



## AWB TENDER AGREEMENT FORM

This AWB Tender Agreement Form ("the Form") is to be used to lodge a bid in the AWB National Pool Tender System

**INSTRUCTIONS:**

1. Bidder to complete and sign this AWB Tender Agreement Form ("the Form"), and then fax to KPMG (03) 9288 5131
2. Each row in the Bid Table is considered as a separate bid

<b>TO</b>	<b>KPMG, Level 5, 189 Flinders Lane, Melbourne VIC 3000, Ph (03) 98384291, Fax (03) 9288 5131</b>		
<b>FROM:</b>	<b>Bidder Name:</b>	<b>Bidder ABN:</b>	
	<b>Bidder Registered Address:</b>		
	<b>Ph:</b>	<b>Fax:</b>	<b>E-mail:</b>
	<b>Bidder's AWB Tender System Registration Number:</b>		
<b>("the Purchaser")</b>			

**BID TABLE:** The Purchaser identified above offers to purchase the wheat detailed below on the terms and conditions set out on the reverse of this Form.. The Purchaser confirms that the Purchaser has appropriate Storage & Handling Agreements in place with the relevant receival agent at each port zone nominated below. If an "optional" column is not completed, AWB (International) Ltd ("AWBI") will assume the Purchaser has no preference in relation to that matter.

PORT ZONE	SEG	SEASON <small>(optional)</small>	QUANTITY <small>(2000t min)</small>	NTP PRICE AUD *  NEARBY	NTP PRICE AUD# NEW CROP	Preferred Region/Site <small>(optional)</small>  YES/NO	BID ACCEPTED  <small>(office use)</small>

\* Adjustments for quality premiums, protein and moisture, and discounts for screenings will apply as per paragraph 2.2(a) of the AWB National Pool Tender System Participation Procedure ("the Procedure") and clause 3(b) of the terms and conditions attached to this Form as at the date of this offer.

**EACH ROW IN THE ABOVE BID TABLE WILL BE CONSIDERED AS A SEPARATE BID. IN ACCEPTING A BID AWBI MAKES NO GUARANTEE AS TO SITE LOCATION BUT WILL USE REASONABLE ENDEAVOURS TO SATISFY REQUIREMENTS.**

<b>FINANCE</b> Please indicate which of the following options applies to you:	
1. The Bidder/Purchaser has an existing AWB Credit Limit?	Yes / No
2. The Bidder/Purchaser seeks to establish an AWB Credit Limit?	Yes / No
3. The Bidder/Purchaser will pay before delivery of wheat?	Yes / No

In lodging this tender bid(s) I agree to comply with and be bound by the Procedure. By signing this Form, I am offering to purchase wheat from AWBI at the *adjusted* bid price upon the terms and conditions attached to this Form.

Bidder/Purchaser Signature:	Date:
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**TERMS AND CONDITIONS OF OFFER MADE BY PURCHASER TO PURCHASE WHEAT FROM AWB (INTERNATIONAL) LTD ("AWBI") IN ACCORDANCE WITH THIS FORM.**

If AWBI accepts the offer by the bidder ("Purchaser") to buy wheat from AWBI constituted by this form, the following terms and conditions will apply to the sale and purchase of wheat.

**1. DEFINITIONS:**

- (a) "Carry Charge" includes any cost incurred or associated with the holding of wheat for supply over a period of time;
- (b) "Delivery Period" is at AWBI's option and will be any day within the 30 days immediately following AWBI's acceptance of a bid;
- (c) "Grower Freight Deductions" means the AWBI Swap Freight Rates published on the AWB Website from time to time;
- (d) "Contracted Tonnages" means the tonnages of wheat for which AWBI accepts the Purchaser's bids;
- (e) "Natural Terminal Port Price" and "NTP Price" means the selling price grossed up to include costs for receipt, shrinkage and outturn at a port;
- (f) "Outturn Storage" means a location at which wheat the property of AWBI is held and outturned;
- (g) "Protein(s)" expressed in this agreement are expressed as nitrogen times 5.7 at 11 per cent moisture basis;
- (h) "Season" means the period of 12 months commencing at 1 July in any one year; &
- (i) "Wheat" means segregated hard and soft varieties.

**2. DELIVERY:**

- (a) Delivery shall be made by AWBI transferring the Contracted Tonnages in store.
- (b) In the absence of any agreement, AWBI shall not be obliged to deliver to the Purchaser the Contracted Tonnages under this agreement at any particular storage site or sites.
- (c) AWBI will endeavour to deliver the Contracted Tonnages at the times and in the quantities requested by the Purchaser. AWBI shall not be responsible for any losses and/or costs that the Purchaser may incur arising from delay in delivery and/or inability to fulfil the Purchaser's quantity requirements due in whole or in part to an event of force majeure or the conduct of the Purchaser.

**3. PRICE:**

- (a) The price(s) expressed in this agreement are, and payment shall be made, in Australian currency.
- (b) The price payable by the Purchaser is the Natural Terminal Port Price adjusted for:
  - (i) Outturn fees of AWBI's Receival Agent where applicable;
  - (ii) Adjustments under the AWB Golden Rewards Payment Scale based on site stack average protein, screenings and moisture (except these adjustments do not apply to feed wheat); &
  - (iii) Freight at AWBI Swap Freight Rates that are applicable at the time of tender (*published on the AWB website [www.awb.com.au](http://www.awb.com.au)*).

**4. PAYMENT:** The Purchaser must pay within 5 business days of receipt of an invoice from AWBI or in accordance with the terms and conditions of the Purchaser's AWB Credit Limit.

**5. PROPERTY & RISK:** Property and risk in wheat sold under this agreement shall pass to the Purchaser on delivery.

**6. EXCLUSION OF LIABILITY:**

- (a) AWBI shall not be liable to deliver wheat other than the Contracted Tonnages. The wheat supplied by AWBI may, at AWBI's discretion, be wheat of any season.
- (b) AWBI does not warrant that the wheat sold under this agreement is suitable for any particular end use or purpose.

**7. LAW:** This agreement shall be governed by and construed in accordance with the laws of Victoria.

**8. AMENDMENT:** This agreement may only be amended by agreement in writing of the parties or in such other form as the parties may agree.

**9. WAIVER:** A failure by either party to insist upon strict performance of any term or condition of this agreement shall not be construed a waiver thereof or of any rights either party may have under this agreement and no express waiver of any term or condition hereof shall be construed a waiver of any subsequent breach of any term.

**10. TERMINATION:**

- (a) This agreement may be terminated by AWBI where the Purchaser:
  - (i) makes default in due observance and performance of the Purchaser's obligations under this agreement and such default continues for 7 days after written notice from AWBI;
  - (ii) ceases to carry on business, becomes bankrupt or insolvent, is wound up or goes into liquidation, other than for the purposes of an amalgamation or reconstruction approved in writing by AWBI;
  - (iii) if a Receiver is appointed under a mortgage debenture, mortgage or charge or other instrument or under an order of any court; or
  - (iv) if the AWB Credit Limit of the Purchaser under clause 4 is varied or withdrawn by AWBI and the Purchaser is unable to comply with such variation or withdrawal.
- (b) The termination of this agreement shall be without prejudice to any accrued rights or liabilities of either party arising under this agreement.

**11. CONFIDENTIALITY:**

- (a) Each of the parties shall treat as confidential all the information disclosed, supplied or made available by, or emanating from the other party, to that party, its authorised officers, servants or agents, relating to this agreement in any form whatsoever ("the Confidential Information").
- (b) Without limiting the generality of paragraph (a), neither party shall use, disclose, supply, or make available the Confidential Information.
- (c) Each party will only disclose the Confidential Information of the other to its authorised officers, servants or agents who shall first be advised that the party is subject to a duty of confidence and that the Confidential Information is not to be used for any purpose other than the observance of the terms and conditions of this agreement.
- (d) The obligations of confidentiality shall not extend to Confidential Information which a party can show:
  - (i) is in, or has been obtained from, the public domain;
  - (ii) without fault of such party, comes within the public domain;
  - (iii) was known to such party on or before the date of this agreement; or
  - (iv) that the party is required by law to disclose subject to reasonable prior written notice being given to the other party.

**12. MEDIATION:**

- (a) If any disputes between AWBI and the Purchaser arise out of this agreement, then either party may refer the dispute to mediation.
- (b) If either of the parties gives notice of a dispute, then mediation shall occur within 14 days.
- (c) Where mediation does not resolve the matter in dispute, then the aggrieved party may seek a resolution in a court of the State of Victoria.
- (d) In the event of a dispute arising under this agreement the costs of the dispute shall be borne as determined by the Mediator.

**13. FORCE MAJEURE:**

- (a) Neither party shall be liable to the other party for any delay in performing or any failure to perform its obligations under this agreement if the delay or failure occurs as a result of an event or force majeure. This clause shall not apply to any obligation to pay money.
  - (b) In this agreement, "Force Majeure" shall include but is not limited to act of God, blockade, civil commotion, declaration of war, outbreak of hostilities or like state of emergency, strike, stop-work, lock-out, boycott.
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