

AWB GRAIN PURCHASE CONTRACTS - 2006/07 GENERAL TERMS AND CONDITIONS



6. Purchase of contracted tonnage

6.1 Agreement to purchase

You agree to sell the *contracted tonnage* to AWB, and AWB agrees to buy the *contracted tonnage* from you, on the terms set out in this contract.

6.2 Quality

- (a) You must ensure that all grain delivered by you to AWB complies with the *receival (classification) standards* current at the time you make a delivery and all relevant State and Federal pesticide treatment legislation or standards in relation to pesticide in grains intended for stockfeed and/or for human consumption or industrial purposes. The *receival (classification) standards* may be updated from time to time and summaries are generally on display at each receival site. For more details about the *receival (classification) standards* contact AWB Grower Service Centre on 1800 054 433.
- (b) AWB may refuse to accept delivery or to purchase grain offered by you for sale under this contract if the grain does not meet the *receival (classification) standards*.

7. Delivery of contracted tonnage and title

7.1 Methods

- (a) You must deliver the *contracted tonnage* using the *delivery method* specified in clause 5.
- (b) If *delivery method* "PZ" is specified in the field designated "Del. Type" in clause 5, you must deliver the *contracted tonnage* to a *delivery site* within the *port zone* specified in the field designated "Site" in clause 5.
- (c) If *delivery method* "DS" is specified in the field designated "Del. Type" in clause 5, you must deliver the *contracted tonnage* to the *delivery site* specified in clause 5.
- (d) If *delivery method* "IT" is specified in the field designated "Del. Type" in clause 5, you must notify the relevant BHC (using a prescribed method) that it must hold the relevant grain for AWB and it must notify AWB that the BHC holds grain for AWB.
- (e) If *delivery method* "XF" is specified in the field designated "Del. Type" in clause 5, you must deliver the *contracted tonnage* by permitting AWB to collect the grain from you.
- (f) If *delivery method* "DB" is specified in the field designated "Del. Type" in clause 5, you must deliver the *contracted tonnage* to the location nominated by the buyer.

7.2 Acceptance of deliveries by AWB

- (a) A delivery of grain occurs at the time specified in the following table in relation to applicable *delivery method*:

Delivery Method	When delivery occurs
PZ	When you unload grain at the instruction of a BHC representative at any site within the <i>port zone</i>
DS	When you unload grain at the instruction of a BHC representative at the <i>delivery site</i>

Delivery Method	When delivery occurs
IT	When the BHC notifies AWB (using a prescribed method) that it holds the grain for AWB (or its agent)
XF	When the grain is removed from your property by AWB
DB	When you unload grain at the instruction of the buyer (or its agent) at the location nominated by AWB (or its agent)

- (b) *Physical deliveries* must be made on a load by load basis with individual quality data provided for each load. AWB or the BHC will issue a ticket specifying your AWB access card number, the quality and quantity of grain delivered and the date of the *physical delivery*.
- (c) AWB does not waive any rights or remedies of AWB under this contract by accepting a delivery of grain.
- (d) If a contractor (or any agent of yours) makes any of your deliveries, you agree that the contractor (or agent) acts on your behalf and with your authority. AWB is not liable for the contractor's (or agent's) actions or omissions.
- (e) AWB will accept deliveries which vary (in respect of weight only) from the *contracted tonnage* within the *tolerance* but acceptance by AWB does not constitute a waiver of its rights under clause 8 which are expressly reserved.

7.3 Title to grain

The title to, and risk of, the *contracted tonnage* passes to AWB when it is delivered to AWB in accordance with this clause 7.

With delivery method XF, AWB reserves its rights not to accept grain, which does not meet receival standards. All costs associated with the nonacceptance of grain are to be paid by you.

7.4 "Ticket by Ticket" Policy

In respect of all deliveries of grain under this contract, you must comply with the "ticket by ticket" policy prescribed by AWB (as amended from time to time) which is available from AWB on request.

7.5 Dates for delivery

You must deliver the *contracted tonnage* during the *delivery period*. If "Buyer's Call" is specified for "Del. Option" in clause 3, the buyer may nominate any date within the *delivery period* as the date on which you must deliver the *contracted tonnage*.

7.6 Weight of deliveries

- (a) Subject to clause 7.6(b), 7.6(c) or 7.6(d), the weight of grain delivered to AWB will be determined by the registered weighing facility at the applicable *delivery site*.
- (b) The weight of grain delivered to AWB by *delivery method* "IT" will be determined according to the original weigh bridge tickets supplied by the BHC in respect of that grain.
- (c) The weight of grain delivered to AWB by *delivery method* "XF" will be determined according to the original weigh bridge tickets supplied by AWB.
- (d) The weight of grain delivered to AWB by *delivery method* "DB" will be determined according to the original weigh bridge tickets supplied by you.

7.7 Site and Segregation Availability

You are responsible for delivering the *contracted tonnage* to a *delivery site*. Non-availability of a *delivery site* or a segregation at a *delivery site* does not affect your obligation to deliver under this contract in any way and you must deliver the grain to a delivery site agreed with AWB.

7.8 Quote contract number

Subject to clause 7.9, you must quote the contract number specified in this contract whenever you deliver under this contract.

7.9 Contract sequence

- (a) If you have more than one grain contract with AWB in respect of which none of the *contracted tonnage* has been delivered, you may specify the sequence for applying your deliveries to those contracts. If you do not specify a sequence, your deliveries will be applied to your earliest contract.
- (b) Where you have specified a sequence for applying deliveries under clause 7.9(a), you are not required to quote the contract number when you deliver. If you quote a contract number your delivery will be allocated to that contract despite any sequence you may have specified previously under clause 7.9(a).
- (c) This clause 7.9 applies only to contracts in respect of which the *delivery period* has not expired.

7.10 Accuracy of information

- (a) AWB is entitled to rely on, and treat as accurate, information contained in the grain delivery receipt that you sign (or your agent signs) when you make a delivery.
- (b) You authorise AWB to receive, record and rely on delivery information provided to AWB by a BHC in relation to the *delivered tonnage*. AWB is not responsible for incorrect or incomplete information provided to AWB by a BHC.
- (c) AWB is not under any duty to enquire whether any instructions which appear to have been properly created by you and received by AWB have, in fact, been issued with your authority.

8. Delivery tolerances

Where applicable, the *tonnage tolerance* refers to the "Tolerance %" specified in clause 3 of this contract.

8.1 Under delivery

- (a) In all circumstances, if you breach this contract you must pay to AWB damages to compensate AWB for all losses, liabilities, costs and expenses suffered by AWB as a consequence of your breach.
- (b) If you breach this contract, AWB will not be liable to compensate you for any losses, liabilities, costs and expenses.
- (c) If you breach this contract by failing to deliver the *contracted tonnage*, AWB may, in its absolute discretion mitigate its loss by:
 - (i) accepting any *delivered tonnage*; and
 - (ii) acquiring from a third party selected by AWB, grain up to the amount of the shortfall.

You must pay to AWB damages under clause 8.1(a) - which will be calculated as the difference in value between the *contracted tonnage* (ignoring the *tonnage tolerance*) and the *delivered tonnage*.

- (d) If AWB does not exercise its right under clause 8.1(c) above, you must pay AWB on demand, by way of damages, costs incurred by AWB in connection with your breach plus, if the market value of the *contracted tonnage* at the date the damages are calculated by AWB exceeds the amount that AWB estimates would be the total *amount payable* under this contract if the breach had not occurred, the difference between the estimated *amount payable* and that market value.
- (e) You must pay AWB any costs and expenses incurred by AWB in enforcing these terms and conditions if you breach this contract.

8.2 Over delivery

If you deliver grain in excess of the *contracted tonnage* AWB may in its absolute discretion, accept or reject the excess tonnage.

8.3 Mitigation by AWB

You acknowledge and agree that, for a period of 3 months commencing on the day after the last day in the *delivery period*, AWB is not required to take steps to mitigate any cost, expense, loss or liability incurred by it as a consequence of your failure to deliver the *contracted tonnage*.

9. Encumbrances

9.1 Notice of encumbrance

You must notify AWB if a crop lien or any other *encumbrance* exists or is created over the grain, or over the proceeds of sale of the grain, that you deliver to AWB.

9.2 Administration Fee

If an *encumbrance* has been given by you or exists in respect of the grain that you deliver to AWB or in respect of the proceeds of sale of that grain, you agree to pay to AWB an administration fee for AWB's costs of processing, complying with and paying any claims or demands made by the holder of that *encumbrance*. You agree that the administration fee will be the amount set by AWB from time to time.

10. Premiums, Discounts and Increments

Subject to any applicable *specific terms and conditions*, any pricing *premiums*, *discounts* and *increments* will be calculated in accordance with the payment scales issued by AWB from time to time for wheat or the applicable industry standard used by AWB for other grains.

11. Liability, Warranties and Indemnities

11.1 Liability of AWB

AWB is not liable for any cost, expense, loss or liability suffered by you unless the cost, expense, loss or liability is caused solely by AWB's breach of this contract.

11.2 Representations and Warranties

You represent and warrant to AWB at the date of this contract and each time you make a delivery under this contract that:

- (a) you have good right and title to the *contracted tonnage* (free of any interest of any third party not disclosed to AWB) at the time that AWB accepts that *contracted tonnage* under this contract;
- (b) you have complied with all applicable laws and standards regarding pesticide residues in grains intended for animal feed and/or for human consumption or industrial purposes in relation to all *contracted tonnage* delivered by you under this contract;
- (c) if you enter into this contract in the capacity of a trustee of any trust or settlement, you have full authority and power to do so under the trust instrument.

11.3 Indemnity

You must indemnify AWB (and any related entity) against all costs, expenses, losses and liabilities (including legal expenses on a full indemnity basis) that AWB (or any related entity) incurs (directly or indirectly) in connection with this contract including (but not limited to) where arising:

- (a) directly or indirectly from a failure of grain delivered by you to comply with the *receival (classification) standards* or from pesticide levels in grain delivered by you;
- (b) from any representation, warranty or statement made by, or repeated by, you being untrue, inaccurate or misleading (whether by omission or otherwise);
- (c) from any claim or demand by any person claiming an interest in any grain delivered by you or the proceeds of sale of such grain, regardless of whether you have notified AWB of such interest;
- (d) as a consequence of the title to any portion of the *contracted tonnage* failing to pass to AWB in accordance with clause 7.
- (e) from *grower liabilities*; and
- (f) from government charges and any other *taxes* (other than GST), duties and charges payable in respect of this contract and the transactions under it.

12. GST

12.1 Words defined in the GST Law have the same meaning in this clause 12.

12.2

- (a) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a supply made under this contract are exclusive of GST ("*GST exclusive amount*").
- (b) Subject to clause 12.3, if you make a taxable supply under this contract, AWB must pay to you an amount equal to the GST payable on the taxable supply ("*GST amount*") to the extent that, in addition to, and at the same time and in the same manner as the *GST exclusive amount* otherwise payable for the supply.
- (c) Similarly, if AWB makes a taxable supply to you under the contract, you must pay to AWB the *GST amount* to the extent that, in addition to, and at the same time and in the same manner as the *GST exclusive amount* otherwise payable for the supply.
- (d) You are responsible for remitting GST to the Commissioner of Taxation on taxable supplies made by you.

12.3

- (a) You have agreed with and authorised AWB to issue a tax invoice ("*Recipient Created Tax Invoice*") and adjustment note on your behalf in respect of any taxable supply of grain made by you under this contract to AWB.
- (b) You must notify AWB immediately if you cease to be registered for GST. If you are not registered for GST at the time a *Recipient Created Tax Invoice* is issued by AWB:
 - (i) that invoice will not be treated as a *Recipient Created Tax Invoice*;
 - (ii) AWB is not obliged to pay you any amount for GST unless and until you have provided AWB with a valid tax invoice in relation to the relevant supply; and
 - (iii) AWB is entitled to recover any amount for GST from you, which it has paid to you in error.

12.4 If an adjustment event arises in relation to any taxable supply made under this contract that gives rise to an increasing adjustment or decreasing adjustment the *GST amount* must be adjusted accordingly and where necessary a payment must be made to reflect that increasing adjustment or decreasing adjustment.

12.5 If a party ("the first party") is required under this contract, to pay for or reimburse a cost, expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (a) the amount of the cost, expense or outgoing less any input tax credits in respect of the cost, expense or outgoing that the other party (or the representative member of a GST group of which it is a member) is entitled to; and
- (b) if the payment by the first party is consideration for a taxable supply, an amount equal to the *GST amount* payable by the other party in respect of the taxable supply.

13. Assignment

13.1 Right to assign with consent

- (a) Your rights in connection with this contract or any of the obligations that you have under it cannot be assigned or varied by you without AWB's consent.
- (b) You agree that AWB may assign or novate any of its rights, entitlements or obligations under this contract at its discretion without obtaining any consent from you or giving any notice to you. You appoint AWB as your attorney for the purposes of agreeing to and executing on your behalf any documentation that gives effect to an assignment or novation of any of AWB's rights, entitlements or obligations under this contract on such terms that AWB considers appropriate in its absolute discretion.

13.2 Administration fee

You agree to pay AWB an administration fee for AWB's costs of processing an assignment effected by you. You agree that the administration fee will be the amount set by AWB from time to time.

14. Force majeure

- (a) If you are affected, or likely to be affected, by a *force majeure event* you must immediately notify AWB of that fact including:
 - (i) full particulars of the *force majeure event*;
 - (ii) an estimate of its likely duration;
 - (iii) the obligations affected by it and the extent of its effect on those obligations; and
 - (iv) the steps taken to rectify it.
- (b) Subject to you discharging your obligations under clause 14(a), your obligations under this contract are suspended to the extent to which they are affected by the relevant *force majeure event* as long as the *force majeure event* continues.
- (c) If you claim a *force majeure event* you must use your best endeavours to remove, overcome or minimise the effects of that *force majeure event* as quickly as possible.

15. Applicable Law and Jurisdiction

The law in the State of Victoria applies to this contract. The parties each submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria.

16. General

16.1 Giving effect to this contract

You must do anything (including execute any document) and must ensure that your employees and agents (if any) do anything (including execute any document), that *AWB* may reasonably require to give full effect to this contract.

16.2 Operation of this contract

- (a) This contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this contract and has no further effect.
- (b) Any right that a person may have under this contract is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this contract enforceable, unless this would materially change the intended effect of this contract.

16.3 Statements by AWB

A statement by *AWB* (or a related entity) on any matter relating to this contract (including any amount owing by or to *you*) is conclusive unless clearly wrong on its face.

16.4 Tape recording of conversations

You agree that:

- (a) telephone conversations between *you* and *AWB* may be recorded by *AWB* with or without an automatic tone warning device; and
- (b) the recordings referred to in paragraph (a) or transcripts of the recordings may be used by *AWB* for any purpose that *AWB* determines (in its absolute discretion) to be appropriate, including as evidence in any dispute between *you* and *AWB*.

16.5 Set off

AWB may, without notice to *you*, deduct any amount that is or may become payable or owing by *you* to *AWB* or a related entity (including by way of indemnity) under this or any other contract, from any amount owing to *you* by *AWB* (or a related entity) under this or any other contract. This clause overrides any contrary provision in this or any other contract.

16.6 Counterparts

This contract may be executed in counterparts.

16.7 Multiple parties

If *you* are made up of more than one person:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally;
- (c) any other reference to that party or that term is a reference to each of those person separately, so that (for example) a representation, warranty or undertaking is given by each of them separately;

16.8 Business days

If the day on or by which a person must do something under this contract is not a *business day*, the person must do it on or by the next *business day*.

16.9 Sale of wheat by AWB

You acknowledge that *AWB* may sell within Australia or

overseas any of the grain that it purchases from *you* under this contract to a related body corporate (as defined in the *Corporations Act 2001* (Cth)) or other associated party on an arm's length basis, and *you* consent to any grain so acquired by any related body corporate or other associated party being dealt with by that party solely for its own account.

17. Interpretation

The following definitions apply in this contract.

"amount payable" means, the total amount payable to *you* (excluding any *GST* payable in accordance with clause 12.2) in respect of *your delivered tonnage* calculated in accordance with the *specific terms and conditions*.

"AWB debt" means any amount that is due and payable by *you* to *AWB* (or a related entity).

"AWB registration form" means the package of registration and claim for payment forms used by *AWB* (or a related entity) for the registration of growers and other sellers, and includes the forms headed "Supplier Application Form" and "Supplier Confirmation Form" amongst others and, in respect of *you*, means the form or forms most recently completed or updated and signed by *you* and provided to *AWB* (or its agent).

"base price" means the amount specified in the field headed "Base Net Price GST Excl." in clause 5.

"benchmark APW" means Australian premium white wheat with the minimum quality characteristics determined by *AWB International Limited* ("*AWB*") from time to time and appearing in the *receival (classification) standards*.

"BHC" means a bulk handling company, including *AWB Grain Centres Pty Ltd* ABN 62 088 928 858, or a receival site and/or storage and handling facility that receives and/or stores and handles grain on behalf of *AWB* or a related entity and has been approved by *AWB* for that purpose.

"business day" means a day that is not a Saturday, Sunday or public holiday on which banks are open for general banking business in Melbourne.

"buyer" means a person nominated by *AWB* and notified to *you*.

"contracted tonnage" means the aggregate quantity (in metric tonnes) of all grain *grades* and *varieties* to be sold by *you* to *AWB* under this contract, as specified in the fields designated "Grade", "Base Prot/Scns" and "Quantity" (or specified pursuant to any special conditions) in clause 5.

"costs" means, in relation to *delivered tonnage*, the amount determined by *AWB* to be the costs incurred by *AWB* in connection with the delivery by *you* of the *delivered tonnage* and which are included by *AWB* as price adjustments in determining the *amount payable*, including:

- (a) **direct costs** incurred or to be incurred by *AWB* in respect of the *delivered tonnage* (including storage, handling, transport costs to port and port costs) but excluding receival fees where appropriate; and
- (b) any **other costs** or charges that *AWB* determines should be included, including drying costs,

to the extent that *AWB* determines that they are not already included in the calculation of the *amount payable*.

"delivered tonnage" means the quantity (in metric tonnes) of all grain *grades* and *varieties* delivered by *you* and accepted by *AWB* under this contract. If *you* are a participant in a share-farm arrangement and that share-farm arrangement makes a delivery using its *AWB* share farm access number, then the number of tonnes delivered by *you* is your percentage share of that delivery.

"**delivery method**" means the delivery method specified in the field headed "Del. Type" in clause 5, where:

- a) "**PZ**" means "port zone";
- b) "**DS**" means "delivered silo";
- c) "**IT**" means "delivered instore";
- d) "**XF**" means "ex farm"; and
- e) "**DB**" means "delivered buyer".

"**delivery site**" means a site approved by AWB for the delivery of grain under this contract. If a delivery site is specified in the field headed "Site" in clause 5 then, subject to clause 7.6, "delivery site" means that specified site.

"**delivery period**" means the period specified in clause 4 (commencing on the date specified for "Delivery Start" and ending on the date specified for "Delivery End") in which you must deliver the *contracted tonnage* to AWB.

"**discount**" means, in respect of each *grade of delivered tonnage*, the amount per tonne published by AWB (or a related entity) in respect of the relevant contract on the relevant date as the grade or quality discount for that *grade* of grain relative to the *benchmark APW*.

"**encumbrance**" means any security for the payment of money or the performance of obligations including a mortgage (including an assignment by way of mortgage), charge, lien, pledge, trust or power of any kind whatsoever.

"**endpoint royalties**" means royalties payable to or collectible by AWB (or a related entity) from you on produce derived from plant varieties, to which plant breeder's rights or patent rights attach.

"**force majeure event**" means an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance, embargo, action or inaction by a Government Agency, or a failure of a supplier, public utility or common carrier which renders it impossible for you to transport the *contracted tonnage* to a *delivery site*. For the avoidance of doubt, "force majeure event" does not include any event relating to the production or non-production of grain (including, without limitation, non-production of grain wholly or partly caused by drought, flood, frost or other weather conditions).

"**grade**" means a grade of grain specified in the *receival (classification) standards*.

"**grade spread**" means the grade spread determined and published by AWB from time to time pursuant to which *premiums* and *discounts* are determined.

"**grower liabilities**" means, in relation to grain delivered by you to AWB under this *contract*, the amount determined by AWB as the total of *levies and tolls* and *endpoint royalties* relating to that grain, and any other fees, charges or other amounts to be collected by AWB from you or that are otherwise payable by you to AWB in connection with you selling that grain.

"**GST**" means the same as in the *GST Law*.

"**GST Law**" means the same as what "*GST law*" means in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"**increments**" means *protein increments*, *screening increments* and *moisture increments*.

"**levies and tolls**" means, in relation to the *delivered tonnage*, any industry levies, tolls, fees, charges, duties and any other amount collectible by AWB in connection with the sale of the *delivered tonnage* to AWB.

"**moisture increments**" means the moisture increments determined and published by AWB from time to time.

"**percentage share**" means, in relation to each *supplier* named under the heading "percentage share details" on an AWB share farm application/confirmation form, the percentage share for that *supplier* specified in respect of grain.

"**physical delivery**" means a delivery effected using delivery method PZ, DS, XF and DB.

"**premium**" means, in respect of each *grade of delivered tonnage*, the amount per tonne published by AWB (or a related entity) in respect of the relevant contract on the relevant date as the grade or quality premium for that *grade* of grain relative to the benchmark APW.

"**protein increments**" means the protein increments determined and published by AWB from time to time.

"**receival (classification) standards**" means the receival (classification) standards prescribed by AWB (or a related entity) from time to time with respect to classification of *grades* of grain to be received by AWB. The receival (classification) standards are available from AWB on request, and are displayed at all *delivery sites* determined and published by AWB from time to time.

"**specific terms and conditions**" means:

- a) in respect of an AWB Active Price Contract – the terms and conditions contained in the document entitled "Special Terms and Conditions - Schedule 1 – Active Price Contract";
- b) in respect of a Multi-Varietal Contract Fixed (without floating protein and screening increments) – the terms and conditions contained in "Schedule 2 – Multi-Varietal Contract - Fixed (without floating protein and screening increments)";
- c) in respect of a Multi-Varietal Contract with active protein and screening increments – the terms and conditions contained in the document entitled "Schedule 3 – Multi Varietal Contract - With active protein and screening increments";
- d) in respect of a Multi-Varietal Durum Contract – the terms and conditions contained in the document entitled "Schedule 4 – Multi Varietal Durum Contract"; and
- e) in respect of a Fixed Grade Contract – the terms and conditions contained in the document entitled "Schedule 5 – Fixed Grade Contract".

"**supplier**" means one or more persons or corporate entities whose details are set out under the heading "Supplier Details" on your Supplier Application Form current at the time of delivery or as updated from time to time by AWB in accordance with your Supplier Confirmation Form. For the avoidance of doubt, *supplier* does not include a group of persons participating in a share-farm arrangement.

"**taxes**" means any tax, goods and services tax, levy, duty, charge, deduction or withholding, however described, that is imposed by law or by a government agency, together with any related interest, penalty, fine or other charge, except a tax on net income in any jurisdiction.

"**tonnage tolerance**" is the amount specified as "**Tolerance %**" in clause 3.

"**varieties**" means the varieties of grain specified in the *receival (classification) standards*