



## GC Pools 2009-10 Loans Terms

### GrainCorp Pool 2009-10 Harvest Loan Terms and Conditions

**GrainCorp Operations Limited** ABN 52 003 875 401 ("GrainCorp") (as agent for GrainCorp Pools Pty Ltd ABN 45 095 759 890)

#### PLEASE NOTE:

This document contains the 2009 Harvest Loan Terms and Conditions of the Standard Harvest Loan and the Flexible Harvest Loan.

Each loan is different and has different terms and conditions.

If You inform GrainCorp, or its agent, that You apply for a loan against a delivery of Grain, You will be taken to have accepted these 2009 Terms and Conditions at the time You deliver the Grain.

Please read this document carefully before making a selection to ensure that You choose the loan that is right for You.

#### SECTION A: DELIVERING GRAIN/MAKING A LOAN

##### **1. These 2009 Harvest Loan Terms and Conditions**

- 1.1 These 2009 Harvest Loan Terms and Conditions ("**2009 Loan terms and conditions**") should be read together with the GrainCorp Operations Limited Harvest Pools Deliveries 2009-10 Terms and Conditions ("**Standard Terms and Conditions**"). Together, they create an agreement between You and GrainCorp. You should read both documents carefully.
- 1.2 These 2009 terms and conditions, read together with the Standard Terms and Conditions, set out how GrainCorp will purchase Grain from You and provide a loan to You. Except as otherwise defined herein, capitalised terms used in these 2009 Loan terms and conditions have the meaning given to them in the Standard Terms and Conditions.
- 1.3 GrainCorp acts as agent for GrainCorp Pools Pty Ltd ABN 45 095 759 890 ("GCPP") in operating and managing the GrainCorp Grain Pool, entering into a harvest loan contract and confirming the harvest loan contract in writing.
- 1.4 This document contains two different types of loan options which are offered to You in accordance with these 2009 terms and conditions.
- 1.5 These 2009 terms and conditions act as a single credit contract with You even though You may have made multiple Deliveries to GrainCorp and applied for more than one loan from GrainCorp (under either the Standard Harvest Loan Option or the Flexible Harvest Loan Option).
- 1.6 A glossary of key terms in these 2009 terms and conditions is set out at the back of this document.

##### **2. Entry into these 2009 terms and conditions**

- 2.1 To enter into an agreement under these 2009 terms and conditions, You must be either:
  - (a) registered with the NGR as an NGR entity or an NGR payee; or
  - (b) registered with GrainCorp as a grain vendor.
- 2.2 These 2009 terms and conditions apply to each Delivery of Grain You make to GrainCorp where, at the time of the Delivery, You instruct GrainCorp or its agent (either orally or in writing) that You apply for a loan from GrainCorp.
- 2.3 After the first Delivery of Grain in accordance with clause 2.2, GrainCorp will send You further documentation in relation to the loan, which will include options to take a Standard Harvest Loan or a Flexible Harvest Loan (each of these is described later in these 2009 terms and conditions). You agree to fill out, sign and return that documentation within 14 days after we send it to You.

##### **3. Encumbrances**

- 3.1 **You are not eligible for a Flexible Harvest Loan for a Delivery of Grain to GrainCorp if any Encumbrance exists on that Grain**
- 3.2 If You do not disclose to GrainCorp any Encumbrance that exists on Grain Delivered by You, You will be in default under these terms and conditions.

#### **4. Allocation of Grain**

- 4.1 After GrainCorp receives a Delivery of Grain from You, GrainCorp will allocate, in its sole and absolute discretion, that Grain to a Grain Pool based on its Grain Classification.

#### **5. Distributions from the Grain Pool**

- 5.1 GrainCorp will pay You a Distribution for each Delivery of Grain in a particular Season.
- 5.2 GrainCorp may pay You the Distribution in periodic interim instalments, plus GST. The amount of each periodic interim instalment will be determined by GrainCorp in its sole and absolute discretion.
- 5.3 All amounts in respect of Distributions to be paid to You will first be applied by GrainCorp to repay Your Standard Harvest Loan or Flexible Harvest Loan (including any interest, fees, costs or otherwise).
- 5.4 GrainCorp will make a final payment (if applicable) of the Distribution, plus GST, when the Grain Pool for the particular Grain Classification is sold off and closed.
- 5.5 You acknowledge that You must pay any GST liability to the ATO on the sale of the Grain You Deliver to GrainCorp. In order to meet Your GST payments to the ATO You will need to set aside funds from the loan monies.

### **SECTION B: THE STANDARD HARVEST LOAN OPTION**

#### **6. Delivery and loan**

- 6.1 If You select the Standard Harvest Loan Option for a Delivery of Grain, GrainCorp will, on and subject to these 2009 terms and conditions, provide You a loan in accordance with this Section B.
- 6.2 Each time You Deliver Grain to GrainCorp and apply for a Standard Harvest Loan in respect of that Delivery, You:
- (a) offer to sell the Grain to GrainCorp for allocation into its Grain Pool;
  - (b) acknowledge that if the Grain Pool for the Grain You Deliver has not closed, and subject to clause 3 of these 2009 terms and conditions, GrainCorp will accept Your offer and purchase the Grain from You on these 2009 terms and conditions;
  - (c) apply to GrainCorp for a Loan Amount; and
  - (d) acknowledge that GrainCorp may in its discretion agree to lend You the Loan Amount for the Grain calculated according to these 2009 terms and conditions.

#### **7. Loan Amount**

- 7.1 If for a Delivery of Grain GrainCorp is to provide a Standard Harvest Loan, the Loan Amount available to You will be the FPE multiplied by 75 percent of the metric tonnage of the Grain Delivered by You, adjusted for any Premium/discount, minus any estimated costs, fees and charges which arise in connection with the sale and Delivery to, and storage at, GrainCorp and an estimate of any interest which is likely to accrue on the Loan Amount.
- 7.2 GrainCorp will make the Loan Amount available to You within 21 days from the day after the date on which You Delivered the Grain to GrainCorp.

#### **8. Additional Loan Amount**

- 8.1 GrainCorp may provide additional Loan Amounts to You for Grain Delivered to GrainCorp.
- 8.2 The timing and amount, if any, of those additional Loan Amounts shall be decided by GrainCorp in its sole and absolute discretion.
- 8.3 If GrainCorp provides You with additional Loan Amounts, they will be distributed as if they were part of the original principal Loan Amount.

#### **9. Interest**

- 9.1 You must pay interest on the Loan Amount (and additional Loan Amounts, if any) for the term of the loan.
- 9.2 The interest rate is variable and is set by GrainCorp from time to time for all Your Standard Harvest Loans. GrainCorp will ensure that any changes to the interest rates charged are published on our website.
- 9.3 Interest is calculated daily and is payable on the balance of the Loan Amount from time to time.
- 9.4 Any interest payable that is outstanding on the last day of each month will be Capitalised and added to Your loan, and interest will be payable on that Capitalised amount.
- 9.5 All Accrued and Capitalised interest will be paid out of the Distribution owed to You (if any), in accordance with clause 11.

#### **10. Disbursement of Loan Amount**

- 10.1 You agree that when GrainCorp makes any Loan Amount available it will apply it in the following order of priority:

- (a) first, to pay to GrainCorp any amount then due by You to GrainCorp (including any amounts referred to in clause 11.1(a), interest, fees, costs or otherwise);
- (b) second, to pay You the remaining Loan Amount (if any) by crediting it to the account nominated on Your NGR form.

10.2 GrainCorp will apply amounts in respect of periodic interim instalments and the final payment (if applicable) of the Distributions for any Deliveries of Grain in reduction of all Loan Amounts, all Accrued or Capitalised interest and any fees and costs due to GrainCorp in accordance with clause 11.1. Subject to clause 11.1, it will apply any such amounts in the order which it determines in its sole and absolute discretion.

10.3 GrainCorp and GCPP will not be responsible for any loss suffered by You because payment of any Loan Amount is delayed.

#### **11. Allocation of Distributions**

11.1 You acknowledge and agree that GrainCorp will apply both periodic interim instalments and the final payment (if applicable) of the Distributions for any Deliveries of Grain in relation to which You have borrowed a Loan Amount in the following order of priority:

- (a) first, to pay to GrainCorp any fees, costs or Expenses, as determined by GrainCorp, then due by You to GrainCorp in connection with the sale and Delivery of Grain to GrainCorp or by GrainCorp to third parties;
- (b) second, to pay to GrainCorp any amount then due by You to GrainCorp in respect of the Loan Amount and in respect of any fees, costs or Expenses and all Accrued or Capitalised interest on the Loan Amount;
- (c) third, to pay any other debt then due by You to GrainCorp;
- (d) fourth, to satisfy any other Encumbrance over the relevant Grain; and
- (e) fifth, after paragraphs (a) to (e) have been satisfied in full, to pay You the remaining Distributions (if any) by credit to the deposit account nominated by You on Your NGR form.

11.2 GrainCorp and GCPP are not responsible for any loss suffered by You because payment of Distribution is delayed.

### **SECTION C: THE FLEXIBLE HARVEST LOAN OPTION**

#### **12. The Flexible Harvest Loan**

12.1 If You select the Flexible Harvest Loan Option for a Delivery of Grain, GrainCorp will, on and subject to these 2009 terms and conditions, provide You a loan in accordance with this Section C.

**12.2 You are not eligible for a Flexible Harvest Loan for a Delivery of Grain to GrainCorp if any Encumbrance exists on that Grain**

12.3 If You do not disclose to GrainCorp any Encumbrance that exists on Grain Delivered by You, You will be in default under these terms and conditions.

12.4 Each time You Deliver Grain to GrainCorp and apply for a Flexible Harvest Loan in respect of that Delivery, You:

- (a) offer to sell the Grain to GrainCorp for allocation into its Grain Pool;
- (b) acknowledge that if the Grain Pool for the Grain You Deliver has not closed, and subject to clause 3 of these 2009 terms and conditions, GrainCorp will accept Your offer and purchase the Grain from You on these 2009 terms and conditions;
- (c) apply to GrainCorp for a Loan Facility; and
- (d) acknowledge that GrainCorp may in its discretion agree to make available to You the Loan Facility up to a certain Credit Limit for the Grain calculated according to these 2009 terms and conditions.

#### **13. Loan Facility**

13.1 The Credit Limit under the Loan Facility available to You for a Delivery of Grain will be the FPE, multiplied by 75 percent of the metric tonnage of the Grain Delivered by You, adjusted for any Premium/discount, minus any estimated costs, fees and charges which arise in connection with the sale and Delivery to, and storage at, GrainCorp and an estimate of any interest which is likely to accrue on the Loan Facility.

#### **14. Alteration to Credit Limit**

14.1 GrainCorp may increase or decrease the Credit Limit available to You for a Delivery of Grain to GrainCorp.

14.2 The timing and amount, if any, of that increase or decrease shall be at GrainCorp's sole and absolute discretion.

14.3 If GrainCorp decides to increase or decrease the Credit Limit available to You for a Delivery of Grain, GrainCorp will notify You of its decision in this regard.

14.4 If GrainCorp decides to increase the Credit Limit available to You, You may apply to Drawdown further amounts under the increased Credit Limit.

#### **15. Drawdown of Amounts under the Loan Facility**

15.1 GrainCorp may allow You to Drawdown amounts under the Loan Facility up to the maximum Credit Limit available to You.

15.2 You may Drawdown any amounts available to You under the Loan Facility if the maximum Credit Limit will not be exceeded immediately after the drawn amount is made available.

15.3 GrainCorp and GCPP are not liable for any loss suffered by You arising out of any delay in making the Drawdown amounts available to You.

15.4 Instructions for Drawdown must be made by fax (02 9325 9178). Instructions received by 10am (EST) on a Monday will be processed by

#### **16. Interest**

16.1 You must pay interest on the Loan Facility for the term of the loan.

16.2 The interest rate is variable and is set by GrainCorp from time to time for all Your Flexible Harvest Loans. GrainCorp will ensure that any changes to the interest rates charged are published on our website.

16.3 Interest is calculated daily and is payable on the balance of the Loan Facility from time to time.

16.4 Any interest payable that is outstanding on the last day of each month will be Capitalised and added to the Loan Facility, and interest will be payable on that Capitalised amount.

16.5 All Accrued and Capitalised interest will be paid out of the Distribution owed to You (if any), in accordance with clause 19.

#### **17. Use of the Loan Facility**

17.1 You agree that GrainCorp can debit Your loan account with any amount then due by You to GrainCorp (including any amounts referred to in clauses 19.1(a), interest, fees, costs or otherwise). You may Drawdown any balance then remaining in accordance with these 2009 terms and conditions.

17.2 GrainCorp will apply amounts in respect of periodic interim instalments and the final payment (if applicable) of the Distributions for any Deliveries of Grain in reduction of the Loan Facility, all Accrued or Capitalised interest and any fees and costs due to GrainCorp in accordance with clause 19.1. Subject to clause 19.1, it will apply any such amounts in the order which it determines in its sole and absolute discretion.

17.3 GrainCorp and GCPP will not be responsible for any loss suffered by You because payment of any amount, requested by You for Drawdown, is delayed.

#### **18. Prepayment of the Loan Facility**

18.1 You may prepay the amount owing under the Loan Facility, or a portion of it, to GrainCorp.

18.2 Prepayment can be made:

- (a) by electronic funds transfer or by direct deposit into Your loan account; or
- (b) by unendorsed cheque made payable to GrainCorp.

18.3 You may redraw amounts which have been prepaid if You have complied with these 2009 terms and conditions and, if the amount is redrawn, the maximum Credit Limit will not be exceeded immediately after the redrawn amount is made available.

#### **19. Allocation of Distributions**

19.1 You acknowledge and agree that GrainCorp will allocate both periodic interim instalments and the final payment (if applicable) of the Distributions for any Deliveries of Grain to which the Loan Facility relates in the following order of priority:

- (a) first, to pay any fees, costs or Expenses, as determined by GrainCorp, which arise in connection with the sale and Delivery of Grain to GrainCorp or by GrainCorp to third parties;
- (b) second, to pay to GrainCorp any amount owing by You to GrainCorp that exceeds Your maximum Credit Limit at that time;
- (c) third, to pay to GrainCorp any amount then due by You to GrainCorp in respect of the Loan Facility and in respect of any fees, costs or Expenses and all Accrued or Capitalised interest on the Loan Facility.
- (d) fourth, to pay any other debt then due by You to GrainCorp; and
- (e) fifth, after paragraphs (a) to (d) have been satisfied in full, to pay You the balance of the Distributions (if any) by credit to Your loan account [or by credit to the deposit account nominated by You on Your NGR form]. In order to meet Your GST payments to the ATO You will need to set aside funds from any amount that You Drawdown under the Loan Facility.

19.2 Each time a Distribution is paid to You under clause 19.1 the maximum Credit Limit available to You will reduce by the net amount distributed.

19.3 GrainCorp and GCPP are not responsible for any loss suffered by You because payment of any Distribution is delayed.

## **SECTION D: GENERAL**

**20. Right of recovery** If at any time the balance of the Distributions for any Deliveries of Grain is less than the amounts owing under clause 11.1(a) to (d) or clause 19.1(a) to (d)(as applicable) above, then notwithstanding any other provision of Your loan, You must (on 30 days' written notice from GrainCorp) repay to GrainCorp the shortfall between the Distributions and the amount owed by You. This requirement to repay any shortfall does not affect Your entitlement to the final payment (if applicable) of the Distribution when the Grain Pool for the particular Grain Classification is sold off and the final pool return is calculated.

### **21. Underwriting**

There is no underwriting of the Standard Harvest Loan and the Flexible Harvest Loan for Grain Pools administered by GrainCorp and there is a risk that the total of all Distributions for any Deliveries of Grain, to which the Loan Amount or Loan Facility relates, will not be sufficient to entirely repay the amount owing to GrainCorp under Your loan. Therefore You may be liable to pay the difference or shortfall between the Distributions and the amount owed by You under Your loan. GrainCorp's recourse against You is not limited to the Distributions, and GrainCorp may recover all amounts owed by You under Your loan, including any difference or shortfall between the Distributions and the amount owed by You under Your loan, from any funds or other assets that You own or are available to You. By applying for, and agreeing to, the provision of a loan to You, You acknowledge Your liability for any such difference or shortfall.

### **22. Levies**

Any industry, statutory or government levies which are not included in \_\_\_\_\_ the price of the Grain purchased from You, including without limitation any endpoint royalties (plus GST) relating to that Grain, will be deducted by GrainCorp from any advance or payment made to You under any loan provided to You by GrainCorp.

### **23. Your Warranties**

23.1 You represent and warrant to GrainCorp that each time You Deliver Grain to GrainCorp and each time GrainCorp provides You with a loan or You make a Drawdown all of the following warranties are true and correct:

- (a) You are not Insolvent;
- (b) You have good right and title to the Grain Delivered to GrainCorp and title to such Grain will transfer to GCPP on Delivery;
- (c) You have disclosed to GrainCorp all Encumbrances which exist or which may exist over the Grain or over amounts due to You for the sale of the Grain Delivered;
- (d) all information provided by You to GrainCorp is true and accurate and is not misleading;
- (e) if You have entered into these 2009 terms and conditions as a trustee of any trust, You have full authority and power under the trust instrument to do so;
- (f) if the Grain is Delivered to GrainCorp or these 2009 terms and conditions are entered into by an agent of Yours, that agent was authorised by You to Deliver that Grain or enter these 2009 terms and conditions; and
- (g) You will use any Loan Amount or Loan Facility (as applicable) provided to You by GrainCorp for business and/or investment purposes.

### **24. Default**

24.1 You will be in default under these 2009 terms and conditions if any of Your warranties set out above are or become untrue, if You become insolvent or if You are otherwise in breach of these 2009 terms and conditions.

24.2 If You are in default, GrainCorp may in its absolute discretion:

- (a) cancel any Loan Facility;
- (b) declare that all Loan Amounts, all amounts outstanding under any Loan Facility and all other amounts which You owe to GrainCorp are immediately due for payment; and
- (c) take any appropriate action to recover those amounts from You.

Any such decision by GrainCorp shall be communicated to You in writing.

24.3 If You are in default, You will be liable to pay the enforcement expenses of GrainCorp incurred to recover any amount owed by You as a result of that default.

## 25. General

25.1 These 2009 terms and conditions, and each loan made under them, are governed by the laws of New South Wales.

25.2 GrainCorp and GCPP may each set off any amount which either of them owe You at any time on any account against any amount which You owe either of them on any account (whether under these 2009 terms and conditions or otherwise). They may do this without prior notice to You.

25.3 GrainCorp and/or GCPP may at any time in its discretion assign the whole or any part of its rights under each loan agreement which You enter into pursuant to these 2009 terms and conditions. You agree that You may not assign the whole or any part of Your rights under any loan agreement without GrainCorp's prior written consent.

### **SECTION E: GLOSSARY**

**Accrued** means in relation to interest, interest that has accumulated on any Loan Amount provided to You or any Drawdown under a Loan Facility provided to You.

**Adjustments** means the costs, fees and charges that GrainCorp incurs when collecting, storing and selling off the Grain that You Deliver.

**ATO** means the Australian Taxation Office.

**Capitalised** means in relation to interest, conversion of that interest into principal.

**Credit Limit** means the maximum amount available to You under a Loan Facility.

**Deliver** means when You deposit Grain with GrainCorp or an agent of GrainCorp and title to that Grain transfers from You to GCPP and **Delivery** and **Deliveries** have a corresponding meaning.

**Distribution** means the amount that GrainCorp will pay You for a Delivery of Grain less any applicable Adjustments.

**Drawdown** means each principal amount provided or to be provided as a loan under Your Flexible Harvest Loan.

**Encumbrance** means any mortgage, charge, lien or other right or interest.

**FPE (First Payment Estimate)** means the monetary amount (exclusive of GST) determined by GrainCorp at the opening of a Grain Pool which is fixed for all Deliveries made to that Grain Pool until the pool is closed.

**GCPP** means GrainCorp Pools Pty Ltd ABN 45 095 759 890.

**GrainCorp** means GrainCorp Operations Limited, ABN 52 003 875 401.

**Grain Classification** means the classification given to Grain You Deliver to GrainCorp based on the time of delivery, quality, grade, variety and other such matters as GrainCorp determines. Allocation by GrainCorp is at GrainCorp's sole and absolute discretion and shall be final.

**Grain Pool** means the grouping of Grain into a pool based on the Grain Classification which is administered by GrainCorp.

**GST (Goods and Services Tax)** means the definition given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Insolvent** means that You are bankrupt, in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up, dissolved, subject to an arrangement, assignment or composition with creditors, under a legislative regime with respect to creditors or unable to pay Your debts as and when they fall due.

**Loan Amount** means the principal amount offered to You for a Delivery under a Standard Harvest Loan.

**Loan Facility** means the financing facility offered to You for a Delivery of Grain to GrainCorp under a Flexible Harvest Loan.

**NGR (National Grower Register)** means the register of the National Grower system.

**Premium/discount** means the premium or discount applicable to the Grain You Deliver to GrainCorp as determined by GrainCorp from time to time.

**Season** means a harvesting season for Grain.

**You** means you the customer, being the person identified as "the Seller" in the GrainCorp Operations Limited GrainCorp Wheat and Barley Pools 2009-10 Standard Contract Terms and Conditions and who signs the contract confirmation, and **Your** has a corresponding meaning.