



# GrainCorp Operations Limited

## GrainCorp Sorghum Pool 2008-09

### Standard Contract Terms and Conditions – Harvest, Deferred & Single Sum Payments

**STANDARD CONDITIONS:** GrainCorp Sorghum Pool Standard Terms and Conditions (“**Standard Conditions**”) on this page apply to this contract. All terms and conditions written or typed on the face of the Remittance Advice shall prevail over any Standard Conditions with which they conflict to the extent of the inconsistency.

In this Contract Confirmation, “Grain” means the grain or other agricultural produce delivered or to be delivered by the Seller under this Contract Confirmation, as follows:

**DELIVERY INTO POOL:** Delivery takes place when title to the Grain is transferred to GrainCorp either by physical delivery or by transfer of ownership via a warehouse transfer. All deliveries into a GrainCorp Pool must meet GrainCorp receipt standards for that season. When the Seller delivers Grain and it is accepted by GrainCorp into a GrainCorp Pool, GrainCorp shall allocate the Grain to a Pool based on time of delivery, quality, grade, variety and other such matters as GrainCorp determines. Allocation by GrainCorp is at GrainCorp’s discretion and shall be final. Grain delivered must comply with all relevant State and Federal Pesticide Regulations and the specific conditions hereof and any loss whether directly or indirectly caused as a result of abnormal pesticide levels shall be borne by the Seller. The Seller indemnifies GrainCorp from any loss arising from any contamination of the grain.

**TITLE TO GRAIN AND INSURANCE:** Title to the Grain 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 possession and at GrainCorp’s risk, GrainCorp shall pay to the Seller a Final Pool Return for the Grain calculated as if GrainCorp had disposed of the Grain at the market price prevailing on the next business day after such loss, damage or destruction.

**FIRST PAYMENT PRICE:** The First Payment Price means GrainCorp’s **estimate** of the Final Pool Return as stated on the Remittance Advice under “First Payment Price”, or such later current *bona fide* estimate of the Final Pool Return as GrainCorp may make from time to time for the purposes of this contract. GrainCorp gives no warranty as to the accuracy of the estimate or level of Final Pool Return.

**FINAL POOL RETURN:** The Final Pool Return means the price per tonne to be paid by GrainCorp to the Seller for the Grain, being the price per tonne for which GrainCorp ultimately disposes of the Grain, adjusted by the Adjustment Factor. The Final Pool Return is to be determined at a time chosen by GrainCorp in its absolute discretion, such time not to be later than 2 (two) years from the Contract Date.

**ADJUSTMENT FACTOR:** The 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 Levies, Borrowing Costs and Expenses authorised under this contract, divided by the total number of tonnes of grain in the Pool.

**UNDERWRITING:** There is NO underwriting of the GrainCorp Pool to which the Contract relates, and there is a risk that the Final Pool Return will be less than the amounts advanced or paid to the Seller from time to time under or in relation to the Contract. Therefore the Seller may be liable to pay the difference or shortfall between the Final Pool Return and the aggregate amount advanced to the Seller. GrainCorp’s recourse is not limited to the Final Pool Return, and GrainCorp may recover all amounts owed by the Seller, including any difference or shortfall between the Final Pool Return and the aggregate amount advanced to the Seller or otherwise owed by the Seller under any loan agreement or credit contract between the Seller and GrainCorp. By giving this Contract Confirmation, the Seller acknowledges its liability for any such difference or shortfall.

**EXPENSES:** Any brokerage, storage or handling fees or other expenses incurred by GrainCorp, including the financing of Pool operations (Borrowing Costs) may be deducted by GrainCorp from any advance or payment made to the Seller under this contract. Other expenses comprise of general costs incurred in the operation of the pool which include, but are not limited to, administrative costs, charged by GrainCorp to the GrainCorp Pool, which will be reflected in the final return to the Seller and may be deducted at one time or in instalments from the advance or payments to be made to the Seller under this contract. Management and Administrative Costs for Sorghum Pools will be 2.50% of the final Pool Return Basis Free On Board (FOB) equivalent value.

**LEVIES:** Any industry, statutory or government levies which are not included in the price shall be deducted by GrainCorp from any advance or payment made to the Seller under this contract.

**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 Return.

**PAYMENT:** Payment shall be made as follows:

- (a) Harvest Payment Option - An initial advance of approximately 75% of the Estimated Harvest Pool Return payable within 21 days end of week of delivery of the grain. Subject to prevailing Estimated Pool Return, a further payment of up to 25% may be paid upon finalisation of the pool.
- (b) Deferred Payment Option - An initial advance of approximately 75% of the Estimated Harvest Pool Return during July 2009. Subject to prevailing Estimated Pool Returns, a further payment of 25% may be paid upon finalisation of the pool.
- (c) Single Sum Payment Option – A single 100% advance to be paid upon the finalisation of the pool, subject to prevailing Estimated Pool Returns.
- (d) Subject to the prevailing estimated Final Pool Return, a further advance(s) may be paid during the 2008-09 season for the Harvest Payment Option and the Deferred Payment Option.
- (e) A final payment of any balance required to cause the total amount per tonne paid by GrainCorp under the Contract to equal the Final Pool Return - 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, or at any time GrainCorp’s current *bona fide* estimate of what the Final Pool Return will be, for the purpose of final payment to the Seller, is less than the amounts advanced to the Seller under (a) or (b) or (c) (as applicable) and (d) above, the Seller must (on 30 days’ written notice from GrainCorp) repay to the Seller the difference or shortfall between the Final Pool Return and the amounts previously advanced to the Seller, and pay any other amounts due to GrainCorp, including under any loan agreement or credit contract between the Seller and GrainCorp.

GrainCorp may deduct from any advance or payment the whole or any part of the Levies, Borrowing Costs and Expenses payable by or attributable to the Seller under this Contract, which have not been deducted from previous advances or payments together with any amounts outstanding by the seller to a GrainCorp entity.

**RCTI:** This clause only applies if the Seller is registered for GST. When a payment is made to the Seller, a Recipient Created Tax Invoice (**RCTI**) will be issued by GrainCorp when authorised to do so. The Seller acknowledges that GrainCorp utilise the National Grower Registry to determine GST status and unless notified in writing GrainCorp will assume this status to be correct. The liability for remitting the Goods and Services Tax (GST) amount to the Australian Tax Office is the responsibility of the Seller.

**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.

**SELLER’S UNDERTAKINGS:** The Seller must disclose to GrainCorp any encumbrance (including any crop lien) which anyone else has in relation to any Grain they deliver into a GrainCorp Pool, and if the Seller does not make any disclosure, 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. If an encumbrance exists in respect of the Grain or in respect of the proceeds of sale of that Grain, the Seller agrees to reimburse and indemnify GrainCorp for the costs of processing, complying with and paying any claims or demands made by the holder of that encumbrance. Where there is more than one party as Seller these Standard Conditions bind all parties jointly and severally as the Seller. 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.

**SEVERABILITY:** If any part of this contract is found to be inoperative or unenforceable, then that part will be severed and the remaining terms of the contract will continue in effect.

**GOVERNING LAW:** This Contract is governed by and shall be construed to be in accordance with the law for the time being enforced in New South Wales.

**PLEASE SIGN BELOW AND FAX A COPY TO (02) 9325 9178. IF NOT RETURNED IN 7 DAYS ALL TERMS & CONDITIONS ARE CONSIDERED TO BE CORRECT. I/WE HAVE READ & ACCEPT THE GOVERNING CONDITIONS:**

For any enquiries, please call GrainCorp on 1800 409 482