



GrainCorp Early Commitment Premium Contract 2009-10 Terms and Conditions

1. TERMS AND CONDITIONS

By signing the "GrainCorp Early Commitment Premium Contract" document, the **Seller** defined therein (or its agent) confirms that s/he has received, read and understood the import of the said document and these GrainCorp Early Commitment Premium 2009-10 Terms and Conditions ("**Terms and Conditions**") and accepts that it has entered into a legally binding contract. If signed by the **Seller's** agent, the agent warrants that s/he is duly authorised by the **Seller** to enter into this Contract on its behalf. Where the **Seller** comprises more than one party, all such parties shall be jointly and severally liable under the Contract.

2. DEFINED TERMS

Terms which are defined or used and described on the front page of the "GrainCorp Early Commitment Premium Contract" document have the same meaning in these **Terms and Conditions**. Further terms used in the **Contract** are defined as follows:

Adjustment Factor: means the net profit or loss resulting from any hedging or other trading in financial instruments or other contracts undertaken by **GrainCorp** in relation to the **Pool** after deduction of all **Expenses** and **Levies** authorised under the **Contract**, divided by the total number of tonnes of **Grain** in the **Pool**.

Deferred Payment Option: means an initial advance to the **Seller** by **GrainCorp** or its assignee of approximately 70% of the **First Payment Price** to be paid in July, with **Final Payment** then made by **GrainCorp** or its assignee to the Seller upon **Finalisation**.

Distribution Payment Option: means where payment is periodically made by **GrainCorp** or its assignee to the **Seller** as **Grain** is sold and payment received, subject to Clause 10 herein. No payment is made at harvest under such option.

Early Commitment Premium: means the premium that **GrainCorp** agrees to pay to the **Seller**, as on the face of this document, in addition to the **Pool Return**, on receipt by **GrainCorp**, or its agent, of a copy of the "GrainCorp Early Commitment Premium Contract" document signed by or on behalf of the **Seller** within the period publically nominated by **GrainCorp** for the acceptance of early commitments from sellers.

Expenses: include but are not limited to any brokerage, hedging costs, freight costs, insurance, interest, storage or handling fees or other costs, **Levies**, charges or expenses, including the financing of the **Pool** operations, and any administrative costs which will be deducted by **GrainCorp** from any payment made to the **Seller** under the **Contract**. **Expenses** will be reflected in the **Final Pool Return** to the **Seller** and may be deducted at one time or in instalments from any payments to be made to the **Seller** under the **Contract**.

Estimated Pool Return: means **GrainCorp's** estimated value per metric tonne of the value of all **Grain** delivered to the relevant **Pool**, which is communicated to the **Seller** on a Free On Board ("**FOB**") basis, per INCOTERMS 2000. **GrainCorp** gives no warranty as to the accuracy of the estimate or level of the **Final Pool Return**.

First Payment Price: means **GrainCorp's** estimate of the **Final Pool Return** as stated on the **Remittance Advice** under "First Payment Price".

Final Payment: means the amount to be paid to the **Seller** by **GrainCorp** or its assignee at the finalisation of the **Pool** (after deductions for **Expenses** and the application of the **Adjustment Factor**).

Finalisation: means latest 30 days from the day by which all the **Grain** in the **Pool** has been disposed of by or on behalf of **GrainCorp**, and payment for the **Grain** has been received.

Final Pool Return: means the **FOB** price per metric tonne received by **GrainCorp** on the disposal of the all the grain in the **Pool** less any **Expenses** and **Levies**, to be paid by **GrainCorp** or its assignee to the **Seller** for the **Grain**, adjusted by the **Adjustment Factor**.

Further Advance: means any further advance(s) that may be paid during the 2009-10 season for the **Harvest Payment Option** and the **Deferred Payment Option** subject to the prevailing estimated **Final Pool Return**.

Grain: means the quantity and quality of the commodity described on the front page of the "GrainCorp Early Commitment Premium Contract" document.

Seller will be paid as a minimum for the **Grain** deposited in to the **Pool**, provided the **Pool** is a guaranteed minimum price pool and not another type of pool, such as a pre harvest pool.

Harvest Payment Option: means that the **Seller** has accepted a payment option with an initial advance of 70% of the **First Payment Price** less all estimated **Expenses**, paid within 21 days from the end of week of delivery of the **Grain**, with **Final Payment** to the **Seller** by **GrainCorp** or its assignee upon **Finalisation**.

Levies: means any industry, statutory or government levies including, without limitation, any endpoint royalties (plus GST) relating to the **Grain**.

Loan Payment Option: means where **GrainCorp** or its assignee agrees to loan money to the Seller on the terms and conditions as per the "GrainCorp Pool 2009 Harvest Loan Terms and Conditions".

Pool: means the GrainCorp Pool listed on the front page of the "GrainCorp Early Commitment Premium Contract" document.

Remittance Advice: means the document **GrainCorp** or its assignee provides to the **Seller** after delivery of the **Grain**, confirming the payment.

Single Sum Payment Option: means that the **Seller** has accepted a payment option of an advance by **GrainCorp** or its assignee of 100% of the **Final Pool Return**, payable upon **Finalisation**.

3. PURPOSE

This **Contract** requires the Seller to commit to, and then deliver the **Grain** to the **Pool** operated by **GrainCorp** or its agents, within the **Delivery Period**. In return, **GrainCorp** will pay the **Seller** as set out in the payment terms below in Clause 10.

4. DELIVERY INTO POOL

A delivery of **Grain** in accordance with this **Contract** takes place when:

- (i) The **Grain** is physically delivered to the **Delivery Location** or other approved **GrainCorp** storage site; or
- (ii) If **Grain** is to be transferred in-store, when the necessary warehouse transfer has been effected.

The **Seller** warrants:

- (i) that all deliveries of the **Grain** shall meet the receival standards required by **GrainCorp** as at the time of delivery and will, at all times, comply with the requirements on the front page of the "GrainCorp Early Commitment Premium Contract" document; and
- (ii) all **Grain** delivered will comply with all applicable State and Federal pesticide legislation, rules, regulations or standards.

The **Seller** agrees that it shall be liable to **GrainCorp** for any cost, loss or any claim whether directly or indirectly suffered by or made against **GrainCorp** in connection with any failure on the part of the **Seller** in respect of the abovementioned warranties in its delivery of **Grain** to **GrainCorp**. The **Seller** further agrees to fully indemnify **GrainCorp** for any losses arising from any contamination of, or caused by the **Seller's Grain**, or any loss of the **Grain**, or any other losses arising from the **Seller's** breach of the **Contract**.

5. TITLE TO GRAIN AND RISK

Title to the **Grain** delivered pursuant to the above clause, and physical risk for same, shall pass to **GrainCorp** when **GrainCorp** accepts delivery of the **Grain**. If the **Grain** is lost, damaged or destroyed in whole or in part while in **GrainCorp's** sole possession and due to **GrainCorp's** negligence, the **Seller's** right and entitlements shall be limited and, in no circumstances, exceed the **Final Payment**.

The **Seller** warrants that the **Grain** was produced by the **Seller** in the ordinary course of its business and that no person other than the **Seller** has any right, title or interest in or to the **Grain** (including any crop lien). If an encumbrance does exist in respect of the **Grain** or in respect of the proceeds of sale of that **Grain** which the **Seller** had not previously disclosed to **GrainCorp**, the **Seller** agrees to reimburse and indemnify **GrainCorp** for any and all costs incurred by **GrainCorp** in processing, complying with and paying any claims or demands made by the holder of that encumbrance. The **Seller** agrees and acknowledges that the **Contract** does not create any relationship of trust, partnership or agency between **GrainCorp** and the **Seller**. The **Seller** also acknowledges that **GrainCorp** trades in agricultural commodities on its own account.

6. ASSIGNMENT

The **Seller** agrees that **GrainCorp** may assign or novate this **Contract**, or any rights or obligations there under to a third party at its absolute discretion and that **GrainCorp** need not provide the **Seller** with any notice of same. In particular, the **Seller** acknowledges that once the **Grain** has been delivered pursuant to the **Contract**, triggering the release of funds by or on behalf of **GrainCorp** pursuant to the **Contract**, that **GrainCorp** may so assign the **Contract** to GrainCorp Pools Pty Ltd (ABN 45 095 759 890), being the special purpose company used by **GrainCorp** to execute financial obligations due under, among others, the **Contract**. The **Seller** agrees that it cannot assign this **Contract**, or any rights or obligations there under, without **GrainCorp's** prior written approval, which may be conditional.

7. WASHOUT BEFORE DELIVERY

This **Contract** is for the physical delivery of the **Grain**.

Should the **Seller** suffer production failure of at least 50% of the **Seller's** current year crop, and not be able, or anticipate that it will not be able to physically deliver as against the **Contract** either from its own crops, or from tonnage purchased in, then provided the **Seller** has given **GrainCorp** prompt notice of any such difficulty, by way of a Statutory Declaration evidencing the alleged difficulty, so that **GrainCorp** can manage its risk and potentially purchase in additional grain if necessary, **GrainCorp** may, in its absolute discretion, offer to wash out the **Contract** with the **Seller**.

Should **GrainCorp** agree to wash-out the **Contract**, the **Seller** shall be obliged to pay **GrainCorp** a wash-out payment, within 30 days from the agreed washout date, a fixed washout fee of A\$25/mt of the contracted mean quantity of the **Grain** otherwise deliverable under the **Contract**.

The **Seller** acknowledges that the option of a washout will not be made available by **GrainCorp** with respect to **Grain** already delivered into a **Pool**.

8. EARLY EXIT AFTER DELIVERY & BEFORE FINALISATION OF POOL

On and from 1st March 2010, where **Grain** has been delivered into a **Pool**, **Sellers** have the option to exit the **Pool** before finalisation of that **Pool**, and will be entitled to receive one final cash payment. To exercise this right, the **Seller** must request early exit by giving **GrainCorp** 7 business days' prior written notice. The early exit will be available to the **Seller** 7 business days after **GrainCorp's** receipt of the said written request. The final cash payment will be calculated based on the **Estimated Pool Return** as defined, as at the date the early exit request become effective, minus **Expenses** and the **Adjustment Factor**, and minus 10% of the **Estimated FOB Pool Return**.

9. NO GUARANTEE

GrainCorp will exercise reasonable skill and care in its efforts to maximise the **Final Pool Return**, but makes no guarantee as to the **Final Pool Return**, unless the first page of this "GrainCorp Early Commitment Premium Contract" document provides for a **Guaranteed Minimum Price Pool** and a **Guaranteed Minimum Price**.

10. PAYMENTS

The agreed payment option is as recorded on the face of the "GrainCorp Early Commitment Premium Contract" document.

Payments will only be made if sufficient equity is available for each grade of grain delivered into the **Pool**.

A final payment of any balance required to cause the total amount per tonne paid by **GrainCorp** or its assignee under the **Contract** to equal the **Final Pool Return**, shall be made in one or more instalments, provided that the last instalment (if any) must be paid within 30 days of the date of final determination of the **Final Pool Return**.

If the **Final Pool Return** as calculated for the purpose of final payment to the **Seller** is equal to the amount(s) advanced by **GrainCorp** or its assignee, then **GrainCorp** and/or its assignee is not required to make any further payment to the **Seller** for the **Grain**.

If the **Final Pool Return** is less than the amount(s) advanced by **GrainCorp** or its assignee, then the **Seller** must (on 30 days' written notice from **GrainCorp** or its assignee) pay to **GrainCorp** or its assignee the difference between the amount(s) previously advanced by **GrainCorp** or its assignee to the **Seller**, and the **Final Pool Return**, and shall also pay any other amounts outstanding and due to **GrainCorp** or its assignee, including under any loan agreement or credit contract between the **Seller** and **GrainCorp** or its assignee.

GrainCorp or its assignee may deduct from any advance or payment otherwise to be made to the **Seller** under this **Contract**, any part of the **Levies**, any borrowing costs, and **Expenses** payable by or attributable to the **Seller** under the **Contract**, which have not been deducted from previous advances or payments, together with any amounts outstanding by the **Seller** to **GrainCorp** or its assignee or a related body corporate of either.

GrainCorp or its assignee may set off any amounts which are otherwise due and payable by the **Seller** to **GrainCorp** or its assignee, or any related body corporate of **GrainCorp** or its assignee, under any other account or contract with any such party, without prior notice to the **Seller**. Where **GrainCorp** or its assignee invokes such right, written confirmation of same shall be forwarded to the **Seller** within 21 days of the right having been exercised.

Where the agreed payment option is a **Loan Payment Option**, then the parties acknowledge that, in addition to the **Terms and Conditions**, the **GTA Rules** and the **GTA DRR** mentioned on the face of the "GrainCorp Early Commitment Premium Contract" document being applicable to such **Loan Payment Option**, such option shall also be subject to the "GrainCorp Pool 2009 Harvest Loan Terms and Conditions".. To the extent of any conflict between the latter set of terms and conditions and the former three sets of terms and conditions and the terms appearing on the face of the "GrainCorp Early Commitment Premium Contract" document, the "GrainCorp Pool 2009 Harvest Loan Terms and Conditions" shall prevail.

Where the agreed payment option is a **Loan Payment Option**, the **Seller** acknowledges that the loan amount shall be repaid from distribution paid as for a **Distribution Payment Option**.

11. RECIPIENT CREATED TAX INVOICE:

This clause only applies if the **Seller** is registered for Goods and Services Tax ("GST").

When a payment is made to the **Seller** by **GrainCorp** under this **Contract**, a Recipient Created Tax Invoice will be issued by **GrainCorp** when authorised to do so. The **Seller** acknowledges that **GrainCorp** utilises the National Grower Registry to determine GST status, and unless otherwise notified in writing, **GrainCorp** will assume this status to be correct. The **Seller** agrees that it is solely responsible and liable for remitting the GST amount to the Australian Tax Office.

The **Seller** further agrees that it will immediately notify **GrainCorp** if the **Seller's** GST status should change during the duration of this **Contract**.

12. LATE PAYMENT

GrainCorp is not required to pay interest on late payments in relation to the **GrainCorp Pool** and is not responsible for any loss suffered due to a delay in payment of any amount in relation to the **GrainCorp Pool**.

13. SEVERABILITY

If any part of the **Contract** is found to be inoperative/unenforceable, that part will be severed and the remaining terms of the **Contract** will continue in effect.

14. DISPUTE RESOLUTION AND GOVERNING LAW

The **Contract** is governed by and shall be construed in accordance with the laws in New South Wales. The parties agree that if there is any dispute arising out of the **Contract**, they shall first discuss the dispute in good faith in an effort to resolve the dispute on a commercial basis, failing which the parties agree that the dispute shall be referred to Grain Trade Australia for arbitration.

If, despite having signed and returned a copy of this document to **GrainCorp** or its agent, or having accepted these **Terms and Conditions** either expressly or impliedly, or having ratified this **Contract** either expressly or impliedly, the **Seller**:

- (i) disputes the incorporation into this **Contract** of the **Terms and Conditions**, or the **GTA Rules**, or the **GTA DRR**; or
- (ii) disputes the jurisdiction of Grain Trade Australia to hear the dispute; or
- (iii) disputes the existence of the **Contract**,

and **GrainCorp** incurs legal costs in relation to addressing such challenges by the **Seller**, then the **Seller** acknowledges that the **Seller** shall be liable to **GrainCorp** for its reasonably incurred legal costs on a full indemnity or solicitor/client basis, as well as penalty interest at 9% on the sum otherwise due to **GrainCorp** from the date of any relevant arbitration award.

For any enquiries, please call GrainCorp on 1800 809 482