

AWB Market Advantage (NPE) Special Terms

The Market Advantage pricing mechanism described in these terms and conditions is issued by Cargill Australia Limited (ABN 42 004 684 173) trading as AWB (**AWB**).

These **Market Advantage Terms and Conditions (Special Terms)** form part of the AWB Grower Purchase Contract (the **Purchase Contract**) which describes the terms of *your* sale of the commodity described therein. The terms of the **Purchase Contract** incorporate the AWB General Terms and Conditions and any relevant Additional Terms and Conditions for the underlying commodity. These **Special Terms** amend the **Purchase Contract** only with respect to the provisions contained in these **Special Terms**, and all other terms and conditions in the **Purchase Contract** remain unchanged and continue in full force and effect. Italicised terms used but not defined in these **Special Terms** have the same meaning as set out in the **Purchase Contract**.

1. Interpretation

The following definitions apply in these Special Terms:

“Advance” has the meaning given in clause 2(a).

“Advance Payment Percentage” means the percentage as set out beside the heading “Advance Payment Percentage” in the **Purchase Contract**.

“Advance Price” means the price as set out beside the heading “Advance Price” in the **Purchase Contract**.

“Delivery Date” means the date on which the *Quantity* is delivered at the *Delivery Location*.

“Established Price” has the meaning given in clause 2(b).

“Excess Amount” has the meaning given in clause 2(f).

“Pricing Date” means the date as set out beside the heading “Pricing Date” in the **Purchase Contract**.

“Quantity” means the quantity of a particular *Commodity* (in metric tonnes) as set out beside the heading “Quantity” in the **Purchase Contract**.

“Nominated Tonnage” has the meaning given in clause 2(b).

“Washout Free Tonnes” has the meaning given in clause 3(e).

2. Price and payment

- a) The cash payment advance (**Advance**) to be paid by AWB to *You* on delivery of the *Quantity* will be an amount equal to the *Advance Payment Percentage* multiplied by the *Advance Price* multiplied by that part of the *Delivered Tonnage* that has not yet had an *Established Price* established in respect of it in accordance with clause 2(c).

Subject to clause 2(g), AWB will pay to You the Advance following the transfer of title of the Commodity to AWB in accordance with clause 5.2 of the Purchase Contract.

- b) On any *Business Day* following the date of the **Purchase Contract** up to and including the *Pricing Date*, *You* may advise AWB that a price be established at the current AWB daily published price for the *Commodity* and *Grade* at *Your Delivery Location* as the price for 100 or more metric tonnes of the *Delivered Tonnage* as specified by *You* (**Nominated Tonnage**). Upon confirmation in writing by AWB of the advised price (or of a higher price agreed between AWB and *You*), the price specified in the confirmation will be the final price for that *Nominated Tonnage* (**Established Price**).
- c) During the period commencing on and from the date of the **Purchase Contract** up to and including the *Pricing Date*, *You* may set the *Established Price* up to a maximum of 3 times provided that:

- i. the aggregate of the proportions (as a percentage) of the *Delivered Tonnage* in respect of which the *Established Prices* apply equals 100%;
 - ii. the proportion (as a percentage) of the *Delivered Tonnage* nominated by *You* in respect of an *Established Price*, when added together with all previous proportions nominated by you cannot exceed 100%. To the extent that it does, it shall be reduced so that the aggregate of all proportions allocated shall equal 100%;
 - iii. if the aggregate of the proportions (as a percentage) of the *Delivered Tonnage* in respect of which the *Established Prices* apply is less than 100%, and *You* do not establish an *Established Price* for the remaining balance on any *Business Day* on or before the *Pricing Date*, then the *Established Price* for the remaining balance shall be determined by AWB in its sole discretion.
- d) Subject to clauses 2(c) (i), (ii) and (iii), the *Established Price* set by *You* and confirmed by AWB in writing in respect of all or any proportion of the *Delivered Tonnage* shall be irrevocable and cannot be changed by *You*.
- e) If the *Established Price* is established before the *Delivery Date*, then the amount payable by AWB to *You* in respect of that *Established Price* is calculated as follows:
- Established Price x Nominated Tonnage*
- Subject to clause 2(g), AWB will pay this amount to You following the transfer of title of the Commodity to AWB in accordance with clause 5.2 of the Purchase Contract.*
- f) If the *Established Price* is established on or after the *Delivery Date*, then the amount payable by AWB to *You* in respect of that *Established Price* is calculated as follows:
- (Established Price – (Advance Price x Advance Payment Percentage)) x Nominated Tonnage*
- provided that if the amount calculated in accordance with the above formula is a negative number, that amount must instead be paid by You to AWB (Excess Amount).*
- g) Payment terms for any amount:
- i. payable by AWB to *You* in accordance with clause 2(a) or 2(e): as per the *Payment Terms* after the *Delivery Date*
 - ii. payable by AWB to *You* in accordance with clause 2(f): 7 days after the date of establishment of the *Established Price*; and
 - iii. payable by *You* to AWB in accordance with clause 2(f). 14 days after the date of AWB's invoice in respect of that amount

3. Crop shortfall – Adverse Environmental Conditions

- a) Notwithstanding any other provision of the *Purchase Contract*, the following provisions of this clause 3 apply if *Your Commodity* crop is directly affected by drought, flooding, pests or hail which is beyond *Your* control (**Adverse Environmental Conditions**) so as to render it impossible for *You* to deliver all or part of the *Contracted Tonnage*.
- b) If *You* expect to be unable to deliver the *Contracted Tonnage* solely due to the occurrence of one or more *Adverse Environmental Conditions*, *You* must:
- i. notify AWB within 48 hours of becoming aware of the *Adverse Environmental Conditions*;
 - ii. notify AWB no later than the *Delivery Date* of the estimated tonnes to be delivered and any estimated shortfall to the *Contracted Tonnage*;
 - iii. if requested by AWB, provide evidence, to the reasonable satisfaction of AWB, of the occurrence and adverse impact of the *Adverse Environmental Conditions* on the relevant *Commodity*; and
 - iv. use *Your* reasonable endeavours to mitigate the impact of the *Adverse Environmental Conditions* on the *Contracted Tonnage*.
- c) *You* agree that AWB, acting reasonably, will be the final arbiter in respect of the matters relevant to this clause 3 and its determinations will be final and binding on *You*.
- d) If AWB determines that the b) *Adverse Environmental Conditions* apply to *You* in respect of the *Contracted Tonnage*, at harvest *You* must:
- i. deliver all of the *Contracted Tonnage* less the amount AWB determines in its absolute discretion to be the *Washout Free Tonnes* applicable to *You*; and
 - ii. confirm any *Washout Free Tonnes* immediately following the completion of harvest;
 - iii. in such circumstances, provided that *You* have otherwise complied in all respects with the *Purchase Contract*, *You* will not be required to sell or pay an amount in respect of, nor will AWB be required to buy from *You*, any the *Commodity* to the extent of the *Washout Free Tonnes*.

e) For the purposes of this clause 3, "**Washout Free Tonnes**" is the quantity in tonnes determined by *AWB* in its absolute discretion, being a quantity not greater than that part of the *Contracted Tonnage* that, immediately following the completion of harvest, has not yet had an *Established Price* established in respect of it in accordance with clause 2(c).

f) Any applicable federal, state or industry levies or taxes will be deducted from the *Contract Price*.

4. Delivery Location

A *Delivery Location* is to be nominated at the time of contracting, but if the nominated site is full or unavailable, delivery will be accepted at the next available *AWB* approved site (at *AWB*'s discretion).

5. Interest

Clause 22.4 of the *Purchase Contract* applies to the *Advance* and the *Excess Amount* with the following modification:

i. in relation to the *Advance*, no amount of interest is payable on the *Advance* or any part of it that is determined to be payable to *AWB* in accordance with 22.4; and

ii. in relation to the *Excess Amount*, no amount of interest is payable on the *Excess Amount* or any part of it provided that the *Excess Amount* is paid in accordance with clause 2(g)(iii) of these *Special Terms*. To the extent that any part of the *Excess Amount* remains unpaid immediately after expiration of the period specified in clause 2(g) (iii) of these *Special Terms*, *AWB* may recover, in addition to that amount, interest at the rate determined in accordance with clause 22.4 calculated daily on and from the day immediately after the expiration of the period in clause 2(g) (iii) of these *Special Terms* up to the day immediately prior to the day on which that amount plus interest is repaid.

6. Service Fee

A service fee of \$5 (plus GST) per metric tonne for Canola will be and \$3 (plus GST) per metric tonne for Wheat and Barley:

- a) deducted from any amount payable by *AWB* to *You* under clause 2(a), 2(e) or 2(f); or
- b) added to any amount payable by *You* to *AWB* under clause 2(f).

7. Conflict

In the event that there is any inconsistency between the terms of these *Special Terms* and the *Purchase Contract*, the terms of these *Special Terms* prevail to the extent of the inconsistency.

8. Incorporation

These *Special Terms* are incorporated into the *Purchase Contract* and do not operate as a stand-alone agreement.


9. Other

The *Purchase Contract*, including these *Special Terms*, comprise the entire agreement between *You* and *AWB* with respect to the subject matter of the documents. The *Purchase Contract* including these *Special Terms* may not be amended, or any rights or obligations granted waived, without a signed written agreement between the parties.

10. Notices

Any notices or instructions provided by *You* on the contract must be by facsimile, telephone, or electronic mail during normal business hours. An instruction will be accepted when *AWB* provides you with written confirmation of the instruction.

I have read and understand these *Special Terms* and agree to the terms and conditions contained herein.

On behalf of Cargill Australia Limited (ABN 42 004 684 173) trading as AWB: Name Date James Massina	Your Signature: Name _____ Date _____
  Signed	Signed