

Receival and Warehousing Standard Terms & Conditions (2016-2017)

1. Background

- (a) These are the Receival and Warehousing standard terms and conditions that are incorporated in and apply to the supply by AWB GrainFlow Pty Limited (ABN 62 088 928 858) (**GrainFlow, we or us or our**) of receival, warehousing and related services to the person (**you or your**) specified in the attached 2016/2017 Season Growers Warehousing Agreement (**collectively "Agreement"**).
- (b) The Agreement may only be amended by written agreement signed by both parties.

2. Our agreement

- (a) Subject to these terms and conditions, we will:
- (i) warehouse the commodity delivered by you (or on your behalf) and to which title has not transferred to any other person in accordance with these terms and conditions (**Your Grain**) to the storage facility specified in the Agreement/the relevant weighbridge ticket (**Storage Facility**) and in respect of which you confirm, by signing our completed warehousing weighbridge ticket (**Delivery Ticket**) that you require us to supply warehousing services; and
- (ii) in accordance with your instructions given from time to time, provide you with an administrative service that effects the transfer by you of the title in Your Grain Entitlement to a participating grain marketer (being a person who has entered into our standard storage and handling agreement and who is offering to purchase commodity at the relevant time (**Participating Marketer**)).

Acceptance

- (b) You will be deemed to have unconditionally accepted the Agreement (which includes these terms and conditions) and will be legally bound by it on and from the date on which we receive a signed copy of the Agreement or the time at which we supply you with any of the services, whichever occurs earlier.

3. Your obligations

- (a) You must comply with all procedural requirements that we from time to time notify in relation to the supply by us of the services described in clause 2.
- (b) You declare, represent and warrant that any commodity delivered by you (or on your behalf):
- (i) is owned by you and is free of any security interest as that term is defined in the Personal Properties Securities Act 2009 (Cth) (**PPS Act**);
- (ii) was grown by you during the 2016-2017 growing season
- (iii) is of the variety and has the particulars disclosed by or on behalf of you on the Delivery Ticket (which is based on, amongst other things, information provided by you at the time of delivery) or at the time of delivery by you (or on your behalf);
- (iv) is not manipulated in any way to prevent the making of an accurate assessment by us of the quality of the grain using our standard assessment procedures;
- (v) in relation to a delivery declared to be non-genetically modified, does not contain genetically modified organism (as that term is defined in the Gene Technology Act 2000 (Cth)) except in relation to non-genetically modified canola where the genetically modified organism is approved by the Australian Government Office of Gene

Technology Regulator and is not in excess of 0.9% of the weight of the delivered commodity and the commodity conforms to the requirements of Australian Oilseeds Federation Canola Standard Reference CSO1-A;

- (vi) in relation to a delivery declared to be non-genetically modified canola, does not contain genetically modified 'Roundup Ready®' canola;
- (vii) has not been treated at any time with any commodity treatment or chemical, including without limiting the generality of the foregoing any insecticide, pesticide or other substances for the control of insects or pests, other than with either gaseous phosphine or gaseous methyl bromide but only to the extent that it has been applied in accordance with manufacturer's specifications;
- (viii) does not contain any detectable gaseous phosphine or gaseous methyl bromide residue or any other form of gaseous residue;
- (ix) has not been treated with any artificial colouring, pickling compound or marker dye that is likely to or may sustain, stain or have stained the grain;
- (x) will not have any other feature that would affect our ability to Outturn/transfer the commodity at the grade in respect of which we receive the commodity;
- (c) You represent and warrant that any person delivering any commodity to us on your behalf or signing the Agreement on your behalf is deemed to be your duly authorised agent and the Agreement (including any declarations and certificates in respect of the commodity) shall bind you as if you had personally signed the Agreement.
- (d) You declare that the representations set out in this Agreement including any other declarations signed by you at the time of delivery and forming part of this Agreement are true and correct and are not misleading or deceptive by omission or otherwise. Without limiting anything else in this clause 3, each time we receive commodity delivered (whether by you or on your behalf) for the supply of services under the Agreement, you will be deemed to have made the representations and warranties set out in this Agreement in relation to the relevant grain.
- (e) You agree to pay, reimburse and indemnify us, our servants, agents, Related Bodies Corporate (as that expression is defined in section 50 of the Corporations Act (2001)) (**Related Bodies**) and counterparties on demand for and against all costs, losses and liabilities (including loss of profit) which are suffered or incurred by GrainFlow its servants, agents, Related Bodies and counterparties directly or indirectly in connection with or arising from any inaccuracy, error, falsity or omission with respect to the declarations, representations and warranties made by you or on your behalf now or in the future.
- (f) You acknowledge that:
- (i) the costs, losses and liabilities referred to in clause 3(e) may include, but are not limited to, replacement cost of third party commodities (including that of GrainFlow or its Related Bodies Corporate) that are contaminated and any costs of cleaning up the Storage Facility;
- (ii) GrainFlow will rely on the accuracy and completeness of your declarations in its storage and handling of the commodity and in its dealings

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with third parties including making declarations and statements to third parties. You should therefore not deliver any commodity to us which could result in your declaration amounting to a false, misleading, incomplete or inaccurate declaration;

- (g) You agree that GrainFlow its servants and agents will not be responsible for or liable in damages to you for any loss, damage, cost or expense, you may suffer or incur arising from any false, misleading or incomplete declarations, representations or warranties of any other user of the GrainFlow services.
- (h) You represent and warrant that you acquire the services and the services are provided by GrainFlow for the purpose of a business carried on or engaged in by you.
- (i) Unless GrainFlow advises otherwise, you must ensure that all of Your Grain Entitlement stored at any Storage Facility must be sold to a Participating Marketer (which includes transfer of ownership) no later than 15 September 2017 except for chickpea or faba beans stored at Narrabri, in which case Your Grain Entitlement must be sold to a Participating Marketer (which includes transfer of ownership) no later than 30 April 2017. If you fail to sell and transfer all of Your Grain Entitlement warehoused with GrainFlow on or prior to the dates specified in this clause 3(i), GrainFlow may issue you with a notice requiring you to outturn the remainder of Your Grain Entitlement within 14 days and if you fail to do so, you irrevocably appoint GrainFlow as your attorney and authorise GrainFlow to:
 - (i) sell Your Grain Entitlement to a third party at a price which may be less than the market value of those commodities and remit the proceeds of sale to you less any unpaid fees or other monies due from you to us; or
 - (ii) transfer Your Grain Entitlement to an alternative Storage Facility whereupon the relevant commodities shall be made available for outturn/transfer from that alternative Storage Facility. In this circumstance, you shall be responsible for and shall pay to us on invoice from us all costs of outturn from the original Storage Facility, all costs of transport to the alternative Storage Facility and all costs of receival at the alternative Storage Facility, at our then current rates. In addition, you shall remain liable to pay all Storage Charges for the supply of services in relation to the carried-over commodity from the alternative Storage Facility.
- (j) You represent and guarantee that:
 - (i) you (and any person transporting Your Grain on your behalf) will comply with all safety, health and environmental policies and procedures applicable to the Storage Facility as published at the Storage Facility or as otherwise on our website www.grainflow.com.au; and
 - (ii) you will, and you will ensure that any person attending the Storage Facility on your behalf shall, comply with all reasonable directions of GrainFlow and its employees and representatives and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the Storage Facility.

- (k) GrainFlow may, due to reasons of operational efficiency, reclassify malt barley to 'feed' barley after 15 September 2017 at its absolute discretion unless otherwise agreed in writing. For the avoidance of doubt, GrainFlow's outturn obligation will be that of feed barley standard (and You agree that GrainFlow's outturn obligations including the Receival Standards will be satisfied upon the outturn of feed barley and the act of doing so will not be considered to be an Outturn Defect) even though Your Grain Entitlement may be in respect of malt barley.

4. Compliance with receival standards and entitlement to reject

You acknowledge and agree that we may in our absolute discretion refuse to accept delivery of Your Grain under this Agreement on any reasonable ground, including where:

- (a) that grain does not meet our applicable receival standards as amended from time to time and available at www.grainflow.com.au;
- (b) that grain is not delivered with the receival information (including but not limited to any required declarations and delivery information to be made or provided by you or any person delivering any commodity to us on your behalf) that we may require as amended from time to time;
- (c) we determine (in our discretion) that we have insufficient capacity at the Storage Facility;
- (d) you fail or have failed to comply with these terms and conditions;
- (e) we determine that risks to health and safety exist or may exist;
- (f) we determine that the commodities are or are likely to be contaminated;
- (g) you fail to comply with all safety, health and environmental policies and procedures applicable to deliveries to the Storage Facility, as amended from time to time by GrainFlow;
- (h) the Storage Facility and any relevant equipment is or is likely to be undergoing routine or emergency maintenance and/or repair work; or
- (i) any outstanding fees or charges are owed to us or our Related Bodies by you.

For the removal of doubt, at all times we retain the sole, absolute and final discretion as to what specifications and quantities of commodities or grades we will receive at our Storage Facilities.

You agree that any determination made by us under this clause 4 shall be final and binding on the parties.

5. Weights and grade

You acknowledge and agree that the weight, quality and grade of Your Grain delivered under this Agreement will be that recorded in the applicable Delivery Ticket.

In the absence of manifest error, you agree that any determination made by us under this clause 5 shall be final and binding on the parties.

6. Your Grain entitlement

- (a) We will commingle Your Grain with grain which is of the same grade that is delivered by third parties to the Storage Facility.
- (b) Commingled commodities will be deemed to be common commodity of specified quality stored in bulk and title to the common commodities will be held jointly by you, the other clients and Participating Marketers

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whose commodities form part of the common commodities stored in bulk at the Storage Facility.

- (c) Your entitlement to the common commodity of a particular grade and Season at any time is your interest in the common commodities at that time which shall be equal to that proportion which the quantity of the Your Grain at the time bears to the quantity of the common commodities at that time, less:
- (i) the Shrinkage Adjustment Factor where your commodity is physically removed in accordance with clause 7(a)(ii)
 - (ii) the weight of any commodities that are damaged or destroyed as a result of any cause beyond the reasonable control of GrainFlow;
 - (iii) the weight of any commodities that are damaged or destroyed as a result of any cause not attributable to negligence of GrainFlow;
 - (iv) the weight of any commodities that are damaged and in respect of which an amount (whether by way of insurance, compensation or otherwise) has been paid to you;
 - (v) the weight of any outturned commodity;
- (d) The relationship between GrainFlow and you in respect of possession of your Grain Entitlement is one of bailment only, notwithstanding comingling of Your Grain with other grain.
- (e) You will hold your interest as tenant in common with the other clients (which includes Participating Marketers) and you will not have the right to nominate any particular parcel of common commodity as Your Grain.
- (f) For the avoidance of doubt, subject to the provisions of these terms and conditions, your interest represents an ownership right to commodities of the same type and grade that was determined by us and delivered by you or another person on your behalf (and not the same physical commodity that was delivered by you or on your behalf.)

7. Outturn

- (a) Subject always to you having a Grain Entitlement and these terms and conditions, you are entitled to outturn your Grain Entitlement by:
- (i) selling your Grain Entitlement to a Participating Marketer at the Storage Facility either by instructing GrainFlow to do so under clause 7(t) or by selling your Grain Entitlement online (**Warehouse Reversion**); or
 - (ii) physically removing your Grain Entitlement from the Storage Facility, provided that the outturning of your Grain Entitlement coincides with the outturning of that grade of grain from the Storage Facility by others or as nominated by GrainFlow,
- in accordance with the following provisions of this clause 7.
- (b) Unless otherwise agreed with GrainFlow:
- (i) your Grain Entitlement shall be outturned from the Storage Facility that you delivered Your Grain;
 - (ii) outturning of a Grain entitlement which is less than 200 tonnes, shall be removed in a single lot within a single day;
 - (iii) outturning of a Grain Entitlement which is greater than 200 tonnes, shall be outturned at a minimum of 200 tonnes lots until the last lot.
- (c) Unless otherwise agreed with GrainFlow, freight and transport relating to the outturning of your Grain Entitlement is your responsibility. GrainFlow is not

responsible for the cleanliness, fitness for loading or carriage of your Grain Entitlement. However, GrainFlow, may in its absolute discretion suspend, cancel, or refuse to provide the outturning services if GrainFlow considers that the transportation vehicle or wagon is not clean or fit for loading or carriage. GrainFlow shall not be liable to you for the cost, liabilities or expenses incurred as a result of GrainFlow's actions under this paragraph.

GrainFlow Grower Outturn Warehouse Form and Time for Outturn

- (d) On each occasion that you require GrainFlow to physically removing your Grain Entitlement from the Storage Facility, you must provide GrainFlow with a completed GrainFlow Grower Outturn Warehouse Form (available at www.grainflow.com.au).
- GrainFlow will not allocate commodity for outturn until it has received a GrainFlow Grower Outturn Warehouse Form properly completed in accordance with this paragraph (d).
- You must comply with all of GrainFlow's ordering procedures from time to time, including in respect of any implementation by GrainFlow of an online ordering system during the term of this agreement.
- (e) Subject to paragraph (f), GrainFlow will use all reasonable efforts to complete outturn of the commodities specified in each GrainFlow Grower Outturn Warehouse Form:
- at the time requested by the Grower, provided that the relevant GrainFlow Grower Outturn Warehouse Form must be given to GrainFlow before 5.00 pm on the Thursday immediately preceding the working week during which outturn is requested.
- (f) GrainFlow does not guarantee that it will outturn the commodities by the time period specified in paragraph (e) and GrainFlow will have no liability to you or any third party whatsoever and howsoever arising in connection with any failure to outturn any of the commodities by the time periods specified in paragraph (e) However, GrainFlow will advise you from time to time of any potential delays and revisions to the estimated time for completion of outturn of the commodities.
- (g) Despite anything to the contrary stated in these terms and conditions, you agree that GrainFlow shall not be obliged under these terms and conditions to outturn commodities during any period(s) in which:
- (i) commodities are or are likely to be undergoing programmed fumigation;
 - (ii) commodities are or are likely to be subject to insect infestation;
 - (iii) the Storage Facility and any relevant equipment is or is likely to be undergoing routine or emergency maintenance and/or repair work;
 - (iv) GrainFlow determines that events beyond the reasonable control of GrainFlow, including without limitation adverse weather conditions (including but not limited to rain, flood, fire, storm and winds) or force majeure events affecting GrainFlow's service providers, prevent or are likely to affect the outturn of the commodities at that Storage Facility or may or are likely to give rise to a risk that such commodities may be damaged, delayed or contaminated during outturn;
 - (v) GrainFlow determines that any plant and equipment necessary for, or used in connection

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with, the outturn of commodities is or is likely to be malfunctioning, broken down or otherwise unavailable for any reason;

- (vi) harvest receival activities or preparation for harvest receival activities are taking place at a Storage Facility that is open to receive grain or preparing to open to receive grain;
- (vii) unacceptable risks to health and safety exist or may exist;
- (viii) any outstanding fees or charges are owed to GrainFlow;
- (ix) the fee for outturning of the Grain Entitlement has not been paid.

You agree that any determination made by GrainFlow under this paragraph (g) shall be final and binding on the parties.

GrainFlow Outturn Obligations – Receival Standards

- (h) Subject to the following provisions of this clause 7 (i) to (v) and without limiting any other provision of these terms and conditions, GrainFlow will outturn commodities which, as a minimum, meet the Receival Standards that apply in relation to your Grain Entitlement (**Outturn Standard**).
- (i) You must notify GrainFlow in writing (using GrainFlow's standard form **Product Failure Report** (as published on our website www.grainflow.com.au) of any failure to comply with the applicable Outturn Standards in paragraph (h) (**Outturn Defect**) (together with your test results which demonstrate the Outturn Defect):
 - (i) immediately upon it becoming aware of an Outturn Defect; and
 - (ii) in any case and without limiting paragraph (k)(i), within 24 hours after the time when the commodities have been or the time they reasonably should have been received at the relevant delivery location (whichever is the sooner to occur) or within 4 days following completion of the outturn (whichever is the sooner to occur).

Where you allege an Outturn Defect, GrainFlow may agree to you returning (at your own expense) the relevant commodities to a Storage Facility. You agree and acknowledge that the return of commodities to a Storage Facility is in no way an admission by GrainFlow of the presence of an Outturn Defect. GrainFlow will conduct its own tests using testing and weighing equipment that has been approved for use under the GTA Trading Standards for each relevant commodity and certified within the previous 12 month period pursuant to National Measurement Act 1960 (Cth) and National Measurement Regulations 1999 (Cth) and having an accuracy of 99.5% or better (**Approved Equipment**) to determine whether the relevant commodities have any Outturn Defect. If testing conducted by GrainFlow does not reveal the presence of any Outturn Defect, GrainFlow may charge a re-receival fee for return of the relevant commodities and you agree to pay any such fees levied and all other standard GrainFlow Fees will continue to apply.

- (j) For the removal of doubt, GrainFlow will have no liability to you or any third party whatsoever and howsoever arising in relation to Outturn Defects where written notification is not received by GrainFlow from you in accordance with the requirements of paragraph (i) above. Without limitation, you agree to provide all reasonable cooperation to GrainFlow to enable any loss arising from an Outturn Defect to be mitigated. Nothing

in this sentence limits the succeeding provisions of this clause 7.

- (k) The parties agree that despite anything to the contrary contained or implied in these terms and conditions:
 - (i) GrainFlow shall have no liability for an Outturn Defect where you did not specify the relevant delivery location for your outturned Grain Entitlement in the GrainFlow Grower Outturn Warehouse Form relating to the outturn of the relevant commodities that are the subject of the Outturn Defect; and
 - (ii) the following circumstances shall not constitute an Outturn Defect for the purposes of these terms and conditions and GrainFlow shall have no liability to you for these circumstances:
 - (A) The protein and moisture parameters of the relevant commodities are within +/- 0.3 of the minimum and/or maximum percentage protein and moisture parameters specified by the Receival Standards and +/- 1.0 of the minimum and/or maximum percentage screenings parameters specified by the Receival Standards (e.g. if the maximum percentage moisture parameter specified by the Receival Standards is 12.5%, the permissible maximum under the mechanism in this clause is 12.8%);
 - (B) contaminants and grain defects specified in the Receival Standards as having nil tolerance are detected at levels of 0.05% by weight or less provided that in relation to bin burnt /storage mould/heat damaged grain the permissible tolerance is 1 grain per half litre
 - (C) an attribute is present in the commodities and that attribute does not form part of GrainFlow's testing procedure or cannot be conclusively determined at the time of delivery of Your Grain. This includes, but is not limited to, germinative quality of barley, varietal purity of grain, the presence of aflatoxins, vitreousness of durum wheat and the presence of toxic and chemical residues;
 - (D) in the case of commodities that are pulses, where the percentage level of defective grain is within +2 of the applicable Receival Standard (e.g. if the relevant percentage level specified by the Receival Standard is 6% the permissible level under this clause is 8%); or
 - (E) where, in the case of commodities to be transported by road, GrainFlow has tested the relevant truck load on outturn and the test results do not evidence an Outturn Defect for which GrainFlow is otherwise responsible pursuant to the provisions of this clause 7 and those test results are displayed on the form produced by GrainFlow at the time of outturn which details the weight of so much of your Grain Entitlement that is outturned (**Outloading Weight Ticket**).
- (l) Within 24 hours of request by GrainFlow you must provide GrainFlow with written details and/or evidence (in a form reasonably satisfactory to GrainFlow) of:
 - (i) the equipment used in performing the tests which you allege evidences an Outturn Defect (including details of the National Measurement Institute

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- class, type, make and model (**Client Equipment**)), which equipment must be Approved Equipment;
- (ii) the Client Equipment being for each relevant commodity certified:
- (A) in accordance with the certification requirements from time to time set out in GTA Trading Standards, the certification standards set by the NMI and all relevant State and Federal regulatory standards; and
- (B) by a person or entity approved by the National Measurement Institute for the purpose of conducting such certifications, within 12 months prior to the date of relevant use (**Appropriately Certified**); and
- (iii) the methodology followed in performing the tests, which methodology must in all respects be consistent with the sampling and testing methodology set out in the GTA Trading Standards for each relevant commodity together with all additional or supplementary requirements set out in the GrainFlow Sample Manual as published from time to time (**Approved Testing Methodology**).
- (m) Unless you comply with the requirements of paragraph (l) (within the time required), GrainFlow shall have no liability for the alleged Outturn Defect (notwithstanding you complied with the requirements of paragraph (j)).
- (n) Upon you providing the written evidence required under paragraph (l) you agree that GrainFlow may (but is not obliged to):
- (i) attend the delivery location for the outturned commodities and observe the relevant testing methodology;
- (ii) attend the delivery location for the outturned commodities and test a GrainFlow sample of the commodities that is alleged to be the subject of the Outturn Defect (being a sample which has been kept by GrainFlow) (**GrainFlow Own Sample**) using the Client Equipment; and/or
- (iii) request, and you must provide, such evidence as GrainFlow reasonably requires (including by allowing inspection by appropriately qualified persons) to verify each of the matters set out in paragraph (l).
- (o) If:
- (i) GrainFlow observes any part of the testing methodology applied at the delivery location for the outturned commodities which is not consistent with the Approved Testing Methodology; or
- (ii) GrainFlow tests the GrainFlow Own Sample under paragraph (n)(ii) in accordance with the Approved Testing Methodology using the Client Equipment and the test results do not match the test results arising from GrainFlow's testing of that sample (within the Permitted Tolerances) using GrainFlow equipment (which must be Approved Equipment); or
- (iii) you do not provide evidence reasonably satisfactory to GrainFlow which verifies the matters referred to in paragraph (n)(iii) or does not procure that GrainFlow is enabled to conduct the testing contemplated by paragraph (n)(ii),
- then GrainFlow shall have no responsibility for the alleged Outturn Defect.
- (p) Within 72 hours of GrainFlow receiving your written notice of an Outturn Defect paragraph (j) and irrespective of whether GrainFlow takes any action under paragraphs (l) or (n) (or of the results of any such action that may be taken), GrainFlow may (but is not obliged to) by notice in writing to you, require testing of samples of the commodities in accordance with the Approved Testing Methodology, to be conducted by Agrifood Pty Ltd or such other testing laboratory as determined by GrainFlow in its absolute discretion (**Independent Testing**) to be conducted to ascertain whether the relevant commodities are affected by an Outturn Defect for which GrainFlow is liable under these terms and conditions. If GrainFlow has retained a sample of commodities from the relevant Outturn, you agree that that sample shall be used by GrainFlow for the purposes of the Independent Testing. Otherwise, you must supply a sample of commodities from the load alleged to be the subject of the Outturn Defect for the Independent Testing in accordance with the requirements of the entity responsible for the conduct of the Independent Testing. The parties must provide all materials and assistance and undertake all necessary actions to give effect to the requirements of this clause as promptly as is reasonably practicable. You agree that the results of the Independent Testing shall be final and binding on the parties. If the results of the Independent Testing establish an Outturn Defect in the relevant Commodities for which GrainFlow is liable under these terms and conditions, the costs of the Independent Testing shall be paid by GrainFlow. Otherwise, the costs of the Independent Testing shall be paid by you.
- (q) Subject to the terms and conditions in this agreement (including without limitation clause 11) if under any of the preceding provisions of this clause 7, GrainFlow is liable for any Outturn Defect, GrainFlow may at its option:
- (i) pay to you an amount equal to $V \times (M1 - M2)$ where:
V is the quantity in tonnes of your commodities affected by the Outturn Defect;
M1 is Market Price per tonne of the commodities on the date of the outturn assuming they were not affected by the relevant Outturn Defect; and
M2 is the Market Price per tonne of the commodities on the date of outturn taking into account the Outturn Defect and the resultant impact that defect has in downgrading those commodities; or
- (ii) replace the affected commodity with commodity that is free from Outturn Defects; or
- (iv) pay to the Client an amount (GrainFlow Adjustment) calculated as follows:
GrainFlow Adjustment = Grain Entitlement x Market Price per tonne of the commodities on the date of the outturn assuming they were not affected by the relevant Outturn Defect.
- GrainFlow will have no liability to you or any third party whatsoever howsoever arising in relation to any Outturn Defect other than as set out in this paragraph (q). Further and for the removal of doubt, GrainFlow shall not have liability for any quality issues, defects or contaminants affecting the outturned commodities unless they constitute an Outturn Defect for which GrainFlow is liable in accordance with this clause 7.

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Weights

- (r) Where GrainFlow determines and records the weight of the outturned commodities (whether by use of a weighbridge located at a Storage Facility or otherwise), then the weight recorded over the weighbridge (the Outloading Weight Ticket) shall be conclusive evidence of the weight of the outturned commodities and shall be final and binding on the parties.
- (s) Notwithstanding any other provision in this agreement, GrainFlow shall have no liability to you or any third party whatsoever howsoever arising in relation to any discrepancy between the weight of the outturned commodities determined by GrainFlow in accordance with paragraph (r) and the weight of the outturned commodity recorded at the destination for the outturned commodities.

Warehouse Reversion

- (t) You may provide verbal or written instructions to GrainFlow to effect a Warehouse Reversion of all or part of your Grain Entitlement, whereby our record of such verbal communication, including any written confirmation, shall be conclusive and binding on you. You agree and authorise GrainFlow to transfer for and on behalf of you as your attorney under this agreement your Grain Entitlement to the nominated Participating Marketer. Subject to the Participating Marketer's acceptance of the transfer, GrainFlow shall complete the transfer.
- (u) The effective date, for the purposes of this agreement, of a Warehouse Reversion will be the date that GrainFlow receives instructions from you. GrainFlow will use its reasonable endeavours to process a Warehouse Reversion within 5 days of receipt of instructions.

Indemnity – over Outturn due to inaccurate records

- (v) You must, if you know or if you ought reasonably to know, that GrainFlow's records or documents are incorrect, inaccurate or out of date, promptly inform GrainFlow of the matter and, if possible, promptly provide GrainFlow with correct, accurate and up to date records and information. You agree to reimburse and indemnify GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow howsoever as a result of, or in connection with, a failure by you to comply with this clause.

8. Title, Lien & Power of Attorney

- (a) You warrant and represent that you are the sole legal and beneficial owner of Your Grain with full right, title and interest, free from any security interest, mortgage, charge, lien, option, encumbrance or other adverse claim or interest.
- (b) Without limiting any right conferred upon us by law in relation to all moneys payable by you to us or any of our Related Bodies on any account whatsoever other than amounts in respect of which we have a lien pursuant to a law of the Commonwealth, a State or Territory (**Other Moneys**), we shall have a lien over your Grain Entitlement as from the time that Your Grain is delivered for such Other Moneys.
- (c) In consideration of GrainFlow agreeing to provide the services to you, you unconditionally and irrevocably appoint GrainFlow and each officer of GrainFlow to be your attorney in the name of, and on behalf of, and as your act and your deed, to execute, perform and complete each of GrainFlow's powers capable of being exercised in your name in enforcing any lien to sell your Grain Entitlement and otherwise performing your obligations under this Agreement. You

acknowledge and agree that we may sell your Grain Entitlement in such manner as we think fit and use the proceeds of such sale in or towards satisfaction of the relevant money due, together with our costs of effecting the sale. Subject to the terms of this Agreement, the balance of the proceeds of such sale will be paid to you.

- (d) You indemnify us and each of our officers against all claims arising under, or in connection with, the exercise of any rights conferred by this clause 8.
- (e) Where Your Grain forms part of the common commodities stored in bulk at the Storage Facilities, we may nominate and identify any particular quantity of the commodity as being Your Grain for the purposes of the Agreement, including for the purposes of enforcing our lien over your Grain Entitlement and for the allocation of loss or damage between you and other clients.

9. Charges

- (a) The charges for the receival, warehousing and all other services under this agreement are published on our website www.grainflow.com.au.
- (b) In relation to any of your Grain Entitlement which remains in the Storage Facility after the end of the Transfer Period, you agree to pay to us the applicable storage charges shown in or attached to the Agreement or otherwise published on our website www.grainflow.com.au (**Storage Charges**) from the day after the end of the Transfer Period until the date that it ceases to be your Grain Entitlement.
- (c) No Storage Charges are payable by you for any services supplied by us under these terms and conditions in respect of each delivery of your Grain and your related Grain Entitlement during the Transfer Period. The **Transfer Period**, for the purposes of these terms and conditions means, in respect of each delivery, the balance of the calendar month in which you deliver Your Grain to the Storage Facility and the next following one calendar month, ending on the last day of the last of the preceding month.
- (d) The Storage Charges must be paid by you within 30 days from the date of invoice from us except that in circumstances where you instruct us to transfer title to any of your Grain Entitlement, all Storage Charges in respect of that grain must be paid in full up to the date of transfer on or before the date of transfer. You agree that we may refuse to effect the transfer until you have complied with the requirements of this clause 9.
- (e) Without limiting any of our rights, when you effect an Warehouse Reversion, you agree to procure for our benefit from the purchaser an indemnity enforceable on demand in respect of the unpaid Storage Charges and other charges payable by you to us. In consideration for us agreeing to provide the services to you, you agree to hold on trust absolutely for our benefit so much of the purchase price paid or payable by the purchaser for your Grain Entitlement equal to the amount of your unpaid Storage Charges and other charges, until the unpaid Storage Charges and other charges have been satisfied either by the purchaser or by you.

10. Risk

Subject to clause 11, to the extent permitted by law and despite anything to the contrary contained or implied in these terms and conditions, you bear all risk of loss or damage to Your Grain and your Grain Entitlement howsoever arising, other than to the extent caused by our negligence.

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11. Liability

- (a) You agree to pay, reimburse and indemnify us, our servants, agents, Related Bodies and counterparties on demand for and against all costs, losses and liabilities claims, damages and expenses, indirect and special loss and damage, and loss of profits, suffered or incurred by GrainFlow its servants, agents, Related Bodies and counterparties arising directly or indirectly in connection with:
- (i) any commodities delivered to us by you (or on your behalf), including (without limitation) for breach of clause 3 of these terms and conditions;
 - (ii) any acts or omissions attributable to you including, (without limitation), acts or omissions causing or contributing to any loss or damage to, any property of any person and any injury to or death of any person;
 - (iii) any overloading of a vehicle containing Your Grain;
 - (iv) any failure to comply with the Road Safety Laws;
 - (v) any claim by a third party to a lien, charge or other security interest in the commodity;
 - (vi) any claim by a third party relating to your acts or omissions in respect of the commodity or your outturned commodity;
 - (vii) damaged or contaminated commodities which were at your risk, except to the extent of any loss caused directly and solely by our negligence;
 - (viii) your failure to comply with any relevant laws or regulations.
- (b) We exclude all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of these terms and conditions to be void (**Non excludable condition**).
- (c) To the extent permitted by law, our liability to you for breach of any Non excludable condition is limited, at our option, to refunding the price of the services in respect of which the breach occurred or to supplying those services again or to paying the cost of having those services supplied again.
- (d) Except for liability for breach of any Non excludable condition and to the extent permitted by law, in respect of any breach of any contract between us or any negligent act or omission by us (whether in relation to any contract between us or otherwise):
- (i) we exclude liability for loss of profits, special loss, consequential loss and indirect loss or damage; and
 - (ii) without limiting paragraph (d)(i) above our total liability to you for any single occurrence or event or series of related events shall not exceed \$50,000.00.
- (e) GrainFlow's employees, agents and contractors have the benefit of this indemnity and release and to that extent GrainFlow enters into this Agreement as agent and trustee on their behalf.

12. Your acknowledgments

You acknowledge and agree that:

- (a) The representations and warranties provided by you under these terms and conditions are true and accurate, and that we may rely on the representations and warranties (and the accuracy and completeness of those representations and warranties) in storing and handling commodities and in our dealings with third parties in relation to the commodities.
- (b) We may keep a representative sample of each load of commodities delivered by you (or on your behalf) for a period determined by us. Without limiting clause 12(a) and clause 3(e)(ii), we may test these samples for the presence of any genetically modified organism or any pesticide residues and/or grain treatments but are not obliged to do so and will rely on the certification provided by you in your declaration and your representations and warranties. In the event that genetically modified organisms and or any evidence of pesticide residues is found in the commodity, the sample and/or this declaration may be required for re-testing to confirm results and may form part of legal proceedings taken against you.
- (e) We make no representations with respect to Participating Marketers whose prices we post at our Storage Facilities, in particular with respect to their financial viability or the terms and conditions under which they operate. You accept all risk associated with dealing with the Participating Marketers and agree that we will not be liable for any loss incurred by you as a result of, or in connection with, your dealings with Participating Marketers.
- (f) Subject to the provisions of these terms and conditions, the relationship between us in respect of the possession of Your Grain is one of bailment and that relationship will continue to exist despite Your Grain losing its identity by becoming part of the common commodities or despite the inability of GrainFlow to redeliver to you the same physical commodity the subject of the bailment.
- (g) You agree to pay, reimburse and indemnify us from and against all claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred by us in connection with the provision of the services.

13. GST

- (a) Italicised terms used in this clause 13 have the same meaning as given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) If a *taxable supply* is made under or in connection with these terms and conditions, the party making the supply (the "**Supplying Party**") may, in addition to the amount payable under or in connection with the terms and conditions, recover from the other party (the "**Receiving Party**") an additional amount on account of GST, calculated by multiplying the amount payable under or in connection with the terms and conditions by the GST rate (within the meaning of the *GST law*, being 10% currently).
- (c) Unless otherwise expressly stated, any amounts payable or any form of consideration to be provided for a supply made under these terms and conditions are exclusive of GST (*GST exclusive amount*).
- (e) Any amount paid or payable by a party as reimbursement for, or calculated by reference to, any expenses or costs incurred by the other party to these terms and conditions shall be calculated net of any *input tax credits* which the other party is entitled to in respect of the expenses or costs.
- (g) If there is a change in the GST rate during the term of these terms and conditions, then any amount payable under or in connection with these terms and conditions which is stated to include an amount on account of GST shall be increased or decreased by an appropriate amount so that the Supplying Party receives the same

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amount (after remittance of GST) as it would have received at the GST rate prevailing before the change.

- (h) The parties must exchange valid *tax invoices* reflecting the mutually agreed *GST inclusive market value* of any barter supplies made under or in connection with these terms and conditions, in accordance with *GST law*.
- (j) This clause 13 survives the expiry or termination of these terms and conditions.

14. General

- (a) Any failure by us to insist on strict compliance with any of these terms and conditions or any delay by us in exercising our rights under these terms and conditions will not constitute a variation or waiver of any of these terms and conditions or any other right that is available to us.
- (b) If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or any part of it cannot be so interpreted, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions remain in force.
- (c) Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.
- (d) We may set off against any amounts that we or any of our Related Bodies owe to you any amounts that you owe to us or our Related Bodies in connection with this agreement.
- (e) You are not entitled to withhold payment of any disputed amount the subject of an invoice issued by us or to set off against the amount of an invoice any other claim that you have against us.
- (f) This agreement is governed by the law in force in the State of Victoria and the parties submit to the non exclusive jurisdiction of the courts of that State.
- (g) You must not assign or transfer any of your rights or novate any of your obligations under this agreement without our prior written consent and no assignment of any obligation will be effective until the incoming party has covenanted in favour of, and in form satisfactory to us, to assume and to be bound by the obligations assigned.
- (h) We may assign or transfer any of our rights or novate any of our obligations under this agreement to any person without your consent and without providing you notice.
- (i) Termination of this agreement is without prejudice to the rights of either party that have accrued prior to the date of termination.
- (j) If you are a trustee, you agree that this agreement is binding upon the trustee personally and in its capacity as trustee of the trust and nothing contained or implied in this agreement or in any notification given or deemed to be given to us will prejudice, affect or in any way limit the personal liability of the trustee on its own account as a party under this agreement.
- (k) Nothing in these terms and conditions is to be construed as constituting an agency, partnership, trust or joint venture between GrainFlow and you.

- (l) No party to this agreement is liable for an act or omission of another party to this agreement except to the extent set out in this agreement.
- (m) We may in our sole and absolute discretion subcontract the provision of the whole or any part of the services or otherwise engage any person to undertake the provision of any part of the services on behalf of GrainFlow without notice to you.
- (n) We do not represent, warrant or guarantee, neither expressly or impliedly, that the information provided by third parties under or on connection with the Agreement is complete, sufficient or accurate. To the fullest extent permitted by law, we accept no responsibilities for any inaccuracies, errors, false or misleading context in or omissions contained in any such information, or any other information or matter arising or coming to its notice which may affect this information or any other party's reliance on it.
- (o) Notwithstanding anything to the contrary in this agreement, if, in our opinion, it would contravene any law or regulation, including any condition or accreditation, then we are not required to perform any obligation under this agreement.
- (p) This agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in this agreement in relation to the subject matter of the agreement binds the parties. Accordingly, all correspondence, negotiations and other communications between the parties in relation to the subject matter of the agreement which preceded the agreement are superseded by it.

15. Privacy

- (a) Subject to any law to the contrary, provided you have not indicated otherwise, you authorise us to collect and use any information related to you, Your Grain, your Grain Entitlement and the performance of this agreement (which includes but is not limited to your personal information and details of your warehoused stock) in the following way:
 - (i) to maintain your relationship with GrainFlow including in order to maintain stock records and administer payments;
 - (ii) to provide products or services which you have agreed to obtain from GrainFlow;
 - (iii) to share with our Related Bodies for the purpose of marketing other products and services to you and/or for any other purposes relating to our business operations and our dealings with you;
 - (iv) to analyse product and customer needs and to inform you of products and services provided by GrainFlow or its Related Bodies or by preferred providers that GrainFlow considers may be of value or interest to you unless you withdraw your consent in writing;
 - (v) to collect outstanding monies;
 - (vi) to assist with maintaining the National Grower Register or any other similar agricultural register;
 - (vii) for the provision or acquisition of services for the purposes of GrainFlow's business;
 - (viii) for promotional, marketing, research and profiling purposes relating to GrainFlow's business or the business of its Related Bodies;
 - (ix) to comply with requests from regulatory authorities or with court issued documents;

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- (x) in connection with a proposed sale or acquisition of an interest in a business;
 - (xi) if you request GrainFlow to do so or if you consent or where the law permits GrainFlow to do so;
 - (xii) to assist any third party with enforcement of any rights that party may have in connection with their commodity;
 - (xiii) for any purpose required or permitted by law, to comply with requests from government and regulatory bodies and authorities and end point royalty managers;
 - (xiv) for the purpose of any arbitration proceeding relating to this Agreement or a contract between you and GrainFlow or its Related Bodies;
 - (xv) for any purposes, specifically set out in the Agreement and these terms and conditions .
- (b) We will continue to collect and deal with information related to you or the performance of this agreement (which includes but is not limited to your personal information and details of your warehoused stock) on an ongoing basis until you inform us that you no longer wish us to do so. You can withdraw your consent at any time by calling the GrainFlow Service Centre on 1800 447 246.
 - (c) You agree and acknowledge that we may transfer and store your personal and other information overseas and disclose it to others (including, without limitation, contractors, service providers and overseas regulatory authorities) and you consent for this to occur. In dealing with your personal information we shall comply with the standards set out in the Privacy Act 1988 and where applicable the National Privacy Principles or the Australian Privacy Principles, as they apply to your personal information.
 - (d) Our Privacy Policy, located at www.grainflow.com.au contains information about how personal information held by us may be accessed and corrected and how complaints can be made and are managed.
 - (e) You agree and acknowledge that we may communicate with you by any means including Electronic Communications at any time to promote the business of GrainFlow and its Related Bodies, including products, services or other promotional activities, including without limitation marketing, research and profiling purposes, until you inform GrainFlow otherwise by using the unsubscribe facility contained in such electronic messages as we send.

16. Site Access

- (a) You must, and must ensure that your employees, officers, agents, contractors and invitees comply with all procedures, policies and instructions of GrainFlow representatives prior to entering, while visiting and when leaving a Storage Facility and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the Storage Facility.
- (b) You are responsible for ensuring that you and your employees, officers, agents, contractors and invitees comply with this clause, any laws and regulations and all GrainFlow requirements and do not cause any risk of harm, damage, injury, hazard or contamination of any commodity or on or about any Storage Facility.

17. Road Safety Laws

At all times you must, and must ensure that your officers, 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 this agreement, including (without limitation) delivery of Your Grain and outturning of your Grain Entitlement;
- (b) have compliance assurance conditions in relevant commercial arrangements with other persons and service providers used or engaged by you in connection with this agreement who are subject to the Road Safety Laws;
- (c) notify us immediately if you or they consider, that your performance of this agreement may breach or disregard any Road Safety Laws; and
- (d) maintain all information and documents necessary to substantiate compliance with the Road Safety Laws in connection with this agreement and must make such material available to us when reasonably required by us to audit your compliance with the Road Safety Laws.

18. Electronic Communications

- (a) By entering into this agreement with GrainFlow you agree and consent that the Electronic Transactions (Vic) Act 2000 applies to this agreement and you consent that any notices and communications between you and GrainFlow relating to or connected with this agreement or arising as a result of the relationship between you and us under this agreement can be conducted using Electronic Communications and that you agree to enter into contracts and agreements with GrainFlow and otherwise interact with GrainFlow using Electronic Communications.
- (b) GrainFlow (including its Related Bodies) may from time to time offer Electronic Communication subscription services for dissemination of notices, information and research.
- (c) There are risks associated with utilising Electronic Communications and short messaging system (SMS) based notices, information and research dissemination services. If you have subscribed to such services offered by GrainFlow or its Related Bodies you agree and acknowledge that you understand that the services can fail due to failure of hardware, software, communication devices and connections. Whilst GrainFlow and its Related Bodies (as applicable) shall ensure that the messages are delivered in time to your mobile network, the delivery of these messages to your mobile phone/messaging and receiveal device/handset is the responsibility of your network operator. Electronic Communications may be delayed and/or not delivered to your mobile phone/messaging and receiveal device/handset on certain days, owing to technical reasons and GrainFlow and its Related Bodies cannot be held responsible for the same.
- (d) To the extent permissible by law, GrainFlow (including its Related Bodies) and its officers and employees shall not be liable for any errors, omissions, defects or misrepresentations in the information or for any loss or damage suffered by persons who use or rely on such information (including by reasons of negligence, negligent misstatement or otherwise) including without limitation any errors or omissions arising from using Electronic Communications. If any law prohibits the exclusion of such liability, GrainFlow limits its liability to the re-supply of the information, provided that such limitation is permitted by law and is fair and reasonable.

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19. Personal Property Securities Act (2009) Cth

- (a) You agree and acknowledge that:
- (i) we have a Security Interest for the purposes of the PPS Act in Your Grain and Your Grain Entitlement including the proceeds from the sale of Your Grain Entitlement (collectively, goods) in respect of the Other Moneys (see clause 6);
 - (ii) we have given value for the Security Interest, including by our promises under this Agreement;
 - (iii) our Security Interest in the goods is effective and attaches to the goods immediately upon us taking delivery of the goods;
 - (iv) we may, at your expense, take all reasonable steps as we consider advisable (in our reasonable opinion) to perfect, protect, record, register, or amend, remove or end the registration of, our Security Interest in the goods; or better secure our position in respect of this Agreement under the PPS Act.
- (b) You must procure the removal or cessation of any registration in relation to any Security Interest that affects the priority of our interest in the goods.
- (c) You must immediately notify us if you become aware of any person taking steps to register, or registering, a financing statement in relation to the goods.
- (d) If we request, you must, at your own cost, immediately do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to this Agreement or consents) which we consider necessary (in our reasonable opinion) to:
- (i) ensure that our Security Interest provided for by this Agreement attaches to the goods, is enforceable, perfected and otherwise effective and has the priority required by us;
 - (ii) enables us to prepare and register (including renewal of registration) a financing statement or financing change statement, this Agreement or any notice of this Agreement, on any register of securities or any other register relevant to the goods;
 - (iii) enable us to exercise any of our rights or powers in connection with our Security Interest in the goods, and the proceeds of the goods, or to perform any of our obligations under the PPS Act;
 - (iv) ensure that this Agreement is not void, voidable or otherwise unenforceable;
 - (v) protect, perfect, record or better secure our position under this Agreement and our interest in the goods and proceeds of the goods in any relevant jurisdiction; or
 - (vi) overcome any defect or adverse effect arising from the PPS Act.
- (e) Words and expressions used in this clause which are not otherwise defined in this Agreement but are defined in the PPS Act have that same meaning.
- (f) You waive your right to receive any notice under the PPS Act (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPS Act.

20. Pest Control

- (a) You acknowledge and agree that we may treat Your Grain and your Grain Entitlement with fumigant in accordance with applicable laws, codes and regulations. A list of treatments will be provided to you on written request. Where fumigation or other certificates are required or requested by you, we may charge a fee for the administration of these certificates.

20A. INTEREST

All overdue payments under these terms and conditions will bear simple interest at the rate of interest being two per cent (2%) higher than the 90 day Bank Bill Rate offered by the Commonwealth Bank of Australia as at the due date, calculated from the due date to the date of actual payment in full.

21. Interpretation

In these terms and conditions, unless the context otherwise requires:

- (a) "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.
- (b) "delivered by you" means, in relation to your commodities, the time at which the Delivery Ticket issued for those commodities has been signed by you and the GrainFlow representative
- (c) "Fees" means the amounts payable by you calculated in accordance with the Warehousing Agreement.
- (d) "Market Price" means average of the per tonne price of a particular grade and variety of commodity determined by three brokers on request from GrainFlow in relation to the particular commodity, and as at the particular time, required under these terms and conditions. The brokers shall determine the price on a GTA "Natural Terminal Port" port basis, plus GrainFlow bulk handling receive fee and charges minus GTA freight rates for the relevant Storage Facility to which the determination relates. For the removal of doubt, if a price is unable to be obtained from any one of the three Brokers for any reason within 1 clear business day of being sought, the Market Price will be the average of the prices actually obtained from the remaining brokers.
- (e) "Permitted Tolerance" means, in relation to the measurement of protein or moisture, +/- 0.3 of the percentage result for protein and/or moisture and +/- 1.0 of the percentage result for screenings (e.g. if the percentage measurement specified by the Receival Standards for moisture is 12.5%, the Permitted Tolerance under this definition is 12.2% - 12.8%).
- (f) "Receival Standards" means GrainFlow's standards for the receival and classification of commodities delivered to the Storage Facility as notified by GrainFlow to you from time to time.
- (g) "Road Safety Laws" includes the Heavy Vehicle National Law and any Australian legislation, regulations and rules relating to road safety, road transport or heavy vehicle transport, including rules relating to:
- (i) vehicle dimensions, weight, load limits, speed limits and securing of loads;
 - (ii) driver management, including occupational health and safety, driving hours, fatigue management and illegal driving;

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- (iii) road management including route and time restrictions; and
- (iv) chain of responsibility in relation to the above matters.
- (h) "Season" means 12 consecutive calendar months commencing 1 October each year.
- (i) "Shrinkage Adjustment Factor" mean the shrink percentage rates published at www.grainflow.com.au.
- (j) "Your Grain Entitlement" means your entitlement to the common commodity as determined in accordance with clause 6(c).
- (k) the singular includes the plural and vice versa;
- (l) words importing a gender include the other genders;
- (m) other grammatical forms of defined words or phrases have corresponding meanings;
- (n) a reference to "dollar", "\$" or "\$A" is a reference to Australian currency;
- (o) a reference to the "Agreement" includes this agreement and these terms and conditions and a reference to the "terms and conditions" includes the Agreement;
- (p) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- (q) headings are for convenience of reference only and do not affect interpretation;
- (r) unless specified otherwise, "day" means a calendar day and "business day" means a day which is not a Saturday, Sunday or public or bank holiday in the place where an act is to be performed or payment is to be made;
- (s) including must not be treated as a word of limitation;
- (t) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity; and
- (u) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.