (iv) do not own, sell, resell, provide, control, offer, deliver, or supply any grain.
- (c) The Platform facilitates grain transactions in two ways:
 - (i) by allowing Users to notify other Users of the price and other contract specifications upon which that User is willing to buy or sell grain, which may lead to a binding contract being formed off the Platform (**Off-Platform Transactions**); and
 - (ii) by allowing Users to make binding offers to other Users to buy or sell grain on the Platform, which may lead to a binding contract being formed between the Users on the Platform (**On-Platform Transactions**).
- (d) Both Off-Platform Transactions and On-Platform Transactions, are subject to the rules set out in this User Agreement and to the contract formation process set out in our Operations Policy. A copy of the Operations Policy may be found at www.dailygrain.com.au/policies. Users must read and understand the Operations Policy before using the Platform to buy or sell grain.

Off-Platform Transactions

- (e) The Platform facilitates Off-Platform Transactions by allowing:
 - (i) a Buyer to notify Sellers of price and other contract specifications upon which the Buyer will consider offers to buy grain; and
 - (ii) a Seller to notify Buyers of price and other contract specifications upon which the Seller will consider offers to sell grain.
- (f) A notification referred to under clause 0(e) is an invitation to treat, which may be withdrawn at any time, and does not constitute a contractually binding offer capable of acceptance. A User that intends to form a transaction based on a notification under clause 0(e) is responsible for making its own binding offer to the relevant party off the Platform.

- (g) Users acknowledge and agree that we are not involved in the formation or execution of any contract for any Off-Platform Transaction. We have no control over the quality, quantity, state, location, or source of grain offered for sale for an Off-Platform Transaction, or the accuracy of any statement or representation made by any User in relation to a proposed Off-Platform Transaction. The Buyer will be solely responsible for ensuring that the grain it purchases is delivered to the Buyer and that title in the grain passes to the Buyer free of any encumbrance.

On-Platform Transactions

- (h) The Platform facilitates On-Platform Transactions by:
 - (i) allowing a Seller to post an offer to sell grain on the Platform to one or more Buyers nominated by the Seller (**Seller Offer**);
 - (ii) allowing a Buyer to post an offer to buy grain on the Platform (**Buyer Bid**); and
 - (iii) automatically matching a Seller Offer to a corresponding Buyer Bid so as to create a legally binding contract for the sale and purchase of grain between the relevant Seller and Buyer (**On-Platform Contract**).
- (i) If a Seller Offer is entered onto the Platform before the matching Buyer Bid, then for the purposes of the On-Platform Contract formed through that match:
 - (i) the Seller Offer is a contractually binding offer to each Buyer nominated by the Seller, and each offer to a Buyer incorporates the Buyer's Terms of that Buyer; and
 - (ii) the Seller Offer is accepted by a Buyer by entering a matching Buyer Bid onto the Platform, with the acceptance communicated to the Seller through the matching functionality of the Platform.
- (j) If a Buyer Bid is entered onto the Platform before the matching Seller Offer, then for the purposes of the On-Platform Contract formed through that match:
 - (i) the Buyer Bid is a contractually binding offer to each Seller, and each offer to a Seller incorporates the Buyer's Terms of that Buyer; and
 - (ii) the Buyer Bid is accepted by a Seller by entering a matching Seller Offer onto the Platform, with the acceptance communicated to the Buyer through the matching functionality of the Platform.
- (k) Each User acknowledges that:
 - (i) the terms of each On-Platform Contract will include the Seller Offer, the Buyer Bid and the relevant Buyer's Terms;
 - (ii) before entering a Seller Offer on the Platform, the Seller must first access, read and understand the applicable purchase terms posted on the Platform for each Buyer nominated by the Seller for that Seller Offer (the **Buyer's Terms**). Each Buyer is responsible for ensuring that their Buyer's Terms are kept up to date, and must promptly notify us of any material changes to their Buyer's Terms;

- (iii) a Seller Offer or Buyer Bid may have a limited validity period. If the validity period for a Seller Offer or Buyer Bid expires, or if the Seller Offer or Buyer Bid is otherwise removed from the Platform, then any offer constituted by that Seller Offer or Buyer Bid is retracted and may no longer be accepted by any other User;
- (iv) other than where a Seller Forward Offer or Buyer Forward Bid is entered, each On-Platform Transaction must relate to an entire parcel of grain that has been delivered to a CBH site and made available on LoadNet – it is not possible to enter into an On-Platform Transaction for part of a parcel of grain or for any grain that has not been made available on LoadNet; subject to paragraph (v) below, the Platform will only match a Seller Offer with a Buyer Bid if (1) the price and other relevant contract specifications (including as to grain quality, location and delivery window, if applicable) in the Seller Offer and Buyer Bid are the same and (2) the Buyer Bid was entered by a Buyer nominated by the Seller when entering the Seller Offer;
- (v) the Platform may match a Seller Offer to a Buyer Bid even if the Seller Offer is for a smaller quantity of grain than specified in the Buyer Bid, provided that the price and other contract specifications are the same. In this case, the On-Platform Contract formed through the match will only apply to the quantity of grain specified in the Seller Offer. The remaining unmatched quantity of grain specified in the Buyer Bid may subsequently be matched against other Seller Offers to create other On-Platform Contracts until the entire quantity of grain specified in the Buyer Bid has been matched; and
- (vi) subject to paragraph (vii) below, once an On-Platform Contract is formed by the Platform matching a Seller Offer with a Buyer Bid, title in the relevant parcel of grain that is the subject of that On-Platform Contract will pass in accordance with the Buyer's terms. To reflect the change of ownership in Loadnet, the Seller must manually nominate the grain the subject of the On-Platform Contract in Loadnet. If the Seller does not manually nominate the grain the subject of the On-Platform Contract in Loadnet by 7.45am on the day following the communication of the match, the grain will automatically be nominated in Loadnet.
- (vii) An On-Platform Contract formed through a Seller Forward Offer or Buyer Forward Bid matching will be for grain that is not available on Loadnet. This will require the Seller to deliver and nominate grain to the Buyer in Loadnet within a defined future delivery window, and title in the grain will pass to the Buyer in accordance with the Buyer's Terms.

Responsibilities of Buyers and Sellers

- (l) A Buyer is responsible for ensuring that:
 - (i) any grain that it purchases from a Seller is fit for its purposes; and
 - (ii) it has limits on LoadNet at levels that are sufficient to handle grain that is transferred using the Platform.

- (m) If a User breaches its obligations under a contract with another User (whether formed using the Platform or otherwise), the other User must take its own action to enforce or protect its rights under that contract. We will not be involved in any dispute regarding the contract other than to provide details of any information exchanged on the Platform.
- (n) We cannot ensure and do not guarantee that a User will actually complete a contract or act lawfully in using the Platform.
- (o) We do not offer any insurance or other protection for Users that enter into contracts using the Platform.
- (p) Users must obtain their own legal or financial advice in respect of an intended contract formed using the Platform.
- (q) Users are responsible for conducting their own due diligence in respect of an intended contract formed using the Platform.

8. User Information

- (a) A User is solely responsible for its User Information that is displayed on the Platform.
- (b) User Information must not, in any way whatsoever, be potentially or actually harmful to us or any third party, where "harm" includes, but is not limited to non-economic loss that will or may be suffered by us.
- (c) Without limiting any provision of this Agreement, a User must, at all times, ensure that its User Information is current and:
 - (i) is not false, inaccurate or misleading or deceptive;
 - (ii) is not fraudulent or involve the sale of grain that is:
 - (A) stolen; or
 - (B) unfit for sale, or otherwise not in a condition that meets our receival standards, as updated from time to time;
 - (iii) does not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights or intellectual property rights, rights of publicity, confidentiality or privacy;
 - (iv) does not violate any applicable law, statute, ordinance or regulation (including, but not limited to, those governing export and import control, consumer protection, unfair competition, criminal law and trade practices/fair trading laws);
 - (v) is not defamatory, libellous, threatening or harassing;
 - (vi) is not obscene or contain any material that, in our sole and absolute discretion, is in any way inappropriate or unlawful;
 - (vii) does not contain any content that is prohibited or that, in our sole and absolute discretion, may be prohibited content for the purposes of the Broadcasting Services Act 1992 (Cth) (for more information about this

legislation, please refer to the Internet Industry Association's Codes of Practice located at <http://www.ii.net.au>;

- (viii) does not contain any malicious code, data or set of instructions that intentionally or unintentionally causes harm or subverts the intended function of the Platform, including, but not limited to viruses, Trojan horses, worms, time bombs, cancelbots, easter eggs or other computer programming routines that may damage, modify, delete, detrimentally interfere with, surreptitiously intercept, access without authority or expropriate any system, data or personal information; or
 - (ix) does not create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers.
- (d) Solely to enable us to use User Information, so that we are not violating any rights the User might have in that User Information (including any intellectual property rights), Users agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) right to do and authorise the doing of all acts comprised in the copyright and to exercise the publicity, and database rights (but no other rights) Users have in their User Information, in any media now known or not currently known, with respect to the User Information.

9. Access and Interference

Users must not take any action that imposes an unreasonable or disproportionately large load on the infrastructure connected with the Platform. Much of the information on our Platform is updated on a real time basis and is proprietary or is licensed to us by our Users or third parties.

10. Breach and suspension

10.1 Suspension

If:

- (a) you have, or we believe that you have, breached this Agreement or any of our Policies in any way;
- (b) we are unable to verify or authenticate any information you have provided to us;
- (c) we believe that your actions may cause Loss to or otherwise unlawfully harm another User, third parties or us, our related bodies corporate or affiliates, our directors, employees or agents;
- (d) we believe that any aspect of your User Information is materially inappropriate, incorrect or misleading; or
- (e) we suspect or believe, or are informed by a government authority or an apparently reputable source, that you have engaged or are likely to engage in fraudulent activity in connection with your use of the Platform,

without limiting other remedies available to us at law, in equity or under this Agreement, we may, without notice and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances):

- (f) delay posting your User Information on the Platform;

- (g) alter or remove your User Information from the Platform;
- (h) issue you a warning;
- (i) restrict your activities on the Platform; or
- (j) temporarily suspend your membership or use of the Platform.

10.2 Breach

If:

- (a) you have, or we have reasonable grounds to believe that you have, breached this Agreement or any of our Policies in any way;
- (b) we have reasonable grounds to believe that your actions may cause Loss to or otherwise unlawfully harm another User, third parties or us, our related bodies corporate or affiliates, our directors, employees or agents;
- (c) we have reasonable grounds to believe that any aspect of your User Information is incorrect or misleading; or
- (d) we have reasonable grounds to believe, or are informed by a government authority that you have engaged or are going to engage in fraudulent activity in connection with your use of the Platform,

without limiting other remedies available to us at law, in equity or under this Agreement, we may, on 2 days' notice and in our sole discretion (which shall be exercised reasonably, having regard to the circumstances):

- (e) terminate your membership or use of the Platform; or
- (f) refuse to provide the Services to you.

11. Privacy

DailyGrain has a Privacy Policy which applies to all Users and forms part of this Agreement. Our current Privacy Policy is located at <http://pages.dailygrain.com.au/policies.html>. Users must read and accept our Privacy Policy upon registration in order to use the Platform, and Users will continue to be bound by its provisions (including any reasonable amendments we make to it) while using the Platform.

12. No Warranty

- (a) The Platform is available for use by Users on an "as is" basis, and without any warranty or condition, express or implied.
- (b) We make no warranties about the accuracy or completeness of any information, or the time within which the information will be posted on the Platform or sent by us to Members by email or SMS.
- (c) We do not warrant and cannot ensure the security of any information which is transmitted to us or posted by User on the Platform. Accordingly, any information which is transmitted to us or posted on the Platform by Users is transmitted and posted at Users own risk.

- (d) We do not guarantee continuous, uninterrupted or secure access to the Platform, and operation of and access to the Platform may be interfered with by a Force Majeure Event.
- (e) The Platform is partly dependent on access to third party data (such as LoadNet). DailyGrain takes no responsibility for the accuracy, timeliness or availability of such data.
- (f) No part of the Services or the Platform constitutes a recommendation in respect of a User. Users acknowledge and agree that we have not conducted or are responsible for any due diligence with respect to any other User.

13. Liability Limit

- (a) Each User releases and discharges us from all liability for all Claims the User may have or all Losses suffered or incurred by the User howsoever arising, including by any negligence on our part, except for any Losses suffered or incurred by the User because of our fraud or wilful misconduct, in connection with the Services or us suspending or terminating the User's use of the Services.
- (b) For the purposes of this Agreement, parts 1A to 1F of the *Civil Liability Act 2002* do not apply.
- (c) To the extent permitted by law, any condition or warranty which would otherwise be implied into this Agreement is hereby excluded. Where legislation (including the *Competition and Consumer Act 2010* (Cth)) implies any condition, guarantee or warranty, and that legislation prohibits us from excluding our liability under, any such condition, guarantee or warranty, that condition, guarantee or warranty will be deemed included but our liability will be limited, where it is fair and reasonable to do so, to one or more of the following:
 - (i) in the case of goods, any one or more of the following:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (C) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.

14. Indemnity

Each User indemnifies and holds DailyGrain and our respective officers, directors, agents, and employees, harmless from and against any and all Claims made against us and all Direct Losses suffered or incurred by us due to or arising out of or in connection with the User's breach of this Agreement or violation of any law or the rights of a third party by the User.

15. No Agency

No agency, partnership, joint venture, employee-employer, franchisor-franchisee or other similar relationship is intended to be or is created by this Agreement. In particular Users have no authority to bind us in any way whatsoever. Users hereby acknowledge that we have no fiduciary or similar obligation to them.

16. Notices

- (a) Any notices to be served on us must be given by registered post to DailyGrain care of 240 St Georges Terrace, Perth WA 6000 or any other address advised by us from time to time.
- (b) Any notice to be served on Users may be sent to the email address Users provide to us during the registration process or by certified post to the address provided to us during the registration process, or as updated by Users as relevant.
- (c) Any notice shall be deemed given:
 - (i) if sent by email, at the time it sent, unless the sender receives an automatic response stating that the transmission was not complete; and
 - (ii) if sent by pre-paid post, three Business Days after the date of posting, and on the seventh Business Day if sent to or posted from outside Australia.

17. Amendment

- (a) We may amend the terms of this Agreement from time to time. Users will be notified of the amended terms when they next log in to use the Platform.
- (b) Users must accept the amended terms if they wish to continue to use the Services.
- (c) If Users do not agree with the amended terms then they must cease using the Services.

18. Miscellaneous

- (a) This Agreement will be governed in all respects by the laws of the State of Western Australia.
- (b) Users and DailyGrain irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (c) The provisions of this Agreement are severable, and if any provision of this Agreement is held to be invalid or unenforceable, such provision may be removed and the remaining provisions will be enforced.
- (d) This Agreement may be assigned by us to a third party without Users consent in the event of a sale or other transfer of some or all of the assets of DailyGrain. In the event of any sale or transfer, Users will remain bound by the Agreement.
- (e) Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section.

- (f) Our failure to act with respect to an anticipated or actual breach by a User or others does not waive our right to act with respect to subsequent or similar breaches.
- (g) This Agreement may not be construed adversely against us solely because we prepared it. This Agreement sets out the entire understanding and agreement between the Users and us with respect to its subject matter.
- (h) In the case of an inconsistency between this User Agreement and the Policies or the Terms and Conditions, this User Agreement takes priority to the extent of the inconsistency.
- (h) Clauses 8, 12, 13, 14 and 18 of this User Agreement will survive any termination or expiration of this User Agreement.