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# **AWB GENERAL TERMS & CONDITIONS**

1 November 2017

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AWB Grower Service Centre: 1800 447 246

## 1. CONTRACT FORMATION

- 1.1 You offer to sell us such quantity and quality of Commodity as specified in Your offer (the “Offer”) on and subject to these AWB General Terms and Conditions (**Terms and Conditions**).
- 1.2 The contract between the parties for sale and purchase of the Commodity, which includes these Terms and Conditions, is formed when we accept Your Offer for the sale of the Commodity by:
- (a) telephone, whereby our record of such telephone call including any written confirmation, shall be conclusive and binding on You; or
  - (b) faxing or emailing a scanned copy of the document entitled Confirmation of AWB Grower Purchase Contract executed by AWB and You to 03 9690 4516 or email address respectively. In the event of any uncertainty in relation to the information provided in the faxed or emailed document, AWB, may in its sole discretion, declare the document invalid without affecting the contract otherwise made. The document is taken to have been received at the time printed on the fax by AWB’s fax machine or the time the email is received by AWB (as applicable); or
  - (c) otherwise contracting with AWB or its agents whereby our record of such agreement shall be conclusive and binding on You.
- 1.3 These Terms and Conditions incorporate the Special Terms.
- 1.4 Subject to these Terms and Conditions, we accept the Offer made by You in accordance with clause 1.1 as evidenced by the Confirmation.

## 2. AWB OBLIGATIONS

- 2.1 Subject to these Terms and Conditions, AWB has agreed to:
- (a) purchase such quantity and quality of Contracted Tonnage from You to be delivered by You to the Delivery Location as specified in the Purchase Contract; and
  - (b) to pay the Contract Price for the Delivered Tonnage in accordance with these Terms and Conditions.

## 3. YOUR OBLIGATIONS

- 3.1 Subject to these Terms and Conditions, You have agreed to:
- (a) sell such quantity and quality of Contracted Tonnage to AWB as specified in the Purchase Contract;
  - (b) deliver the Contracted Tonnage within the Delivery Period to the Delivery Location as specified in the Purchase Contract; and
  - (c) comply with the Purchase Contract.

## 4. CONTRACT PRICE

- 4.1 The Contract Price is the amount payable by AWB in respect of the Delivered Tonnage under the Purchase Contract.
- 4.2 The Contract Price is the aggregate of:
- (a) the amount specified beside the heading “Price or Basis” in the Purchase Contract in respect of the Delivered Tonnage; and
  - (b) any premiums, discounts and increments as contained in the Purchase Contract in respect of the Delivered Tonnage; and
  - (c) any other amounts payable by AWB under the Purchase Contract, less any Costs, and Grower Liabilities.
- 4.3 For a Contract Type which is specified as “fixed grade” in the Confirmation, You may only deliver the grade which is specified as “Grade” in the Purchase Contract.
- 4.4 For a Contract Type which is specified as “multi grade or multi varietal” in the Purchase Contract:
- (a) The base grade is the grade nominated beside the heading “Grade” in the Purchase Contract.
  - (b) You may only deliver the grades which are specified beside the heading “Multi Grade Details” in the Purchase Contract.
  - (c) AWB in its sole discretion may add additional grades at AWB’s nominated premiums or discounts.

### Price or Basis

- (d) AWB shall on each Business Day quote the price for the base grade for that day.
- (e) You can fix the Price or Basis at any time by notifying AWB on any Business Day between the Contract Date and the Fix Price Date to apply the prevailing price on that Business Day. That price will be the “Price or Basis” contained in the Purchase Contract. Clause 1.2 applies in respect of the notification *mutatis mutandis* (i.e. by changing those things which need to be changed in clause 1.2 to make it applicable to this clause).
- (f) If You have not fixed the Price or Basis by the Fix Price Date then the Price or Basis under Your Purchase Contract will be the prevailing price quoted by AWB on the Fix Price Date.

### Spread

- (g) AWB will quote on each Business Day a price spread between the grades nominated in the Purchase Contract under the heading “Multi Grade Details” and the base grade (**Spread**).
- (h) You can fix the Spread at any time by notifying AWB on any Business Day between the Contract Date and the Fix Price Date to apply the prevailing spread on that Business Day. That rate will be the Spread under the Purchase Contract. Clause 1.2 applies in respect of the notification *mutatis mutandis*.

- (i) If You have not fixed the Spread by the Fix Price Date then the Spread under Your Purchase Contract will be the prevailing Spread quoted by AWB on the Fix Price Date.

## 5. DELIVERY OF CONTRACTED TONNAGE

- 5.1 You must comply with Your delivery obligations in relation to delivery of the Contracted Tonnage for the "Delivery Type", as set out in the following table:

Delivery Type	Your Delivery Obligations	Passing of Title and Risk	Preliminary Determination of Weight of grain
Port Zone	Deliver to and unload the Contracted Tonnage at any BHC Site in the Port Zone that is open to receive Your Contracted Tonnage.	Title and risk pass on receipt by AWB of notice from the BHC Site that it holds the relevant Delivered Tonnage for AWB at the BHC Site in the Port Zone specified by AWB.	by a weighing station acceptable to AWB at the applicable Delivery Location
Delivered Silo	Deliver to and unload the Contracted Tonnage to the Delivery Location	Title and risk pass on receipt by AWB of notice from the BHC Site that it holds the relevant Delivered Tonnage for AWB at the specified Delivery Location.	by the original weighbridge tickets supplied by the BHC Site in respect of that grain
Delivered In-store	Advise the BHC Site that it is storing the Contracted Tonnage for AWB and direct the BHC Site to notify AWB	Title and risk pass on receipt by AWB of notice from the BHC Site that it holds the relevant Delivered Tonnage for AWB.	by the original weighbridge tickets supplied by the BHC Site in respect of that grain
Ex-farm	Make the Contracted Tonnage available on Your farm for pick up by AWB.	Title and risk pass when AWB or its agent collects the relevant Delivered Tonnage from Your farm and obtains a weighbridge ticket showing the weight	by the original weighbridge tickets issued by the weigh station nominated by AWB to AWB or its agent
Delivered Buyer	Deliver to and unload the Contracted Tonnage to the Delivery Location.	Title and risk pass on Your unloading the relevant Delivered Tonnage at the Delivery Location.	by the original weighbridge tickets issued by the weigh station nominated by AWB.

- 5.2 Title and risk in the Delivered Tonnage pass to AWB in accordance with the provisions of the table set out in clause 5.1.

- 5.3 Subject to the following provisions of this clause 5.3, You must deliver the Contracted Tonnage during the Delivery Period. If "buyer's call" is specified beside the heading "Delivery Option" in the Purchase Contract:

- (a) You must deliver the Contracted Tonnage within the dates nominated by AWB within the Delivery Period; and  
(b) AWB will pay the carry charges (if any) as specified beside the heading "Carry Schedule" in the Purchase Contract.

- 5.4 The weight of grain delivered to AWB is determined in accordance with the table set out in clause 5.1 except that, if AWB considers that the weight specified on these tickets is manifestly wrong, then AWB will consult with you so that we can agree with you the appropriate weight.

- 5.5 When You deliver the Contracted Tonnage to AWB via a BHC Site, You are responsible for obtaining from the BHC Site a ticket containing the following information for each delivery load;

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|---|---|
| (a) contract number;                      | (i) test weight;                                      |
| (b) ticket number;                        | (j) protein content;                                  |
| (c) grower name;                          | (k) screenings;                                       |
| (d) Your Third Party Registration Number; | (l) moisture content;                                 |
| (e) date of delivery;                     | (m) details of any treatment to the grain or defects; |
| (f) variety;                              | (n) site of delivery;                                 |
| (g) bin grade;                            | (o) Increments;                                       |
| (h) pay grade;                            | (p) and load tonnage.                                 |

- 5.6 You must provide this ticket to AWB on request. You agree that AWB can, in its discretion, rely on the accuracy of information contained in this grain delivery ticket unless AWB considers that the information on the grain delivery ticket is wrong.

- 5.7 If a contractor makes any of Your deliveries, You agree that the contractor acts on Your behalf and with Your authority.

- 5.8 If You are a participant in a share farm arrangement, You agree that where a person makes a delivery of grain to us using the share farm Third Party Registration Number, that person is authorised to do so on behalf of each participant (including You) in that share farm arrangement.

- 5.9 You are responsible for delivering the Contracted Tonnage to the Delivery Location.

- 5.10 Non availability of segregation at a BHC Site or non availability of particular Delivery Location does not affect Your obligation to deliver under the Purchase Contract in any way and You must deliver the Commodity to a Delivery Location agreed with AWB.

## 6. FREIGHT DEDUCTIONS

- 6.1 For Delivery Type which is specified as "Port Zone" any grain delivered will have the AWB Grower Freight Deduction, for the corresponding BHC Site and commodity, deducted from the Price or Basis specified in the

Purchase Contract, except where the Port Zone is in Western Australia.

## 7. ORIGIN

7.1 You warrant that the Contracted Tonnage has been produced in Australia.

## 8. QUANTITY TOLERANCE

8.1 Any Shortfall in delivered quantity will be subject to clause 20 below.

8.2 Deliveries that exceed the Contracted Tonnage, may at AWB's discretion, either be accepted at the Contract Price, the cash price on that day or rejected.

## 9. CONTRACT SEQUENCE

9.1 If You have more than one grain contract with AWB, and You have not delivered any of the Contracted Tonnage for one or more of those grain sale contracts, You may nominate the sequences for applying Your deliveries to any contracts whose Delivery Period has not expired. If You do not specify a sequence or there is an error in Your nominated sequence, AWB may, without affecting any of our rights, apply Your deliveries at its sole discretion.

## 10. SAMPLING AND ANALYSIS

10.1 Unless we otherwise agree in writing, analysis of the sample as conducted by AWB or our representative shall be final and binding. AWB has sole discretion whether to accept or reject deliveries of grain by You that do not comply with the specifications or requirements of the Purchase Contract. If AWB accepts delivery of grain that does not comply with the specifications, You agree to accept payment from AWB at the price payable by AWB for such grain (determined by AWB acting reasonably) as at the date on which AWB determines the grain did not comply. Acceptance by AWB in these circumstances does not constitute a waiver of any additional rights under the Purchase Contract.

## 11. GRAIN RECEIVAL STANDARDS

11.1 You must ensure that all grain delivered by You to us complies with the applicable grain Receiving Standards that we require at the time of delivery and all applicable State and Federal pesticide treatment legislation or standards in relation to pesticide in grains intended for stock feed and/or for human consumption or industrial purposes (**Pesticide Standards**).

## 12. WE MAY WITHDRAW REJECT ALL OR PART OF THE GRAIN

12.1 Despite any other provision of the Purchase Contract, we may within 30 days of delivery reject all or part of the grain You have delivered to us under the Purchase Contract:

- (a) if You do not have good right and title to the grain delivered by You to us;
- (b) if any Encumbrance exists over that grain, or the proceeds of sale of that grain, and either:
  - (i) that Encumbrance is not discharged to our satisfaction ; or
  - (ii) we decide that suitable priority arrangements have not been made between us and the holder of that Encumbrance;
- (c) if any representations or warranties that You make are not correct; or
- (d) if you have delivered to us grain that is not compliant with our grain receiving standards or applicable Pesticide Standards referred to in clause 11.

12.2 If we reject grain You have delivered to us under the Purchase Contract in accordance with clause 12.1 (each a **Rejection**), we will notify You and we will require You to request a ticket amendment from the BHC Site. Once we notify you of a Rejection we will no longer be responsible for Your grain and subject to clause 18 (Limitation of Liability), we disclaim any responsibility for any Loss You incur as a result of the Rejection or the BHC executing your ticket amendment request and returning your delivery to You. You agree that you will not bring a Claim against us, (or any other AWB Entity) in respect of a Rejection made in accordance with clause 12.1 or any act or omission of the BHC Site in relation to that Rejection. For the purposes of the Purchase Contract the Delivered Tonnage excludes grain returned to You as a result of a Rejection

## 13. PAYMENT

13.1 Unless otherwise specified AWB will pay the Contract Price to You within the Payment Terms specified in the Purchase Contract.

13.2 Any industry, statutory or government levies which are not included in the price shall be deducted as required by law, or as notified by AWB.

## 14. GOODS AND SERVICES TAX

14.1 This clause 14 survives the expiry or termination of the Purchase Contract.

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

14.3 Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a taxable supply made under the Purchase Contract is exclusive of GST (**GST exclusive amount**).

14.4 If a supplier makes a taxable supply under the Purchase Contract, and the consideration is a GST exclusive amount, the recipient must pay to the supplier an amount on account of GST on the taxable supply (GST amount) equal to the GST exclusive amount multiplied by the GST rate. The GST amount is payable at the same time as the GST exclusive amount for the taxable supply.

14.5 You have agreed with and authorised us 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 the Purchase Contract to us. You have agreed and acknowledge that You will not issue a tax invoice or adjustment note in respect of the taxable supply of grain in relation to which AWB has generated a recipient created tax invoice and that You are registered for GST.

- 14.6 You must notify us immediately if You cease to be registered for GST or cease to satisfy the requirements for us to issue You an RCTI as set out in the GST Act or as determined by the Commissioner of Taxation from time to time.
- 14.7 If You are not registered for GST at the time a Recipient Created Tax Invoice is issued by us or it is subsequently determined that a Recipient Created Tax Invoice should not have been issued by AWB for whatever reason:
- (a) that invoice will not be treated as a Recipient Created Tax Invoice;
  - (b) we are not obliged to pay You any amount in respect of that supply unless and until You have provided us with a valid tax invoice in relation to the relevant supply; and
  - (c) we are entitled to recover any amount for GST from You, which has been paid to You in error.
- 14.8 You warrant that You are registered for GST at the time of making the Offer and You will continue to:
- (a) be registered for the term of the Contract; and
  - (b) comply with the requirements of any taxation ruling relating to the issue of Recipient Created Tax Invoices during the term of the Contract.
- 14.9 If an adjustment event arises in relation to any taxable supply made under the Purchase 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 or decreasing adjustment.
- 14.10 If a party is required under the Purchase Contract, to pay for or reimburse or indemnify for a loss, cost or expense incurred by the other party, the amount to be reimbursed or indemnified is first reduced by any input tax credits the other party (or the representative member of a GST group of which it is a member) is entitled to for the loss, cost or expense and then increased in accordance with clause 14.4
- 14.11 Any payment of an amount in respect of a taxable supply by one party to another pursuant to this clause is deferred until the issue of the relevant valid tax invoice or adjustment note to the recipient.
- 14.12 You must, at our request, provide us with all documentation to enable us to claim any available input tax credits or adjustments in respect of amounts on account of GST payable under or in connection with the Purchase Contract.

## 15. ENCUMBRANCES

- 15.1 You must not without our written consent:
- (a) create an Encumbrance over, dispose of, declare a trust over or otherwise deal with any interest that You have in the Purchase Contract, including all Your rights under it or any amount payable to You under it; or
  - (b) create or allow to come into existence any Encumbrance which affects the Purchase Contract; or
  - (c) purport to create or allow to come into existence any Encumbrance over grain that You deliver to AWB, or create or allow to come into existence any Encumbrance over the proceeds of grain You deliver to AWB.
- 15.2 Without limiting the above, You agree to notify AWB immediately if an Encumbrance exists or is created at any time over Your rights under the Purchase Contract, over the grain, or over the proceeds of sale of grain, that You deliver to AWB.
- 15.3 Without limiting the above, if an Encumbrance exists in respect of the grain that You delivered to AWB or the proceeds of sale of that grain, then, without limitation to any other right of AWB, including the right to indemnification. You agree to pay AWB an administration fee for processing, complying with and paying any Claims made by the holder of that Encumbrance. You agree that the administration fee will be the amount set by AWB from time to time, details of which are available from the AWB Grower Service Centre but will not exceed \$500.
- 15.4 Whenever we reasonably request You to do anything to more satisfactorily mortgage, assure or secure an Encumbrance in favour of us in a manner not inconsistent with the Purchase Contract, You must do it immediately. It may include registering a charge or PPSA Security Interest created by or arising under the Purchase Contract with here under the Corporations Act 2001 (Cth), the Personal Property Security Act 2009 (Cth) (PPSA) or any other applicable law, registration is required or may affect the validity, enforceability or priority of that security interest (as that term is defined in the PPSA), executing or registering any other document or agreement, delivering documents or evidence of title and executing and delivering blank transfers.
- 15.5 You must take any steps we reasonably require to perfect or otherwise ensure the enforceability and priority of any security interest (as that term is defined in the PPSA) granted to us under the Purchase Contract.
- 15.6 You waive Your right under section 157(3) of the PPSA, to receive any notice from us in connection with the registration of a financing statement or a financing change statement. In addition, for the purposes of section 115 of the PPSA, sections 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA will not apply to any collateral arising from or in connection with the Purchase Contract.

## 16. WARRANTIES

- 16.1 You represent and warrant to AWB at the date of the Purchase Contract and each time You make a delivery under the Purchase Contract that:

- (a) You have good right and title to the Contracted Tonnage delivered by You to AWB;
- (b) You have disclosed in writing to AWB any Encumbrance to which that grain, or the proceeds of sale of that grain, is subject;
- (c) in relation to any grain delivered by You to AWB which has been the subject of an Encumbrance, You have obtained the written consent of the holder of the Encumbrance to the sale of the grain to AWB such that AWB acquires the grain free of the Encumbrance;
- (d) You are not Insolvent;
- (e) title to the Contracted Tonnage will transfer to AWB in accordance with clause 5.1;
- (f) You have complied with all applicable grain Receival Standards that AWB or its agent requires at the time of delivery and all Pesticide Standards;
- (g) the Contracted Tonnage, on delivery, complies with the specifications in the Purchase Contract;
- (h) You will execute and provide all required declarations as nominated by AWB or its agents;
- (i) if You enter into the Purchase Contract:
  - (i) in the capacity of a trustee of a trust or settlement, You have the full authority and power to do so under the instrument and enter into the Purchase Contract for the proper administration of the trust or settlement and for the benefit of, and in the interests of, all beneficiaries of the trust or settlement and have and will maintain an enforceable right of indemnity against the assets of the trust for any liability You may incur as trustee and that our rights against You under the Purchase Contract are not limited to the assets of the trust; and
  - (ii) as an attorney under a power of attorney You agree that You are authorised to do so and that at the time of entry into the Purchase Contract Your power of attorney had not been revoked;
- (j) You are authorised to provide the Supplier Information on behalf of the supplier, and such Supplier Information, remains accurate as at the time of delivery and that You will ensure that the Supplier Information is updated promptly to reflect any changes that occur after delivery, for so long as any obligations under the Purchase Contract remain to be performed.
- (k) For the avoidance of doubt You agree that You make these representations and warranties to us each time You make a delivery under the Purchase Contract and each time You otherwise deal with us in connection with the Purchase Contract or as a result of the relationship arising pursuant to the Purchase Contract.

## 17. LIABILITY and INDEMNITIES

17.1 As a separate and independent obligation enforceable against You, You agree that:

- (a) At your request we have agreed to enter into this agreement to buy the Contracted Tonnage at the Contract Price and You agree and acknowledge that we enter into the Purchase Contract (including any oral agreement) in reliance on the indemnity in this clause 17.1.
- (b) You unconditionally and irrevocably indemnify us against any and all Claims or Losses which may be made or brought against or suffered or incurred by us arising as a result of Your acts or omissions in connection with the Purchase Contract (whether oral or written) becoming unenforceable, including any money or other amounts that are not recoverable from you under any such oral or written contract provided the Purchase Contract has not become unenforceable due to the negligent or fraudulent acts of AWB.
- (c) You must pay to us immediately on demand any amounts due to us under this clause 17.1. We may make such a demand on you from time to time.
- (d) The indemnity in this clause 17.1 extends to any money that is not recoverable:
  - (i) because of any legal limitation, disability or incapacity of or affecting you or any other person;
  - (ii) because any transaction relating to that money was void, illegal, voidable or unenforceable except where caused by the negligent or fraudulent acts of AWB;
  - (iii) whether or not you knew or should have known any of the relevant matters or facts; and
  - (iv) because of any fact or circumstance that is not caused by the negligent or fraudulent acts of AWB.
- (e) This provision is a continuing indemnity for all amounts referred to in clause 17.1
- (f) Your obligation under this clause 17.1 is a primary obligation and we are not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by you under this clause 17.1.
- (g) Your obligations under this clause 17.1 are absolute and unconditional. They are not subject to any set-off, counter claims or conditions. In particular, your obligations will not be affected by anything which might abrogate, prejudice or limit them or the effectiveness of this agreement.
- (h) If any transaction or payment under the Purchase Contract is void, voidable or otherwise unenforceable or refundable and such circumstances have not been caused by the negligent or fraudulent acts of AWB:
  - (i) we are entitled against you to all rights under the Purchase Contract and these Terms and Conditions that we would have had if the transaction or payment had not occurred or been made, as the case may be; and
  - (ii) you agree and undertake to do all things and sign such documents necessary to restore to us our rights under the Purchase Contract and these Terms and Conditions immediately before that

transaction or payment.

17.2 Except to the extent such an agreement would constitute an offence by us, You agree to reimburse, pay and indemnify AWB (and each other AWB Entity for which AWB holds this indemnity on trust):

- (a) against any Claim by any person claiming an interest in any grain delivered by You or the proceeds of sale of such grain (other than an interest created or granted by Us);
- (b) for any Claims, costs, expenses, liabilities or Losses incurred by us in connection with:
  - (i) Your failure to deliver grain under on time under the Purchase Contract;
  - (ii) any representation, warranty or statement made or repeated by You that is inaccurate, untrue or misleading (whether by omission or otherwise)
  - (iii) any breach of the Purchase Contract by You, Your officers, employees, agents or contractors;
  - (iv) discharging any Encumbrance that affects any of Your contracts with an AWB Entity;
  - (v) any damage, death or injury that You, Your officers, employees, agents or contractors cause to any property or person in connection with the Purchase Contract;
  - (vi) Your failure to comply with the grain Receival Standards referred to in the Purchase Contract; and
  - (vii) Your failure to comply with Pesticide standards referred to in clause 11; and
  - (viii) the Supplier Information provided to us not being accurate and complete and, notwithstanding any other provision in the Purchase Contract, we will not be liable to You for any Claim, costs, expenses, liabilities, Losses or damages arising or resulting from that information not being accurate and complete;
- (c) for all Grower Liabilities; and
- (d) for all government charges and any Taxes (other than income tax and GST), duties and charges payable in respect of the Purchase Contract and the transactions under it.

17.3 You are in breach of the Purchase Contract if:

- (a) the Delivered Tonnage is less than the Contracted Tonnage as at the end of the last day of the Delivery Period;
- (b) any of the representations and warranties that You made are untrue or become untrue;
- (c) You notify us that You cannot or will not deliver all of the Contracted Tonnage;
- (d) You become Insolvent; or
- (e) You are otherwise in breach of the Purchase Contract.

17.4 AWB (and each other AWB Entity) is not required to outlay funds before claiming under this indemnity.

## **18. LIMITATION OF LIABILITY**

18.1 To the maximum extent permitted by law all implied terms, conditions, warranties are excluded from the Purchase Contract.

18.2 To the extent that any law implies into the Purchase Contract any term, condition, warranty or additional obligations that cannot be law fully excluded under clause 18.1, then our liability in respect of a breach of that term, condition, warranty or additional obligation is limited to the maximum extent (if any) permitted by that law, as if the provisions effecting such limitation are incorporated in the Purchase Contract.

18.3 Notwithstanding any other provision in the Purchase Contract save for negligence, breach of this Purchase Contract or fraud on our part:

- (a) we will not be liable to You for any Claim, damage to or Loss, theft or deterioration of the grain;
- (b) we will not be liable to You for any Claim or Loss or damage arising or resulting from any statement, information, or advice made, given or Published in relation to the Purchase Contract;
- (c) every exemption from liability, defence and immunity of whatsoever nature applicable to us or to which we are entitled hereunder shall also be available and shall extend to protect our Related Bodies Corporate acting hereunder or making or giving statements, information or advice and for the purposes of this clause we shall be or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such related bodies corporate as well as on our own behalf and all such entities shall to this extent be or deemed to be parties to the Purchase Contract.

## **19. FORCE MAJEURE**

19.1 Neither party will be liable for delay or non-performance of the Purchase Contract which is caused by a Force Majeure Event provided that the affected party immediately (being within 2 Business Days of the Force Majeure Event) notifies the other party in writing of the circumstances of the claimed Force Majeure Event and provide details to the other party's reasonable satisfaction as to the existence and impact of such Force Majeure Event. This clause applies to the benefit of a party only for so long as the relevant Force Majeure Event continues.

19.2 A party claiming that a Force Majeure Event exists, must use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as possible.

19.3 AWB may terminate the Purchase Contract if the Force Majeure Event continues for a period exceeding 30 days.

## **20. FAILURE TO DELIVER CONTRACTED TONNAGE**

20.1 If You breach the Purchase Contract by failing to deliver the Contracted Tonnage or if the Delivered Tonnage is less than the Contracted Tonnage as at the end of the last day of the Delivery Period AWB may accept or reject any Delivered Tonnage, and either;

- (a) acquire from a third party selected by AWB, grain up to the amount of the Shortfall; or
  - (b) calculate the cost to acquire, from a third party selected by us, of the grain in the amount of the Shortfall.
- 20.2 You must pay to AWB on demand the difference between the cost to acquire the Shortfall or the calculated cost to acquire the Shortfall, less the price that would have been paid to You for the amount of the Shortfall.
- 20.3 The calculated cost to acquire the Shortfall will be provided within 24 hours of either Your first notification to AWB of Your intent to fail to deliver the Contracted Tonnage, or if You do not so notify, when AWB declares a default.
- 20.4 You must pay any amounts payable by You to AWB under this clause 20 within one month of AWB's determination of the amount payable in respect of the relevant breach.
- 20.5 If a breach of the Purchase Contract occurs Your obligation to deliver the undelivered Contracted Tonnage as at the time of default becomes due immediately notwithstanding that the Delivery Period may not have expired.
- 20.6 You acknowledge that we are in the business of on-selling the Contracted Tonnage to third parties and may in the ordinary course of our business enter into futures or options arrangements or engage in hedging against fluctuations of currency or grain prices or arranging transportation and shipping and that if you are in default we may suffer loss (including loss of profit) as a result of conducting our business in making arrangements for the on selling of the Contracted Tonnage in reliance of receiving the Contracted Tonnage.
- 20.7 You acknowledge and agree that AWB is not required to take any steps to mitigate any costs expense, Loss or liability incurred by it as a consequence of Your failure to deliver the Contracted Tonnage.
- 20.8 Without in any way limiting any of our rights, powers or remedies, in the event that You are in default, we may, in our absolute discretion, assign, transfer or novate all or part of our rights under the Purchase Contract or arising in connection with the Purchase Contract and/or engage a collection agency to assist us or the assignee or transferee with the collection of the outstanding liquidated damages. Interest at the AWB Interest Rate plus five percent per annum calculated daily and compounded monthly, will apply on amounts outstanding greater than thirty (30) days.

## 21. WAIVER

A failure to exercise or a delay in exercising any right, power or remedy under the Purchase Contract does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## 22. SET-OFF AND CLAW BACK

- 22.1 If any AWB Entity has a Claim against You, whether or not arising under a contract, then:
- (a) the Claim, if a liquidated amount, will be a debt due and owing by You to the relevant AWB Entity;
  - (b) if the Claim is unliquidated, then the relevant AWB Entity will be entitled to make a reasonable estimate of the amount claimed or owed which will be notified to You in writing. You agree that the amount of that estimate will be a debt due and owing by You to the relevant AWB Entity; and
  - (c) if the Claim is contingent, the AWB Entity will be entitled to make a reasonable estimate of the contingent liability and You direct the AWB Entity to withhold such amount until such time as the contingent liability crystallises (by agreement or otherwise) upon which the AWB Entity may treat that liability as a claim to which clause 22.1(b) above applies.
- 22.2 If there is any debt due and owing by You to an AWB Entity (collectively, **amount payable**) then that AWB Entity or any other AWB Entity which is liable to pay any amount to You on any account whatsoever (**amount receivable**) may deduct Your amount payable from Your amount receivable. This relevant AWB Entity has this right of deduction or set off even if the amount payable is owed by You to another AWB Entity. The AWB Entity to which Your amount payable is due and owing and any AWB Entity which has made a deduction in respect of Your amount payable will account to each other for the amount deducted, and Your amount payable shall be reduced by the amount deducted. When an estimated debt or obligation becomes liquidated or known, the relevant AWB Entity will make all necessary adjustments to the amount of the debt due and owing to You.
- 22.3 If there is any debt due and owing to You by an AWB Entity (collectively, **amount receivable**) then You may, after providing us with 10 Business Days' notice, deduct the amount of any amount payable by You (**amount payable**) from the amount receivable. You have this right of deduction or set off even if the amount receivable is owed by another AWB Entity. In the notice to us you must specify which AWB Entity owes you the amount receivable and the prior payment date for that amount receivable. We will reduce the amount receivable by the amount payable.
- 22.4 If, after payment to You of any amount by an AWB Entity in relation to a contract, that AWB Entity decides that for any reason You had no right to some or all of that amount (including, where You are Overpaid) then, despite any other provision of that contract, that AWB Entity may, by giving you notice (**Notice**) recover from You that amount. The AWB Entity is also entitled to recover from You interest on that amount at the AWB Interest Rate applicable at that time plus:
- (a) two percent per annum for the period from the date of the Notice until the date which is thirty (30) days after that date; and
  - (b) five percent per annum for the period from the date which is thirty one (31) days after the date of the Notice, calculated daily, until (but not including) the date upon which the amount is repaid, and compounded monthly. However, if you are Overpaid directly and solely as a result of an act or omission by us, interest will only be payable by You if You have not paid the relevant amount to the relevant AWB Entity within thirty (30) days after the provision of the Notice. In

that case the applicable interest rate will be the AWB Interest Rate plus five per cent per annum (calculated daily and compounded monthly) for the period from the date which is thirty one (31) days after the date of the Notice until (but not including) the date upon with the amount is repaid.

22.5 You unconditionally and irrevocably direct us to apply all proceeds payable to you in connection with any agreement you have entered into with us, other AWB Entities or our Associates, whether or not the agreement pre-dates the Offer, to repay any amount Overpaid to you and then to repay you any remaining balance. You ratify and confirm any and all acts carried out in connection with this authority and direction.

22.6 If any such payment made to an AWB Entity in accordance with the terms of a contract is void or voidable for any reason, that payment will be deemed not to have discharged Your liability to that AWB Entity in respect of that payment (notwithstanding any release or discharge given by that AWB Entity).

### **23. DISPUTES**

23.1 If there is any dispute, controversy, claim or difference (**Dispute**) arising between the parties arising out of, relating to or in connection with the Purchase Contract including any question regarding its existence, validity or termination, then within ten Business Days of a party notifying the other party of the Dispute, a senior representative from each party must use all reasonable endeavours acting in good faith to resolve the Dispute by joint discussions.

23.2 If the Dispute is not settled within 21 Business Days of notification under clause 23.1 the parties will submit the Dispute to be settled by arbitration in accordance with the GTA Dispute Resolution Rules current at the date of the Purchase Contract.

23.3 Neither party to the Dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect of any such Dispute except insofar as that is permitted by the GTA Dispute Resolution Rules and the applicable governing legislation. Every award shall be binding on the parties. By submitting the dispute to arbitration under the GTA Dispute Resolution Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can be validly made.

23.4 Each party must pay its own costs in relation to the settling of any dispute and joint costs are to be shared equally.

### **24. PRIVACY AND ELECTRONIC COMMUNICATIONS**

24.1 Subject to any law to the contrary and provided You have not indicated otherwise, You authorise AWB to collect and use any information related to You and the performance of the Purchase Contract (which includes but is not limited to Your personal information) for the purpose of managing AWB's commercial relationship with You including but not limited to:

- (a) providing AWB's products or services which You have agreed to obtain from AWB and/or for any other purposes relating to AWB's business operations and AWB's dealings with You;
- (b) for the purpose of any arbitration proceeding relating to the Purchase Contract or a contract between You and AWB or the Related Bodies Corporate of AWB;
- (c) contacting you on an ongoing basis by email, telephone and other means for the purpose of direct marketing unless you withdraw your consent by opting out or calling the AWB Grower Service Centre.

24.2 You agree and acknowledge that AWB:

- (a) may transfer and store Your personal and other information overseas and disclose it to others (including, without limitation, contractors, buyers and third parties we have engaged to provide marketing services) and you consent for this to occur;
- (b) may collect information from an entity other than You including brokers used by You.

24.3 In dealing with your personal information we shall comply with the standards set out in the Privacy Act 1988 and where here applicable the National Privacy Principles or the Australian Privacy Principles, as they apply to your personal information.

24.4 You can withdraw Your consent at any time by calling the AWB Grower Service Centre. AWB's Privacy Policy, located at [www.awb.com.au/privacy/](http://www.awb.com.au/privacy/) contains information about how personal information held by AWB and its Related Bodies Corporate may be accessed and corrected and how complaints can be made and are managed.

24.5 If You wish to give AWB any information about an individual other than Yourself, then You agree to ensure the individual to whom that information relates agrees that AWB may use and disclose information about him or her in accordance with this clause 24.

24.6 By entering into the Purchase Contract You agree and consent to the Electronic Transactions (Vic) Act 2000 applying to the Purchase Contract. You agree that any notices and communications between AWB and You relating to or connected with the Purchase Contract or arising as a result of the relationship between AWB and You under the Purchase Contract can be conducted using Electronic Communications and that You agree to enter into contracts and agreements with AWB and otherwise interact with AWB using Electronic Communications.

24.7 You agree and consent that using Electronic Communications in accessing or undertaking any transactions with AWB regarding any agreement, acknowledgement, consent, terms, disclosures or conditions, including without limitation Electronic Communication which bears Your name (or that of our Your officers, employees or other authorised persons) or part of it, constitutes your signature, acceptance, and agreement as if actually signed by You in writing.

24.8 You agree no certification authority or other third party verification is necessary for the validity of the electronic signature in clause

24.7 and the lack of such certification or third party verification shall not in any way affect the enforceability of Your signature or the resulting contract between AWB and You. Absent manifest error, the admissibility, validity, or use of any electronically signed document cannot be contested.

24.9 By consenting and agreeing to use Electronic Communications you release AWB (including its Related Bodies Corporate) and indemnify AWB (including its Related Bodies Corporate) against, all losses and liabilities arising from any payment AWB (including its Related Bodies Corporate) makes or action AWB (including its Related Bodies Corporate) takes based on any instruction or agreement (even if not genuine) that AWB (including its Related Bodies Corporate) receives by Electronic Communication bearing Your details and/or a signature that is apparently Yours (including Your officers, employees and authorised persons) except where the Electronic Communication contains a manifest error or you have not contributed to the Loss in any way. You agree that neither you nor anyone claiming through you has any claim against AWB (including its Related Bodies Corporate) in relation to payments or actions undertaken as a direct or indirect result of Electronic Communications.

24.10 There are risks associated with utilising Electronic Communications. You agree and acknowledge that notices and information sent by Electronic Communications may fail due to failure of hardware, software, communication devices and connections. Whilst AWB and its Related Bodies Corporate (as applicable) shall ensure that the notices and information are delivered in time to Your mobile network, the delivery of these notices and information to Your mobile phone/messaging and receival device/handset is the responsibility of Your network operator. Electronic Communications may be delayed and/or not delivered to Your mobile phone/messaging and receival device/handset on certain days, owing to technical reasons and AWB and its Related Bodies Corporate cannot be held responsible for the same.

24.11 To the extent permissible by law, AWB (including its Related Bodies Corporate) and its officers and employees shall not be liable for any errors, omissions, defects or misrepresentations in the notices and information or for any loss or damage suffered by persons who use or rely on such information including without limitation any errors or omissions arising from using Electronic Communications. If any law prohibits the exclusion of such liability, AWB limits its liability to the re-supply of the information.

## **25. APPLICABLE LAW AND JURISDICTION**

25.1 Each party by making an offer subject to these Terms and Conditions or agreeing to the application of these Terms and Conditions to their contract irrevocably and unconditionally agrees that:

- (a) the offer, acceptance and the contract shall be interpreted according to and governed by the laws in force in the State of Victoria with specific reference to the Goods Act (Victoria) 1958; and
- (b) enforceability and performance of their agreement is governed by the Goods Act (Victoria) 1958 and any related orders, rules, and regulations of all Government Agencies, except as limited in these Terms and Conditions.

25.2 Any legal action in relation to this document or the contract evidenced by it against any party or its property and related non-contractual matters shall be brought in any court of competent jurisdiction in the State of Victoria. Each party by agreeing to the application of these Terms and Conditions to their contract irrevocably and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

## **26. RELATIONSHIP OF PARTIES**

26.1 Nothing in the Purchase Contract is to be construed as constituting a partnership, trust, joint venture, agency or fiduciary relationship between the parties.

26.2 We may sell or otherwise deal with the grain that we purchase from You to an Associate on an arm's length basis, and You agree that neither us nor the Associate shall be accountable to You for any profit, fees or commissions earned, arising or resulting from any such transactions and that we and the Associate shall be entitled to retain such amounts for our own and the Associate's own benefit (as applicable).

## **27. ASSIGNMENT**

27.1 Your rights in connection with the Purchase Contract or any of the obligations that You have under it cannot be assigned or varied by You without our prior written consent.

27.2 You agree that, other than a purported assignment of our obligations under the Purchase Contract, for which we require your prior consent, we may assign, transfer, novate and otherwise grant participation and sub-participations in, and can otherwise deal in any manner with, all or any of our rights, remedies, powers and duties under the Purchase Contract to any person, without Your consent or any further notice to You. Without limiting clause 27.2, You agree that we may assign, transfer novate or otherwise grant all or part of the Purchase Contract to an Associate on the basis that You and the Associate have the same rights, entitlements and obligations as if the Associate was a party to the Purchase Contract initially in respect of the matters assigned, novated, transferred or otherwise granted to the Associate.

## **28. GENERAL**

28.1 All stipulations set forth in the Purchase Contract as to time are of the essence.

28.2 The Purchase Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

28.3 Any notices or instructions provided by You must be provided in writing by facsimile, telephone, or electronic

mail during normal business hours. An instruction will be accepted by AWB when AWB provides You with written confirmation of the instruction.

28.4 Unless otherwise specified, a notice is regarded as given by the sender and received by the addressee:

- (a) if delivered in person, when delivered to the addressee;
- (b) if posted, 5 Business Days from and including the date of posting;
- (c) if faxed, when faxed by the sender as evidenced by the fax confirmation receipt indicating successful delivery; or
- (d) if emailed at the time of receipt specified in the Electronic Transactions Act (Victoria) 2000,

but if, in relation to items 28.4(a) to (c) delivery or receipt is on a day which is not a Business Day or is after 5.00 pm at the place of delivery or receipt, it is regarded as given at 9.00 am on the next Business Day.

28.5 Written communications to You must be sent to the address set out in Your supplier information or in the Purchase Contract and may be sent by email to any email address specified by You from time to time. Written communications to an AWB Entity must be sent to AWB at GPO Box 58, Melbourne, Victoria, 3001 or as otherwise notified on the AWB website from time to time.

28.6 You agree and acknowledge that:

- (a) sending or giving instructions or information by facsimile, the internet or telephone (communications methods) is not a secure means of sending or giving information;
- (b) You are aware of the risks involved in using such communications methods, including the risk that instructions may:
  - (i) be fraudulently or mistakenly written, recorded, altered or sent; or
  - (ii) not be received in whole or in part by the intended recipient or listener;
- (c) no AWB Entity is under a duty to enquire as to whether any instructions which appear to have been properly given by You have in fact been given by You;
- (d) an AWB Entity may record and/or monitor telephone conversations with You with or without an automatic tone warning device and any AWB Entity may use those recordings or transcripts from such recordings for any purpose that AWB Entity considers desirable or appropriate in its absolute discretion;
- (e) no AWB Entity will be liable for any Claims or Losses incurred in connection with You using such communication methods, including in connection with an AWB Entity:
  - (i) not acting on any instructions which in its opinion appear to have been communicated fraudulently, mistakenly, erroneously or without authority; or
  - (ii) acting on instructions which appear to have been properly created by You and received by that AWB Entity, except in the case where that Claim or Loss is the direct result of fraud or wilful misconduct on the part of that relevant AWB Entity.

28.7 You agree that You are aware that the Purchase Contract is a binding legal agreement and You should seek independent legal advice if You are uncertain about the rights and obligations created under it.

28.8 The Purchase Contract may only be amended by another agreement executed by all the parties affected by the amendment.

28.9 The rights, powers and remedies of a party under the Purchase Contract are in addition to and do not exclude or limit any right, power or remedy provided by law or equity or any agreement.

28.10 The Purchase Contract contains the entire agreement between the parties in connection with the subject matter and will supersede and prevail over any previous negotiations between the parties. The parties agree to exclude the application of the GTA Trade Rules.

28.11 If any provision of the Purchase Contract is prohibited or unenforceable or partly unenforceable (Unenforceable Provisions), for the purposes of giving effect to the remaining provisions of the Purchase Contract at a particular time, such Unenforceable Provisions at that time shall be deemed to be severed without affecting the validity and enforceability of the remaining provisions of the Purchase Contract.

In the event of any inconsistency between the provisions of the documents that constitute the Purchase Contract, the following documents will prevail in the following order:

- (a) the terms and conditions of any applicable Production Advance offer;
- (b) the Special Terms, if any;
- (c) these Terms and Conditions.

28.12 At all times You must, and must ensure that Your officer, employees, agents, contractors and sub-contractors:

- (a) comply with all Road Safety Laws and have a working knowledge of all relevant provisions of the Road Safety Laws and be adequately trained to comply with the Road Safety Laws in connection with the Purchase Contract;
- (b) notify us immediately if You or they consider, that Your performance of the Purchase Contract may breach or disregard any Road Safety Laws; and
- (c) maintain all information and documents necessary to substantiate compliance with the Road Safety Laws in connection with the Purchase Contract and must make such material available to us when reasonably required by us to audit Your compliance with the Road Safety Laws.

## 29. DICTIONARY:

The following definitions apply in the Purchase Contract.

**"Associate"** means an AWB Entity, a joint venture company in which an AWB Entity holds at least 25% of the issued share capital or a subsidiary of such a joint venture company.

**"AWB"** means Cargill Australia Limited ABN 42 004 684 173 trading as AWB or its agents and is named as the "Buyer" in the document entitled Confirmation of AWB Grower Purchase Contract.

**"AWB Entity"** means us, Cargill Australia Limited (ACN 004 684 173) or one of its Related Bodies Corporate acting directly or through an agent or sub-agent, as the context requires.

**"AWB General Terms and Conditions"** means the terms and conditions contained in this document as varied from time to time. **"AWB Grower Freight Deduction"** is the rate (in AUD per metric tonne) made available by AWB which is valid on the contract date. If AWB does not have a rate available on the contract date, the rate will be the rate published by Grain Trade Australia on the contract date.

**"AWB Grower Service Centre"** means the AWB telephone information service which (at the time of printing) can be reached on telephone number 1800 447 246.

**"AWB Interest Rate"** means the rate that AWB reasonably determines to be the 90 day bank bill rate applicable at that time. **"BHC Site"** means an AWB approved bulk handling site that receives and/or stores and handles grain on behalf of AWB under a current storage and handling agreement.

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

**"Claim"** means any claim, notice, demand, action, recovery, proceeding, litigation, investigation or judgment of any kind.

**"Commodity"** means the commodity as set out beside the heading "Commodity" in the Purchase Contract.

**"Confirmation"** is the written record prepared by AWB at the time of formation of the contract in accordance with clause 1 of these Terms and Conditions and includes the document entitled Confirmation of AWB Grower Purchase Contract executed by AWB. **"Contract Price"** means the amount determined in accordance with clause 4.

**"Contracted Tonnage"** means the quantity, variety, crop year and grade of a particular Commodity (in metric tonnes) and quality specifications relating to that Commodity as specified in the Purchase Contract. The amount (in metric tonnes) of the Contracted Tonnage may vary by any quantity tolerance specified in the Purchase Contract.

**"Contract Type"** means the type of contract as set out beside the heading "Contract Type" in the Confirmation.

**"Costs"** means, in relation to Delivered Tonnage,

- (a) any third party charges (including storage, handling, transport costs to port and port costs on-farm pick up costs or drying and cleaning costs incurred by You prior to the passing of title and risk to AWB in respect of the Delivered Tonnage;
- (b) any fee charged by AWB for using an AWB product or service that is offered by AWB provided such fees are disclosed to you prior to our acceptance of your Offer.

**"Delivery Period"** means the period set out beside the heading "Delivery Period" in the Purchase Contract.

**"Delivery Location"** means, for "delivered silo" and "delivered buyer" Delivery Types, the site specified for delivery in the Purchase Contract and, in respect of "Port Zone" deliveries, the relevant BHC Site. In relation to the Delivery Type specified as "delivered in store" the delivery point is taken to be the relevant BHC Site and in relation to the Delivery Type specified as "ex farm" the delivery point is taken to be the relevant location on Your farm which is accessible for the Contracted Tonnage to be picked up by AWB.

**"Delivered Tonnage"** means the quantity (in metric tonnes to the nearest one hundredth (1/100th) of a metric tonne) of the Contracted Tonnage that is delivered by You and accepted by AWB. If You are a participant in a share-farm arrangement and that share-farm arrangement makes a delivery using its Third Party Registration Number, then the number of tonnes delivered by You is Your percentage share of that delivery.

**"Delivery Type"** means the delivery type as set out beside the heading "Delivery Type" in the Purchase Contract.

**"Electronic Communications"** means message transmitted and/or received by any electronic notice board on Your account, email, short message service (SMS), multimedia message service (MMS) or instant messaging or WAP.

**"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 or any other hypothecation, lien (including a crop lien), pledge, trust or power of any kind whatsoever or a security interest (as that term is defined in the Personal Property Securities Act 2009 (Cth)).

**"Endpoint Royalties"** means royalties payable to or collectible by an AWB Entity from You in respect of grain delivered to us on produce derived from plant varieties to which plant breeders' rights or patent rights attach.

**"Fix Price Date"** means, in respect of Contract Types which are multi grade or multi varietal, 5pm AESDT on the 1st of October within the Crop Year. In the event that the 1st of October within the Crop Year is not a Business Day then the Fix Price Date will be 5pm AESDT on the first Business Day following the 1st of October within the Crop Year.

**"Force Majeure Event"** means an act of war (either declared or not) or terrorism, the mobilisation of armed forces, civil

commotion or riot, industrial action or labour disturbance, embargo, action or inaction by a Government Agency, or a failure of a public utility which renders it impossible for You to transport the Contracted Tonnage to a Delivery Location or for AWB to pick up ex-farm grain. 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 or grain wholly or partly caused by drought, flood, frost, fire or other weather conditions).

**"Government Agency"** means a government or any governmental, semi-governmental, legislative, administrative, fiscal, quasi-judicial entity, authority, department or other body, whether foreign, federal, State, Territorial or local (including any self-regulatory organization established under statute).

**"Grower Liabilities"** means, in relation to a delivery of grain by You to AWB under the Purchase Contract, the total of Levies and Tolls and End Point Royalties relating to that delivery of grain. **"GST"** means the same as in the GST Law.

**"GST Law"** has the meaning given to it in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**"GTA Trade Rules"** means the Trade Rules Published by Grain Trade Australia from time to time.

**"GTA Dispute Resolution Rules"** means the dispute resolution rules Published by Grain Trade Australia from time to time. To the extent of any inconsistency between the GTA Dispute Resolution Rules and the Purchase Contract, the terms of the Purchase Contract prevail.

**"Increments"** means any protein increments, screening increments, moisture increments or any other increment specified in applicable increment scale in the Purchase Contract (if applicable).

**"Insolvent"** means bankrupt, unable to pay debts as and when they fall due, in receivership, in receivership and management, in liquidation, in provisional liquidation, under any form of administration, wound up, dissolved, deregistered, subject to any arrangement, assignment or composition with creditors, protected from creditors under any statute or in receipt of protection under statute.

**"Levies and Tolls"** means, in relation to the delivery of grain by You to AWB, any industry levies, tolls, fees, charges, duties and any other amount collectible or payable by AWB in connection with the sale of that grain to AWB.

**"Loss"** means any loss, costs, charges, outgoings, liabilities, damages, expenses or indebtedness of any description, including for AWB, AWB's internal costs and expenses.

**"Overpaid"** means, at any time, the amount you have been paid in excess of your entitlement (or likely entitlement) under a contract with us or another AWB Entity and includes without limitation a payment made to you in error.

**"Payment Terms"** means the information contained beside the heading "Payment Terms" in the Purchase Contract.

**"Pesticide Standards"** has the meaning given in clause 11.

**"Port Zone"** means the region associated with the Delivery Location identified, as determined by AWB from time to time.

**"Published"** means to make information publicly available, including by making the information available on the AWB internet site at

www.awb.com.au. If information is provided in writing to You under the Purchase Contract that information shall apply to the exclusion of equivalent information otherwise published, unless the terms of that published information specifically provides otherwise. **"Purchase Contract"** means the contract (whether oral or written) that is subject to these Terms and Conditions formed upon our acceptance of Your Offer as evidenced or recorded by the Confirmation.

**"Receival Standards"** means the receival standards for classification of grain set out beside the heading "Receival Standards" in the Purchase Contract. Unless otherwise determined by us, Receival Standards are accepted industry receival standards at the Delivery Location and are available on request from AWB from the Grower Service Centre.

**"Related Body Corporate"** has the meaning set out in section 9 of the Corporations Act 2001.

**"Road Safety Law"** includes any Australian legislation, regulations and rules relating to road safety, road transport or heavy vehicle transport, including rules relating to:

- (a) vehicle dimensions, weight, load limits, speed limits and securing of loads;
- (b) driver management, including occupational health and safety, driving hours, fatigue management and illegal driving;
- (c) road management including route and time restrictions; and
- (d) chain of responsibility in relation to the above

matters. **"Special Terms"** means any one or more of the following:

- (a) the terms and conditions as Published by us which are applicable to Your Offer;
- (b) the terms and conditions a record of or reference to which appears in the Confirmation and in the document entitled Confirmation of AWB Grower Purchase Contract relating to the contract beside the heading "Special Terms";

including any of the foregoing as amended from time to time.

**"Shortfall"** means the difference in amount between the Contracted Tonnage (ignoring the quantity tolerance) and the Delivered Tonnage (if any).

**"Supplier Information"** means the information provided to us by You or the provider of Your Third Party Registration Number in connection with the Purchase Contract including Your name, trading name (if applicable),

Australian Business Number, address, contact information, Third Party Registration Number and bank account information (account name, account number, BSB, name of bank and branch) for the receipt of payments.

"**Tax**" means any tax, goods and services tax, levy, duty, impost, fee, charge, deduction or withholding (however described) that is assessed, levied, imposed or collected by law or by any Government Agency (including, without limitation, a tax on net income), together with any related interest, penalty, fine, fee or other charge or amount imposed on, or in respect of any of the above, in any jurisdiction.

"**Third Party Registration Number**" means a unique grower registration number issued by a third party which maintains a register of growers and other sellers and which we have agreed, in our absolute discretion, to accept for use to (amongst other things) identify grain delivered by You under the Purchase Contract and to make payments to You using information provided by the provider of your Third Party Registration Number.

"**Varieties**" means the varieties of grain specified in the Receival Standards.

"**You**" or "**Your**" refers to the party who sells grain to us under the Purchase Contract, who must be a supplier with a Third Party Registration Number acceptable to us in our absolute discretion and includes any agent acting on behalf of that supplier. If the supplier information includes more than one person or corporate entity as the supplier, "You" or "Your" refers to each of them separately and every two or more of them jointly and includes any agent acting on behalf of them. It also includes the supplier's lawful assigns and successors. Any reference to the "parties" is a reference to You and AWB.

### 30. INTERPRETATION

30.1 Headings are for convenience only and do not affect interpretation.

30.2 Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.

30.3 Nothing in these Terms and Conditions is to be interpreted against a party solely on the ground that the party put forward these Terms and Conditions or a relevant part of them.

30.4 The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, the Purchase Contract.
- (f) A reference to an agreement or document (including a reference to the Purchase Contract) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by the Purchase Contract or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (h) A reference to a party to the Purchase Contract or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.