



GrainCorp Sorghum Harvest Pools Deliveries 2009-10 - Terms and Conditions

1. TERMS AND CONDITIONS

By delivering grain to a **GrainCorp Pool**, the **Seller** accepts that it has entered into a legally binding contract with GrainCorp Operations Limited ("**GrainCorp**") to sell the grain as delivered (the "**Grain**") to **GrainCorp** (the "**Contract**"), and that the terms and conditions of such **Contract** shall comprise the terms and conditions hereunder ("**Terms and Conditions**"), and the most up to date version of the Trade Rules of Grain Trade Australia as at the date the **Contract** was entered into (the "**GTA Rules**") (including the GTA dispute and Arbitration Rules therein (Rules 24 and 26), and the Grain Trade Australia Dispute Resolution Rules ("**GTA DRR**"). Copies of the **GTA Rules** and **GTA DRR** are available on request from **GrainCorp**, or may be viewed on the GTA website (i.e. www.nacma.com.au) without the need to be a member of Grain Trade Australia. In the event of any inconsistency or conflict between the **Terms and Conditions** and the **GTA Rules** or the **GTA DRR**, the **Terms and Conditions** shall prevail. Where the **Seller** comprises more than one party, all such parties shall be jointly and severally liable under the **Contract**.

2. DEFINED TERMS

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**.

Agreed Payment Option: means the payment option chosen by the **Seller**.

Deferred Payment Option: means an initial advance to the **Seller** by **GrainCorp** or its assignee of approximately 80% 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**.

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**.

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.

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 physically delivered to the **GrainCorp Pool** by or on behalf of the **Seller** in accordance with the **Contract**

Harvest Payment Option: means that the **Seller** has accepted a payment option with an initial advance of 80% 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**.

Parties: means either of the parties to this **Contract**.

Pool: means the pool into which the **Grain** has been physically delivered.

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

In consideration of the **Seller** delivering its **Grain** to a **GrainCorp Pool** and accepting these **Terms and Conditions**, **GrainCorp** will pay the **Seller** as set out in the payment terms below in Clause 9.

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 **Grain** in accordance with the **Contract** shall meet the receival standards required by **GrainCorp** as at the time of delivery, and will, at all times, comply with the specifications on the front page of the **Document**; and
- (ii) all **Grain** delivered in accordance with the **Contract** 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** under the **Contract**. 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 **Contract**, 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 thereunder to a third party at its absolute discretion, and that **GrainCorp** need not provide the **Seller** with any notice of same. The **Seller** agrees that it cannot assign this **Contract**, or any rights or obligations thereunder, without **GrainCorp's** prior written approval, which may be conditional.

7. 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 accuracy of either the **Final Pool Return** or the **Estimated Pool Return**.

8. PAYMENTS

The agreed payment option is the payment option chosen by the **Seller** on delivery of the **Grain** into the **GrainCorp Pool**.

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**.

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**.

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.

9. 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**.

10. 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 by the **Seller** due to a delay in payment of any amount in relation to the **GrainCorp Pool**.

11. SEVERABILITY

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

13. 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 in accordance with the **GTA DRR**.

If, having accepted the terms and conditions of this **Contract**, 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 any dispute referred to, arising out of, or in relation to the **Contract**; or
- (iii) disputes the existence or validity 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