

Plum Grove Mitsui Western Australian Grain Pool  
General Terms & Conditions

14/12/2011

For  
"Plum Grove Mitsui Noodle Pool"

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## 1. Definitions & Interpretation

### 1.1 Definitions

Advance Payment Option means each of the payment options set out in clause 10.1 of These Terms

Authorise, Authorised and Authorising means (in the context of a Contract Confirmation) signing or otherwise communicating acceptance, affirmation or authorisation by conduct, word, or document.

BHC means a bulk handling company approved by the Buyer from time to time and notified as approved on the Website.

Buyer means PGM GRAIN PTY LTD (ABN 85 153 489 984)

CBH Grower Number means the number assigned by CBH Group (ABN 29 256 604 94) to the Seller for the purposes of invoicing, payment, and shareholding eligibility for CBH Group.

Contract means the contract formed between the Buyer and the Seller and set out in a Contract Confirmation in combination with These Terms.

Contract Confirmation means any method by which the Seller communicates to the Buyer that it intends to sell a quantity of grain to the Buyer on the terms of the Grain Pool (either then on offer, or next to be offered) by the Buyer whilst These Conditions are publicly expressed to apply to the Grain Pool. For the absence of doubt:

- (a) any document or set of documents or electronic instructions directing a BHC to transfer a delivery of grain at a BHC Silo to the account of the Grain Pool will constitute a Contract Confirmation.
- (b) any Guaranteed Access Contract between the Buyer and the Seller will constitute a Contract Confirmation.

Deliver and Delivery mean actual transfer of full legal title to, or possession of, physical grain from the Seller to the Buyer by:

- (a) in the case of a physical delivery of Grain directly to the account of the Buyer with a BHC, when that Grain is unloaded in accordance with the instructions of a representative of a BHC;
- (b) in the case of an In Store Transfer of the Grain, when a BHC notifies the Buyer that it now holds the Grain on behalf of the Buyer and not for the Seller.

Encumbrance means any security for the payment of money or the performance of obligations, including any mortgage, charge, hypothecation, lien, crop lien, pledge, trust, personal property security or any other interest in or over property.

Encumbrancer the holder of an Encumbrance over the Grain the subject of a Contract.

Estimated Final Equity means the estimate of the Final Equity that the Buyer (in its absolute discretion in all respects) publishes on the Website from time to time

Estimated Pool Costs means, in respect of each Pool, the Buyer's best estimate of the amount payable under clause 9, per tonne of Grain delivered to that Pool.

Final Equity means the amount (excluding GST) per tonne of Grain on a free on board basis which is published by the Buyer on the Website following Final Distribution for the Pool.

Final Distribution means the distribution of the balance of the Price after taking into consideration all other payments made or to be made between the Seller and the Buyer.

Grain means the grain specified in a Contract Confirmation

Grade means each classification into which the Buyer divides Grain according to its qualities and characteristics, as is set out in the Contract Confirmation.

GST means goods and services tax as is imposed by the GST Law, or any other consumption based tax imposed upon the supply of the Grain by the government of the Commonwealth of Australia or any State or Territory of Australia.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Guaranteed Access Contract means a contract between the Seller and the Buyer guaranteeing the Seller access to a Pool on terms stipulated by the Buyer on its standard terms for such contracts.

Grain Pool means the Plum Grove Mitsui Noodle Pool for the type of grain (wheat or barley) delivered by the Seller

Grain Supplier Registration means the registration documents available from the Website and required by the Buyer to pay the Seller.

In Store Transfer means a transfer of beneficial ownership of grain within the books of account of a BHC, from the Seller to the Buyer.

Interim Distribution means a distribution of a portion of the Estimated Final Equity, to the credit of the Seller.

Interest Rate means the interest rate published from time to time under the heading "Pool Interest Rate" in the "Estimated Final Equities" section of the Website calculated daily and charged or compounded monthly. Any increase or decrease in the Interest Rate will apply immediately from the date on which it is published at the above location.

Mitsui means Mitsui & Co. (Australia) Ltd (ACN 004 349 795)

NGR means the register of grower details operated by National Growers Register Pty Ltd

Nominated Pool Return means the Nominated Pool Return that the Buyer (in its absolute discretion in all respects) publishes on the Website from time to time.

Pool means a quantity of grain aggregated by the Buyer from one or more sources (sellers) which grain is determined by the Buyer to be generally homogenous according to relevant location, harvest time, characteristics and Grades and which the Buyer will collectively market and sell.

Pool Costs means for each Pool, the aggregate of the fees set out in clause 9 (including the Pool Management Fee) plus any applicable GST

Pool Management Fee means the fee described in clause 9.2

PPSA means the Personal Property Securities Act (2009) (Cth) as amended or replaced from time to time.

Price means the total consideration payable by the Buyer to the Seller in respect of any particular Contract.

Privacy Act means Privacy Act 1988 (Cth)

Quality means variations in Grade characteristics identified from time to time on the Website, which are material to the market price of the relevant Grade of Grain (either positively or negatively)

Season means the annual grain harvesting and delivery season for any particular Grain

Seller means the person named in the Contract Confirmation as the Seller of the Grain to be supplied to the Buyer

These Conditions means the general terms and conditions of the Grain Pool set out in this document.

Website means <http://www.plumgrove.com.au/Pools/WAPools.aspx>

## 1.2 Interpretation

In These Terms, the Grain Supplier Registration and the Contract Confirmation, unless the contrary appears;

- (a) a reference to the singular includes the plural and vice versa;
- (b) a reference to a natural person includes a reference to a body corporate and a reference to a company includes any body corporate;
- (c) words denoting gender will include all genders;
- (d) a reference to a clause or paragraph is a reference to a clause or paragraph in These Conditions;
- (e) references to any statute include a reference to that statute as amended, modified or replaced and include orders, ordinances, regulations, rules and by-laws made under or pursuant to that statute;
- (f) "includes" and "including" are not words of limitation;

- (g) where a word or phrase is given a particular meaning in this document, other parts of speech and grammatical forms of that word or phrase have corresponding meanings

## 2. Interaction with Contract Confirmation

### 2.1 Contract Confirmation

The terms of any Contract Confirmation may only include:

- (a) particulars of the load or loads of grain being sold by the Seller to the Buyer, including:
  - (i) CBH Grower Number of the Seller;
  - (ii) Seller name and all other details set out in the Seller's Grain Supplier Registration;
  - (iii) particulars of the individual BHC grain weigh bridge tickets to be transferred to the Buyer and all information set out in those weigh bridge tickets;
- (b) particulars of any Advance Payment Option selected by the Seller.

The Contract Confirmation will not incorporate any other data, terms or information communicated by the Seller to the Buyer or any agent of the Buyer except to the extent that the information is incorporated into one or more documents which themselves form part of the Contract Confirmation. In the event of any inconsistency between These Terms and a Contract Confirmation, These Terms will prevail to the extent of the inconsistency.

### 2.2 Entire Agreement

The terms of each Contract Confirmation between the Buyer and the Seller and These Terms together form an entire and separate Contract between the Buyer and the Seller. For the absence of doubt, the Grain Trade Australia ("GTA") standards are hereby excluded, as is access to GTA arbitration.

## 3. Purchase of Grain

### 3.1 Agreement to Buy & Sell

The Buyer agrees to buy and the Seller agrees to sell the Grain of such Grades and in such quantity or quantities as is set out in the Contract Confirmation for the Price.

### 3.2 Price

The Price will be determined according to the method set out in clause 8.2(c).

### 3.3 Payment

The Buyer will pay the Seller for the Grain the subject of a Contract, at the time or times determined according to These Conditions. Each obligation of the Buyer to

make payment by any particular date, will in each case be conditional upon the Seller having provided the Buyer with complete and accurate details of all information needed to complete the Buyer's standard supplier registration document, including all information needed by the Buyer in order to issue a recipient created tax invoice. That is, the Buyer may withhold payment until the Seller provides all information necessary for the Buyer to make payment in compliance with its legal and contractual obligations and reasonable administrative and accounting requirements.

#### 4. Seller Warranties & Indemnities

##### 4.1 Warranties

Subject to clause 4.2, the Seller and each person Authorising a Contract Confirmation on behalf of the Seller, represents and warrants to the Buyer, as an express representation intended to induce the Buyer into the Contract that:

- (a) the Seller has good right and title to the Grain and is in all respects able to convey good, proper and unencumbered title to the Grain to the Buyer;
- (b) that the Grain is not subject to any Encumbrance;
- (c) that the Seller is solvent and able to pay all of its debts as and when they fall due;
- (d) that title to the Grain will pass to the Buyer according to clause 6;
- (e) that the Grain meets the quality and other standards prescribed by the Buyer for the Grades and volumes set out in the Contract Confirmation;
- (f) that if the Seller holds the Grain as trustee of a trust, the Seller has proper authority to sell the Grain to the Buyer free of encumbrances;
- (g) that all particulars supplied by the Seller and set out in the Contract Confirmation are true, correct and not misleading in any way and that the Seller will promptly advise the Buyer of any material change in any of those particulars;
- (h) the Seller has disclosed to the Buyer all information which a reasonable person in the position of the Buyer would consider relevant to their decision to purchase the Grain or to the exercise of any right or power under any Contract;
- (i) if Delivery has been effected by an In Store Transfer, that the BHC holds the Grain specified in the Contract Confirmation.
- (j) that the Seller will immediately complete return the Grain Supplier Registration and to the Buyer.

Each warranty set out in this clause 4.1 is made upon the formation of each Contract and repeated and affirmed on each occasion that the Seller delivers Grain to the Buyer. The Warranty in clause 4.1(h) is an obligation of continuous disclosure,

requiring the Seller to inform the Buyer immediately upon becoming aware of any relevant circumstance or thing.

#### 4.2 Encumbrances

If the Grain is subject to any Encumbrance:

- (a) the Seller will not be in breach of clause clauses 4.1(a) or 4.1(b) to the extent that it has fully disclosed the Encumbrance, its nature and the details of the Encumbrancer to the Buyer in the Contract Confirmation; and
- (b) the Seller unconditionally and irrevocably authorises and directs the Buyer to:
  - (i) deduct from any amount payable to the Seller, the total of:
    - (A) the amount secured by any Encumbrance over the Grain and pay that amount to the relevant Encumbrancer; and
    - (B) the Buyer's reasonable calculation of its costs of dealing with and discharging the Encumbrances attaching to the Grain;
  - (ii) rely on the information provided by any Encumbrancer for the purposes of determining the payment necessary to discharge an Encumbrance and calculating any payment to be made under clause 4.2(b)(i)(A).
- (c) the Seller releases the Buyer from any claim, risk, liability or demand arising in connection with any deduction or inquiry made by the Buyer under clause 4.2(b).

#### 4.3 Indemnities

The Seller and each person Authorising a Contract Confirmation on behalf of the Seller hereby jointly and severally undertakes to indemnify and forever hold the Buyer harmless against any loss, cost, demand, suit, liability or other adverse consequence arising from or in connection with any:

- (a) breach by the Seller of any provision of any Contract; and without limitation;
- (b) claim by any person claiming to hold an Encumbrance over the Grain, whether disclosed to the Buyer, or not;
- (c) any breach of any warranty set out in clause 4.1;
- (d) any incorrect, misleading or deceptive information provided by the Seller, or any person acting for or on behalf of the Seller, to the Buyer;
- (e) any failure by the Seller or any person acting for or on behalf of the Seller, to disclose any information to the Buyer, which a reasonable person in the position of the Buyer would have considered relevant to their decision to purchase the Grain or to the exercise of any right or power under any Contract;

- (f) any claim, cost, loss or damage arising out of any circumstance in connection with the collection or return of Grain rejected by the Buyer under clause 4.4.

#### 4.4 Right to Reject Grain

If any Grain of the Seller the subject of a Contract is subject to any Encumbrance (whether disclosed by the Seller to the Buyer or not) or the Buyer becomes aware that:

- (a) any person claims an Encumbrance over the Grain, whether registered or not; or
- (b) the Seller has breached any warranty set out in clause 4.1; or
- (c) the Seller has committed any material breach of a Contract; or
- (d) the Grain is not of a Grade or grain type acceptable to the Buyer;

the Buyer may at any time which is within thirty (30) days after the date on which the Buyer becomes aware of the relevant circumstance, elect to reject the Seller's Grain. If the Buyer notifies the Seller under this clause 4.4 that it has rejected the Seller's Grain:

- (e) the Seller must at its own cost collect its Grain, or if the Grain has been combined or comingled with other Grain, such other grain of the same Grade and quantity as the Buyer determines, from the location at which the BHC is then storing the relevant Grain; and
- (f) if the Seller fails to collect its grain within seven (7) days of receiving notice under this clause 4.4, the Buyer may deliver the Seller's grain to the Seller, less such portion of the Grain as the Seller considers is reasonable to cover its costs of the processing and returning of the Seller's Grain (and the Seller hereby grants to the Buyer an irrevocable license to enter into the Seller's property to deliver and return the Grain); and
- (g) subject to the Buyer's obligation to return the Grain, the Seller's rights under the Contract relating to the Grain will be entirely discharged and the Seller will have no further claim against the Buyer under the Contract.

#### 4.5 Acceptance of Grain

The Buyer will be taken to accept any Grain the subject of a Contract:

- (a) when the Buyer expressly notifies the Seller that the Buyer has accepted the Grain; or
- (b) fourteen (14) days from the date on which the Grain is Delivered to the Buyer; or
- (c) if the Buyer makes a payment to the Seller in respect of or in connection with the Grain;

BUT such acceptance is at all times subject to the Buyer's right to reject the Grain under clause 4.4, whether such right accrues to the Buyer before or after deemed acceptance under this clause 4.5.

## 5. Grain Delivery, Quality & Inspection

### 5.1 Delivery of Grain

All Grain the subject of a Contract must be delivered by the Seller to a silo operated by a BHC, at the cost of the Seller. If the Seller purports to deliver Grain to a Pool and that Grain does not meet the requirements as to Grade, Quality or grain type published from time to time by the Buyer on its Website, or the delivery is made other than in accordance with the Contract, the Seller will bear all of the Buyer's costs associated with rectifying or rejecting that delivery.

### 5.2 Inspection of Grain

The Buyer may (itself or by its authorised representative) inspect the Grain to determine its weight, Grades and any Quality variations within given Grades. The Buyer's determination of Grade and Quality variations will be final and binding except in the case of manifest error. The weight of a delivery of Grain will be determined:

- (a) in the case of a physical delivery of Grain, by an approved weighing facility with the relevant BHC; and
- (b) in the case of an In Store Transfer of Grain, according to the original weigh bridge ticket supplied by the relevant BHC for that Grain.

The Buyer may reject any Grain that does not meet its published Grade requirements, or is delivered other than in accordance with a Contract or after the Buyer announces on the Website that it is no longer accepting contributions to the Pool .

### 5.3 Failure to Deliver Contracted Grain

If the Seller fails to deliver Grain to the Buyer in accordance with a Contract:

- (a) the Seller will remain liable to the Buyer for the Pool Management Fee that the Buyer would have been entitled to claim or charge in respect of the contracted volume of Grain, had the Seller delivered the Grain; and
- (b) the Buyer may also charge a contract administration fee, to cover its costs associated with the Buyer's entry into and default of the relevant contract; and
- (c) the Seller will indemnify and forever hold the Buyer harmless against any trading or operational loss, cost, exposure or risk incurred or suffered by the Buyer in connection with or as a consequence of the Seller's failure to deliver Grain.

The Seller will bear the Buyer's costs (including legal costs on a full indemnity basis) of recovering any sum owing to the Buyer under this clause 5.3, or otherwise in connection with the Seller's failure to deliver grain in accordance with a Contract.

## 6. Title & Risk

## 6.1 Title

Legal and beneficial title to all Grain the subject of a Contract will pass to the Buyer when the Grain is accepted by the Buyer in accordance with clause 4.5; BUT the Seller may not under any circumstances reclaim or repossess any Grain the subject of a Contract or rescind a Contract, prior to acceptance under clause 4.5.

## 6.2 Risk

Without prejudice to the Buyer's rights to recover any debt or sum from, or exercise any other right against the Seller under or in connection with These Terms, physical risk associated with all Grain the subject of a Contract will pass to the Buyer when the Grain is Delivered by the Seller. Market and credit risk associated with the Grain will remain with the Seller at all times.

## 7. Lien

### 7.1 Waiver of Lien

The Seller waives any claim to a lien or other form of Encumbrance over the Grain the subject of a Contract Confirmation, whether arising at law, equity, or otherwise.

## 8. Pool Establishment & Operation

### 8.1 Establishment of Pools

The Buyer will from time to time (generally each Season) operate a Pool for the marketing of Grain under the style of the Grain Pool. All grain purchased by the Buyer from any seller of Grain under a Contract (during the period that any given Pool remains open) will be contributed into the open pool and (subject to These Terms) treated equally with all other Grain so contributed.

### 8.2 Operation of Pools

The Seller acknowledges to the Buyer:

- (a) that the Buyer will operate one or more Pools in respect of grain of one or more Grades and will contribute the Grain to the Pool which the Buyer considers to be most consistent with the Grain.
- (b) the Buyer may:
  - (i) sell Grain contributed to a Pool at such times, in such manner, for such consideration and to such persons (including the Buyer or any entity associated with the Buyer); and
  - (ii) in respect of each Pool, use such risk management and hedging strategies and techniques; and
  - (iii) accept such quantity of grain into a given Pool; and
  - (iv) close any given Pool at such time and with or without such notice;

as the Buyer may determine in its absolute and unfettered discretion.

- (c) the Price payable to the Seller in respect of a particular Contract, will be the aggregate of the separate amounts payable by the Buyer to the Seller for each Grade and Quality of Grain delivered by the Seller under that Contract. The amount payable by the Buyer to the Seller per Pool, will be the Final Equity (on a “per tonne” basis) for each Pool multiplied by the total number of tonnes of grain delivered to that Pool by the Seller, less the Pool Costs. (on a per tonne basis)
- (d) the Buyer has no liability to the Seller arising out of or in connection with the exercise of its discretions set out in clause 8.2(b) and the Seller hereby releases the Buyer to the maximum extent possible at law, from any claim, loss, action, suit or demand that the Seller might have against the Buyer but for the operation of this clause 8.2(d).

### 8.3 Audit of Pools

The Buyer will cause each Pool to be audited within six (6) months of its Final Distribution and the Seller may obtain a copy of the audit report relating to any Pool into which the Grain has been contributed upon request.

## 9. Pool Costs

### 9.1 Pool Costs

All costs associated with the establishment, promotion, management and operation of the Pool will be accounted for as a cost to the Pool in determining the Final Equity. Those costs include, but are not limited to, costs associated with receipt, transport, transfer, insurance, storage, handling, outturn, distribution, finance, audit functions, underwriting and interest and any statutory and other levies. Pool costs also include all costs of complying searching, investigating and discharging securities on all Grain contributed to a Grain Pool, including but not limited to compliance with PPSA.

### 9.2 Pool Management Fees

The Pool Management Fee will be two point five percent (2.5%) of the total aggregate Final Equity for each Pool.

## 10. Advanced Payment Options

### 10.1 Options

The Seller may, prior to formation of a Contract, elect to receive a payment under that Contract in one of the following ways:

- (a) Harvest Loan – on the terms set out in clause 10.2;
- (b) Flexible Draw Down – on the terms set out in clause 10.3;
- (c) Harvest Advance – on the terms set out in clause 10.4;
- (d) Deferred Payment – on the terms set out in clause 10.5;

## 10.2 Harvest Loan

A "Harvest Loan" payment is:

- (a) a loan payable by the Buyer to the Seller;
- (b) in an amount calculated according to the formula in clause 10.6(a); and
- (c) otherwise on the loan terms set out in clause 10.6.

## 10.3 Flexible Draw Down

A "Flexible Draw Down" is:

- (a) a loan facility to be made available by the Buyer to the Seller; and
- (b) with a facility limit set according to the formula in clause 10.6(a); and
- (c) otherwise on the terms set out in clause 10.6.

## 10.4 Harvest Advance

A "Harvest Advance" is a part payment of the Price by the Buyer to the Seller, on the following terms:

- (a) the amount of the actual payment will be the amount determined by the formula set out in clause 10.7(a); and
- (b) an amount calculated according to the formula in clause 10.7(b) will be offset against the Price; and
- (c) The Buyer will pay a Harvest Advance, to the Seller on or before the date being twelve (12) days from the date of Delivery of the last of the relevant Grain (if that day is a Sunday) or otherwise from the Sunday in the calendar week following the date of Delivery of the last of the relevant Grain.

## 10.5 Deferred Payment

A "Deferred Payment" is a part payment of the Price by the Buyer to the Seller, on the following terms:

- (a) the amount of the actual payment will be the amount determined by the formula set out in clause 10.7(a); and
- (b) an amount calculated according to the formula in clause 10.7(b) will be offset against the Price; and
- (c) The Buyer will pay the Deferred Payment, to the Seller within fourteen (14) days of the first day of the month of July next following the relevant Delivery.

## 10.6 Loan Terms

- (a) The maximum amount of a Harvest Loan, or the facility limit of a Flexible Draw Down, will be an amount calculated as follows:

$$A = [(NPR \times T) \times P] - (EPC \times T)$$

Where:

- A is the maximum amount to be loaned to the Seller or the facility limit (as the case requires) in respect of the relevant Grain;
- NPR is the Nominated Pool Return of Grain delivered excluding GST (adjusted according to its constituent Grades and Qualities);
- T is the number of tonnes of Grain delivered by the Seller into the Pool;
- P is the then current percentage draw down permitted by the Buyer (and published on the Website) for Harvest Loans or Flexible Draw Downs as the case may be; and
- EPC is the Estimated Pool Costs for the Pool excluding GST
- (b) The Buyer will pay a Harvest Loan to the Seller on or before the date being twelve (12) days from the date of Delivery of the last of the relevant Grain (if that day is a Sunday) or otherwise from the Sunday in the calendar week following the date of Delivery of the last of the relevant Grain.

Flexible Draw Down payments will be made on the later of

- i) The due date for payment of Harvest Loans; and
- ii) 7 business days from the date of request of the Flexi Loan payment,

With respect to ii) above, a request for earlier payment will be accommodated whenever practicable.

- (c) Interest will be payable on the outstanding maximum daily balance of the loan at the Interest Rate. For the purposes of this clause 10.6(c) a sum will only be outstanding once it has been drawn by the Seller.
- (d) If the Harvest Loan or the amount drawn on a Flexible Draw Down exceeds the Price payable to the Seller in respect of the particular Contract:
- (i) the amount of the excess will be immediately repayable by the Seller to the Buyer, with or without demand; and
  - (ii) the Buyer may offset any amount owed to the Buyer by the Seller against any other amount owed by the Seller to the Buyer under any other contract or otherwise.

## 10.7 Payment Terms

- (a) The maximum amount of a Harvest Advance or Deferred Payment, will be an amount calculated as follows:

$$A = [(NPR \times T) \times P] - (EPC \times T)$$

Where:

- A is the amount to be paid to the Seller in respect of the relevant Pool including GST;
- NPR is the Nominated Pool Return for the relevant Pool including GST;
- T is the number of tonnes of Grain delivered by the Seller into the relevant Pool;
- P is the then current percentage draw down permitted by the Buyer (and published on the Website) for Harvest Advances or Deferred Payments as the case may be; and
- EPC is the Estimated Pool Costs for the Pool excluding GST

- (b) If the Seller elects to take up a Harvest Advance the amount to be offset against the Price will be the total amount of the Harvest Advances made ("the Paid Sum") plus an amount of notional interest calculated on the aggregate daily balance of the Paid Sum at the Interest Rate. Any Interim Distribution paid by the Buyer will be taken to offset the then outstanding balance of the Paid Sum.
- (c) Deferred Payments are treated as in 10.7(b) above for Harvest Advances, save that where the offsetting amount results in a negative difference (that is, when any Interim Distribution precedes a Deferred Payment) the Price will be increased by a notional amount at four percent (4%) per annum less than the Interest Rate.

## 10.8 Failure To Select Option

If in the Contract Confirmation establishing a Contract the Seller does not elect to take up an Advance Payment Option, the Seller will be deemed to have elected to receive the Price only by way of pool distributions under clause 11.

## 10.9 Underwriting

The Seller may elect to have its returns from the Pool underwritten by the Buyer. The terms of such underwriting will be set out on a separate underwriting agreement between the Buyer and the Seller which must be Authorised by the Buyer and delivered to the Buyer BEFORE OR WITH delivery of the Grain to the Buyer. Any underwriting agreement delivered to the Buyer after delivery of the relevant Grain, will not bind the Buyer. No application for underwriting will bind the Buyer until the Buyer communicates acceptance to the Seller.

## 11. Pool Distributions

### 11.1 Interim Distributions

The Buyer may make one or more interim distributions from a Pool. Such distributions may be paid to the Seller or offset against any sum owing by the Seller to the Buyer or paid to any Encumbrancer, as the Buyer reasonably determines.

#### 11.2 Final Distributions

The Buyer will determine the Final Distribution to be made from the Pool, after sale of all Grain forming part of the Pool and payment of all Pool Costs. The Seller hereby authorises (but does not oblige) the Buyer to pay the Final Distribution in satisfaction of:

- (a) any claim by any Encumbrancer known to the Buyer; and
- (b) in discharge of any sum owing by the Seller to the Buyer;

before payment of any surplus to the Seller. The Buyer will not be liable to the Seller in respect of any loss associated with any delay in the declaration or payment of a Final Distribution. The Buyer will be under no duty to enquire into the existence or bona fides of any Encumbrancer or any person who claims to be an Encumbrancer.

#### 11.3 Contested Distributions

If the Seller disputes the right of any person who purports to be an Encumbrancer, to any security interest in or over the Grain or the proceeds of sale of the Grain, or a dispute arises as to the priority of interest of two or more Encumbrancers, the Buyer may discharge its responsibilities to the Seller in respect of a Final Distribution by paying the disputed sum into:

- (a) court; or
- (b) a bank account in the joint names of the Seller and the disputed Encumbrancer.

The Buyer may deduct its reasonable legal and other expenses associated with taking any action under this clause 11.3, from the disputed sum prior to paying out the balance of the disputed sum.

### 12. Goods & Services Tax

#### 12.1 In this clause 12, the term "Base Payments" means:

- (a) any payment of the Price required to be made by the Buyer to the Seller under a Contract; and
- (b) Pool Management Fees; and

BUT does not mean:

- (c) a payment to be made under clause 10.

#### 12.2 Unless otherwise expressly stipulated, all base payments ("Base Payments") specified in These Terms are exclusive of GST.

#### 12.3 If a party is liable under the GST law for the payment of any GST in respect of the receipt of any Base Payment, the the Base Payment must be calculated in a manner

that includes the GST payable (“the Adjusted Base Payment”) calculated in accordance with the following formula:

$$ABP = BP + (BP \times R)$$

Where: ABP is the Adjusted Payment;

BP is the Payment;

R is the rate of goods and services tax specified in the “A New Tax System (Goods and Services Tax Imposition - General) Act 1999”.

12.4 The party liable to make the Base Payment must pay the Adjusted Base Payment calculated under clause 12.3 in the same manner and at the same time as the party is required to pay the Base Payment.

### 13. Privacy

#### 13.1 Privacy

The Buyer hereby acknowledges that it is a “record keeper” for the purposes of the Privacy Act and, subject to These Terms, undertakes to adhere to the terms of the Privacy Act in respect of its treatment of any records of the Seller.

#### 13.2 MITSUI

The Seller hereby acknowledges that the Buyer operates grain pools in Western Australia as a contractor to Mitsui. The Seller hereby irrevocably consents to the Buyer providing to Mitsui:

- (a) a copy of each Contract Confirmation between the Buyer and the Seller,
- (b) information pertaining to all transactions or relevant events occurring or expected to occur in connection with each Contract, including but not limited to:
  - (i) details of the performance of any grain pool;
  - (ii) any breach of any Contract by the Seller;
  - (iii) details of the timing and amounts of any payments made by the Buyer to the Seller under any Contract;
  - (iv) Seller’s CBH Grower Number and any associated information held by Mitsui.

#### 13.3 Disclosure of Contracts

The Seller hereby authorises the Buyer to disclose the existence and terms of any Contract to the Buyer’s bank, lending institution, financier, accountant, taxation advisor or legal advisor.

## 14. General

### 14.1 Notices

All notices notifications offers requests consents demands and other documents of communications authorised or required under a Contract must be in writing and delivered personally or sent by prepaid letter, or facsimile and will be deemed to have been duly given or made when delivered (in the case of personal delivery) or two (2) days after posting (in the case of letter) and the day following the date of dispatch (in the case of a facsimile) and in each case addressed to the party at its address as set out:

- (a) In the case of delivery to the Seller, to the Seller's address set out in the Contract Confirmation; or
- (b) In the case of delivery to the Buyer, to the Buyer's address for notices as published on the Website on the date of dispatch of the notice.

A notice in respect of a Pool which is published on the Website, will be effective on the date specifically set out in These Terms and in the absence of specific treatment of the notice or type of notice, seventy two (72) hours after the moment of posting on the Website.

### 14.2 Governing Law

This document and each Contract will be governed by, and construed in accordance with, the laws of the State of Western Australia and the applicable laws of the Commonwealth of Australia in force from time to time, and the Parties agree to submit to the non-exclusive jurisdiction of their courts.

### 14.3 Force Majeure

If the performance of any Contract, or of any obligation hereunder is prevented, restricted or interfered with by reason of fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies or war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or representative thereof or any other acts whatsoever beyond the reasonable control of a party hereto, then:

- (a) The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; and
- (b) The other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with,

PROVIDED THAT the party so affected shall use its best efforts to avoid and to remove such causes of non-performance and both parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed. This clause 13.3 will not apply to the Seller's obligations under clause 5.3.

#### 14.4 Severability & Read Down

- (a) If, any provision of a Contract or part of a provision of a Contract is or becomes legally ineffective, under the general law or by force of legislation, but would not have such effect if it were read down; if it is capable of being read down, such provision or part of a provision must be read down accordingly.
- (b) If, notwithstanding sub clause 14.4(a) a provision or part of a provision of a Contract still is or becomes legally ineffective:
  - (i) if the provision would not have such an effect if a word or words were omitted, that word or those words are hereby severed;
  - (ii) in any other case, the whole provision is hereby severed;

and the remainder of the Contract will be of full force and effect.

#### 14.5 Assignment

Neither the Buyer nor the Seller may assign their rights or obligations under a Contract without the consent of the other of them. That consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Buyer may assign a Contract to its financier, without the Seller's consent.

#### 14.6 Costs

Save as is set out in These Terms, each party will bear its own costs of entry into a Contract.

#### 14.7 Waiver

The failure of a party at any time to require performance by the other party of any provision of a Contract will not affect in any way the full right of the waiving party to require such performance at any time thereafter nor will the waiver by any party of a breach of any provision of These Terms be deemed a waiver of the provision itself or any other provision of These Terms.

#### 14.8 Counterparts

Each Contract may consist of a number of copies (including facsimile or electronic copies), each Authorised by one or more parties to the Contract. If there are a number of Authorised copies they are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.

