



**GRAINFLOW PTY LTD – STORAGE AND HANDLING SERVICES COMMERCIAL DETAILS**

<b>1 GrainFlow</b>	<b>AWB Grainflow Pty Ltd (ABN 62 088 928 858) trading as GrainFlow</b> Address: 380 La Trobe Street, Melbourne, Victoria, 3000 Facsimile: 03 9670 0117
<b>2 Client</b>	Name and ABN: Address: Facsimile: Email:
<b>3 Term</b>	From 1 October 2011 until 30 September 2012 (subject always to termination and arrangements for Carry-Over Commodity – see clause 10 attached terms and conditions)
<b>4 Storage Facilities</b>	<b>NSW:</b> Beanbri, Bellata, Gilgandra, Nyngan, Narromine, Bogan Gate, West Wyalong, Stockinbingal, Grong Grong and Oaklands.  <b>Vic:</b> Sea Lake, Birchip, Charlton and Dimboola.  <b>SA:</b> Pinnaroo, Mallala, Crystal Brook and Maitland.  <b>QLD:</b> Talwood, The Gums, Jondaryan & Surat order north to south
<b>5 Participation in On-Farm Pickup Program</b>	Yes/No [ <i>choose alternative – refer to clause 8</i> ]
<b>6 Date of Agreement</b>	

GrainFlow and the Client have agreed that GrainFlow will supply the certain storage and handling services to the Client subject to the attached Storage and Handling Services Terms and Conditions. The agreement between GrainFlow and the Client in relation to the supply of those services is constituted by these Commercial Details and the attached Storage and Handling Services Terms and Conditions.

**EXECUTED AS AN AGREEMENT ON THE ABOVE DATE OF AGREEMENT**

**SIGNED** for and on behalf of **AWB GRAINFLOW PTY LTD (ABN 62 088 928 858)** by its duly authorised representative in the presence of:

.....  
Signature of Witness

.....  
Name of Witness (please print)

.....  
Signatory sign here

.....  
Name of signatory (please print)

.....  
Position

**SIGNED** for and on behalf of **THE CLIENT** by its duly authorised representative in the presence of:

.....  
Signature of Witness

.....  
Name of Witness (please print)

.....  
Signatory sign here

.....  
Name of signatory (please print)

.....  
Position

## TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	1
2.	TERM .....	3
3.	GrainFlow - GENERAL OBLIGATIONS.....	3
4.	RECEIVAL .....	3
5.	GrainFlow - SPECIFIC OBLIGATIONS .....	3
6.	STORAGE FACILITIES - OPERATING HOURS .....	3
7.	OUTTURN .....	4
8.	ON-FARM PICKUP PROGRAM.....	7
9.	TRANSPORT SERVICE PROVIDERS .....	7
10.	CARRY-OVER OF COMMODITY .....	8
11.	AGGREGATION OF COMMODITY GRADES .....	8
12.	SHRINKAGE.....	8
13.	ADJUSTMENTS.....	8
14.	TITLE TRANSFER.....	9
15.	GrainFlow FEES.....	9
16.	GST.....	9
17.	TITLE & LIEN.....	9
18.	RECORDS .....	10
19.	CONTAMINANTS.....	10
20.	WARRANTIES AND INDEMNITY .....	10
21.	EXCLUSIONS AND LIMITATIONS .....	10
22.	CONFIDENTIALITY .....	10
23.	TERMINATION .....	11
24.	NOTICES.....	11
25.	INTEREST .....	11
26.	EVENTS OUTSIDE CONTROL .....	11
27.	INSURANCE.....	11
28.	DISPUTES .....	11
29.	GENERAL.....	12
	SCHEDULE.....	13

# GRAINFLOW PTY LTD – STORAGE AND HANDLING SERVICES TERMS AND CONDITIONS

These are the terms and conditions on which GrainFlow will supply the Services to the Client.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

Expressions defined in the attached Commercial Details have their defined meaning wherever they appear in these terms and conditions. In addition, in these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

**Agreement** means the agreement constituted by the Commercial Details and these terms and conditions (including the Schedule).

**Alternative Storage Facility** has the meaning given in clause 7.2.

**Appropriately Certified**, in relation to the Approved Equipment, means having been certified for each relevant commodity:

- (a) in accordance with the certification requirements from time to time set out in the trading standards published by Grain Trade Australia (**GTA Trading Standards**), the certification standards set by the NMI and all relevant State and Federal regulatory standards;
- (b) by a person or entity approved by NMI for the purpose of conducting such certifications; and
- (c) within 12 months prior to the date of the Client using its Approved Equipment.

**Approved Equipment** means testing and weighing equipment that has been approved for use under the GTA Trading Standards for each relevant commodity and Trade Certified.

**Approved Testing Methodology** means 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.

**Brokers** means Woodside Commodities Pty Ltd (ABN 23 083 159 693), Pallett Dawson Pty Ltd (ABN 64 089 934 823) and Shearwater International Pty Ltd (ABN 28 078 763 578) and any other broker acceptable to GrainFlow.

**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.

**Carry-Over Commodities** means any Commodity that has not been, or in GrainFlow's reasonable opinion is not likely to be, completely Outturned in accordance with these terms and conditions before the applicable Carry-Over Date.

**Carry-Over Date** means 1 October 2012.

**Carry-Over Fee** means the fee or fees specified or referred to in the Schedule which are payable at the times and in the manner specified or referred to in the Schedule.

**Client Delivery Location** means the location to which particular Commodities Outturned are to be transported by a Transport Service Provider. The GrainFlow Order Form requires this location to be specified therein.

**Client Receival Weight Figure** means, in relation to Commodity Outturned, the weight of Commodity recorded at the Client Delivery Location.

**Commercial Details** means the document headed GRAINFLOW - STORAGE AND HANDLING SERVICES COMMERCIAL DETAILS, to which these terms and conditions are attached.

**Commodities** means, subject to the terms of these terms and conditions, the commodities in respect of which the Client requires GrainFlow to supply Services from time to time.

**Confidential Information** means information of either party (**Disclosing Party**) (irrespective of whether or not it has been reduced to material form) that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the party receiving or obtaining the information (**Receiving Party**) knows or ought to know is confidential;

provided that the information is not:

- (d) information in the public domain at the time that it is provided to or obtained by the Receiving Party; or
- (e) information which after it is provided to or obtained by the Receiving Party becomes a part of the public domain other than through a breach by the Receiving Party of any provision of these terms and conditions.

**Container Packing Facility** means a facility at which Commodities, or materials of a similar kind to the Commodities, are packed into shipping containers for subsequent export from Australia.

**Delivery Option** means the basis of sale by the Grower to the Client.

**Domestic Destination** means a rail receival facility other than a Port or a container packing facility.

**Dynamic Binning Strategy** means a receival strategy allowing a range of receival limits for protein, screenings and moisture depending on the site running stack average for these parameters in a particular binning line, details of which are available upon request from GrainFlow.

**Export Destination** means a rail receival facility at a Port or a container packing facility.

**Fees** means the amounts payable by the Client for the supply of the Services, calculated in accordance with the Schedule.

**Genetically Modified Materials** means plant or animal material whose genetic code has been altered in order to give it characteristics that it does not have naturally.

**GrainFlow Domestic Rail Outturn Weight Figure** means the figure determined by GrainFlow for the relevant Commodity Outturned for transportation by rail to a Domestic Destination.

**GrainFlow Export Rail Outturn Weight Figure** has the meaning given in clause 7.24.

**GrainFlow Order Form** means the standard GrainFlow form to be completed by the Client on each occasion the Client requires GrainFlow to Outturn Commodities or any corresponding client order form which contains at least the same information and which is in a form reasonably acceptable to GrainFlow.

**Grain Reveal Ticket** means GrainFlow's standard Commodity delivery confirmation form completed by GrainFlow each time a Grower makes a delivery of Commodity to the Client in the manner contemplated by clause 4.1 or under the On Farm Pickup Program referred to in clause 8, and which is transmitted electronically by GrainFlow to the Client and which contains details of the weight, Commodity type, variety and quality of the Commodity delivered and Delivery Option.

**GrainFlow Sample Manual** means the manual setting out the methodology followed at the Storage Facilities for the sampling and testing of commodities on receipt at those facilities.

**Grower** means a person who grows Commodities and sells them to the Client.

**GST** has the same meaning as in section 195.1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**GTA Trading Standards** has the meaning given in the definition of **Appropriately Certified**.

**Independent Testing** means testing of samples of Commodities in accordance with the Approved Testing Methodology, to be conducted by Agrifood Pty Ltd or such other testing laboratory that the parties agree in writing.

**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 receipt fee 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.

**NMI** means the National Measurement Institute being part of the Australian Government Department of Innovation, Industry, Science and Research.

**Original Storage Facility** has the meaning given in clause 7.2.

**Outloading Weight Ticket** means the form produced by GrainFlow at the time of Outturn which details the weight of the Commodity Outturned.

**Outturn** means the removal of Commodities from a Storage Facility and the loading of those Commodities for transportation by a Transport Service Provider.

**Outturned Amount** means the total weight of Commodities (in tonnes) Outturned by GrainFlow under the Agreement, being the aggregate weight of Commodities Outturned as recorded in each Outloading Weight Ticket.

**Outturn Defect** has the meaning given in clause 7.9.

**Outturn Entitlement** means the total weight of Commodities (in tonnes) required to be Outturned by GrainFlow under the Agreement, being the aggregate weight, type and grade of Commodities received at the Storage Facilities as recorded in each Grain Receipt Ticket, subject to allowance for shrinkage in accordance with clause 12.

**Permitted Tolerance** means, in relation to the measurement of protein or moisture, +/- 0.3 of the percentage result for protein and/or moisture and +/- 0.5 of the percentage result for screenings (e.g. if the percentage measurement specified by the Receipt Standards for moisture is 12.5%, the Permitted Tolerance under this definition is 12.2% - 12.8%).

**Port** means an Australian port including Fisherman Islands, Queensland Bulk Terminals, Newcastle, Port Kembla, Melbourne Port Terminal, Geelong Port Terminal, Port of Portland, Port Adelaide Inner and Outer Harbour, Wallaroo and Port Giles.

**Priority Deed** means a deed of priority in GrainFlow's standard format from time to time.

**Receipt Information** means the information GrainFlow requires persons delivering a load of Commodities to the Storage Facility to supply, as notified by GrainFlow to the Client from time to time and which must include the relevant Grower registration number, Delivery Option (including whether delivery is to a specified marketer or the relevant Commodity is to be warehoused), type of commodity and variety and treatment history.

**Receipt Standards** means GrainFlow's standards for the receipt and classification of Commodities delivered to the Storage Facility as notified by GrainFlow to the Client from time to time.

**Schedule** means the schedule to these terms and conditions which, for the removal of doubt, forms part of these terms and conditions.

**Season** means 12 consecutive calendar months commencing 1 October each year.

**Services** means the receipt of Commodities at the Storage Facility, the storage and handling of Commodities and the Outturn of Commodities, subject to these terms and conditions.

**Shrinkage Allowance** means the percentages specified as such in the Schedule.

**Storage Period**, in relation to particular Commodities, means the period during which GrainFlow supplies Services in respect of those Commodities under the Agreement.

**Tax Invoice** has the same meaning as in section 195.1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

**Third Party Claim** means any action, claim or demand in relation to ownership of, or the enforcement of any security interest in relation to, any Commodity.

**Time of Discharge** means, in relation to particular Commodities, completion of Outturn of those Commodities.

**Time of Receipt** means, in relation to particular Commodities, the time of delivery to GrainFlow of those Commodities.

**Trade Certified** means certification within the previous 12 month period by NMI pursuant to *National Measurement Act 1960* (Cth) and *National Measurement Regulations 1999* (Cth) and having an accuracy of 99.5% or better.

**Transport Service Provider** means a third party contractor of the Client who transports Commodities by road vehicle or rail wagon following completion of the supply of the Services in relation to those Commodities.

**Weight Discrepancy Notice** means the written notice that must be provided by the Client to GrainFlow, advising GrainFlow that the GrainFlow Domestic Rail Outturn Weight Figure is outside the one per-cent range of the Client Receival Weight Figure.

## 1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include the other genders;
- (c) other grammatical forms of defined words or phrases have corresponding meanings;
- (d) a reference to "dollar", "\$" or "\$A" is a reference to Australian currency;
- (e) a reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- (f) headings are for convenience of reference only and do not affect interpretation;
- (g) unless specified otherwise, "day" means a calendar day; and
- (h) **including** must not be treated as a word of limitation.

## 2. TERM

Subject to clause 10 and unless terminated earlier, the Agreement is in force during the Term. The terms and conditions of the Agreement are deemed to be accepted by the Client if the Client uses any Services, even if the Client has not executed the Agreement.

## 3. GrainFlow - GENERAL OBLIGATIONS

GrainFlow will, subject to these terms and conditions, supply the Services to the Client in respect of Commodities from the Storage Facilities as and when required by the Client from time to time.

## 4. RECEIVAL

- 4.1 In connection with the supply of the Services by GrainFlow, GrainFlow will, in accordance with GrainFlow's applicable procedural requirements, provide an administrative service to the Client enabling the direct delivery to the Storage Facilities by Growers of Commodities and the sale of those Commodities to the Client on a cash, contract or pool price basis. The Client must, in accordance with GrainFlow's requirements notified to the Client from time to time, provide such information (including details of the Client's available Delivery Option(s) and applicable pricing) as GrainFlow requires to supply the administrative service referred to in this clause 4.1.

- 4.2 GrainFlow will receive Commodities which:

- 4.2.1 meet the applicable Receival Standards, subject to the Dynamic Binning Strategy; and

- 4.2.2 are delivered with the relevant Receival Information and in respect of which the person delivering the Commodities provides such confirmations in respect of the Receival Information as GrainFlow reasonably requires.

- 4.3 For the removal of doubt, GrainFlow may at its sole discretion, decline to receive any Commodities which do not satisfy the requirements of clause 4.2.

- 4.4 The Client acknowledges and accepts that GrainFlow is not responsible in any way for any errors, or for any damages, losses, costs, expenses or liabilities suffered, sustained or incurred resulting from any errors howsoever arising, in the Receival Information as supplied by the person delivering Commodities to the Storage Facility.

- 4.5 In addition to above, GrainFlow may decline to receive particular Commodities where GrainFlow determines, in its sole discretion, that the relevant Storage Facility does not have capacity to receive those Commodities.

- 4.6 GrainFlow may, where reasonably necessary or practicable, commingle any Commodities with commodities belonging to or stored on behalf of any third party, provided that the Commodities will not be commingled with commodities of a different commodity type. Commingled commodities will be deemed to be common commodity of specified quality stored in bulk.

- 4.7 Without limiting clause 4.4, the Client acknowledges that where GrainFlow provides an administrative service to the Client for the delivery and sale by a Grower to the Client of Commodities on a cash price basis, there may be occasions where GrainFlow does not accurately record in its records the details of that sale. The Client agrees that where, within 5 Business Days of the day of the delivery of the relevant Commodities by or on behalf of a Grower to GrainFlow, GrainFlow demonstrates to the reasonable satisfaction of the Client that the data originally recorded by GrainFlow in its records is incorrect, the Client agrees to honour the correct terms of the sale. The Client agrees that GrainFlow may verify the correct terms of sale by producing for inspection by the Client the delivery form supplied by or on behalf the Grower to GrainFlow giving GrainFlow delivery instructions and information.

## 5. GrainFlow - SPECIFIC OBLIGATIONS

In supplying the Services, GrainFlow will take reasonable steps to:

- 5.1 provide and maintain all equipment, facilities and materials (including pesticide and fumigation treatments), necessary to perform GrainFlow's obligations under these terms and conditions;

- 5.2 keep complete and accurate records in respect of the Services;

- 5.3 ensure the safe storage of Commodities and that they remain free of insects and contaminants; and

- 5.4 maintain a high standard of hygiene at the Storage Facilities.

## 6. STORAGE FACILITIES - OPERATING HOURS

The Client acknowledges that GrainFlow has an absolute discretion in relation to the days and times that the Storage

Facilities will be kept open for business and that GrainFlow provides no guarantees that the Storage Facilities will be open on any particular days or at any particular times.

## 7. OUTTURN

### *Introduction*

7.1 Subject always to the Client having an Outturn Entitlement and the terms in these terms and conditions, GrainFlow will Outturn Commodities on request by the Client from time to time subject to the following provisions of this clause 7.

### *Outturn from an Alternate Storage Facility*

7.2 The Client agrees that GrainFlow may, in its discretion, Outturn Commodities from a Storage Facility (**Alternative Storage Facility**) other than the Storage Facility at which the Client acquired the Commodities (**Original Storage Facility**) if GrainFlow determines, in its reasonable opinion, that it is operationally efficient to Outturn the Commodities from the Alternative Storage Facility.

7.3 Subject to clause 7.4, where the Commodities are Outturned from the Alternative Storage Facility, the parties must calculate the applicable freight differential as follows:

**Freight Differential** = (Published GTA Location Differential for Alternative Storage Facility – Published GTA Location Differential for Original Storage Facility) x \$1 x metric tonnes of Commodity Outturned.

Where the Freight Differential is positive, GrainFlow must pay the value of the Freight Differential to the Client. Where the Freight Differential is negative, the Client must pay the value of the Freight Differential to GrainFlow.

### *GrainFlow Order Form and Time for Outturn*

7.4 On each occasion the Client requires GrainFlow to Outturn Commodities, the Client must provide GrainFlow with a GrainFlow Order Form, which must include the following details in respect of the Commodities requested to be Outturned:

- 7.4.1 the quantity and grade;
- 7.4.2 the quality specifications;
- 7.4.3 the name of the Transport Service Provider;
- 7.4.4 the Client Delivery Location; and
- 7.4.5 the estimated time (during any working week) of arrival of the Transport Service Provider at the Storage Facility having regard to the notice periods under clause 7.5.

GrainFlow will not allocate Commodity for Outturn until it has received a GrainFlow Order Form properly completed in accordance with this clause 7.4.

The Client must comply with all of GrainFlows ordering procedures from time to time, including in respect of any implementation by GrainFlow of an online ordering system during the Term.

7.5 Subject to clause 7.6, GrainFlow will use all reasonable efforts to complete Outturn of the Commodities specified in each GrainFlow Order Form:

- 7.5.1 for transport by road, at the time specified in the GrainFlow Order Form, provided that the relevant GrainFlow Order Form must be given to GrainFlow before 5.00 pm on the Thursday immediately preceding the working week during which Outturn is requested; and

7.5.2 for transport by rail, at the time specified in the GrainFlow Order Form, provided that the applicable GrainFlow Order Form must be given to GrainFlow at least 10 days prior to the day on which Outturn is requested.

7.6 GrainFlow does not guarantee that it will Outturn the Commodities by the time periods specified in clause 7.5 and GrainFlow will have no liability to the Client 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 clause 7.5. However, GrainFlow will advise the Client from time to time of any potential delays and revisions to the estimated time for completion of Outturn of particular Commodities.

7.7 Despite anything to the contrary stated in these terms and conditions, the Client agrees that GrainFlow will not be obliged under these terms and conditions to Outturn Commodities during any period(s) during which:

- 7.7.1 Commodities are undergoing programmed fumigation;
- 7.7.2 Commodities are subject to insect infestation;
- 7.7.3 the Storage Facility is undergoing routine or emergency maintenance;
- 7.7.4 adverse weather conditions (including rain, flood, fire, storm and winds) prevent the safe Outturn of Commodities at that Storage Facility or give rise to a risk that such Commodities may be damaged during Outturn;
- 7.7.5 any plant and equipment necessary for, or used in connection with, the Outturn of Commodities is malfunctioning, broken down or otherwise unavailable; or
- 7.7.6 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.

### *GrainFlow Outturn Obligations – Receival Standards*

7.8 Subject to the following provisions of this clause 7 and without limiting any other provision of these terms and conditions (including, in particular, clause 19), GrainFlow will Outturn Commodities which, as a minimum, meet the Receival Standards that apply in relation to the Commodities to be Outturned.

7.9 The Client must notify GrainFlow in writing (using GrainFlow's standard form Product Failure Report or client form containing at least the same information in a form reasonably acceptable to GrainFlow) of any failure to comply with the applicable Receival Standards) (**Outturn Defect**) (together with the Client's test results which demonstrate the Outturn Defect):

- 7.9.1 immediately upon it becoming aware of an Outturn Defect; and
- 7.9.2 in any case and without limiting clause 7.11.1, within 24 hours after the time when the Commodities have been received at the Client Delivery Location or within 4 days following completion of Outturn (whichever is the sooner to occur).

Where a Client alleges an Outturn Defect, GrainFlow may agree to the Client returning at its own expense the relevant Commodities to a Storage Facility. The Client agrees and acknowledges that the return of Commodities to a Storage Facility GrainFlow is in no way an admission of

the presence of an Outturn Defect. GrainFlow will conduct tests using 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 to the Client Delivery Location and the Client agrees to pay any such fee levied.

- 7.10 For the removal of doubt, GrainFlow will have no liability to the Client or any third party whatsoever and howsoever arising in relation to Outturn Defects where written notification is not received by GrainFlow from the Client in accordance with the requirements of clause 7.9. Without limitation, the Client agrees 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.
- 7.11 The parties agree that the despite anything to the contrary contained or implied in these terms and conditions:
- 7.11.1 GrainFlow shall have no liability for an Outturn Defect where the Client did not specify the Client Delivery Location in the GrainFlow Order Form relating to the Outturn of the relevant Commodities that are the subject of the Outturn Defect; and
- 7.11.2 the following circumstances shall not constitute an Outturn Defect for the purposes of these terms and conditions and GrainFlow shall have no liability to the Client for these circumstances:
- 7.11.2.1 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 +/- 0.5 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%);
- 7.11.2.2 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 grain the permissible tolerance is 1 bin burnt grain per litre;
- 7.11.2.3 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 Receipt. This includes, but is not limited to, germative quality of barley, varietal purity of grain, falling number of wheat and barley, vitreousness of durum wheat and the presence of toxic and chemical residues;
- 7.11.2.5 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
- 7.11.2.6 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 Outloading Weight Ticket.
- 7.12 Within 24 hours of request by GrainFlow the Client must provide GrainFlow with written details (in a form reasonably satisfactory to GrainFlow) of:
- 7.12.1 the equipment used in performing the tests which the Client alleges evidences an Outturn Defect (including details of NMI class, type, make and model) (**Client Equipment**), which equipment must be Approved Equipment;
- 7.12.2 the Client Equipment being Appropriately Certified; and
- 7.12.3 the methodology followed in performing the tests referred to in clause 7.10.1, which methodology must in all respects be consistent with the Approved Testing Methodology.
- 7.13 Unless the Client complies with the requirements of clause 7.12 (within the time required), GrainFlow shall have no liability for the alleged Outturn Defect.
- 7.14 Upon the Client providing the written evidence required under clause 7.12, the Client agrees that GrainFlow may (but is not obliged to):
- 7.14.1 attend the Client Delivery Location and observe the client testing methodology;
- 7.14.2 attend the Client Delivery Location and test an GrainFlow sample of the Commodities that are 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
- 7.14.3 request, and the Client 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 clause 7.12.
- 7.15 If:
- 7.15.1 GrainFlow observes any part of the testing methodology applied at the Client Delivery Location which is not consistent with the Approved Testing Methodology; or
- 7.15.1 GrainFlow tests the GrainFlow Own Sample under clause 7.14.2 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
- 7.15.2 the Client does not provide evidence reasonably satisfactory to GrainFlow which verifies the matters referred to in clause 7.14.3 or does not procure that GrainFlow is enabled to conduct the testing contemplated by clause 7.14.2,
- then GrainFlow shall have no responsibility for the alleged Outturn Defect.
- 7.16 Within 72 hours of GrainFlow receiving the Client's written notice of an Outturn Defect clause 7.9 and irrespective of whether GrainFlow takes any action under clauses 7.13 or 7.14 (or of the results of any such action that may be taken), GrainFlow may (but is not obliged to) by notice in writing to the Client require 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, the Client agrees that that sample shall be used by

GrainFlow for the purposes of the Independent Testing. Otherwise, the Client 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. The Client agrees 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 the Client.

7.17 If under any of the preceding provisions of this clause 7, GrainFlow is liable for any Outturn Defect, GrainFlow will, subject always to clauses 21 and 26, at its option:

7.17.1 pay to the Client an amount equal to  $V \times (M1 - M2)$  where:

V is the quantity in tonnes of Commodities affected by the Outturn Defect;

M1 is Market Price per tonne of the Commodities on the date of 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

7.17.2 replace the affected Commodity with commodity that is free from Outturn Defects.

GrainFlow will have no liability to the Client or any third party whatsoever howsoever arising in relation to any Outturn Defect other than as set out in this clause 7.17. Further and for the removal of doubt, GrainFlow shall not have liability for any quality issues, defects or contaminants affecting Outturned Commodities unless they constitute an Outturn Defect for which GrainFlow is liable in accordance with this clause 7.

**Weights – Outturn by Rail (Domestic Destination)**

7.18 Where the GrainFlow Domestic Rail Outturn Figure is determined by use of a weighbridge located at a Storage Facility, then the weight recorded over the weighbridge (GrainFlow bin charge record) shall be conclusive evidence of the weight of the relevant Commodities Outturned and shall be final and binding on the parties. Clauses 7.19 – 7.23 apply only where the GrainFlow Domestic Rail Outturn Figure is determined other than by use of a weighbridge located at a Storage Facility.

7.19 In relation to Commodities Outturned for transportation by rail to a Domestic Destination, if the GrainFlow Domestic Rail Outturn Weight Figure is:

7.19.1 within or equal to a one per cent range of the Client Receival Weight Figure and the Client notifies GrainFlow of this fact in writing within 48 hours after the time when the relevant Commodities are received at the Client Delivery Location, GrainFlow will, having regard to industry practice and without any admission or acceptance of responsibility on its part, adjust the GrainFlow Domestic Rail Outturn

Weight Figure to be equal to the Client Receival Weight Figure; or

7.19.2 in excess of the one percent range of the Client Receival Weight Figure as referred to in clause 7.19.1, the Client must provide GrainFlow's logistics coordinator with a Weight Discrepancy Notice within 48 hours after the time when the relevant Commodities are received at the Client Delivery Location, and in these circumstances GrainFlow and the Client will meet to discuss and use reasonable endeavours to agree a resolution to the alleged discrepancy on mutually acceptable terms. In the absence of agreement within a reasonable time after the Weight Discrepancy Notice is delivered to GrainFlow, the provisions of clause 28 will apply.

7.20 The Client must, within 48 hours after the time when Commodities Outturned for transportation to a Domestic Destination are received at the Client Delivery Location, provide GrainFlow with full details in writing of the Client Receival Weight Figure and any other information and documentation reasonably required by GrainFlow. The Client must comply with its obligations under this clause 7.20 whether or not it has notified GrainFlow pursuant to clause 7.19 of any discrepancy between the GrainFlow Domestic Rail Outturn Weight Figure and the Client Receival Weight Figure.

7.21 GrainFlow's sole liability where the GrainFlow Domestic Rail Outturn Weight Figure is less than or equal to one per cent above the Client Receival Weight Figure is as set out in clause 7.19.1.

7.22 For the removal of doubt, GrainFlow will have no liability to the Client or any third party whatsoever howsoever arising in relation to any discrepancy between the GrainFlow Domestic Rail Outturn Weight Figure and the Client Receival Weight Figure where:

7.22.1 written notification is not received from the Client within the 48 hour period referred to in clause 7.19.1 or clause 7.19.2, as the case may be; and/or

7.22.2 the Client fails to comply with its obligations under clause 7.20; and/or

7.22.3 the equipment used to calculate the Client Receival Weight Figure has not been Trade Certified.

7.23 The Client must provide written notification to GrainFlow of all details of all Client Receival Weight Figures within 48 hours after the time when all relevant Commodities are received at the Client Delivery Location.

**Weights – Outturn by Rail (Export Destination)**

7.24 In relation to Commodities Outturned for transportation by rail to an Export Destination, the weight figure recorded on each Outloading Weight Ticket (**GrainFlow Export Rail Outturn Weight Figure**) is final and binding and GrainFlow will have no liability to the Client whatsoever howsoever arising if the Client Receival Weight Figure is less than the GrainFlow Export Rail Outturn Weight Figure.

7.25 The Client must, within 48 hours after the time when Commodities Outturned by rail to an Export Destination are received at the Export Destination, provide GrainFlow with full details in writing of the Client Receival Weight Figure and any other documents or records reasonably requested by GrainFlow.

**Weights – Outturn by Road (Domestic and Export Destinations )**

- 7.26 In relation to Commodities Outturned for transportation by road, the weight figure recorded on each Outloading Weight Ticket (**GrainFlow Road Outturn Weight Figure**) is final and binding and GrainFlow will have no liability to the Client whatsoever howsoever arising if the Client Receival Weight Figure is less than the GrainFlow Road Outturn Weight Figure.
- 7.27 The Client must, within 48 hours after the time when Commodities Outturned for transportation by road are received at the Client Delivery Location, provide GrainFlow with full details in writing of the Client Receival Weight Figure and any other documents or records reasonably requested by GrainFlow.
- 7.28 Nothing in the preceding provisions of this clause 7 limits clause 15.4.

**Indemnity – over Outturn due to inaccurate records**

- 7.29 The Client must, if it knows or if it 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. The Client indemnifies GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow howsoever as a result of, or arising out of, a breach of this clause by the Client.

**8. ON-FARM PICKUP PROGRAM**

- 8.1 The Client acknowledges that GrainFlow operates an On-Farm Pickup Program, allowing direct delivery of Commodities from Growers' farms to the Storage Facility (**Pickup Program**). The following provisions of this clause 8 apply if item 5 of the Commercial Details specifies that the Client has elected to participate in the Pickup Program.
- 8.2 GrainFlow's collection and transport of Commodities under the Pickup Program is subject to GrainFlow's requirements for the conduct and operation of the Pickup Program as notified in writing by GrainFlow to the Client from time to time.
- 8.3 Without limiting clause 8.2, the Client acknowledges that in respect of each delivery of Commodity to the Client made by Growers using the Pickup Program (as notified by GrainFlow to the Client in the Grain Receival Ticket applying to that delivery), the Client will deduct from the proceeds otherwise payable to those Growers for the Commodity purchased, GrainFlow's costs of collection under the Pickup Program (**Deduction Amount**). The Client will pay the Deduction Amount to GrainFlow within 14 days after receipt of invoice from GrainFlow.
- 8.4 GrainFlow confirms that Grower participation in the Pickup Program is conditional upon each Grower providing written consent for the relevant Commodity acquirer to deduct the Deduction Amount from the proceeds otherwise payable to those Growers for the Commodity purchased. GrainFlow will provide a copy of such consent upon request from the Client.

**9. TRANSPORT SERVICE PROVIDERS**

- 9.1 The Client agrees to ensure that, in delivering Commodities to or collecting Commodities from any Storage Facility, all Transport Service Providers will:

- 9.1.1 comply with GrainFlow's operating procedures and occupational health and safety guidelines and all requirements and directions given by GrainFlow;
- 9.1.2 comply with all applicable laws including without limitation those relating to occupational health and safety, driving hours, driver fatigue management, loading, unloading, weight or mass limits, dimension limits, load restraint limits, road and rail safety and regulation, vehicle maintenance and vehicle emissions, vehicle mass limits and similar freight and safety obligations and any act, regulation, code or standards of industry best practice applying to the operation of the Transport Services Provider's business or the engagement or management of its personnel (**Applicable Laws**) and use vehicles that are entirely fit for purpose;
- 9.1.3 provide reasonably detailed evidence of its (and its personnel's) compliance policies and procedures (including its Driver Fatigue Management System) when requested by GrainFlow from time to time;
- 9.1.4 fully, accurately and properly complete, and provide to GrainFlow, all vehicle and container weight declarations and information and any other required documentation relating to loading, weights and freight and safety obligations where required to do so by any Applicable Laws;
- 9.1.5 maintain all equipment and materials used in delivering or collecting Commodities to a standard that allows compliance with all Applicable Laws; and
- 9.1.6 keep the Client and GrainFlow and their employees, agents and sub-contractors informed at all relevant times of all up to date information and documentation reasonably required to allow each of the Client and GrainFlow to comply with all Applicable Laws.
- 9.2 The Client agrees to ensure that, in delivering Commodities to or collecting Commodities from any Storage Facility, all Transport Service Providers will:
- 9.2.1 only present vehicles that are clean and free from contaminants; and
- 9.2.2 upon request by either the Client or GrainFlow promptly provide information and documentation about a vehicle's prior load.
- 9.3 The Client acknowledges and accepts that GrainFlow may at its sole discretion and without reason and without any liability whatsoever to the Client or any third party, refuse to allow any Transport Service Provider to deliver Commodities to, or collect Commodities from, any Storage Facility.
- 9.4 The Client must:
- 9.4.1 bear all costs arising from the exercise by GrainFlow of its rights under clauses 9.2 and 9.3;
- 9.4.2 bear all costs arising from any alleged Outturn Defect detected at a Client Delivery Location arising out of a breach or suspected breach of clause 9.2.1, including without limitation the payment of any re-receival fees charged by GrainFlow and any costs incurred by GrainFlow in removing grain in any way connected with the alleged Outturn Defect; and
- 9.4.3 indemnify GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or

incurred by GrainFlow as a result of, or arising out of, any act or omission (including any negligent or unlawful act or omission or any failure to comply with any Applicable Laws) of any Transport Service Provider engaged by the Client to deliver or collect Commodities from any Storage Facility.

#### 10. CARRY-OVER OF COMMODITY

- 10.1 In the event that the Client has any Carry-Over Commodities, GrainFlow will, subject to the following provisions of this clause 10, continue to supply the Services to the Client in relation to the Carry-Over Commodities on these terms and conditions (including subject to the payment of Fees in accordance with clause 15) until completion of Outturn of all such Carry-Over Commodities.
- 10.2 The Client agrees to pay GrainFlow the applicable Carry-Over Fee in relation to all Carry-Over Commodities within 30 days after receipt of invoice from GrainFlow.
- 10.3 GrainFlow may require the Client to accept Outturn of the Carry-Over Commodities by giving the Client not less than 14 days' notice in writing (**Carry-Over Outturn Notice**). The Carry-Over Outturn Notice will specify the date by which the Carry-Over Commodities must be Outturned. In these circumstances, the Client must cooperate with GrainFlow in every reasonable way to facilitate Outturn of the Carry-Over Commodities by the date specified in the Carry-Over Outturn Notice (including arranging a Transport Service Provider to transport the Carry-Over Commodities from the Storage Facilities). If the Client does not accept Outturn of the Carry-Over Commodities by the date specified in the Carry-Over Outturn Notice, or if the Client otherwise fails to cooperate with GrainFlow as required by this clause, GrainFlow may at any time after the Outturn date specified in the Carry-Over Outturn Notice:
- 10.3.1 sell the Carry-Over Commodities to a third party and remit the proceeds of sale to the Client less any unpaid fees or other monies due from the Client to GrainFlow; or
- 10.3.2 transfer the Carry-Over Commodities to an Alternative Storage Facility in its discretion whereupon the relevant Carry Over Commodities shall be made available for Outturn from that Alternative Storage Facility. In this circumstance, the Client shall be responsible for and shall pay to GrainFlow on invoice from GrainFlow all costs of Outturn from the Original Storage Facility, all costs of transport to the Alternative Storage Facility and all costs of Receipt at the Alternative Storage Facility, at GrainFlow's then current rates. In addition, the Client shall remain liable to pay all Fees for the supply of Services in relation to the Carry-Over Commodities from the Alternative Storage Facility.
- 10.4 Unless otherwise agreed in writing by GrainFlow, GrainFlow will not receive any Commodity under these terms and conditions after the Carry-Over Date.
- 10.5 Any Carry-Over Commodity shall be subject to the terms and conditions of the corresponding agreement in respect of the Season in which the Carry-Over Commodity was received by GrainFlow and subject also to such other terms and conditions or stipulations as GrainFlow notifies to the Client in writing including without limitation the re-grading of the Carry-Over Commodity.

#### 11. AGGREGATION OF COMMODITY GRADES

The parties acknowledge that for the purposes of:

- 11.1 applying the Shrinkage Allowance under clause 12; and
- 11.2 determining whether any adjustment is due under clause 13,

each different grade of Commodity in respect of which GrainFlow supplies Services under these terms and conditions is to be aggregated across all Storage Facilities at which GrainFlow supplies Services in respect of that particular grade and is otherwise to be dealt with separately and not in combination with any other Commodity grade(s).

#### 12. SHRINKAGE

- 12.1 The Client acknowledges that normally occurring environmental influences and unavoidable handling losses will cause a reduction in the weight of Commodities during the course of the provision of the Services. Subject to clauses 7.18 to 7.28 and payment by GrainFlow of any amount due under clause 13, it will not be a breach of GrainFlow's obligations under these terms and conditions if, at the Time of Discharge, the weight of the relevant Commodities has reduced by less than or equal to the Shrinkage Allowance having regard to the weight of the relevant Commodities at the Time of Receipt.
- 12.2 For the purposes of clause 12.1 only and without limiting clauses 7.18 to 7.28, the weight of the relevant Commodities at the:
- 12.2.1 Time of Receipt, will be the net weight of the Commodities recorded in the Grain Receipt Ticket; and
- 12.2.2 Time of Discharge, will be the net weight of the Commodities recorded in the Outloading Weight Ticket.

#### 13. ADJUSTMENTS

- 13.1 After the complete Outturn of each individual grade for each Season at each Storage Facility covered by the Agreement, an adjustment will be made between GrainFlow and the Client in respect of any variation between the Outturned Amount and the Outturn Entitlement.
- 13.2 Subject to clause 21, where the Outturned Amount is less than the Outturn Entitlement, GrainFlow will, at its option and in full and final settlement:
- 13.2.1 pay to the Client an amount (**GrainFlow Adjustment**) calculated as follows:
- $$\text{GrainFlow Adjustment} = (\text{Outturn Entitlement} - \text{Outturned Amount}) \times \text{Market Price on the date that GrainFlow notifies the Client in writing of the shortfall,}$$
- or,
- 13.2.2 within a reasonable period after completion of Outturn, provide the Client with Commodity of the same type, amount and grade from any of the Storage Facilities so that the Outturn Amount equals the Outturn Entitlement.
- When the Client has been advised that the Outturned Amount is less than the Outturn Entitlement, notwithstanding clause 14, the Client agrees not to transfer this entitlement to a third party.
- 13.3 Where the Outturned Amount is greater than the Outturn Entitlement, the Client will pay to GrainFlow an amount (**Client Adjustment**) calculated as follows:

Client Adjustment = (Outturned Amount – Outturn Entitlement) x Market Price on the date of final Outturn to the Client.

13.4 The GrainFlow Adjustment and / or the Client Adjustment (if any) shall be paid within 30 days of receipt of invoice in full and final settlement.

13.5 For the removal of doubt, any adjustment pursuant to the preceding provisions of this clause 13 will be made having regard to the aggregate weight of Commodities Outturned as recorded in each Outloading Weight Ticket, notwithstanding any claim by the Client pursuant to clause 7.19.

13.6 Title in any grain remaining at any Storage Facility covered by these terms and conditions that is surplus to the Client's Outturn Entitlement will transfer to GrainFlow and GrainFlow is entitled to sell or dispose of any such surplus grain as it sees fit and to retain for itself any proceeds.

#### 14. TITLE TRANSFER

14.1 The Client may, in accordance with the applicable procedures of GrainFlow in force from time to time (and which shall be provided upon request), transfer its title to all or part of the Commodities to a third party (**Transferee**) provided that:

14.2.1 the sum total of the amount or amounts transferred shall be no more than the applicable Outturn Entitlement;

14.2.2 the Client has performed all its obligations under these terms and conditions and has made all payments for Services supplied in respect of the relevant Commodities, up to the date of transfer; and

14.2.3 the Transferee agrees, in writing, to be bound by these terms and conditions.

14.2 The Client must produce all relevant documents required by GrainFlow to effect transfer of its title to the Commodities pursuant to the preceding provisions of this clause 14.

#### 15. GrainFlow FEES

15.1 In consideration of the supply by GrainFlow of the Services, the Client must pay to GrainFlow the Fees.

15.2 GrainFlow will invoice the Client on a calendar monthly basis. GrainFlow's invoices must provide the information specified in the Schedule.

15.3 The Client must pay the Fees within 30 days after receipt of invoice from GrainFlow.

15.4 Despite clause 15.3, unless otherwise agreed by GrainFlow, all Fees in respect of Commodities to be Outturned or title transferred must be paid in full up to the date of Outturn or transfer. GrainFlow is entitled to refuse Outturn or allow transfer of Commodities if the Client fails to comply with this clause 15.4.

15.5 If the duration of the Term is greater than 12 months, or if the Term is extended beyond 12 months by agreement between GrainFlow and the Client then, subject to clause 15.6, GrainFlow may amend the Fees on each anniversary of the commencement of the Term by written notice to the Client. If GrainFlow proposes to amend the Fees, GrainFlow must provide a revised version of the Schedule, setting out the new Fees. In this circumstance, the Schedule will be deemed deleted and replaced with the revised Schedule

provided by GrainFlow under this clause 15.5 with effect from the date 30 days after the date of GrainFlow's notice of the amendment of the Fees or, if the notice is provided more than 30 days prior to the nearest anniversary of the commencement of the Term, on that anniversary of the commencement of the Term.

15.6 In the absence of any agreement to the contrary between GrainFlow and the Client, the amended Fees set out in a notice provided by GrainFlow under clause 15.5 must be substantially the same as the standard fees published by GrainFlow and charged by GrainFlow for similar services to its other customers.

#### 16. GST

16.1 Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause 16.

16.2 Unless otherwise expressly stated, any amounts payable for a supply made under this document are exclusive of GST (**GST exclusive amount**).

16.3 Where under the Agreement a taxable supply is made, an amount equal to the GST payable on the taxable supply (**GST amount**) must be paid in addition to, at the same time and in the same manner as the GST exclusive amount otherwise payable for the supply. The party who receives consideration, whether monetary or otherwise, must issue a weekly tax invoice to the other party in a form which complies with the GST Law in a timely manner. The payer is not obliged to pay any amount until it has received a valid tax invoice in relation to the relevant supply.

16.4 If an adjustment event arises in relation to any taxable supply made under the Agreement that gives rise to an increasing adjustment or decreasing adjustment the GST amount must be adjusted accordingly and where necessary a payment must be made to reflect that increasing adjustment or decreasing adjustment. Immediately after the adjustment event arises the supplier must provide a valid adjustment note to the recipient.

16.5 If a party (the **first party**) is required under the Agreement, to pay for or reimburse a cost, expense or outgoing of the other party, the amount to be paid by the first party is the sum of:

16.5.1 the amount of the cost, expense or outgoing less any input tax credits in respect of the cost, expense or outgoing that the other party (or the representative member of a GST group of which it is a member) is entitled; and

16.5.2 if the payment by the first party is consideration for a taxable supply, an amount equal to the GST amount payable by the other party in respect of the taxable supply.

#### 17. TITLE & LIEN

17.1 Subject to clause 17.2:

17.1.1 The Client warrants and represents that it is, or will be for the entire time that GrainFlow supplies Services to it in respect of particular Commodities, the sole legal and beneficial owner of all Commodities with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest.

17.1.2 GrainFlow shall have a lien over Commodities as from the Time of Receipt of the Commodities for all moneys payable by the Client to GrainFlow on any account whatsoever.

17.1.3 Without limiting clause 15.4, GrainFlow will be entitled, upon default by the Client in making any payments due to GrainFlow and in exercising the lien referred to in clause 17.1.2, to sell all or any of the Commodities in such manner as it thinks fit and use the proceeds of such sale in or towards satisfaction of the moneys due to GrainFlow, together with GrainFlow's costs of effecting the sale. The balance of the proceeds of such sale will be paid by GrainFlow to the Client.

17.2 The warranty in clause 17.1 shall not apply in relation to any particular Commodities:

- (a) to the extent that the Client notifies GrainFlow of the existence of any encumbrance or other security interest affecting those Commodities; and
  - (b) in respect of which the Client procures the holder of that encumbrance or security interest over the relevant Commodities enters into a Priority Deed with GrainFlow,
- prior to Receipt of those Commodities by GrainFlow.

## 18. RECORDS

18.1 Each party must keep at its principal place of business proper, complete and current records, books of account and documents relating to the supply of the Services by GrainFlow under or in connection with these terms and conditions (**Records**) and will make the Records available for inspection by officers of the other party upon the giving of reasonable notice.

18.2 The Client must, and must procure that its officers do, comply with all directions or conditions reasonably given by GrainFlow in connection with any inspection of the Records.

## 19. CONTAMINANTS

19.1 The Client must take all reasonable measures to ensure that Commodities containing any Genetically Modified Materials, or any pest or insect infestation or any other toxic or other chemical treatments or contamination will not be delivered to the Storage Facility.

19.2 Without in any way limiting clause 19.1, the Client acknowledges that GrainFlow is unable to test Commodities on receipt for toxic or other chemical treatments, contaminants or Genetically Modified Materials and, without limiting any other provision of these terms and conditions and having regard to GrainFlow's entitlement under clause 4.6, GrainFlow is not liable for any damage to or contamination of any Commodities caused, whether directly or indirectly and howsoever arising, by the storage, handling or Outturn of any Commodities, whether of the Client or any third party, which, on receipt, contained any toxic or other chemical treatments, contaminants or Genetically Modified Materials. The Client indemnifies GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow as a result of, or arising out of, the delivery of Commodities by or for the Client that contain any Genetically Modified Materials, or any pest or insect infestation or any other toxic or other chemical treatments or contamination.

## 20. WARRANTIES AND INDEMNITY

20.1 The Client warrants that it:

- (a) is fully entitled without the consent of any third person to exercise all of the rights under and do all of

the things contemplated by these terms and conditions;

- (b) will not divulge any information in any way relating to Growers provided to it by GrainFlow in connection with Commodities other than for the purposes of grain marketing; and
- (c) will comply with all applicable laws, including any privacy laws, in exercising its rights and performing its obligations under these terms and conditions.

20.2 The Client indemnifies GrainFlow against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by GrainFlow howsoever arising directly or indirectly in relation to any Third Party Claim in relation to any Commodities or otherwise affecting the Client, or out of any breach of a warranty provided under these terms and conditions.

## 21. EXCLUSIONS AND LIMITATIONS

21.1 The parties agree that the only warranties provided by GrainFlow under or in connection with these terms and conditions are those expressly set out in these terms and conditions. For the removal of doubt and to the maximum extent permitted by law, GrainFlow excludes all conditions and warranties implied by law or statute.

21.2 Subject to clauses 7.17 and 13, GrainFlow excludes all liability for loss of profits and consequential and indirect loss and damage howsoever arising (including but not limited to loss or damage arising from any breach of the Agreement and/or the negligent act and/or omission of GrainFlow). GrainFlow acknowledges that nothing in this clause 21.2 limits its obligation under clause 7.8 to Outturn, subject to clauses 7.9 to 7.17 (inclusive), Commodities which, as a minimum, meet the Receipt Standards that apply in relation to the Commodities to be Outturned.

21.3 Other than where clause 21.4 applies, despite anything to the contrary contained in these terms and conditions and where permissible by law GrainFlow's total liability to the Client howsoever arising (including from any breach of these terms and conditions or the negligent act or omission of GrainFlow) is capped at a total all inclusive amount of \$50,000.00 for any single incident or event or series of related events.

21.4 If pursuant to any law or statute GrainFlow is not permitted, or is held not to be permitted, to exclude any implied condition or implied warranty, notwithstanding clause 21.3, in the event of any breach of any such implied condition or implied warranty in the provision of services to the Client and despite anything to the contrary contained or implied in these terms and conditions, GrainFlow's liability shall be limited, at its option, to the re-supply of the services that are the subject of the relevant breach to the Client or the payment to the Client of the cost of re-supply of such services.

## 22. CONFIDENTIALITY

22.1 Each party agrees that it will not, and will procure that its personnel do not, make any use of any Confidential Information of the other party for any purpose other than in connection with the performance of its obligations in accordance with these terms and conditions and agrees that it will, and will procure that its personnel will, keep such Confidential Information secret.

22.2 Each party shall positively guard against, and shall ensure that its personnel positively guard against, the direct or indirect disclosure of the Confidential Information of the other party to any third person.

22.3 The obligations of confidence contained in clauses 22.1 and 22.2 shall not be taken to have been breached where the Confidential Information is required to be disclosed by law.

22.4 The obligations of confidence contained in clauses 22.1 and 22.2 survive the expiry or termination of these terms and conditions.

### 23. TERMINATION

Either party (**Terminating Party**) may terminate the Agreement with immediate effect at any time by notice to the other party (**Breaching Party**) and without prejudice to its rights at law or otherwise if the Breaching Party:

23.1 breaches a term of the Agreement which is capable of remedy and fails to remedy that breach within fourteen (14) days after being given written notice to do so;

23.2 breaches a term of the Agreement which is incapable of remedy; or

23.3 is placed under some form of official management or insolvency administration or is unable to pay its debts as and when they fall due.

### 24. NOTICES

24.1 Notice to be given by a party under these terms and conditions must be:

- (a) in writing;
- (b) directed to the recipient's address as set out in the Commercial Details or as varied by written notice;
- (c) left or sent by pre-paid registered post, hand delivered, or facsimile to that address;

and will be deemed to be duly given:

- (d) in the case of hand delivery, on the day of delivery;
- (e) three (3) days after the date of posting by pre-paid registered post; or
- (f) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice unless, within eight business hours after that transmission, the recipient informs the sender that it has not received the entire notice,

as the case may be.

24.2 For the purposes of clause 24.1, the parties' respective addresses and facsimile numbers are as set out in the Commercial Details (unless otherwise notified in writing by one party to the other).

### 25. INTEREST

All overdue payments under these terms and conditions will bear simple interest at the rate of interest being two percent (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.

### 26. EVENTS OUTSIDE CONTROL

26.1 Neither party is liable for not performing an obligation in whole or in part, or for not performing it on time (except an

obligation to pay money) because of an event beyond that party's reasonable control.

26.2 If an event beyond a party's reasonable control occurs, that party must:

26.2.1 give the other notice of the event promptly and an estimate of the extent of the non-performance and delay;

26.2.2 take all steps to end the event as quickly as possible (but this does not require the settlement of industrial disputes or other claims or unreasonable terms); and

26.2.3 resume compliance as soon as the event no longer affects the party.

26.3 Without limitation, strikes, stop works, lock-outs, boycotts or any other form of labour dispute or industrial action shall be deemed to be events beyond the reasonable control of a party.

26.4 Notwithstanding anything to the contrary contained in these terms and conditions, GrainFlow is not liable to compensate the Client or any third party for any losses sustained or damages suffered by the Client and arising from an event beyond the reasonable control of GrainFlow.

### 27. INSURANCE

27.1 Subject to clauses 27.2 – 27.3 during the Term GrainFlow will obtain and keep current insurance for in respect of physical loss or damage to commodities stored across all of the Storage Facilities during such time as those commodities are in the possession, custody and control of GrainFlow.

27.2 Insurance under clause 27.1 will not be provided for any Commodity that is for the time being wholly or partly in the possession custody or control of any other person, including without limitation any subcontractor or third party freight provider of the Client.

27.3 The insurance required under clause 27.1 may be by way of a policy or policies covering one or more members of the corporate group of which GrainFlow forms part and may be subject to such deductibles and excesses as GrainFlow and that corporate group determines are appropriate.

27.5 The Client must have and maintain all insurances in respect of the Commodities and otherwise that a prudent person in the position of the Client would have and maintain and, without limitation, are sufficient to guard against its risks having regard to the terms of the Agreement. The Client must provide such information as GrainFlow reasonably requests from time to time to verify its compliance with the requirements of this clause.

### 28. DISPUTES

28.1 Subject to clause 28.6, the parties must attempt to settle any dispute under or relating to the Agreement (**Dispute**) in accordance with this clause 28 before resorting to external dispute resolution mechanisms.

28.2 A party claiming that a Dispute has arisen must notify the other party, at which time the parties must exchange all documents and other relevant information relevant to the dispute and refer the matter for discussion to representatives appointed and authorised to settle the dispute on their behalf.

28.3 If a dispute is not resolved within seven (7) days after notice is given under clause 28.2, the parties must meet within a

further seven (7) days (or such other time period agreed between the parties) and negotiate in good faith to agree upon:

- 28.3.1 a process to resolve the Dispute through means other than litigation, such as further negotiation, mediation, conciliation or independent expert determination;
- 28.3.2 the procedure and timetable for any exchange of documents and other information in relation to the Dispute;
- 28.3.3 procedural rules and timetable for the conduct of the selected mode of proceedings;
- 28.3.4 a procedure for selection and compensation of any neutral person; and
- 28.3.5 whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Commercial Disputes Centre.
- 28.4 If the parties cannot agree within the further seven (7) day period (or such other period agreed between the parties) referred to in clause 28.3 on a process for resolving the Dispute, or the Dispute has not been resolved within fourteen (14) days of the parties agreeing a process for resolving the Dispute under clause 28.3, then either party may by notice terminate the Dispute resolution process and may then commence court proceedings relating to the Dispute.
- 28.5 The exchange of information or documents or the making of any offer of settlement under this clause is for the purpose of attempting to settle the Dispute and is provided or made on a without prejudice basis.
- 28.6 A party may commence court proceedings relating to any Dispute at any time if that party is seeking urgent interlocutory relief or if the other party has failed to comply with the requirements of this clause 28.

## **29. GENERAL**

### **29.1 Entire agreement**

The Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in the 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 and merged in it.

### **29.2 Amendment**

The Agreement may only be amended in writing signed by both parties and not in any other manner.

### **29.3 Waiver**

- 29.3.1 The failure by any party at any time to enforce any of its powers, remedies or rights under the Agreement will not constitute a waiver of those powers, remedies or rights or affect the party's rights to enforce those powers, remedies or rights at any time.
- 29.3.2 Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise of it or the exercise of any other power, remedy or right under the Agreement.

### **29.4 Severance**

If any provision or part of a provision of the Agreement is prohibited, invalid or unenforceable in any jurisdiction, that provision or part of a provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining part(s) of the prohibited, invalid or unenforceable provision or any other provisions of the Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

### **29.5 Governing Law**

The Agreement is governed by the law in force in the State of Victoria and the parties submit to the jurisdiction of the courts of that State.

### **29.6 Assignment and Novation**

29.6.1 The Client must not assign or transfer any of its rights or novate any of its obligations under the Agreement without the prior written consent of GrainFlow and no assignment of any obligation will be effective until the Client has covenanted in favour of, and in form satisfactory to, GrainFlow, to assume and to be bound by the obligations assigned.

29.6.2 GrainFlow may assign or transfer any of its rights or novate any of its obligations under the Agreement to any person without the consent of the Client.

### **29.7 Set Off**

GrainFlow may set off against any monies that it owes to the Client under or in connection with the Agreement, any monies that are owed by the Client to GrainFlow.

### **29.8 Advertising**

GrainFlow shall be entitled to advertise the fact, at all relevant Storage Facilities, that the Client is a buyer of commodities from those facilities and shall further be entitled to advertise appropriate Client contact details for the purchase of commodities from those facilities.

**SCHEDULE**

**FEES & INVOICING**