

PRODUCTION ADVANCE OFFER – ADDENDUM 2018/19

Background

The Production Advance Offer:

- is issued by AWB Harvest Finance Pools Pty Ltd as trustee of the 2018/19 AWB Pools Trust (ABN 53 631 471 748) in relation to eligible Pool Contracts or by Cargill Australia Limited (ABN 42 004 684 173) in relation to all other eligible contracts for the purchase of a Commodity (*we, us or our*);
- including the terms and conditions contained in this Addendum varies each AWB Contract specified in a Production Advance Offer (in consideration of the payment of the Production Advance). All other terms and conditions in the applicable AWB Contract remain unchanged and continue in full force and effect;
- is provided to you in respect of one or more AWB Contracts made between you and us, as nominated by you in your Production Advance Request Form(s) and the Production Advance Offer(s) accepted by you; and
- is provided to you in reliance on, amongst other things, the information in the Production Advance Application Form(s) and the Production Advance Request Form that you provided to us.

This Production Advance Offer – Addendum 2018/19 (the Addendum) is provided and applies in respect of all Production Advance Offers for the 2018/19 season. You are only required to sign and return one Addendum which will apply in respect of all Production Advance Offers for the 2018/19 season

1. WHEN DO THESE TERMS AND CONDITIONS APPLY TO YOU?

- (a) The terms and conditions of a Production Advance Offer (including this Addendum) apply to you when you accept a Production Advance Offer by completing it in writing and returning the signed Production Advance Offer and this Addendum to us within the period specified in the Production Advance Offer (unless you have already returned a signed Addendum to us for the 2018/19 season in which case you only need return the signed Production Advance Offer within the specified period).
- (b) Notwithstanding any action or inaction by us, you will not be entitled to receive a Production Advance and we revoke the Production Advance Offer and no contract is formed between you and us in respect of the Production Advance if:
 - i) you have not completed and returned to us the Production Advance Application Form and Production Advance Request Form;
 - ii) you have not entered into a AWB Contract specified in your Production Advance Request Form and the Production Advance Offer; or
 - iii) you have not completed and returned to us your acceptance of the Production Advance Offer and this Addendum within the period specified in the Production Advance Offer (unless you have already returned a signed Addendum to us for the 2018/19 season in which case you only need return the signed Production Advance Offer within the specified period).

2. PRODUCTION ADVANCE

- (a) In respect of each AWB Contract under which you agree to sell a specified Contracted Tonnage of a Commodity to us at a later date, as specified in your Production Advance Request Form and the relevant Production Advance Offer accepted by you, you apply for and we agree to make available to you the Production Advance on the terms and conditions of the relevant Production Advance Offer and the relevant AWB Contract (as varied by the relevant Production Advance Offer).
- (b) You acknowledge and agree that the Production Advance is a pre-payment of part of the consideration to be paid to you in relation to the Commodity to be delivered by you under the relevant AWB Contract. For Pool Contracts, the Production Advance (less the Production Advance Fee and any applicable GST) is taken to be a Pool Payment for the purposes of that particular Pool Contract. The Production Advance will be credited to the bank account recorded in your Supplier Information within 7 days of receipt by us of the relevant completed and executed Production Advance Offer.
- (c) You acknowledge and agree that the Production Advance must wholly or predominantly be used by you for the purposes of enabling you to produce the Commodity you are required to deliver under the relevant AWB Contract and you must pay to us any part of the Production Advance not used for the purposes of producing such Commodity.
- (d) We will charge you a fee (the Production Advance Fee) for providing you with the Production Advance.

3. REPAYMENT OF THE PRODUCTION ADVANCE

- (a) If a payment is to be made to you in respect of the delivery of a Commodity under an AWB Contract (as varied by the relevant Production Advance Offer in respect of which a Production Advance has been paid, that payment will be reduced by the amount of the Production Advance and the Production Advance Fee. For Pool Contracts, any Pool Payment will be reduced by the amount of the Production Advance and the Production Advance Fee in priority to applying clause 7.4 (Payment) of Section 1 of the relevant Pool Contract. For the avoidance of doubt the reduction of such payment reflects that the Production Advance, being a pre payment of the consideration payable for the Commodity delivered by you, has already been paid to you under the relevant AWB Contract (as varied by the relevant Production Advance Offer).
- (b) If you have entered into an AWB Flexible Loan Agreement or an AWB Harvest Loan Agreement in accordance with the 2018/19 Season Starter Pool Payment Terms and Conditions, the 2018/19 Spring Starter Pool Payment Terms and Conditions or the 2018/19 AWB Harvest Pool Payment Terms and Conditions (as applicable), you are deemed to have irrevocably and unconditionally directed us to provide you a Drawdown Amount of an amount that is the lower amount of the Available Credit Limit and the Production Advance and to apply that Drawdown Amount to reduce the Production Advance. This direction applies notwithstanding that the requirements in clause 3.1 (Payment of Drawdown Amounts) and 3.2 (Payment of Drawdown Amounts) of Section 4 of the 2018/19 Season Starter Pool Payment Terms and Conditions or the 2018/19 Spring Starter Pool Payment Terms and Conditions (as applicable) have not been complied with. For the avoidance of doubt the Drawdown Amount reflects the Production Advance being a part of the consideration due to you under the relevant AWB Contract (as varied by the relevant Production Advance Offer).
- (c) You irrevocably nominate that the sequence for applying each and all Commodity deliveries that you have made or are to make under any agreements with us, any AWB Entity or Associate (each a **Commodity Contract**), shall be as follows:
 - i) first, to each AWB Contract (as varied by the relevant Production Advance Offer) in respect of which you have been paid a Production Advance in the order nominated by you to us in writing and otherwise on a first in first out basis, until you have satisfied all your obligations under those contracts;
 - ii) secondly, to each other Commodity Contract that is a Commitment Tonnage Contract on a first in first out basis, until you have satisfied all your obligations under those contracts; and
 - iii) finally, to all other Commodity Contracts in accordance with the terms of those Commodity Contracts.
- (d) If on 30 July of the relevant Crop Year, the Production Advance relating to the relevant AWB Contract (as varied by the relevant Production Advance Offer) has not been fully repaid in accordance with clause 3(a) or 3(b) of this Addendum, then the remaining balance of the Production Advance is taken, for the purposes of any relevant Pool Contract to have been "Overpaid" or for the purposes of any other eligible AWB Contract to be an amount recoverable by us under clause 22 (Set off and Claw Back) of the AWB General Terms & Conditions or the AWB Basis Contract General Terms & Conditions, in which case we may exercise the rights conferred pursuant to clause 3(e) of this Addendum in addition to any other rights we have or may have.
- (e) Subject to clause 3(d) of this Addendum, you unconditionally and irrevocably direct us to apply all proceeds payable to you in connection with any agreement you have entered into with us, any AWB Entity or our Associates, whether or not the agreement pre-dates your acceptance of a Production Advance Offer, to repay the remaining balance of the Production Advance referred to in clause 3(d) of this Addendum and then to pay to you the balance (if any) of such proceeds. You ratify and confirm any and all acts carried out in connection with the authority and direction in this clause 3 and you indemnify us, any AWB Entities and Associates against any Claim or Loss suffered or incurred by us/them in connection with carrying out any such acts.

4. ADDITIONAL REPRESENTATIONS AND WARRANTIES

- (a) In addition to the representations and warranties contained elsewhere in an AWB Contract (as varied by the relevant Production Advance Offer), you represent and warrant to us that:
 - i) all information provided by you in a Production Advance Application Form and Production Advance Request Form is true and correct in every particular and is not misleading or false by omission or otherwise;
 - ii) all information provided by you in Audits, Crop Reports and other information requests made by us is true and correct in every particular and is not misleading or false by omission or otherwise;
 - iii) you will inform us of any forward sales of your Commodity by you within 14 days of the date of such sale; and
 - iv) there are no Encumbrances existing in respect of or in connection with the Crop to produce the Commodity to be delivered by you to us under an AWB Contract (as varied by the relevant Production Advance Offer).
- b) You agree to notify us of any material change in any information provided to us in connection with the payment of the Production Advance at the time such change takes place.
- c) You agree that we may conduct audits of your Crops in such manner as we determine (**Audits**), which may include requesting you to complete reports on production and yield information as determined by us (**Crop Reports**).
- d) You agree to provide all reasonable assistance and information in order to conduct the Audits and complete the Crop Reports and to submit the Crop Reports to us within the timeframe we reasonably request.

- e) You agree to keep us informed of the condition of the Crop on a regular basis and agree to notify us immediately upon becoming aware of a reduction in yield or quality.

5. DEFAULT

- (a) In addition to (and without limiting) any other relevant provisions of an AWB Contract (as varied by the relevant Production Advance Offer), you are in default of your obligations contained in a Production Advance Offer if:
 - i) any of the representations and warranties that you made under a Production Advance Application Form, Production Advance Request Form or clause 4 of this Addendum are untrue or become untrue;
 - ii) you fail to notify us in writing of any proposed change in directors, shareholding or ownership of you or change of the trustee prior to such changes taking place;
 - iii) in relation to a Pool Contract (if applicable) you are in default under clause 10 of Section 1 (Failure to Deliver Contracted Tonnage) of the relevant Pool Contract or, in relation to any other AWB Contract, you are in default under clause 20 (Failure to Deliver Contracted Tonnage) of the AWB General Terms and Conditions or the AWB Basis Contract Terms & Conditions; or
 - iv) you fail to:
 - (1) on or before 30 October 2018, effect and thereafter maintain crop insurance with a reputable insurance company licensed to conduct insurance business in Australia in respect of all the Crops the subject of an AWB Contract (as varied by the relevant Production Advance Offer) until all Contracted Tonnage is delivered to us; and
 - (2) whenever requested by us, make available for inspection and/or provide to us, the policy or policies of insurance or such other insurance related information we may require.
- (b) Notwithstanding any other provisions of an AWB Contract (as varied by the relevant Production Advance Offer), if you are in default of the terms of a Production Advance Offer as set out in clause 5(a) of this Addendum:
 - i) we may in our absolute discretion immediately suspend, withdraw, cancel or terminate that Production Advance Offer and if we do so, we will be under no obligation to pay to you the Production Advance; and
 - ii) you agree to pay to us, as a reasonable estimate of our damages, on demand, being:
 - (1) the Production Advance; and
 - (2) subject to clause 5(c) and clause 5(d) of this Addendum, interest at the Interest Rate plus five percent per annum on the Production Advance accruing on and from the date of the default under clause 5(a) of this Addendum until the date of payment.
- (c) Where you pay us the interest in accordance with clause 5(b)(ii)(2) of this Addendum within the required time, the interest will be calculated daily on the Production Advance balance.
- (d) Where interest is not paid within the required time, any unpaid interest will be capitalised and added to the Production Advance balance on the last day of each month until the full amount is repaid.
- (e) A default of your obligations under an AWB Contract specified in a Production Advance Offer shall not by itself affect any other AWB Contract specified in that Production Advance Offer.

6. SECURITY INTEREST

- (a) Unless indicated otherwise in an AWB Contract (as varied by the relevant Production Advance Offer), terms used in clause 6 of this Addendum have the same meaning given to those terms in the PPSA.
- (b) We may register any security interest that we have under an AWB Contract (as varied by the relevant Production Advance Offer) on the Personal Property Securities Register in any manner we choose.
- (c) You must provide us with any information we require for the purposes of giving effect to registration of our security interest under clause 6(b) of this Addendum.
- (d) Without limiting any other provision of an AWB Contract (as varied by the relevant Production Advance Offer), you are in default under that contract for the purposes of section 123(1) of the PPSA if any other secured party:
 - i) seizes the Crop, the Commodity produced from the Crop or any other personal property that is subject to a security interest in our favour (whether under section 123 of the PPSA or otherwise) for the purposes of enforcement; or
 - ii) becomes entitled to seize the Crop, the Commodity produced from the Crop or any other personal property that is subject to a security interest in our favour .
- (e) For the purposes of section 157(3) of the PPSA, you irrevocably and unconditionally waive your right to receive any notice from us in connection with the registration of a financing statement or a financing change statement in respect of any security interest we may have under an AWB Contract (as varied by the relevant Production Advance Offer).
- (f) You agree and acknowledge that any action taken by us under this clause 6 in relation to any security interest we may have under an AWB Contract (as varied by the relevant Production Advance Offer) is at your cost.

- (g) For the purposes of section 115 of the PPSA, the following sections of the PPSA will not apply to any collateral arising from or in connection with an AWB Contract (as varied by the relevant Production Advance Offer):
 - i) section 121(4) (notice by secured party of enforcement of security interest in liquid assets);
 - ii) section 125 (obligation of secured party to dispose of or retain collateral after seizure);
 - iii) section 130, to the extent that it requires us to give any notice to you (notice by secured party of disposal of collateral);
 - iv) section 132(3)(d) (obligation of secured party to show amounts paid to other secured parties in statement of account);
 - v) section 132(4) (statement of account by secured party if it does not dispose of collateral within prescribed period); and
 - vi) section 135 (notice by secured party of retention of collateral).
- (h) You must take any steps we reasonably require to perfect or otherwise ensure the enforceability and priority of any security interest granted to us under the AWB Contract (as varied by the Production Advance Offer), including:
 - i) obtaining and giving any consents;
 - ii) producing and providing any receipts or information in respect of the Crop and the Commodity produced from the Crop or any other personal property that is subject to a security interest in our favour;
 - iii) signing or procuring the signing of any documents;
 - iv) facilitating registration of any security interest on the Personal Property Securities Register;
 - v) facilitating the giving of notice to any person, including any person who also has, or appears to have, a security interest over you, the Crop, the Commodity produced from the Crop or any other personal property that is subject to a security interest in our favour; and
 - vi) facilitating the exercise of our rights in enforcing any security interest.

7. CONFLICT

In the event that there is any inconsistency between the terms of this Addendum and the rest of an AWB Contract (including, for the avoidance of doubt, any special terms that vary general terms and conditions), the terms of this Addendum prevail to the extent of the inconsistency.

8. ENTIRE AGREEMENT

An AWB Contract (as varied by the relevant Production Advance Offer) comprises the entire agreement between you and us with respect to the subject matter of the documents.

9. SURVIVAL

Clauses 3, 4, 5 and 6 of this Addendum will continue to apply after expiration or termination of an AWB Contract (as varied by the relevant Production Advance Offer).

10. INTERPRETATION AND DEFINITIONS

- (a) Unless indicated otherwise in this Addendum, terms used but not defined in this Addendum have the same meaning given to those terms in the relevant AWB Contract.
- (b) Capitalised terms used in this Addendum have the following meaning:

AWB Contract means the Pool Contract or eligible contract regarding the purchase of grain or Commodity by Cargill Australia Limited (ACN 004 684 173) as specified in a Production Advance Offer.

AWB General Terms & Conditions means the general terms and conditions of an AWB Contract to which Cargill Australia Limited is a party, as varied from time to time.

AWB Basis Contract General Terms & Conditions means the general terms and conditions of an AWB Contract to which Cargill Australia Limited is a party, as varied from time to time.

Commitment Tonnage Contract means a contract under which a party agrees in advance to deliver and sell a specified contracted tonnage of a Commodity, being greater than or equal to the minimum tonnage specified in that contract.

Commodity means grain in the case of a Pool Contract or has the meaning given in the AWB General Terms & Conditions or the AWB Basis Contract General Terms & Conditions in all other cases.

Crop means the crops planted to produce the Contracted Tonnage specified in the AWB Contract.

Pool Contract means the relevant Commitment Tonnage Contract regarding the purchase of grain between you and AWB Harvest Finance Pools Pty Ltd as trustee of the 2018/19 AWB Pools Trust (ABN 53 631 471 748).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Production Advance in respect of an AWB Contract means the GST inclusive amount of money specified as the 'production advance amount' in a Production Advance Offer referable to the AWB Contract(s) in that Production Advance Offer, and, at a particular time, is such amount less any amounts 'repaid' in accordance with clause 3 of this Addendum. For the avoidance of doubt, the amount of the Production Advance is subject to clause 5 of this Addendum.

Production Advance Application Form means the application made by you seeking eligibility for a Production Advance, in the form approved by us from time to time.

Production Advance Fee means the fee for provision of a Production Advance, as specified in a Production Advance Offer or as otherwise Published by us from time to time.

Production Advance Offer means a written offer from us to you in which we, in response to your Production Advance Application Form and Production Advance Request Form, offer to pay the Production Advance in relation to the AWB Contract(s) specified in the Production Advance Offer on the terms and conditions of that offer, including this Addendum and the terms and conditions of the specified AWB Contracts.

Production Advance Request Form means the application made by you to us in the form approved by us from time to time, in which you specify the eligible Commitment Tonnage Contracts with us in respect of which you seek a Production Advance.

11. POWER OF ATTORNEY

- (a) You (and if there is more than one of you, each of you) irrevocably appoint us and each of our officers, employees and agents, severally, as your attorneys to do in your name all acts and things:
 - i) that you are obligated to do under an AWB Contract (as varied by the relevant Production Advance Offer); or
 - ii) which you have authorised us to undertake on your behalf, including the signing of any document, amending or supplementing an AWB Contract (as varied by the relevant Production Advance Offer);
 - iii) required or necessary to give effect to any assignment, transfer or novation; or
 - iv) which, in our opinion is necessary or desirable in connection with the exercise of our rights, powers and remedies under an AWB Contract (as varied by the relevant Production Advance Offer).
- (b) You will at all times ratify and confirm whatever the attorneys do, or cause to be done, in exercising the rights granted under this clause 11.
- (c) We will not exercise any rights we have or may have under clause 18.3 (Assignment and Variation) of a relevant Pool Contract or under clause 27 (Assignment) of the AWB General Terms and Conditions or the AWB Basis Contract General Terms & Conditions if we consider that to do so would be unfair to you having regard to applicable consumer laws.

I have read and understand this Addendum and agree to the terms and conditions contained in this Addendum.

ACCEPTANCE AND ACKNOWLEDGEMENT

By signing this Addendum you acknowledge, declare and confirm that you have read this Addendum and agree to be bound by the terms of the Production Advance Offer(s) including this Addendum.

If you are an individual/ sole proprietor

Signature:
✕

Print
Name: _____

Date: / /

Signature of Witness
✕

Print
Name: _____

Date: / /

If you are a partnership

Signature:
✕

Signature of partner

Print
Name: _____

Date: / /

Signature:
✕

Signature of partner

Print
Name: _____

Date: / /

Signature of Witness:
✕

Print
Name: _____

Date: / /

If you are a company/ corporate partner/ corporate trustee (please insert the name in the space provided below)

Executed in accordance with section 127 of the Corporations Act 2001 (Cth) by

Signature:
✘

Signature of director

Name of director (print)

Signature:
✘

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Signature of Witness:
✘

Print
Name:

Date: / /