

## Warehousing Standard Terms & Conditions (2009-2010)

### 1. Background

- (a) These are the terms and conditions that apply to the supply by AWB GrainFlow Pty Limited (ABN 62 088 928 858) (we or us or our) of warehousing and related services to the person (you or your) specified in the attached 2009/2010 Season Growers Warehousing Agreement (Warehousing Agreement).
- (b) These terms and conditions must be read in conjunction with, and form part of, the Warehousing Agreement. These terms and conditions may be amended by us by notice from time to time and the amendments will take effect as from the date of the notice.

### 2. Our agreement

Subject to these terms and conditions, we will:

- (a) Warehouse 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 Warehousing Agreement (Storage Facility) and in respect of which you confirm, by signing our completed warehousing weighbridge ticket (Weighbridge Ticket) that you require us to supply warehousing services; and
- (b) 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 to a participating 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)).

### 3. Your obligations

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 paragraph 2.

### 4. Compliance with receival standards and entitlement to reject

You acknowledge and agree that we may refuse to accept delivery of Your Grain under this agreement where:

- (a) That grain does not meet our applicable receival standards;
- (b) That grain is not delivered with the receival information that we require; or
- (c) We determine (in our discretion) that we have insufficient capacity at the Storage Facility.

### 5. Weights and grade

You acknowledge and agree that the weight and grade of Your Grain delivered under this agreement will be that recorded in the applicable Weighbridge Ticket.

### 6. Title & Lien

- (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 mortgage, charge, lien, option, encumbrance or other adverse claim or interest.
- (b) You acknowledge and agree that we shall have a lien over Your Grain for all moneys payable by you to us, whether under these terms and conditions or otherwise.
- (c) You acknowledge and agree that upon default by you in making any payments due to us and in exercising the lien referred to in paragraph 6(b), we shall be entitled to sell all or any of Your Grain in such manner as we think fit and use the proceeds of such sale in or towards satisfaction of the moneys due to us, together with our costs of effecting the sale. The balance of the proceeds of such sale will be paid to you.

### 7. Charges

- (a) No charges are payable by you for any services supplied by us under these terms and conditions in respect of any of Your Grain during the Transfer Period. The Transfer Period, for the purposes of these terms and conditions means the balance of the calendar month in which you deliver Your Grain to the Storage Facility and the next following two calendar months, ending on the last day of the last of those two months.
- (b) In relation to any of Your Grain 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 Warehousing Agreement (Storage Charges) from the day after the end of the Transfer Period until the date that it ceases to be Your Grain.
- (c) The Storage Charges must be paid by you within 14 days after invoice from us from time to time except that in circumstances where you instruct us to transfer title to any of Your Grain, all Storage Charges in respect of that grain must be paid in full up to the date of transfer. You agree that we may refuse to effect the transfer until you have complied with the requirements of this paragraph.

### 8. Risk

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 howsoever arising and you must maintain all appropriate insurances to cover your risk.

### 9. Liability

- (a) These terms and conditions do not exclude, restrict or modify the application of any statutory provision (including a provision of the Trade Practices Act (1974)) where to do so would:
- (i) contravene that statute; or
- (ii) cause any part of these terms and conditions to be void.
- (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 or special, consequential or indirect loss or damage; and
- (ii) without limiting paragraph 9(d)(i) our total liability to you for any single occurrence or event shall not exceed \$1,000.00.

### 10. Your acknowledgments

You acknowledge and agree that:

- (a) We will commingle Your Grain with grain delivered by third parties to the Storage Facility and which is of the same grade.
- (b) Your Grain cannot be removed from the Storage Facility.
- (c) Where Your Grain is delivered to the Storage Facility using our On Farm Pickup Program, despite anything to the contrary contained in these terms and conditions and in accordance with that program, title to that grain may only be transferred to a Participating Marketer who has agreed to participate in the On Farm Pickup Program in the manner contemplated in the On Farm Pickup Program terms and conditions, as accepted by you as a condition of your use of that program (Pickup Terms). In accordance with the Pickup Terms, the costs of collecting Your Grain (Collection Costs) will be deducted from the proceeds otherwise payable for the purchase of Your Grain.
- (d) Without in any way limiting the basis on which the On Farm Pickup Program is provided to you (as specified in the Pickup Terms), in relation to any of Your Grain:
- (i) delivered to the Storage Facility using the On Farm Pickup Program; and
- (ii) in respect of any of Your Grain which remains in the Storage Facility after the end of the Transfer Period, - we will invoice you the Collection Costs and you must pay our invoice within fourteen (14) days after receipt.

### 11. GST

- (a) Words defined in the A New Tax System (Goods and Services Tax) Act (1999) have the same meaning in this paragraph 11.
- (b) 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).
- (c) If we make a taxable supply to you, you must pay to us an amount equal to the GST payable on the taxable supply to the extent that, in addition to, and at the same time and in the same manner as the GST exclusive amount is otherwise payable for the supply.

### 12. 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.