



MARKETING • STORAGE • LOGISTICS

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Southern Grain Pty Limited ABN 44 590 293 042

Storage and Handling Agreement

KEY DETAILS

Parties

Company

Name Southern Grain Pty Ltd
ACN 117 072 027
Address 111 Bridgewater Raywood Road, Bridgewater on Loddon VIC 3516
Attention Peter Wardell
Email PWardell@southernstockfeeds.com.au

Client

Name _____
ABN _____
Stock Code _____
Address _____
Attention _____
Email _____
Facsimile _____

EXECUTION

Signed as an agreement _____ 2017

Signed by Southern Grain Pty Ltd by:

Signature of Authorised Signatory

Signature of witness

Name and position of Authorised Signatory

Name of witness

Signed by the Client by:

Signature of Authorised Signatory

Signature of witness

Name and position of Authorised Signatory

Name of witness

1 Background

- A The Company provides the Services at the Facility.
- B The Client is the owner of certain Grain.
- C The Client wishes to procure the Services from the Company.
- D The parties agree that the Company will provide the Services to the Client subject to the terms and conditions of this Agreement.

2 Terms

Carry-Over Grain means any Grain that has not been, or in the Company's reasonable opinion is not likely to be, completely Outturned in accordance with this Agreement before the applicable Carry-Over Date.

Carry-Over Date means 30 September 2018.

Carry-Over Fee means the fee or fees specified or referred to in Schedule 1.

Charges means those charges calculated in accordance with Schedule 1.

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

Client Grain means that quantity of Grain held by the Company for the Client within the Facility.

DAFF means the Commonwealth Department of Agriculture, Fisheries and Forestry.

Damaged Grain means Grain that has been damaged in an unusual incident or event to such an extent that it can no longer be classified by the Receival Standards and is only of salvage value or suitable for disposal.

Delivered means, in respect of Grain, the point in time at which Grain first arrives at the Facility.

Dust means Grain dust attributable to the Client Grain extracted from dust collection plants in a Facility, but excluding Damaged Grain.

Facility means the Grain receival, storage and handling facility used by the Company in connection with the provision of Receival or other services to the Growers and/or the provision of the Services to the Client, located at Sebastian Road, Bridgewater on Loddon, Victoria 3516.

GMO or Grain Movement Order means an authorisation to Outturn Grain issued by the Client in writing or by electronic mail.

Grade means a grade of Grain of a given Season specified in the Receival Standards of that same Season, or any other grade agreed by the Parties.

Grain means the seed of any crop or pasture species including Pulses and oilseeds.

Grower means a person or entity involved in the growing of Grain, the contact details for whom have been registered by the Client or the Company or a national grower register.

Gross Negligence means, where a duty is owed by the Company to the Client, an act or omission done with reckless disregard, whether consciously or not, for the consequences of the act or omission.

"Insolvency Event" means:

- (a) in relation to a company:
 - (i) a receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days;
 - (ii) the Party suspends payment of its debts generally;
 - (iii) the Party is insolvent within the meaning of the Corporations Act 2001 (Cth);
 - (iv) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (v) an application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in the case of an application, the application is not withdrawn or dismissed within 60 days; or
 - (vi) an administrator is appointed under Division 2 of Part 5.3A of the Corporations Act 2001 (Cth) and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days; and

- (b) in the case of a natural person:

- (i) the person is or states that he or she is unable to pay all of his or her debts as and when they become due and payable;
- (ii) a bankruptcy notice is issued against the person or a receiver or a trustee for creditors or a trustee in bankruptcy is appointed to any of the person's property;
- (iii) the Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (iv) an event occurs in relation to the person which is analogous to anything referred to above or which has a substantially similar effect.

Interest means the legal title that a client holds to a percentage of Stored Grain, being equivalent to the percentage which Grain of a particular type and Grade received from that client bears to the total Stored Grain of that particular type and Grade.

Non Company Facilities means storage facilities which are not owned, either in whole or in part, by the Company or are not affiliated with the Company via operating agreements.

Outturn means:

- (a) the loading of Grain from the Facility for transportation to Non Company Facilities or such other place as directed by the Client;
- (b) the disposal of Damaged Grain; or
- (c) any other outturn required and directed by the Client for the purposes of stock accounting,

as evidenced by a GMO.

Outturn Entitlement has the meaning given in clause 8.1.

Pulses means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and any other grain legumes.

Receival means the process of Testing, weighing, tipping, inwardly elevating and placing the Grain into the Facility on behalf of a Grower or client. "Receive" has a corresponding meaning.

Receival Standards means the statement of standards and sampling methodology in respect of the particular Grain prescribed by Grain Trade Australia from time to time.

Season means the period in which most of the Grower's Grain is harvested and delivered to the Company, typically commencing in October in one year and going through to the February of the following year.

Services means the services provided by the Company to the Client under this Agreement in respect of all Grains at the Facility and includes:

- (a) Receival;

- (b) Storage; and
- (c) Grain handling and Outturn.

Shrinkage means that quantity of Client Grain, which is lost in the normal storage and handling process including:

- (a) loss of mass through changes in moisture content;
- (b) handling; and
- (c) Waste,

but does not include Grain lost as Dust or Damaged Grain.

Shrinkage Allowance means the allowance for Shrinkage specified in Schedule 1 or such other allowance for Shrinkage as may be agreed between the Company and the Client from time to time.

Storage means warehousing, control and movement of Grain. "Store" has a corresponding meaning.

Stored Grain means, in respect of a particular type and Grade of Grain, all of the Grain of that type and Grade Stored by the Company at its Facility, in which the Company's clients have an Interest.

Term means the term set out in clause 4.1.

Testing means testing as described in clause 6.

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 Grains.

Throughput Services means Receival and Outturn of Grains classified by the Company to be solely throughput services at the Facility operated by the Company, including the administrative/transfer services provided with respect to the short term storage and handling of Grains.

Transport Service Provider means a third party contractor of the Client (including any personnel) who transports Grain by road vehicle following completion of the supply of the Services in relation to that Grain.

Waste means Grain that as a result of the normal handling process has been downgraded to Grain of no commercial value, for example mouldy grain or grain mixed with dirt or stones.

3 Interpretation

The following apply in the interpretation of this Agreement, unless the context requires otherwise.

- (a) A reference to this agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to an agreement or document (including a reference to this agreement) is to the agreement or document as amended, supplemented, novated, or replaced except to the extent prohibited by this agreement or that other agreement or document.

<p>(c) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.</p> <p>(d) A reference to the singular includes the plural number and vice versa.</p> <p>(e) A reference to a gender includes a reference to each gender.</p> <p>(f) A reference to a party means a person who is named as a party to this agreement.</p> <p>(g) Person includes a firm, corporation, body corporate, unincorporated association and a Government Agency.</p> <p>(h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this agreement, their substitutes and assigns.</p> <p>(i) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.</p> <p>(j) Includes means includes but without limitation.</p> <p>(k) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.</p> <p>(l) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.</p> <p>(m) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this agreement.</p> <p>(n) A reference to writing includes any method of representing or reproducing words, figures, or symbols in a visible or tangible form, and includes emails and faxes.</p> <p>(o) A reference to time is to the time in the place where a thing is to be done, unless specified otherwise.</p> <p>(p) A reference to dollars or \$ is to Australian currency.</p> <p>(q) A heading is for reference only. It does not affect the meaning or interpretation of this agreement.</p>	<p>4.2</p> <p>4.3</p> <p>5</p> <p>5.1</p> <p>5.2</p> <p>5.3</p> <p>5.4</p> <p>5.5</p> <p>5.6</p> <p>6</p> <p>6.1</p> <p>6.2</p>	<p>agrees to provide the Services to the Client from 1 November 2017 to 30 September 2018 (the "Term").</p> <p>This Agreement supersedes any previous agreement between the Company and the Client for the provision of the Services or services similar to the Services.</p> <p>If the Company continues to provide Services to the Client after the end of the Term then the terms and conditions of this Agreement will continue to apply until a new Agreement is executed or this Agreement is terminated in accordance with clause 21.</p> <p>5 Receival Standards</p> <p>All Grain that is to be Received and Stored by the Company for the Client must comply with the Receival Standards. If Grain has characteristics which do not comply with the Receival Standards the Company may, in its absolute discretion, refuse to Receive that Grain.</p> <p>The Company may, in its discretion, reasonably refuse to Receive Grain known or suspected to contain chemical contaminants or residues.</p> <p>The Client must not deliver, and must take reasonable steps to ensure that none of its suppliers deliver, Grain known or suspected to contain chemical contaminants or residues, to the Facility.</p> <p>The Client indemnifies and holds harmless the Company against all claims, damages losses, costs, expenses and liabilities suffered, sustained or incurred as a result of the delivery by it or its suppliers of Grain containing chemical contaminants or residues.</p> <p>The Client acknowledges and agrees that the Company may treat all Grain with fumigation treatment in accordance with applicable laws, codes and regulations. A list of treatments will be provided to the Client on written request. Where fumigation or other certificates are required or requested by the Client, the Company will charge a fee for the administration of these certificates.</p> <p>If the Company refuses to Receive Grain in accordance with clause 5.1 or clause 5.2, or if the Company requires the Client to remove the Grain for any reason, the Client will immediately remove the Grain from the Facility upon receipt of a notice from the Company requiring it do so.</p> <p>6 Testing</p> <p>The Company will conduct Testing on Grain:</p> <p>(a) delivered by the Client, for the purpose of classifying the Grain and determining whether to Receive the Grain (Receival Tests); and</p> <p>(b) intended for Outturn (Outturn Tests).</p> <p>Testing will be undertaken in accordance with the Receival Standards.</p> <p>The Client will be provided with the results of the Testing. If the Client does not agree with the</p>
<p>4 Term and Services</p> <p>4.1 Subject to this Agreement and in consideration for the Client paying to the Company the Charges, the Company</p>		

	results of the Testing the Client must immediately notify the Company, otherwise the Client is deemed to have accepted the results of the Testing as final and binding.	7.4	The Client acknowledges that when the Company receives the Client Grain, it becomes Stored Grain and the Client maintains an Interest in the Stored Grain.
6.3	The Client acknowledges that:	7.5	Unless specifically agreed otherwise, the Company reserves the right to mix the whole or any part of any Grain delivered to it by any client or Growers with Grain of similar specification and any and all such Grains so received will be Stored Grain.
	(a) testing is conducted on a sample taken in accordance with the Receival Standards;		
	(b) testing is indicative of the quality of Grain, it is not determinative of the quality of all of the Grain Delivered; and	7.6	While the Company has possession of the Client Grain:
	(c) a variation in results between the Receival Tests and Outturn Tests is not abnormal.		(a) the relationship between the Company and the Client in respect of the possession of the Grain is one of bailment only;
7	Receipt and Storage		(b) that relationship will continue to exist despite the Grain losing its identity by being part of Stored Grain, or despite the inability of the Company to redeliver to the Client Grain the subject of the bailment; and
7.1	The Company will:		(c) unless specifically agreed otherwise, the Company as bailee may manage, use, deal with or otherwise control the Grain in its possession in any manner not inconsistent with the Outturn Entitlement.
	(a) receive Grain Delivered at the Facility during the Term provided that in the sole opinion of the Company the Grain complies with the Receival Standards, is in fit condition for safe and hygienic storage and in the opinion of the Company, storage space permits;	8	Outturn
	(b) Store the Grain for the Client at the Facility; and	8.1	The Client will be entitled to an Outturn by weight of the Client Grain initially received on behalf of the Client; after deduction of the Shrinkage Allowance and Dust (" Outturn Entitlement ").
	(c) Outturn the Grain for the Client at such time, or times, and in such quantities as the Client requires in accordance with clause 8.	8.2	On each occasion the Client requires the Company to Outturn the Client Grain, the Client must provide the Company with a notice setting out:
7.2	The Client will ensure that where a Grain is Delivered by a Grower, or agent on behalf of the Client, the Grower or agent will clearly state in writing the Client's name at the time of delivery (" Nomination "). The Client will also ensure that a Nomination contains a statement to the effect that the delivering Grower or agent transfers all of the right, title and interest to and in the Grain to the Client. All Nominations are final and irrevocable and the Company may rely on the details of the Nomination without any further enquiries.		(a) the quantity and grade of the Grain;
			(b) the name of the Transport Service Provider;
			(c) the Client Delivery Location; and
7.3	The Client will ensure that where Grain is Delivered from a Non Company Facility, it provides:		(d) the estimated time (during any working week) of arrival of the Transport Service Provider at the Facility, having regard to the notice periods set out in clause 8.3,
	(a) written confirmation to the Company of fumigation clearance; and		(Outturn Order Form).
	(b) grain treatment details for the period of time Grain was at a Non Company Facility.	8.3	Subject to clause 8.2, the Company will use all reasonable efforts to complete the Outturn of the Client Grain specified in the Outturn Order Form for transport by road, at the time specified in the Outturn Order Form, provided that the relevant Outturn Order Form must be given to the Company before 5:00pm on the Thursday preceding the working week during which the Outturn is requested.
		8.4	The Company does not guarantee that it will Outturn the Grain by the time periods specified in clause 8.3 and the Company will have no liability to the Client or any third party whatsoever arising in connection with any failure to Outturn any of the Grain by the time periods specified in clause 8.3.

- 8.5 The minimum Outturn request for road transport is 150mt per day. Outturn requests for less than 150mt per day will be reviewed on a case by case basis. The Company reserves the right to refuse an Outturn request for anything less than 150mt per day.
- 8.6 When all Client Grain has been Outturned from the Facility the Company will advise the Client of any variation between the Outturn Entitlement and the tonnage actually outturned ("**Variation**"). If the Outturn Entitlement has not been completely received by the Client, the Company will, in its absolute discretion, either
- (a) replace the physical short Outturn Entitlement of the Client; or
 - (b) determine, acting reasonably, the value of the Variation including any freight component base grade quality.
- 8.7 The Company is not required to Outturn Grain if it has received notice from a person holding a security interest over that Client Grain until;
- (a) the person holding the security interest has consented to the Outturn; or
 - (b) the Company receives a court order requiring it to Outturn the Grain.
- 8.8 Despite anything to the contrary stated in this Agreement, the Client agrees that the Company will not be obliged under this Agreement to Outturn Grain during any period(s) during which:
- (a) the Grain is undergoing programmed fumigation;
 - (b) The Grain is subject to insect infestation;
 - (c) the Facility and any relevant equipment is undergoing routine or emergency maintenance and/or repair work;
 - (d) the Company determines that adverse weather conditions (including but not limited to rain, flood, fire, storm and winds) prevent or are likely to affect the safe Outturn of the Grain at the Facility or give rise to a risk that such Grain may be damaged during Outturn;
 - (e) the Company determines that any plant and equipment necessary for, or used in connection with, the Outturn of Grain is malfunctioning, broken down or otherwise unavailable for any reason;
 - (f) harvest receival activities or preparation for harvest receival activities are taking place at the Facility that is open to receive grain or preparing to open to receive grain;
 - (g) unacceptable risks to health and safety exist or may exist; or
 - (h) any outstanding fees or charges are owed to the Company.
- 8.9 The Client will indemnify the Company against all losses (excluding consequential and indirect loss), costs, damages, expenses, charges and surcharges the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over Client Grain.
- 8.10 The Company's obligations in respect of the Grain cease immediately upon Outturn of the Grain from a Facility.
- 9 Carry-over Grain**
- 9.1 In the event that the Client has any Carry-Over Grain, the Company will, subject to the following provisions of this clause 9, continue to supply the Services to the Client in relation to the Carry-Over Grain on the terms of this Agreement (including subject to the payment of Charges in accordance with clause 14) until completion of Outturn of all such Carry-Over Grain.
- 9.2 The Client agrees to pay the Company the applicable Carry-Over Fee in relation to all Carry-Over Grain within 30 days after receipt of invoice from the Company.
- 9.3 The Company may require the Client to accept Outturn of the Carry-Over Grain 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 Grain must be Outturned. In these circumstances, the Client must cooperate with the Company in every reasonable way to facilitate Outturn of the Carry-Over Grain by the date specified in the Carry-Over Outturn Notice (including arranging a Transport Service Provider to transport the Carry-Over Grain from the Facility). If the Client does not accept Outturn of the Carry-Over Grain by the date specified in the Carry-Over Outturn Notice, or if the Client otherwise fails to cooperate with the Company as required by this clause, the Company may at any time after the Outturn date specified in the Carry-Over Outturn Notice sell the Carry-Over Grain to a third party at a price which may be less than the market value of the Carry-Over Grain and remit the proceeds of sale to the Client less any unpaid fees or other monies due from the Client to the Company.
- 10 Title**
- The Client warrants and represents to the Company that it is the sole legal and beneficial owner of all of its Grain held by the Company on behalf of the Client with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest other than as notified in writing to the Company prior to:
- (a) Outturn of that Grain; or
 - (b) receipt of a notice of an In-Store Transfer (as defined below).
- 11 Title Transfer**
- 11.1 The Client may elect to transfer title to all or part of the Outturn Entitlement to a third party by providing prior notice of such transfer ("**In-Store Transfer**"). The third party must agree, in writing, to be bound by this Agreement.

11.2	All title transfers from Growers to the Client are automatically approved by the Client. The Client needs to request the reversal of the Title Transfer to The Company within 48 hours if the Client choses to not accept the Title Transfer.	13.1	The Client agrees to ensure that, in delivering Grain to or collecting Grain from the Facility, all Transport Service Providers will:
11.3	The Client must provide all relevant documents required by the Company to effect the transfer of its title to the Grain.	(a)	comply with the Company's operating procedures, environmental policies and procedures and occupational health and safety guidelines and all requirements and directions given by the Company;
11.4	An In-Store Transfer is effective from the date the Company is given notice by the Client of the In-Store Transfer.	(b)	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 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;
11.5	The Client must have performed all of its obligations under this Agreement and made all payments for the Charges incurred up to the date of the In-Store Transfer.	(c)	provide reasonably detailed evidence of its (and its personnel's) compliance policies and procedures (including its Driver Fatigue Management System) when requested by the Company from time to time;
12	Lien	(d)	fully, accurately and properly complete, and provide to the Company, 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;
12.1	The Client warrants and represents that it is, or will be for the entire time that the Company supplies Services to it in respect of the Grain, the sole legal and beneficial owner of all Grain with full right, title and interest, free from any mortgage, charge, lien, option, encumbrance or other adverse claim or interest.	(e)	have all approvals, licences and authorisations required to operate the transport services being provided and have adequate systems in place to provide the necessary services to the Company in a timely, safe and professional manner;
12.2	Without limiting any right conferred upon the Company by law, in relation to all moneys payable by the Client to the Company on any account whatsoever other than amounts in respect of which the Company has a lien pursuant to a law of the Commonwealth, a State or Territory (Other Moneys), the Company shall have a lien over the Grain during the Term.	(f)	minimise and avoid all risk of damage or injury to all persons and the protection of same including the protection of the Company's employees, agents and contractors;
12.3	The Company will be entitled, upon default by the Client in making any payments due to the Company and in enforcing any lien, to sell all or any of the Grain in such manner as it thinks fit and use the proceeds of such sale in or towards satisfaction of the relevant moneys due, together with the Company's costs of effecting the sale. Subject to the terms of this Agreement, the balance of the proceeds of such sale will be paid by the Company to the Client.	(g)	only present vehicles that are clean and free from contaminants, safe, fit for purpose, registered, insured and or operated by licensed and experienced trained, qualified and physically capable persons;
12.4	The warranty in clause 12.1 shall not apply in relation to any particular Grain to the extent that the Client:	(h)	comply with all reasonable directions of the Company 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 Facility.
	(a) notifies the Company of the existence of any encumbrance or other security interest affecting those Grains; and	(i)	The Client acknowledges and accepts that the Company may at its sole discretion and without any liability whatsoever to the Client or any third party, refuse to allow any Transport Service Provider to deliver Grain to, or collect Grain from,
	(b) obtains the written consent of the holder of that encumbrance or security interest over the relevant Grains that any lien and security interest held by the Company will be paid in advance of any such encumbrance or security interest,		
	prior to Receival of those Commodities by the Company.		
12.5	Where the Client's Grains forms part of the common commodities stored in bulk at the Facility, the Company may nominate and identify any particular quantity of Grain as being the Client's Grain for the purposes of this Agreement, including for the purpose of Outturn or transfer at the direction of the Client or sale by the Company in exercise of its lien over the Grain.		
13	Transport and Freight		

	any Facility if the Company considers that the transportation vehicle or wagon is not clean or fit for loading or carriage or for any other reason reasonably related to the safety or security of any person or property. Where the Company refuses to allow the delivery or collection as a result of the Company considering that the transportation vehicle is not clean or fit for loading or carriage, The Company shall not be liable to the Client for the cost, liabilities or expenses incurred as a result of the Company's actions under this paragraph.		Company must provide a revised version of Schedule 1, setting out the new Charges.
13.2	The Client must:	14.5	If the Client fails to pay any amounts owing under this Agreement by the due date:
	(a) bear all costs arising from the exercise by the Company of its rights under this clause 12; and		(a) any amount outstanding will bear simple interest at the rate of interest being 5% higher than the 90 day Bank Bill Rate offered by the Commonwealth Bank as at the due date, calculated from the due date to the date of actual payment in full; or
	(b) indemnify the Company against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by the Company as a result of, or arising out of or in connection with, 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 the Facility.		(b) the Company may, in its absolute discretion, suspend the provision of any or all Services until the outstanding invoice has been paid.
		15	GST
13.3	The Client agrees and acknowledges that the Company will rely on the advice of the Transport Service Provider as to its road transport configuration and applicable codes and any other advice it may provide with respect to loading in seeking to prevent any vehicle being loaded beyond the legal mass limits prescribed for that road transport configuration. In such circumstances, the Client acknowledges and agrees that the Company will not be liable for any claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by the Client or any third party and the Client will indemnify and keep indemnified the Company for any and all claims, damages, losses, costs, expenses and liabilities associated with the actions.	15.1	The Company and the Client acknowledge that all fees and charges payable as stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.
		15.2	In this clause 15:
			(a) GST Law has the meaning given in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth); and
			(b) terms used in this clause which are not defined in this agreement, but which are defined in the GST Law, have the meanings given in the GST Law.
		15.3	If GST is payable on a supply made in connection with this Agreement, the recipient must pay the party making the supply (supplier) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.
		15.4	The supplier must give a tax invoice to the recipient no later than the time when the recipient is required to pay or provide any part of the consideration for the supply.
14	Charges and Invoices	15.5	If an adjustment event arises in connection with a supply made in connection with this Agreement:
14.1	In consideration for the supply by the Company of the Services, the Client will pay the Charges.		(a) the supplier must recalculate the GST payable to reflect the adjustment event;
14.2	The Company will invoice the Client on provision of the Services and the Client must pay the Charges to the Company within 30 days after provision of the Services.		(b) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
14.3	Despite clause 14.2, unless otherwise agreed by the Company, all Charges in respect of Grain to be Outturned or title transferred must be paid in full up to the date of Outturn or transfer. The Company is entitled to refuse Outturn or allow transfer of Grain if the Client fails to comply with this clause 14.3.		(c) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
14.4	If the duration of the Term is greater than 12 months, or if the Term is extended beyond 12 months by agreement between the Company and the Client then, the Company may amend the Charges on each anniversary of the commencement of the Term by written notice to the Client. If the Company proposes to amend the Charges, the	15.6	Where a party (first party) must pay to another party (other party) an outgoing of the other party, the amount payable is the sum of:
			(a) the amount of the outgoing less any input tax credit in respect of it to which the other party, or

- its GST group representative member, is entitled; and
- (b) if the amount payable is subject to GST, an amount equal to that GST.
- 16 Security**
- 16.1 The Client will, if reasonably required by the Company obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount given approved by the Company (acting reasonably) in guarantee of the Client's performance of this Agreement (**security**).
- 16.2 Any written guarantee or security required by the Company must be established:
- (a) prior to the Company receiving Grain for storage on behalf of the Client; and
- (b) within 7 days after it has been requested by the Company.
- 16.3 If the Client defaults, then the Company may call up, draw on, use, appropriate and apply the whole or part of the security as may be necessary in the opinion of the Company to compensate the Company for loss or damage suffered by the Company by reason of the Client's default, and:
- (a) any use or appropriation of the security by the Company does not operate to waive the default and does not affect the Company's other rights; and
- (b) if the security or any part of it is used or appropriated by the Company, the Client must within seven (7) days from receipt of a request by the Company pay to or deposit with the Company new or additional security in a form and for an amount as specified by the Company.
- 16.4 On termination of this Agreement and if the Client has complied with this Agreement, the security less any sums drawn on, used or appropriated by the Company and not reinstated by way of further security, must be refunded, returned or cancelled.
- 17 Risk and insurance**
- 17.1 The Company is under no obligation to insure Client Grain against loss, damage, destruction.
- 17.2 The Client will at all times during this agreement keep the Grain insured against all risks while it is held at the Facility.
- 17.3 The Client must, and must cause any person entering the Facility for or on behalf of the Client, to hold:
- (a) public liability insurance with coverage of \$10 million per event and in aggregate;
- (b) workers' compensation insurance required by law; and
- (c) comprehensive motor vehicle insurance.
- 17.4 The Client will ensure that the Company is named in all relevant insurance policies as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against the Company is to be included in all policies.
- 17.5 The Company reserves the rights to request the Client to submit evidence of the above.
- 18 Indemnity**
- 18.1 The Client indemnifies, releases and holds harmless the Company and its employees, officers agents and contractors from and against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by the Company howsoever arising directly or indirectly in relation to:
- (a) the Client's use of the Services;
- (b) any Third Party Claim in relation to any Grain or otherwise affecting the Client; or
- (c) any breach (including of breach of warranty), non-observance or non-performance by the Client of any of its obligations under this Agreement.
- 18.2 The Company's employees, agents and contractors have the benefit of this indemnity and release and to that extent the Company enters into this Agreement as agent and trustee on their behalf.
- 19 Liability**
- 19.1 The Company 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 the Company). The Company acknowledges that nothing in this clause 19.1 limits its obligation to Outturn Grain, which, as a minimum, meet the Receival Standards that apply in relation to the Grain to be Outturned.
- 19.2 The Company will only be liable for failing to Outturn the Client Grain in accordance with this Agreement if such failure is as:
- (a) a result of fraudulent or unexplained physical stock shortage; or
- (b) a result of a quality defect caused by the Company's Gross Negligence or wilful default.
- 19.3 It is agreed that the Company will not be liable for any other loss or damage, including but not limited to:
- (a) any special or unusual event or any natural process (as determined by the Company) which is not covered by the Company's insurance pursuant to clause 17, causing loss or damage to the Grain;

<p>(b) the natural deterioration of Grain which has been carried over at the Facility from one season to the next;</p> <p>(c) any loss or damage arising out of or related to the incidence or effect or both of any delays in the loading of trains, trucks, containers or ships;</p> <p>(d) any loss or damage arising out of or related to Grain passing or failing to pass inspection by the DAFF inspectors, DAFF authorised officers, or similar;</p> <p>(e) any loss or damage arising out of or related to toxic or other chemical residues, other contamination or genetic modification;</p> <p>(f) any indirect or consequential loss (including but without limitation loss of profit, loss of opportunity or loss of reputation), cost, damage or expense suffered or incurred directly or indirectly by the Client as a result of any loss or downgrade of or damage to a Grain however caused (including without limitation any loss, cost, damage or expense caused by the failure of the Company to comply with any of its obligations under this Agreement or any negligent act or omission on the part of the Company, its employees or Agents).</p>	<p>21.2</p> <p>21.3</p> <p>21.4</p> <p>21.5</p>	<p>This Agreement may be terminated by the Company by written notice with immediate effect:</p> <p>(a) if the Client breaches any term of this Agreement the breach is not capable of remedy; or</p> <p>(b) if the Client breaches any term of this Agreement and the breach is capable of remedy, but the Client has failed to remedy that breach within a period of not less than 30 days after the Company gives the Client written notice of that breach; or</p> <p>(c) if the Client suffers an Insolvency Event.</p> <p>Within 28 days of termination of this Agreement, the Client must remove any Client Grain from the Facility. The Company may dispose of any Client Grain still remaining after that time. Surplus proceeds from the sale of that Client Grain after deducting costs incurred by the Company in its disposal and for amounts owing to the Company will be returned to the Client.</p> <p>Termination will not affect any rights or remedies accrued to a party under this Agreement.</p> <p>Notwithstanding any other provisions of this Agreement, the Company may refuse to provide Services, including to Outturn Client Grain, if the Client has not paid any amounts owing to the Company.</p>
<p>19.4 In any event, other than in the circumstances described in clause 19.2, the Company's liability in respect of providing the Services under this Agreement, whether in tort or in contract, will not exceed \$100,000 in respect of any one or a series of related events and \$250,000 in aggregate claims during the Term.</p>	<p>22</p> <p>22.1</p>	<p>Disputes</p> <p>The parties will endeavour to resolve any dispute concerning the terms of this Agreement between themselves, including where necessary escalating the dispute for negotiation between both parties' chief executives.</p>
<p>19.5 The Company's liability under any non-excludable implied condition or warranty is limited to:</p> <p>(a) in the case of services, the lowest of the costs of supplying the services again and having the services supplied again; and</p> <p>(b) in the case of goods, the lowest of the costs of replacing the goods, acquiring equivalent goods or having the goods repaired.</p>	<p>22.2</p> <p>(a)</p> <p>(b)</p>	<p>If the process set out in clause 22.1 is not successful, the parties must meet within a further seven days (or such other time period agreed between the parties) and negotiate in good faith to agree upon:</p> <p>a process to resolve the Dispute through means other than litigation, such as further negotiation, mediation, conciliation or independent expert determination; or</p> <p>whether the parties should seek the assistance of a dispute resolution organisation such as the Australian Disputes Centre.</p>
<p>20 Books and Records</p> <p>20.1 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 the Company under or in connection with this Agreement (Records) and will make the Records available for inspection by officers of the other party upon the giving of reasonable notice.</p> <p>20.2 The Client must, and must procure that its officers do, comply with all directions or conditions reasonably given by the Company in connection with any inspection of the Records.</p>	<p>23 Notices</p> <p>23.1</p>	<p>Notices</p> <p>Any notice or other communication given in respect of this Agreement must be in legible writing and:</p> <p>(a) delivered by hand or sent by post (air mail if sent to an address in another country) to the relevant address set out in the Key Details or any other address notified by the relevant party; or</p> <p>(b) emailed to the relevant email address set out in the Key Details or any other email address notified by the relevant party.</p>
<p>21 Termination</p> <p>21.1 This Agreement may be terminated by the Company by giving the Client 30 days' prior written notice.</p>	<p>21.2</p>	<p>This Agreement may be terminated by the Company by written notice with immediate effect:</p> <p>(a) if the Client breaches any term of this Agreement the breach is not capable of remedy; or</p> <p>(b) if the Client breaches any term of this Agreement and the breach is capable of remedy, but the Client has failed to remedy that breach within a period of not less than 30 days after the Company gives the Client written notice of that breach; or</p> <p>(c) if the Client suffers an Insolvency Event.</p>

- 23.2 Notices are taken to be given:
- (a) in the case of delivery by hand, when delivered;
 - (b) in the case of delivery by post, on the fifth (ninth, if sent to an address in another country) day after the date of posting; and
 - (c) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

- 23.3 If a notice by email is given:
- (a) on a day in which business is not generally carried on in the place in which the email is received, or
 - (b) after 4.00 pm (local time) on a day in which business is generally carried on in the place in which the email is received,

the notice will be taken to have been given at the commencement of business on the next day in which business is generally carried on in the place in which the email is received.

24 Assignment

- 24.1 The Company may assign or novate this Agreement or any part of its rights and obligations under this Agreement if the Company reasonably believes that the assignment or novation would not cause detriment to the Client, and provides written notice to the Client of such assignment.
- 24.2 The Client must not assign or novate this Agreement or any part of its rights and obligations under this Agreement without the prior written consent of the Company, which may be withheld in at the Company's sole discretion.

25 Costs

The Company and the Client must pay their own cost of preparation, negotiation and execution of this Agreement. The Client must pay any stamp duty and other taxes payable in respect of this Agreement or anything arising under it.

26 Governing Law

This agreement is governed by the laws of Victoria and the parties submit to the exclusive jurisdiction of its courts.

27 Entire agreement

This agreement:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this agreement.

28 Severability

Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

29 Waiver

The failure by any Party at any time to enforce any of its powers, remedies or rights under this 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.

Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.

30 Counterparts

This Agreement may be executed in any number of counterparts and all counterparts together will be taken to constitute one agreement.

Schedule 1

Charge Type (per tonne)	Wheat	Barley
Receival	\$12.00	\$12.00
Shrinkage	0.70%	0.70%
Outturn	\$3.00	\$3.00
Monthly Storage		
Current Season	\$1.00	\$1.00
Old Season	\$2.00	\$2.00
Carry-Over Storage where Grain has not been completely Outturned by the Carry-Over Date.	\$2.00	\$2.00

Other Charges	Charge
Re-grade	TBA
Title transfer	TBA