



## GrainCorp Operations Limited

A.B.N. 52 003 875 401

### Grower Warehousing Agreement - Terms and Conditions ("Agreement")

Queensland, New South Wales, Victoria and South Australia  
2009/2010

#### **1. PURPOSE**

1.1 In consideration of the Grower:

- (a) paying to GrainCorp all fees, costs, charges or levies payable under or in connection with this Agreement; and
- (b) complying with the terms and conditions of this Agreement,

GrainCorp agrees to provide the Services at Country Sites to the Grower from 1 September 2009 until 1 October 2010 in Queensland (Qld), New South Wales (NSW), Victoria (Vic) and South Australia (SA) under the terms and conditions outlined in this Agreement.

1.2 The Grower acknowledges that Services under this Agreement will be provided to the Grower by GrainCorp and that GrainCorp will be responsible for the performance of any such Services provided to the Grower.

1.3 The Grower must be registered with NGR before they may receive any Services as contemplated by this Agreement and prior to delivering or attempting to deliver any Grain to GrainCorp Warehousing.

1.4 Delivery into Country Site, constituted by the issue of a Receival Docket constitutes acceptance by the Grower of the terms and conditions of this Agreement.

#### **2. SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT**

##### **Scope of Agreement**

2.1 This Agreement applies to the all Services including storage and handling of all Grain by GrainCorp for and on behalf of the Grower. In particular, but without limitation, this Agreement covers the storage and handling of Grain physically received at any Country Sites directly from or on behalf of the Grower.

2.2 GrainCorp will sample, provide quality testing services for, classify into available grades, weigh, store and load to (if available and as directed by the Grower) rail or road transport (if and available) or transfer Grain to a Client, all Grain received by it under the terms of this Agreement.

##### **Receival of Grain**

2.3 GrainCorp will during the term of this Agreement use reasonable endeavours to receive Grain at Country Sites in accordance with the Grower's request and subject to any restrictions or limitations, or other conditions in this Agreement. However, GrainCorp retains the final discretion to determine what types of Grain or grades of Grain it is able to receive at the Country Sites.

2.4 GrainCorp will receive and load Grain in accordance with the Receival Standards unless otherwise specified by the Grower in writing and agreed to by GrainCorp.

2.5 The Grower also accepts the terms and conditions as expressed on the Receival Docket with respect to legal loading of vehicles, and other matters set out on the front and reverse of the Receival Docket.

## Automatic Offers on the CLEAR System

- 2.6 The following terms (and related uses of such terms) have the meaning ascribed to them in the CLEAR Terms and Conditions located at [www.cleargrain.com.au](http://www.cleargrain.com.au), as amended from time to time, for the purposes of clauses 2.6 to 2.12 (inclusive) and any other clause referring to CLEAR in this Agreement:
- (a) CLEAR;
  - (b) CLEAR System;
  - (c) Grain (also referred to in this Agreement as 'Clear Grain');
  - (d) Offer;
  - (e) Registered User;
  - (f) Terms and Conditions; and
  - (g) User Details.
- 2.7 Subject to prior written notice to the contrary, the Grower acknowledges and agrees that it makes a legally binding Offer to sell Grain on the CLEAR System if it is a Registered User on the CLEAR System by depositing that Grain into any Country Site. This Grain is herein referred to as "CLEAR Grain".
- 2.8 The Grower acknowledges and agrees that all Offers to sell CLEAR Grain on the CLEAR System are subject to the CLEAR Terms and Conditions located at [www.cleargrain.com.au](http://www.cleargrain.com.au) and the Grower hereby acknowledges and agrees that it is bound by the CLEAR Terms and Conditions in respect of the making of such Offers.
- 2.9 The Grower further acknowledges and agrees as follows in respect of all CLEAR Grain Offered for purchase or sale on the CLEAR System in accordance with clause 2.6:
- (a) Grower must first elect to transact Grain on CLEAR by logging onto the CLEAR website; and
  - (b) GrainCorp must deposit that CLEAR Grain on the CLEAR System for sale on the CLEAR Terms and Conditions; and
  - (c) the terms of the Offer on which the CLEAR Grain is to be made available for sale on the CLEAR System are as notified to GrainCorp in writing by the Grower or is otherwise determined in accordance with the CLEAR Terms and Conditions.
- 2.10 The Grower acknowledges and agrees that GrainCorp will provide information concerning the CLEAR Grain (including the Grower's identity, and other personal information as described in Schedule 3) to CLEAR in order to facilitate the depositing of that CLEAR Grain on the CLEAR System and the sale of that CLEAR Grain on the CLEAR System (if any). The Grower hereby consents to the provision of any such information that GrainCorp considers necessary or desirable for this or any related purpose.
- 2.11 The Grower hereby directs GrainCorp to notify CLEAR of the Grower's consent (as expressed in clause 2.10 above) on the Grower's behalf, and to authorise CLEAR to use and publish or have published the said information (in addition to the Client's User Details in accordance with the CLEAR Terms and Conditions).
- 2.12 GrainCorp is not liable to the Grower for any claims, damages, losses or costs howsoever suffered, incurred, anticipated, claimed or threatened by or on behalf of (whether direct, indirect or consequential) the Grower as a result of any matter arising from or connected to the provisions detailed in clauses 2.6 to 2.12 of this Agreement (other than acts of willful misconduct or gross negligence), including, and without limitation, the depositing of the CLEAR Grain on the CLEAR System,

the use or provision of any Grower information, and any transaction in respect of any CLEAR Grain or non / operation of the CLEAR System.

### **Storage**

- 2.13 The Grower acknowledges despite anything to the contrary expressed or implied in this Agreement that:
- (a) Grain received and stored by GrainCorp may be stored in common (i.e. commingled) with grain received from other Clients, provided that the commingled grain is of the same type and grade; and
  - (b) after GrainCorp receives the Grower's Grain or if title to Grain already received and stored by GrainCorp is transferred to the Grower, this Agreement gives the Grower a right (regardless of whether that Grain has been commingled with other grain) to receive back from GrainCorp, on the terms of this Agreement, grain of the same type, quantity and grade as the Grain originally received from the Grower by GrainCorp, but not the right to require re-delivery of the same Grain (i.e. in specie) that was originally received by GrainCorp from the Grower.
  - (c) this Agreement shall not be construed as a license or lease of any storage facilities or land upon which any storage facility is located and the Grower shall receive no actual or implied rights to same.

For the purposes of this clause, the grade will be determined in accordance with the Receival Standards unless otherwise agreed in writing between GrainCorp and the Grower.

### **Co-ownership**

- 2.14 The Grower acknowledges that despite anything to the contrary expressed or implied in this Agreement or otherwise, when GrainCorp receives the Grower's Grain, it becomes Stored Grain. At this time, the Grower transfers full ownership in the Grain to the Co-owners. In return, the Co-owners transfer to the Grower an Interest. In so doing, the Grower becomes a Co-owner of the Stored Grain.
- 2.15 For the purposes of this Agreement, the percentage of the Stored Grain which the Grain makes up and therefore the Grower's interest in the Stored Grain will be determined by GrainCorp, using the records GrainCorp is required to keep pursuant to Clauses 4.9 and 4.10.
- 2.16 Each Co-owner is an owner in common and retains the right to claim full ownership of their interest in the event of GrainCorp's insolvency.

### **Quality Testing Services**

- 2.17 GrainCorp will conduct protein (if applicable), oil (if applicable), moisture, screenings, defective grain and contaminant testing services for Grain received at Country Sites. GrainCorp will provide falling number testing of Grain upon receipt at Country Sites as determined by GrainCorp. Grain analysis resulting in grade or scale classification will be performed using instruments which comply with the provisions of the Commonwealth Government's National Measurement Act (1960) and National Measurement Regulations (1999). All other testing will be performed in accordance with the Receival Standards for the relevant Grain type and grade.
- 2.18 If requested by the Grower, GrainCorp will provide the average quality result for protein (if applicable), oil (if applicable), falling number (if applicable) and other quality parameters based on the analysis results of running samples for all Grain of a particular type and grade at that Country Site stored by the Grower.
- 2.19 For the purpose of determining average quality of Grain at a Country Site and determining average quality at a Country Site attributed to a specific Grower, the cumulative average of quality data, such as protein, on applicable Receival Dockets will be used.



## **Pest Control**

- 2.20 Unless otherwise agreed in writing, GrainCorp may treat all Grain with approved chemicals or treatments as per applicable codes and regulations including the Australian Pesticide and Veterinary Medicines Authority (APVMA) and Food Safety Australia and New Zealand (FSANZ) codes.
- 2.21 In the event of infestation being detected post receipt the Grain will be disinfested and treated at GrainCorp's cost. GrainCorp is not required to obtain the Grower's approval to disinfest Grain.
- 2.22 Where fumigants are applied to Grain, that Grain will not be accessible for a period of approximately four weeks from the date of fumigation; such period determined at the reasonable discretion of GrainCorp. GrainCorp will provide regular updates on the accessibility of Grain by grade at each Country Site on the Grain Availability Sheet available at GrainCorp's website ([www.graincorp.com.au](http://www.graincorp.com.au)).

## **Outloading and Transfer of Grain**

- 2.23 To remove Grain from Country Sites by loading onto rail or road transport (if available), the Grower must complete and execute a Grower Warehouse Return Order Form and follow the procedures set out in the instructions on that form. GrainCorp is not required to make any arrangements to load Grain until:
- (a) the Grower Warehouse Return Order Form has been properly completed and executed by the Grower; and
  - (b) the procedures set out on the Grower Warehouse Return Order Form have been followed.

The loading of Grain is subject to restrictions and limitations which may include local operating arrangements, legal or regulatory requirements, safe carriage of permitted goods, availability of rail and road transport, fumigation requirements, prevailing weather conditions and payment of any outstanding fees or charges as advised by GrainCorp.

Notwithstanding any provision of this Agreement, the outloading to road or rail is not available for canola and malting barley stored under this Agreement. Canola and malting barley can only be transferred in store to a GrainCorp Client in accordance with Clause 2.24.

- 2.24 To transfer Grain to another Client, the Grower must either:
- (a) complete and execute a Grower Warehousing Title Transfer Form and follow the procedures set out in the instructions on that form, or by utilising the GrainCorp website ([www.graincorp.com.au](http://www.graincorp.com.au)) on-line to effect a Title Transfer by following the instructions provided on this website. Grain may be transferred in accordance with this Clause 2.24 only to another Client who has signed a current Country Storage and Handling Agreement. The transfer is effective, after execution by all parties, on the date on which the Grower signs the Grower Warehousing Title Transfer Form (seller's date); or
  - (b) place an Offer on the CLEAR System as described in clauses 2.6 to 2.12.
- 2.25 GrainCorp is not required to (but may in its discretion):
- (a) execute a Grower Warehousing Return Order Form or load Grain under Clause 2.23; or
  - (b) execute a Grower Warehousing Title Transfer Form for Grain under Clause 2.24
- (a),

if there are any monies which are owing, due or payable or accrued but unpaid by the Grower to GrainCorp or any accrued amount whatsoever and whether or not in respect of that Grain (including, without limitation, fees, charges and other moneys for which the Grower becomes liable under this Agreement because of a transfer of the Grain) as accrued or invoiced. This clause 2.25 applies irrespective of the capacity in which GrainCorp or the Grower is acting, whether or not the Grower is liable as principal or surety, and whether or not the Grower is liable alone, or jointly or jointly and severally with another person.

- 2.26 Once Grain is removed from any Country Site in accordance with a Grower Warehousing Return Order Form, the Grain no longer forms part of the Stored Grain and the Client becomes the full owner of that Grain and accepts all risk associated with ownership and control.

### **Stock Swaps**

- 2.27 The Grower acknowledges that GrainCorp may swap a grade of Grain with the same binned grade of Grain between Country Sites in the Natural Port Zone without recourse to the Grower for Operations Reasons. GrainCorp will affect these Stock Swaps by filling out a Stock Swap Form, forwarding this form to the Grower and amending the location of the Grower's Accounting Stock Tonnages in GrainCorp's stock system.
- 2.28 For each Stock Swap, effected under Clause 2.27, GrainCorp will ensure payment to the Grower (if applicable) of the following:
- (a) the differential in the applicable Natural Port Zone export GTA location differentials, and
  - (b) the differential in the average protein and oil based on the Relevant Increments.

This clause will not apply where the total net differential cost as calculated by GrainCorp, payable by GrainCorp to the Grower is less than \$0.50 per tonne.

## **3. STORAGE AND HANDLING FEES AND STORAGE PERIOD**

### **Country Receival Fee**

- 3.1 In accordance with Clause 4 the Grower must pay GrainCorp the Country Receival Fee in Schedule 1 for receival of the Grain or grade of Grain into storage at a Country Site. The Country Receival Fee is calculated on the Receival Tonnage.
- 3.2 The Country Receival Fee covers the receival, quality testing, treatment and hygiene of stock at Country Sites.

### **Country Outloading Fee**

- 3.3 In accordance with Clause 4 the Grower must pay GrainCorp the Country Outloading Fee in Schedule 1 for the outloading of Grain from a Country Site onto road or rail transport (if available). The Country Outloading Fee is calculated on the Outloaded Tonnage.

### **Monthly Storage Fee**

- 3.4 The Grower must pay GrainCorp a Monthly Storage Fee as set out in Schedule 1 for the designated period for storage of Grain at Country Sites including for the period during which Grain is consigned from Country Sites and in transit to another GrainCorp Country Site.

- 3.5 The Monthly Storage Fee is calculated using Accounting Stock Tonnages at the close of business on the last day of each month.
- 3.6 If any Grain remains in Country Sites after October 1, 2010, GrainCorp may at its sole discretion agree to continue to store that Grain either at the site at which the Grain was received or at any other GrainCorp Country Site. The Grower must continue to pay GrainCorp the applicable Monthly Storage Fees in Schedule 1 up to 30 September 2010.
- 3.7 a) If the Grower still has Grain in Country Sites on 1 September 2010 for Qld and 1 October 2010 for NSW, Vic and SA, the Grower may be required to pay all accrued Country Receival Fees and Monthly Storage and any handling fees or other charges if requested by GrainCorp. Monthly Carryover Storage Fees as listed in Schedule 1 will continue to apply thereafter.
- b) The Grower acknowledges that all malting barley held on behalf of the Grower beyond the dates in Clause 3.7 a) may be reclassified as feed barley and the Grower's entitlement to transfer or take possession of that Grain will be similarly amended.

#### **Special Fees for Other Grains**

- 3.8 Fees for other grains not identified in Schedule 1 will be as advised by GrainCorp from time to time, and as requested by the Grower.

#### **Goods and Services Tax**

- 3.9 If GST has application to any supply made under this Agreement, GrainCorp may, in addition to the fees or any other consideration expressed as payable in this Agreement, subject to issuing a valid tax invoice, recover from the Grower an additional amount on account of GST, such amount to be calculated by multiplying the fee or any other amount or consideration payable by the Grower for the supply by the prevailing GST rate.
- 3.10 If it is determined on reasonable grounds that the amount of GST paid or payable on any supply made under this Agreement differs for any reason from the amount of GST recovered from the Grower including by reason of:
- (a) an alteration in the GST law;
  - (b) the issued of or an alteration in a ruling or advice of the Commissioner of Taxation;
  - (c) the allowance to the seller of a refund of GST in respect of any supply made under this Agreement; or
  - (d) a decision of the Administrative Appeals Tribunal (or its equivalent) or a court
- then the amount of GST recovered or recoverable from the Grower shall be adjusted accordingly.

### **4. PAYMENT OF FEES, CHARGES AND OTHER MONEYS**

#### **Payment/Invoicing**

- 4.1 The Grower agrees to pay all fees, charges and all other amounts claimed by GrainCorp in connection with this Agreement (which include the attached Schedules).
- (i) GrainCorp and the Grower agree and acknowledge that money owing by the Grower under this Agreement, may be invoiced to the Grower by GrainCorp.
  - (ii) The parties acknowledge that all money due and payable to the Grower by GrainCorp under this Agreement may be paid to the Grower by GrainCorp. The parties acknowledge that payment by GrainCorp of a payment claim or an invoice issued by the Grower to GrainCorp will constitute full and final payment of that invoice by GrainCorp.



- 4.2 GrainCorp may invoice the Grower for the Monthly Storage Fee in respect of the transferred Grain relating to the period up to and including the date of transfer, where possible GrainCorp will seek to reclaim all accrued storage fees from the buyer. Monthly Storage fees invoiced must be paid before the grain is Title Transferred or outloaded. The Grower must pay, in accordance with this Agreement and before the Grain is transferred. GrainCorp reserves the right to amend these credit terms at any time without notice if the Grower does not strictly adhere to these payment terms.
- 4.3 If Grain is transferred to another Client or Grower by way of a Grower Warehousing Title Transfer GrainCorp will invoice that Client or Grower the Receival Fee as per Schedule 1.
- 4.4 If Grain is Offered on CLEAR, all accrued GrainCorp fees pursuant to that Grain will be deducted as part of the settlement in the event of a sale and in accordance with the CLEAR Terms and Conditions.
- 4.5 If the Grower outloads Grain which is stored, the Grower must pay by the agreed payment method, in accordance with this Agreement and before the Grain is outloaded for:
- (a) all outstanding Receival and Outloading Fees; and
  - (b) outstanding Storage Fees; and
  - (c) all other outstanding GrainCorp fees, charges and other moneys claimed; in respect of the outloaded Grain relating to the period up to and including the date of outloading.

#### **Overdue Accounts**

- 4.6 The Grower will be liable for interest on overdue amounts claimed by GrainCorp from the date on which payment was due to the date on which payment is made in full. The interest rate applicable under this clause 4.6 is the rate which is 3% above the bank bill buying rate for bills with a tenor of 90 days quoted from time to time by National Australia Bank. The initial interest rate will be based on the average of the relevant bank bill rates quoted by National Australia Bank on the second last business day of the month before the date interest begins to accrue. The interest rate will be adjusted on the first day of every calendar month based on the average of the relevant bank bill rates quoted by National Australia Bank on the second last business day of the immediately preceding months. Interest will be on a daily basis on the outstanding amount.
- 4.7 If any amount owing to GrainCorp by the Grower for any reason and on any account whatsoever (whether or not directly in connection with this Agreement or the Grain) remains unpaid for a period of thirty days following the due date, GrainCorp may:
- (a) by giving notice to the Grower, convert part or all of GrainCorp's obligation under this Agreement into an obligation instead to pay a sum of money equal to the value of the Grain which GrainCorp would (but for the exercise of its rights under this clause and assuming all sums owing to GrainCorp had been paid in full) be required to redeliver to the Grower under this Agreement; and
  - (b) pay that sum of money to the Grower after deducting from it any part or all of any amount owing by the Grower to GrainCorp at the time the payment is made.

The payment by GrainCorp to the Grower under Clause 4.7(b) will serve to discharge in full the obligation of GrainCorp which was converted under paragraph (a). The value of any Grain under Clause 4.7(a) is the value reasonably determined by GrainCorp having regard to prevailing market prices at the time GrainCorp exercises its rights under this Clause.

### **Costs**

- 4.8 The Grower must meet all reasonable costs, expenses, charges or liabilities which are suffered or incurred by GrainCorp directly as a result of the Grower's failure to pay fees, charges and other moneys payable in accordance with this Agreement.

### **Record-keeping**

- 4.9 GrainCorp will keep separate records for the Grower, of the Receival Tonnage and Outloading Tonnage for each type and grade of Grain received or outloaded.
- 4.10 GrainCorp will keep daily records of the total amount of Stored Grain in its possession and where the Stored Grain is stored.

### **Set-off**

- 4.10 At its sole discretion, GrainCorp may apply (without notice) any amounts whatsoever then due and payable by it to the Grower in satisfaction of any amounts whatsoever then due and payable by the Grower to GrainCorp under this Agreement.

## **5. CONDITIONS OF SERVICES PROVIDED BY GRAINCORP UNDER THIS AGREEMENT**

### **Outloading of Small Tonnages**

- 5.1 GrainCorp is not required to receive into any Country Site or load onto rail or road transport less than 200 tonnes or, for bunker-type storage, less than 400 tonnes of Grain on any one day and at any one storage.

### **Hours of Operation**

- 5.2 GrainCorp is not required to receive or load Grain other than during the normal business hours and days (as determined by GrainCorp from time to time) of the Country Site at which receival or loading is proposed.

### **Shrinkage**

- 5.3 GrainCorp will deduct a shrinkage allowance from each load of Grain delivered into any Country Site under the Grower's name. This one off deduction will be made against the first Grower if the Grower outloads the Grain under Clause 2.23. This one off deduction will not be made against the Grower if the Grower transfers that Grain to another Client under Clause 2.24. A shrinkage allowance of 0.5% by weight will be deducted from the delivered weight of all Grain, except
- (a) a shrinkage allowance of 0.75% by weight will be deducted from the delivered weight of field peas, white peas, faba beans, soybeans, lentils, lupins and maize on receival; and
  - (b) a shrinkage allowance of 1% will be deducted from the delivered weight of chick peas and sunflower seed.

Where GrainCorp agrees to receive Grain above the maximum commodity and/or grade moisture limit in the relevant Receival Standard an adjustment to the receival weight will be made to the delivery receipt in accordance with Schedule 2. Moisture Management Service charges shall apply and will be invoiced to the Grower immediately after receival of that Grain in accordance, with Schedule 2.

After all of the Grower's stocks of a commodity have been outloaded, any shrinkage residue will be available for sale by GrainCorp as it sees fit. GrainCorp



will retain all proceeds from the sale of any shrinkage residue. Receival fees will be levied against the delivered tonnage. All other charges will be levied against the shrunk tonnage. Any dust and damaged grain disposed of by GrainCorp will be to the account of GrainCorp and will not be considered to be outloaded on behalf of the Grower.

- 5.4 If the actual outloading (after the deduction of shrink) of a particular type and grade of Grain is less than the Accounting Stock Tonnage, GrainCorp will in its discretion either:
- (a) provide sufficient additional Grain of the same type and grade from any GrainCorp Storage site to ensure that the net outloading of Grain to the Grower is equivalent to the Accounting Stock Tonnage for the Grower; or
  - (b) provide financial compensation to the Grower for the shortfall in the net outloading. The financial compensation will be based on the fair market price for Grain of the relevant grain type and grade for the applicable season and shall represent full and final settlement of any liability GrainCorp may have in this regard.
- 5.5 If the actual outloading (after the deduction of shrink) of a particular type and grade of Grain is more than the Accounting Stock Tonnage, GrainCorp will in its discretion either:
- (a) transfer the Grower's Grain of the same type and grade from a previous season or subsequent season to ensure that the net outloading of Grain to the Grower is equivalent to the Accounting Stock Tonnage for the Grower: or
  - (b) receive financial compensation from the Grower for the excess in the net outloading. The financial compensation will be based on the fair market price for Grain of the relevant grain type and grade for the applicable season and shall represent full and final settlement of any liability GrainCorp may have in this regard.

#### **Documentation and Weights**

- 5.6 For receival from and loading to road transport, GrainCorp weighbridges at Country Sites will be used to determine the Receival Tonnage and Outloaded Tonnage.
- 5.7 For loading to rail transport, GrainCorp Country Site weighbridges or official rail company weighbridges, if available, will be used to determine the Outloading Tonnage. If the official rail company cannot weigh rail wagons from a particular Country Site, certified weighbridge weights declared by the Grower or the domestic end-user will be accepted, subject to this Agreement, for the purpose of determining the Outloading Tonnage.
- 5.8 Where in GrainCorp's opinion the Grower or the domestic end-user has not declared detailed weights in a timely manner GrainCorp may use appropriate GrainCorp average weights to determine the Outloading Tonnage until the Grower provides reliable and accurate details of weights.
- 5.9 GrainCorp reserves the right to dispute at any time any weights declared to GrainCorp by the Grower or the domestic end-user. If there is a dispute about declared weights, GrainCorp may substitute appropriate GrainCorp average weights in place of any weight declared by the Grower or the domestic end-user.
- 5.10 The Grower acknowledges that because precise weighing and outloading of Grain received and outloaded by GrainCorp is not always possible, the actual Outloaded Tonnage for a Country Site may be more or less than the tonnage received at that site. The resulting negative or positive stock-on-hand will still form a part of the Accounting Stock Tonnages for invoicing purposes and will still be subject to the shrinkage outload adjustment provisions in clauses 5.3, 5.4 and 5.5.

- 5.11 Where the Grower's Accounting Stock Tonnage for any one grade or Country Site is between positive or negative 1.0 tonne, this amount will be considered to be of nil value and will be converted to a zero Accounting Stock Tonnage.

## **6. DAMAGES**

- 6.1 Unless agreed in writing with the Grower, GrainCorp will not be liable to the Grower for any Claim or Loss in relation to any alleged or actual reduction in standard or quality of Grain where:
- (a) the reduction in quality or standard of Grain has not resulted in the downgrading of the Grain from the grade to which the Grain was classified on receipt by GrainCorp; and/or
  - (b) GrainCorp has received and loaded the Grain in accordance with the Receival Standards or other minimum receival specifications and sampling methodology agreed in writing between GrainCorp and the Grower under this Agreement; and/or
  - (c) the quality parameter does not form part of the standard load by load receival test conducted at the time the Grain is delivered by or on behalf of the Grower to the Country Site; e.g. malt barley germinative quality, wheat falling number test result.

- 6.2 If the Receival Standards or the minimum receival specifications and sampling methodology as the case may be referred to in Clause 6.1 are not met, any Claims made by the Grower against GrainCorp in respect of downgraded Grain will be limited to:

$$T \times (P - V)$$

where T is the quantity in tonnes of Grain downgraded from one grade to a lower grade; and P is the fair market price of Grain of the grade to which the Grain was classified on receipt by GrainCorp; and V is the fair market value of the downgraded Grain.

- 6.3 GrainCorp's liability for any Claim or any Loss of any Grain is subject to the Grower:
- (a) advising GrainCorp immediately of any actual or potential Loss or Claim which it believes it will have or has against GrainCorp in respect of downgraded Grain received by the Grower within 2 business days of receiving the Grain; and
  - (b) providing GrainCorp a sample of the relevant downgraded Grain within 2 business days, the subject of the Loss or Claim; and
  - (c) allowing GrainCorp to test this sample and compare this sample with a sample of Grain retained by GrainCorp on the outloading of Grain from the Country Site.
- 6.4 GrainCorp may, in its discretion, mitigate or satisfy a claim in respect of downgraded Grain by:
- (a) averaging the quality parameters of the downgraded grain with other road or rail trucks outloaded to the Grower on the same day, provided that (i) the protein and screening parameters of the downgraded load of grain are within 0.3% of the minimum protein and 1.0% of the maximum screening of the grade's Approved Receival Specification and (ii) no more than two road or rail trucks have downgraded grain; and/or
  - (b) blending a sufficient quantity of other grain so as to upgrade the Grower's Grain; and/or
  - (c) substituting (at GrainCorp's expense) other grain of the same type of the required grade and quantity; and/or
  - (d) retaining the downgrade Grain and providing for the claim as part of the outload adjustment under Clauses 5.3, 5.4 and 5.5.
- 6.5 GrainCorp is not liable for any indirect, special or consequential loss including any loss of profit or for damage howsoever alleged to arise from or be connected to downgraded Grain.

- 6.6 The Grower acknowledges that GrainCorp, while using all reasonable endeavours to do so, cannot guarantee the level of whole and split grain for chick peas and other legumes stored and outloaded to the Grower.

## **7. EXCLUSION OF LIABILITY**

- 7.1 Unless specifically provided otherwise in this Agreement, GrainCorp is not liable for any Loss or Claim including damage, destruction, contamination or loss of Grain unless and only then to the extent such is caused directly by the negligence of GrainCorp or its employees.
- 7.2 The Grower acknowledges that GrainCorp is unable to test Grain on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified seed or other contamination. GrainCorp is not liable for any direct or Loss suffered, threatened or incurred by the Grower or a party claim through or for the Grower caused by or otherwise relating to the storage or handling of contaminated Grain at any Country Site.
- 7.3 The Grower acknowledges that any transportation of Grain is at the Grower's risk, including transportation of Grain arranged by or on behalf of or at the request of either the Grower or GrainCorp. To the fullest extent permitted by law, GrainCorp is not liable for any Loss incurred by the Grower caused or otherwise relating to the loading, transportation or unloading of Grain.
- 7.4 The Grower acknowledges that GrainCorp can remove and dispose of dust or downgraded grain generated from the Grower's Grain in any manner it sees fit.
- 7.5 GrainCorp is under no obligation to insure Grain against loss, damage, destruction or contamination during storage, handling or transportation.

## **8. DISPUTES**

Any dispute concerning the grade, quality, sampling or testing of Grain which the parties cannot resolve themselves after using reasonable endeavours to do so will be referred promptly to BRI Australia Ltd (BRI) or another mutually agreed independent testing facility for resolution. The parties agree to be bound by the decision of the BRI or other mutually agreed independent testing facility.

## **9. MISCELLANEOUS**

### **Legal Operation**

- 9.1 GrainCorp is not required to perform any obligation under this Agreement if, in GrainCorp's opinion, it would contravene or might contravene any Commonwealth, State, Territory or Local Government laws, regulations or ordinances, any GrainCorp policy or procedure, or any site specific procedures.

### **Governing Law**

- 9.2 This Agreement is governed by and shall be construed in accordance with the laws for the time being in force in the State of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts in that State.

### **Assignment of Contract & Privacy**

- 9.3 This Agreement and any rights or obligations contemplated herein:
- a) may be assigned by GrainCorp to any of its related bodies corporate without the consent of the Grower; and



- b) subject to paragraph (a), must not be assigned by either party to this Agreement to any third party without the written consent of the respondent party, which may not unreasonably be withheld.

9.4 The Grower acknowledges the right of GrainCorp to access information pursuant to this Agreement in line with the Privacy Act. The Grower agrees that any information related to the performance of this Agreement may be collected, held, disclosed to another party and used by GrainCorp as follows:

- a) for any purpose required or permitted by law;
- b) in order to maintain stock records and administer grower payments on behalf of Clients;
- c) for purposes connected with the provision of products or services by GrainCorp which the Client has agreed to obtain from GrainCorp;
- d) for any purposes described in clauses 2.6 to 2.12 including to provide to CLEAR in the event that the Grower logs onto the CLEAR System with the intent to transact Grain on that platform;
- e) disclosed to GrainCorp's related bodies corporate to recover outstanding payments or market other products and services to the Client; and
- f) for the purpose of enforcing any rights that party may have in connection with Grain or commodity or variety.

#### **Interpretation**

9.5 In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) headings are inserted for convenience and do not affect the interpretation of this Agreement;
- (g) a reference to a clause, schedule, website, annexure or appendix is a reference to a clause, schedule, website, annexure or appendix attached to or referenced in this Agreement and references to this Agreement include any recital, schedule, website, annexure or appendix, unless otherwise indicated.

## **Definitions**

9.6 The following words have the corresponding following meanings in this Agreement unless a contrary intention appears.

**Accounting Stock Tonnages** means in respect of a period the quantity of each type and grade of Grain in, or which was in, in the GrainCorp System during that period as shown in GrainCorp's accounting records and is calculated as follows:

- (a) Receival Tonnage, less,
- (b) Shrinkage, less,
- (c) The net of tonnage title transferred between a GrainCorp Grower or registered Client, less,
- (d) The net of seasonal or grade reclassification, less,
- (e) The net of Grain Outloaded.

**Claim** means any allegation, demand, claim, suit, action, proceeding, damage, Loss, cost, expense or liability threatened, incurred, made or recovered by or against a person, however arising, whether present, immediate, actual, contingent or future.

**CLEAR** means Clear Commodities Pty Ltd (ABN 50126444219) of Level 1, 616 St Kilda Road, Melbourne, Victoria, 3004.

**CLEAR System** means the web-based platform enabling users to deal in Grain including to record bids and offers for the purchase and sale of Grain, through the CLEAR Website, including any related enhancements such as grain inventory financing or grain contracting.

**Client** means a grain buyer who has a current Storage and Handling or Grower Warehousing Agreement with GrainCorp.

**Central Queensland** means Country Sites in Queensland that lie in geographical area bounded by the normal movement by rail to the ports of Gladstone and Mackay.

**Co-owner** means, in respect of a particular type and grade of Grain, each client of GrainCorp who has delivered grain of that type and grade to GrainCorp and for whom GrainCorp has stored, handled or is storing or handling grain of that type and grade at any particular time, pursuant to a Storage and Handling Agreement.

**Country Sites / Sites** means the grain storage facilities operated from time to time by GrainCorp including Sub-terminal Sites but excluding the Port Terminals unless and to the extent the parties agree in writing to include any nominated Port Terminal (provided the Grower has agreed in writing to be bound by terms, conditions and pricing that GrainCorp may require in connection with any services at its Port Terminals).

**Grain Availability Sheet** means the document and/or spreadsheet hosted on the GrainCorp website at [www.graincorp.com.au](http://www.graincorp.com.au) that shows the present and future accessibility of a grade of Grain at each Country Site.

**GrainCorp Storage / GrainCorp System** means the Grain receipt, storage and handling facilities operated from time to time by GrainCorp, including the Country Sites, Metropolitan and Port Terminals.

**Grain** means wheat, malt barley, feed barley, canola, oats, rye, triticale, legumes, rice, sunflower seed, sorghum, maize and cotton seed (and any other type of grain which GrainCorp agrees to store and handle) which is received, stored and/or handled by GrainCorp under this Agreement and, after receipt of a quantity of such grain means the same quantity of grain of the same type and grade.

**Grower** means any person or entity registered by NGR pursuant to a Grower Registration Form who seeks to or delivers Grain to Country Sites.

**Grower Warehouse Grain Title Transfer Form** means the form for Title Transfer of Grain entitled 'Grower Warehouse Grain Title Transfer Form' pursuant to which Grain is transferred from Country Sites

**Grower Warehouse Return Order Form** means the form for Outloading of Grain entitled "Grower Warehouse Return Order Form" pursuant to which Grain is outloaded from Country Sites.

**Grower Warehousing** means storage of Grain with GrainCorp pursuant to a Grower Warehouse Agreement.

**Grower Warehouse Agreement** means an agreement entitled "Grower Warehouse Agreement" between GrainCorp and a Grower.

**GST** means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

**GTA** means Grain Trade Australia Incorporated PO Box R1829 Royal Exchange NSW 1225.

**Legumes** means chickpeas, lupins, field peas and mungbeans and other grains subject to a levy by Pulse Australia.

**Loss** means any direct or indirect loss (including Consequential Loss) of any kind, liability, damage, cost (including full legal costs on a full indemnity basis), charge, expense, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is or may be liable for.

**Natural Port Zone** means Country Sites that lie in geographical area bounded by the normal movement of trains in NSW, Victoria and Queensland to GrainCorp Port Terminals as advised by GrainCorp from time to time.

**NGR** means National Grower Register of PO Box 3526, Toowoomba Village Fair, QLD 4350.

**Operations Reasons** means delays or Grain unavailability due to weather problems, grain infestation or fumigation, grain quality problems, inaccessible Grain, mechanical failure, rail delays and end of grade.

**Outloaded Tonnage / Outloading** means tonnage of Grain removed from a Country Site to the Grower's nominated rail or road transport.

**Port Terminals** means GrainCorp's seaboard terminals at Mackay, Gladstone, Fisherman Islands, Pinkenba, Port Kembla (Port Kembla Grain terminal), Newcastle (Newcastle Terminal Elevator), Carrington, Geelong and Portland.

**Receival Docket** means grain receipts issued by GrainCorp on receipt of Grain by GrainCorp from or on behalf of the Grower or pursuant to Grower Warehousing at any Country Site.

**Receival Standards** means those standards, including those published on the GTA, AOF, Pulse Australia and GrainCorp Websites. These standards may include harvest management tools utilised by GrainCorp such as commingling of grades and Dynamic Binning Strategy. The grade recorded on the Receival Docket confirms the entitlement of the Buyer to the outturn of the tonnage of that grade. Additional receival standards may be created by GrainCorp due to seasonal requirements and notified to the Grower, or as otherwise agreed between GrainCorp and the Client for specific requirements.

**Receival Tonnage** means tonnage of Grain delivered from growers on a Receival Docket, or transfers of Receival Dockets from Grower Warehousing or other deliveries from outside of the GrainCorp System.

**Relevant Increment** means the applicable increment in dollars per tonne in respect of the protein content of wheat and oil content of canola as advised by GrainCorp from time to time.



**Services** means the services that GrainCorp will provide to the Grower, as set out in clause 2 of this Agreement in return for the fees set out in clause 3 and attached in Schedule 1.

**Southern Queensland** means Country Sites in Queensland that lie in geographical area bounded by the normal movement by rail to the ports of Fisherman Islands, Pinkenba, Newcastle and Carrington and includes the Country Site of Boggabilla.

**Stock Swap** means where the stock balance, or part thereof, of two Grower's Grain at two specific Country Sites, as recorded in the GrainCorp stock system, is transferred between the two Clients.

**Stock Swap Form** means the form for the Stock Swap of Grain entitled "Stock Swap Form" available from GrainCorp.

**Storage and Handling Agreement** means an agreement so titled between GrainCorp and a Client in writing and executed but does not include a Grower Warehousing Agreement.

**Stored Grain** means, in respect of a particular type and grade of Grain, all of the Grain of that type and grade received by GrainCorp for storage and/or handling at any particular time pursuant to a Storage and Handling Agreement and which the Co-owners collectively own.

**Sub-terminal Site** means Country Sites at Moree, Narrabri, Werris Creek, Parkes Sub, Temora Sub, Junee, Murtoa and Dunolly.

**Title Transfer** means where the Accounting Stock Tonnage, or part thereof of a Grower's Grain at a specific Country Site, as recorded in the GrainCorp stock systems, is transferred to a GrainCorp Client.

## SCHEDULE 1

### (a) STORAGE AND HANDLING FEES FOR WINTER GRAINS

Unless stated otherwise all fees are quoted as AUD per tonne.  
Fees for Grain not listed in the following table available on application.  
All fees quoted are exclusive of GST.

Fee Type	Commodity	Component	Fee / T
Receival	Wheat	Standard Grade	\$6.17
		Durum Grades	\$7.77
		Special Grade	\$8.83
	Barley	Feed Grades	\$7.35
		Malt Grades	\$7.86
		Special Grade	\$10.10
	Triticale	Standard Grade	\$8.83
	Legumes	Standard Grade	\$9.95
	Oilseeds	Standard Grade	\$8.83
		Special Grade	\$10.53
Oats	Standard Grade	\$10.53	
Sorghum	Standard Grade	\$6.02	
Monthly Storage*	All Grains (excluding canola)	One month after end of month of delivery for delivery prior to 28/2/10	\$1.38
	Canola		\$1.49
Monthly Carry-over	All Grains (excluding canola)	As of opening of 2010/11 season then ongoing	\$2.30
	Canola		\$2.53
Outloading	All Grains	Within normal operating hours	\$5.53
		Outside normal operating hours	\$7.17

Emerald & Toowoomba regions commence 2010/11 season on September 1, 2010; all other regions on October 1, 2010.

\* This Agreement only entitles storage up until September 30, 2010.

\*Deliveries after 28/2/10 will incur storage fees 1<sup>st</sup> of month after receival.

### (b) STANDARD AND SPECIAL GRADES

Special Grades relate to specific segregation requests during harvest and will be advised by GrainCorp when applicable. The grade used for the purpose of determining Standard and Special grades is the binned grade, not the varietal (paid) grade.

Sample notification requirements obtained prior to harvest and collected during intake are included in the fee. NB: Additional sample requests in excess of 5kg/Site will be charged at \$50/kg.

Harvest data and samples will be provided on a site/grade and/or port zone basis where customers own stock. The port zone codes, site lists and forms for registering for samples and data are available by contacting Technical Services on 07 4639 9297.

## SCHEDULE 2

### Wheat Moisture Management Services (Where facilities available)

Where facilities are available, GrainCorp will receive and store wheat with a moisture content greater than 12.5%. Growers will be charged a moisture management fee dependant on the moisture content of the delivery. Sites available for high moisture deliveries will be advised by GrainCorp from time to time. On receipt of the grain a wet weight is provided and adjusted to a dry weight on the Delivery Advice. Growers will be charged a moisture management fee dependant on the moisture content of the delivery.

Wheat will be reclassified from high moisture grain to dry grain in accordance with the following schedule.

Receival Moisture	High Moisture Cost (per tonne)	Adjustment (X)
13.0	\$6.00	0.989
13.1	\$6.50	0.988
13.2	\$7.00	0.986
13.3	\$7.50	0.985
13.4	\$8.00	0.984
13.5	\$8.50	0.983
13.6	\$9.00	0.982
13.7	\$9.50	0.981
13.8	\$10.00	0.980
13.9	\$10.50	0.978
14.0	\$11.00	0.977
14.1	\$11.50	0.976
14.2	\$12.00	0.975
14.3	\$12.50	0.974
14.4	\$13.00	0.973
14.5	\$13.50	0.972
14.6	\$14.00	0.970
14.7	\$14.50	0.969
14.8	\$15.00	0.968
14.9	\$15.50	0.967
15.0	\$16.00	0.966

Notes:

- Charges are calculated on the wet weight.
- GrainCorp will accept grain for drying in the following classifications APH2, H2, APW1.
- GrainCorp will accept wheat up to 14.0% moisture at drier depots only.

## SCHEDULE 2 (Continued)

### Sorghum Moisture Management Services (Where facilities available)

Where facilities are available, GrainCorp will receive and store sorghum with a moisture content greater than 13.5%. Growers will be charged a moisture management fee dependant on the moisture content of the delivery. Sites available for high moisture deliveries will be advised by GrainCorp from time to time. Central Queensland wet deliveries will be accepted up to 17.5%. Southern Queensland wet deliveries will be accepted up to 15%. NSW wet deliveries sites and tolerances will be advised by GrainCorp.

Sorghum will be reclassified from high moisture grain to dry grain in accordance with the following schedule.

Receival Moisture	High Moisture Cost (per tonne)	Adjustment (X)
13.6	\$1.00	0.993
13.7	\$1.50	0.992
13.8	\$2.50	0.991
13.9	\$5.00	0.990
14.0	\$6.00	0.989
14.1	\$6.50	0.987
14.2	\$7.00	0.986
14.3	\$7.50	0.985
14.4	\$8.00	0.984
14.5	\$8.50	0.983
14.6	\$9.00	0.982
14.7	\$9.50	0.980
14.8	\$10.00	0.979
14.9	\$10.50	0.978
15.0	\$11.00	0.977
15.1	\$11.50	0.976
15.2	\$12.00	0.975
15.3	\$12.50	0.974
15.4	\$13.00	0.972
15.5	\$13.50	0.971
15.6	\$14.00	0.970
15.7	\$14.50	0.969
15.8	\$15.00	0.968
15.9	\$15.50	0.967
16.0	\$16.00	0.966
16.1	\$16.50	0.964
16.2	\$17.00	0.963
16.3	\$17.50	0.962
16.4	\$18.00	0.961
16.5	\$18.50	0.960
16.6	\$19.00	0.959
16.7	\$19.50	0.957
16.8	\$20.00	0.956
16.9	\$20.50	0.955
17.0	\$21.00	0.954
17.1	\$21.50	0.953
17.2	\$22.00	0.952
17.3	\$22.50	0.951
17.4	\$23.00	0.949
17.5	\$23.50	0.948

Note: Receival charges are calculated on the wet weight

### **Schedule 3 PRIVACY STATEMENT**

This statement explains your privacy rights and the rights and obligations of GrainCorp Operations Limited ("GrainCorp") in relation to your personal information which for the purpose of this Agreement includes all details as set out on a Receiving Docket.

#### **(a) Your rights**

You need not give GrainCorp any of the personal information requested in this form or any other document or communication relating to the warehousing of your Grain. However, without this information, GrainCorp may not be able to process your application or provide you with an appropriate level of service.

You may request access at any time to personal information held by GrainCorp about you and ask GrainCorp to correct it if you believe it is incorrect or out of date.

#### **(b) How GrainCorp uses your personal information**

GrainCorp uses your personal information to:

- maintain a record of your relationship with GrainCorp
- pass your relevant information to Clear as described in clauses 2.6 to 2.12 of this Agreement
- process your application
- administer and manage the supply of Services, e.g. grain warehousing Service to you, Clear System etc
- comply with requests from government and regulatory bodies, authorities or with court issued documents
- facilitate GrainCorp's internal business operations, including fulfillment of any legal requirements and confidential system maintenance and testing
- assist in maintaining the National Grower Register.

#### **(c) GrainCorp's right to disclose your personal information**

GrainCorp may disclose your personal information in the following circumstances:

- to its external service providers that provide services for the purposes only of GrainCorp's business, for example a mailing house, a rail or road carrier or silo operator
- to SunPrime Seeds Pty Limited
- to CLEAR Commodities Pty Ltd as described in Clauses 2.6 to 2.12 (for the avoidance of doubt, the information will only be provided to CLEAR if the Grower logs onto the CLEAR system)
- to National Grower Register Pty Ltd for the purpose of maintaining a database of grower and grower payment information
- to comply with requests from government and regulatory bodies, authorities or with court issued documents
- in connection with a proposed sale or acquisition of an interest in a business
- if you request GrainCorp to do so or if you consent or where the law requires or permits GrainCorp to do so

#### **(d) Use by GrainCorp Group**

GrainCorp may also use your personal information or give access to personal information about you to any member of the GrainCorp Group to:

- perform advisory and administrative services
- assess your total relationship with the GrainCorp Group, analyse products and customer needs and develop new products
- collect monies claimed
- inform you of products and services provided by GrainCorp, any member of the GrainCorp Group or by preferred providers which GrainCorp thinks may be of value or interest to you unless you tell GrainCorp not to

#### **(e) Your authority to GrainCorp**

By delivering Grain to GrainCorp Storage you authorise GrainCorp to collect, maintain, use and disclose your personal information in the manner set out in this privacy statement.

**By delivering Grain to GrainCorp warehousing, you undertake to provide a copy of this privacy statement to each principal, agent, contractor, company officer or partner that you purport to represent.**