

# GrainCorp Pool/PriceGuard Plus Contract Terms and Conditions

## 1. APPLICATION

These Terms and Conditions apply to both GrainCorp Pools and PriceGuard Plus as operated by GrainCorp

## 2. DEFINITIONS & INTERPRETATION

Terms which are defined or used and described on the front page of the Confirmation have the same meaning in these Terms and Conditions. Additional terms used in these Terms and Conditions are defined as follows:

<b>Term</b>	<b>Meaning</b>
<b>Confirmation</b>	The Contract confirmation issued by GrainCorp to the Seller for the respective GrainCorp Pool or PriceGuard Plus.
<b>Contract</b>	The agreement between the Seller and GrainCorp evidenced by the Contract Suite.
<b>Contract Suite</b>	Has the meaning given to it by clause 4.
<b>Consequential Loss</b>	Any indirect, special, incidental or consequential loss or damage, any loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings and any increased operating costs suffered by or incurred by any person or legal entity, whether arising in contract or tort (including negligence) or under any statute, arising out of or in connection with this Contract.
<b>Deliver or Delivery</b>	Delivery of Grain in accordance with this Contract takes place: (a) In respect of physical delivery, when the Seller unloads the Grain at the instructions of the relevant bulk handling company representative, and the quality has been determined and a receipt issued by the relevant bulk handling company and the Seller has elected GrainCorp Pool as the buyer and nominated an applicable Pool payment code; or (b) if Grain is to be transferred in-store, upon title transfer to GrainCorp.
<b>Estimated Pool Return or EPR</b>	GrainCorp's estimated Final Pool Return, which is calculated and communicated to the Seller on a <b>TRACK</b> basis.
<b>TRACK</b>	as per GTA Trade Rules
<b>Final Payment</b>	Any amount to be paid to the Seller by GrainCorp at the Finalisation of the Pool/PriceGuard Plus, whichever is applicable, after deductions for Pool Expenses or PriceGuard Plus Expenses, as the case may be.
<b>Final Pool Return</b>	The final value for the Grain received by GrainCorp on the disposal of all the grain in the Pool including any hedging gains/losses less any Pool Expenses to be paid by GrainCorp to the Seller is calculated and communicated on a TRACK basis per metric tonne.
<b>Final PriceGuard Plus Return</b>	The final value for the Grain received by GrainCorp on the disposal of all the grain in PriceGuard Plus including any hedging gains/losses less any PriceGuard Plus Expenses, to be paid by GrainCorp to the Seller for the Grain, communicated to the Seller on per site/per grade/per metric tonne basis.
<b>Finalisation</b>	The date on which the Final Pool Return and the Final PriceGuard Plus Return is determined by GrainCorp. Unless otherwise notified in writing by GrainCorp to the Seller, the determination will occur on or before 30 October 2018.
<b>GTA</b>	Grain Trade Australia.
<b>GTA Rules</b>	The published GTA Trade Rules in force at the time of entering into this Contract, excluding clause 18 "Circle Trades" but including the GTA Dispute Resolution Rules in force at the commencement of any arbitration.
<b>Grain</b>	The quantity and quality of the commodity described on the front page of the Confirmation.
<b>GrainCorp</b>	GrainCorp Operations Limited ACN 003 875 401 of Level 28, 175 Liverpool Street, Sydney NSW 2000.
<b>Guaranteed Minimum Return</b>	The dollar amount per metric tonne specified by GrainCorp on the Confirmation (or otherwise agreed in writing between the parties) as the guaranteed minimum return.
<b>Initial Advance Payment</b>	The initial payment made by GrainCorp to the Seller pursuant to the Harvest Payment Option the Deferred Payment Option, the Combined Payment Option and the Quick Payment Option.
<b>Levy (s)</b>	Any industry, statutory or government levies including, without limitation, any endpoint royalties (plus Goods and Services Tax ("GST")) relating to the Grain.
<b>Pool</b>	The GrainCorp Pool listed on the front page of the Confirmation (other than PriceGuard Plus), limited to Harvest 10 and PreHarvest Optimiser Pools.

**Pool Expenses** In regard to a GrainCorp Pool (excluding PriceGuard Plus) any estimated or actual expense, cost, fee or charge incurred for administration; management; brokerage; Underwriting; hedging; financing; freight; insurance; interest; receipt, storage or handling of Grain, Levies, or other incidental expense will be deducted by GrainCorp from any payment made to the Seller under the Contract. Expenses will be reflected in the Final Pool Return and may be deducted at one time or in instalments from any payments to be made to the Seller under the Contract. Please refer to the GrainCorp Pool calculator on our website ([www.graincorpools.com.au](http://www.graincorpools.com.au)) for a breakdown of all expenses.

**Washout** The separate agreement between the Seller and GrainCorp to terminate the Pre-Harvest Optimiser Contract.

**PriceGuard Plus** The GrainCorp PriceGuard Plus listed on the front page of the "GrainCorp Pool/PriceGuard Plus Contract Confirmation", or as otherwise agreed between the parties.

**PriceGuard Plus Expenses** Is limited to the published management fee for PriceGuard Plus. Please refer to the GrainCorp Pool calculator on our website ([www.graincorpools.com.au](http://www.graincorpools.com.au)).

**Remittance Advice** The document GrainCorp provides to the Seller after delivery of the Grain, confirming any payment by GrainCorp to the Seller.

**Seller** Any person or other legal entity registered by National Grower Register Pty Ltd (or like entity in other states) and any agent or servant acting on behalf of the said person or other legal entity.

**Terms and Conditions** These GrainCorp Pool/PriceGuard Plus Contract Terms and Conditions.

**Underwriting** The mechanism pursuant to which GrainCorp guarantees the Seller overall payment(s) under the Pool/PriceGuard Plus, whichever is applicable, of at least the value of the Initial Advance Payment. This mechanism is only available for and compulsorily applicable to the Harvest Payment Option, the Combined Payment Option and Quick Payment Option.

(a) **INCONSISTENCY:** In the event of any inconsistency between the provisions of documents relating to a Contract, the documents will prevail in the following order:

- (i) **the Contract Confirmation;**
- (ii) **the T&C's; and**
- (iii) **the rules,**

provided that the terms of the Grower Washout Agreement referred to in clause 21) will prevail in the event of any inconsistency with the T&Cs.

(b) **CONTRACT CONFIRMATIONS:** Contracts are normally entered into orally. You and GrainCorp are bound by a Contract from the time any oral agreement between you and GrainCorp is made. GrainCorp will provide you with a Contract Confirmation setting out the details of that Contract. Upon receipt of the Contract Confirmation you must check all details and immediately notify GrainCorp in writing of any discrepancies. You must sign and return the Contract Confirmation to GrainCorp on the fax number or email provided within two business days of the date of the Contract Confirmation. If a signed copy of the Contract Confirmation is not returned within two business days, all details and terms and conditions set out in the Contract Confirmation will be considered correct and complete. A Contract will be enforceable by GrainCorp irrespective of whether the steps under this clause 3) are followed.

### 3. PARTIES

The Confirmation shall set out the details of parties, being the Seller and GrainCorp, to the Contract for GrainCorp Pools and PriceGuard Plus.

### 4. CONTRACT SUITE

The Contract expressly incorporates any Confirmation, these Terms and Conditions and the GTA Rules and any other document agreed to by the parties.

### 5. ACCEPTANCE

By signing or otherwise acknowledging or performing any obligation under the Contract, the Seller confirms it has received, read and understood the terms and conditions in the documents comprising the Contract Suite and accepts it has entered into a legally binding and enforceable contract. Each party warrants that the signatory is duly authorised to execute this Contract and provide the warranties hereunder.

### 6. PRECEDENCE

To the extent of any conflicts or ambiguity between the provisions in the Contract the following decreasing order of precedence shall apply: any Confirmation, these Terms and Conditions, the GTA Rules, then and any other document agreed to by the parties.

### 7. PURPOSE

This Contract obliges the Seller to Deliver the Grain to the Pool/PriceGuard Plus within the delivery period stated in the Confirmation or absent any Confirmation, as agreed to by the parties. In consideration, GrainCorp will pay the Seller pursuant to the agreed payment option.

### 8. DELIVERY, DEFAULT & WASHOUT

The Seller is obliged to Deliver the contracted tonnage of Grain by the end of the delivery period set out in the Confirmation or absent any Confirmation, as agreed to by the parties. If the Seller fails to do so, GrainCorp will either acquire, or calculate the value to acquire, from third parties selected by GrainCorp, grain up to the amount of the shortfall (if GrainCorp accepts delivery) or the contracted tonnage (if GrainCorp rejects delivery). The Seller must, on 30 days written notice from GrainCorp, pay the difference between the replacement value, at the date of the notice from the Seller or the Seller's default (whichever is earlier), of the shortfall or contracted tonnage, whichever is applicable, and the GrainCorp grower contract bid on the day of entering into the Contract less Expenses for a Pool or the Initial Advance Payment less Expenses for PriceGuard Plus. Where the Contract is a multigrade contract, APW1 as defined by the GTA Commodity Standards will be used for the purposes of these calculations.

In the event there is no segregation of the contracted grain at Delivery Location 1, GrainCorp may direct you to deliver to an alternative delivery location (i.e. a location other than Delivery Location 1). The price for delivery at the alternative location will be priced at the GrainCorp differential between the price for delivery at Delivery Location 1 and the price for delivery at the alternative delivery location. You will be notified of the GrainCorp differential at the time of delivery to the alternative delivery location;

In the event the Seller experiences a production failure and subject to the Seller verifying the facts and circumstance giving rise to the said production failure by an executed statutory declaration, the Seller may elect to Washout their Pre-Harvest Optimiser on the terms hereunder. The Seller's statutory declaration must provide accurate, truthful and sufficient evidence in support of the alleged production failure in order to allow GrainCorp's to verify the same. If the Seller so elects and provides the supporting evidence to GrainCorp's satisfaction, GrainCorp shall agree to Washout the applicable Contract in consideration of the parties entering into a separate contract where the Seller agrees to pay GrainCorp compensation equivalent to A\$25/mt of the total undelivered quantity of Grain within 30 days of the date of the Washout agreement. This Washout is not available for delivered Grain (see clause 13) and only applies to the Pre-Harvest Optimiser

(a) **Delivered Buyer or Ex-Farm:**

In respect of Contracts for multi grades of wheat and barley and all forward sale Contracts for canola and sorghum to be delivered buyer or ex-farm:

- (i) you must nominate the grades applicable to the Contract and the segregation and fumigation plans for that grain by 15 December (or such other date as agreed in writing with GrainCorp) so that the Contract can be converted from multi grade to fixed grade and an amended Contract Confirmation issued; and

## 9. TITLE & RISK

Title and risk in the Grain shall remain with the Seller until the Grain has been Delivered, at which time title and risk pass to GrainCorp.

## 10. WARRANTIES

The Seller warrants that: (a) all deliveries of the Grain shall meet the accepted industry receival standards at the Delivery Location as at the time of delivery and will, at all times, comply with the requirements in the Confirmation; (b) all Grain delivered will comply with all applicable State and Federal pesticide legislation, rules, regulations or standards; and (c) no person other than the Seller has any right, title or interest in or to the Grain (including any crop lien). If an encumbrance does exist in respect of the Grain or in respect of the proceeds of sale of that Grain which the Seller had not previously disclosed to GrainCorp, the Seller agrees to reimburse and indemnify GrainCorp for any and all costs incurred by GrainCorp in processing, complying with and paying any claims or demands made by the holder of that encumbrance. The Seller agrees that it shall be liable to GrainCorp for any cost, loss or any claim whether directly, indirectly or consequentially suffered by or made against GrainCorp in connection with any failure on the part of the Seller in respect of the abovementioned warranties in its delivery of Grain to GrainCorp. The Seller further agrees to fully indemnify GrainCorp for any losses arising from any contamination of, or caused by the Seller's Grain, or any loss of the Grain, or any other losses arising from the Seller's breach of the Contract.

## 11. PAYMENT OPTIONS

### GENERAL PROVISIONS

- (a) The amount(s) payable to the Seller shall be calculated and determined by the payment option recorded on the Confirmation (or as otherwise agreed between the parties) but in all circumstance in line with the options set out in these Terms and Conditions
- (b) The EPR is determined in GrainCorp's absolute discretion. GrainCorp makes no representation and gives no warranty as to the accuracy of the estimate of the amount of the Final Pool Return.  
At GrainCorp's election any Final Payment may be made by instalments, subject to the last instalment (if any) being paid within 30 days from the date of the first instalment.
- (c) If the Final Pool Return/Final PriceGuard Plus Return, whichever is applicable, is equal to the amount(s) advanced by GrainCorp, GrainCorp is not obliged to make any further payment.
- (d) If the Final Pool Return is less than the amount(s) advanced by GrainCorp, the Seller must, on 30 days written notice from GrainCorp, pay to GrainCorp the difference between the amount(s) previously advanced by GrainCorp to the Seller and the Final Pool Return, and shall also pay any other amounts outstanding and due to GrainCorp, including under any loan agreement or credit contract between the Seller and GrainCorp. However, for the Harvest Payment Option, the Combined Payment Option and the Quick Payment Option, GrainCorp guarantees that in case the Initial Advance Payment is higher than the Final Pool Return/Final PriceGuard Plus Return, whichever is applicable, the Seller does not have to pay to GrainCorp the difference between same.
- (e) GrainCorp may deduct from any advance or payment due to the Seller, any Pools Expense or PriceGuard Expense (as the case may be) payable by or attributable to the Seller under the Contract, which has not been deducted from previous advances or payments, together with any amounts outstanding by the Seller to GrainCorp, or any of its related entities.
- (f) For PriceGuard Plus, all payments will be calculated at a delivered silo level, net of PriceGuard Plus Expenses. (What about in WA ?)
- (g) GrainCorp may set off any amount which is otherwise due and payable by the Seller to GrainCorp, or any of its related entities including but not limited to GrainCorp Pools Pty Ltd, whether under any other contract with any such party or other number under the National Grower Register Pty Ltd (or like entity in other states), without prior notice to the Seller. Where GrainCorp invokes such right, written confirmation of same shall be forwarded to the Seller within 21 days of the right having been exercised.

### Harvest 10 Pool

- (h) **Deferred Payment Option**

Deferred Payment Option means the payment option whereby GrainCorp agrees to pay an Initial Advance Payment to the Seller equivalent to 75% of the prevailing EPR as at the date of determination of payment less applicable Pool Expenses to be paid in July on a date to be determined in GrainCorp's sole discretion, with any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation.

(i) **Distribution Payment Option**

Distribution Payment Option means the payment option whereby GrainCorp agrees to make a first payment to the Seller of 25% of the prevailing EPR at the date of determination of that payment less applicable Pool Expenses to be paid within 5 days end of week of delivery, a second payment for the difference with 50% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in April, a third payment for the difference with 75% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in July and any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation. When the Seller has chosen the Distribution Payment Option, payments will only be made if sufficient equity is available for each grade of Grain delivered into the Pool.

(j) **Monthly Payment Option**

Monthly Payment Option means the payment option whereby GrainCorp agrees to make a first payment to the Seller of 10% of the prevailing EPR at the date of determination of that payment less applicable Pool Expenses to be paid within 5 days end of week of delivery, a second payment for the difference with 20% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in February, a third payment for the difference with 30% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in March, a fourth payment for the difference with 40% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in April, a fifth payment for the difference with 50% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in May, a sixth payment for the difference with 60% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in June, a seventh payment for the difference with 70% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in July, an eight payment for the difference with 80% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in August, a ninth payment for the difference with 90% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in September, and any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation. When the Seller has chosen the Distribution Payment Option, payments will only be made if sufficient equity is available for each grade of Grain delivered into the Pool.

(k) **Harvest Payment Option**

Harvest Payment Option means the payment option whereby GrainCorp agrees to make an Initial Advance Payment to the Seller of 70% of the prevailing EPR at the time of determination of the payment less applicable Pool Expenses to be paid within 5 days from the end of week of delivery of the Grain, with any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation.

## PRICEGUARD PLUS

(l) **Combined Payment Option**

Combined Payment Option means the payment option whereby GrainCorp agrees to make an Initial Advance Payment to the Seller of the amount set out in the Confirmation or as otherwise agreed between the parties, per metric tonne Delivered, together with any Final Payment for any difference with the Final PriceGuard Plus Return as one payment on Finalisation.

(m) **Deferred Payment Option**

Deferred Payment Option means the payment option whereby GrainCorp agrees to make one lump sum payment to the Seller of the amount set out in the Confirmation or as otherwise agreed between the parties, per metric tonne Delivered, in July. Any Final Payment for any difference with the Final PriceGuard Plus Return, is paid at Finalisation.

(n) **Harvest Payment Option**

Harvest Payment Option means the payment option whereby GrainCorp agrees to make an Initial Advance Payment to the Seller of the amount set out in the Confirmation, or as otherwise agreed between the parties, per metric tonne Delivered, to be paid within 5 days from the end of week in which Delivery takes place, with any Final Payment for any difference with the Final PriceGuard Plus Return to be paid upon Finalisation.

## PRE-HARVEST OPTIMISER

(o) **Harvest Payment Option**

Harvest Payment Option means the payment option whereby GrainCorp agrees to make an Initial Advance Payment to the Seller of 70% of the prevailing EPR at the time of determination of that payment less applicable Pool Expenses to be paid within 5 days from the end of week of delivery of the Grain, with any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation.

(p) **Distribution Payment Option**

Distribution Payment Option means the payment option whereby GrainCorp agrees to make a first payment to the Seller of 30% of the prevailing EPR at the date of determination of that payment less applicable Pool Expenses to be paid within 5 days end of week of delivery, a second payment for the difference with 30% of the prevailing EPR at the date of determination of that payment less all estimated Expenses to be paid in April, and any Final Payment for any difference with the Final Pool Return to be paid upon Finalisation. When the Seller has chosen the Distribution Payment Option, payments will only be made if sufficient equity is available for each grade of Grain delivered into the Pool.

(q) **Deferred Payment Option**

Deferred Payment Option means the payment option whereby GrainCorp agrees to pay a single final payment to the Seller less all applicable Pool Expenses at finalisation, on a date to be determined in GrainCorp's sole discretion.

## 12. PERSONAL PROPERTIES SECURITY ACT

(a) Except and as set out in clause 12(b)(ii) below, the Seller may, subject to the Terms and Conditions, deal with her/his interest in the Grain as an owner, including transferring all or part of that interest to a third party.

(b) The Personal Property Securities Act 2009 (Cth) (**PPSA**) affects the way the Seller may create and enforce security interests over the Grain. In this clause, "security interest" has the meaning as in the PPSA. The Seller warrants to GrainCorp that:

- (i) the Grain transferred by the Seller in accordance with clauses 8 and 9 above is transferred free and will remain free of any security interest;
  - (ii) the Seller will not create, or consent to, any other security interest over the Grain (save for the one under a Contract, the subject of these Terms and Conditions);
  - (iii) the Seller will, if any security interest is created over the Grain or her/his interest in the Grain, in breach of paragraph 12(b)(ii), ensure that it is (promptly and unconditionally release the Seller will not seek to enforce, in any way, any other security interest over the Grain or interest in the Grain.
- (c) The Seller indemnifies and will keep GrainCorp fully indemnified in respect of any breach of this clause 12(b).
- (d) If the Seller or third party seeks a waiver from the restriction on dealing with the Grain as set out in clause 12(b), then a request for waiver must be submitted in writing to GrainCorp for GrainCorp's consideration and approval. GrainCorp may elect or decline, in its sole discretion, to grant its approval to such request for waiver on terms as it thinks fit. GrainCorp may elect to request the party seeking a waiver to procure entry of a deed of priority with GrainCorp.
- (e) The Seller agrees to make amendments to any agreement, and to do such other things as GrainCorp may require from time to time to ensure that any security interest that GrainCorp has out of or in connection with the Contract is perfected under the PPSA and to otherwise protect GrainCorp's position under the PPSA.

### 13. EARLY EXIT AFTER DELIVERY & BEFORE FINALISATION

Early Exit does not apply to Harvest 10 or PriceGuard Plus

### 14. NO GUARANTEE

GrainCorp guarantees all payments to the Seller under the Harvest Payment Option, Combined Payment Option or Deferred Payment Option will be no less than the Initial Advance Payment. GrainCorp makes no representation, warranty or guarantee as to the Final Pool Return in respect of any other payment option.

### 15. JOINT & SEVERAL LIABILITY

The Contract is binding on the Seller, her/his executors, administrators and assignees, and GrainCorp and its assignees. If the Seller enters into the Contract in respect of which there is more than one payee, then the Seller warrants that all of the payees have authorised entry into the Contract and the liability of each payee will be joint and several. If the Seller enters into the Contract as or on behalf of a partnership, then the Seller warrants that all action required under the partnership deed or document that establishes the partnership in relation to the entry into the Contract has been taken and the partners are jointly and severally liable for all obligations assumed by the partnership including under the Contract. If the Seller enters into the Contract as a trustee of any trust, then the Seller warrants that s/he has full authority and power under the trust instrument to enter into this Contract for the proper administration of the trust and for the benefit of, and in the interests of, all beneficiaries of the trust and is entitled to be fully indemnified out of the assets of the trust for any liability of the Seller under the Contract.

### 16. RECIPIENT CREATED TAX INVOICE

This provision only applies if the Seller is registered for Goods and Services Tax (GST). When a payment is made to the Seller by GrainCorp under this Contract, a recipient created tax invoice issued by GrainCorp when authorised to do so. The Seller acknowledges that GrainCorp utilises records from the National Grower Register Pty Ltd (or like entity in other states) to determine GST status, and unless otherwise notified in writing, GrainCorp will assume this status to be correct. The Seller agrees that it is solely responsible and liable for remitting the GST amount to the Australian Tax Office. The Seller further agrees that it will immediately notify GrainCorp if the Seller's GST status should change during the duration of this Contract.

### 17. LATE PAYMENT

The Seller acknowledges and agrees that GrainCorp is not liable to pay interest on late payments in relation to the Pool/PriceGuard Plus, whichever is applicable, and is not responsible for any loss suffered due to a delay in payment of any amount in relation to the Pool/PriceGuard Plus.

### 18. EXCLUSION OF WARRANTIES

Except for the statutory guarantees in Part 3-2, Division 1 of the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth), and except for any express warranties set out herein, GrainCorp disclaims and excludes all other warranties and representations in relation to goods or services provided by it.

### 19. LIMITATION OF LIABILITY

GrainCorp shall only be liable for any loss or damage to the Grain if the Grain was in GrainCorp's sole possession and the loss or damage occurred due to GrainCorp's negligence or its agents or servants. In this case, the Seller's right and entitlements shall be limited to and, in no circumstances, exceed the Final Pool Return/Final PriceGuard Plus Return, as the case may be. GrainCorp shall not be liable for any indirect, special or Consequential Loss alleged to arise from or be connected to any act or omission of GrainCorp its agents or servants.

### 20. DISPUTE RESOLUTION

The parties agree that if there is any dispute arising out of the Contract, they shall first discuss the dispute in good faith in an effort to resolve the dispute on a commercial basis, failing which within 14 days the parties agree that the dispute shall be referred to GTA for arbitration. If, despite having signed and returned a copy of Confirmation to GrainCorp, or having accepted these Terms and Conditions either expressly or impliedly, or having ratified this Contract either expressly or impliedly, the Seller disputes: (a) the incorporation into this Contract of the Contract Suite; the jurisdiction of GTA; or the existence of the Contract, and GrainCorp incurs legal costs and expenses in relation to addressing such challenges by the Seller, the Seller acknowledges that s/he shall be liable to GrainCorp for its reasonably incurred legal costs and expenses on a full indemnity or solicitor/own client basis, as well as default interest at 9% on the sum otherwise due or determined to be payable on the date of any relevant arbitration award.

### 21. MISCELLANEOUS

- (a) If a provision of this Contract is invalid or enforceable in a jurisdiction it is to be read down and severed in that jurisdiction to the extent of the invalidity or unenforceability; and it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.
- (b) The Seller agrees that GrainCorp may assign or novate this Contract, or any rights or obligations there under to a third party, including but not limited to GrainCorp Pools Pty Ltd, at its discretion and that GrainCorp need not provide the Seller with any notice of same. The Seller agrees that it cannot assign this Contract, or any rights or obligations there under, without GrainCorp's prior written approval, which may be conditional.
- (c) GrainCorp may amend the Terms and Conditions at any time by giving the Seller written notice of the amendment and by publication of the amendment on GrainCorp's website (including the case where an amendment is reasonably necessary to protect GrainCorp's legitimate business interests). Any amendments of the Terms and Conditions will not affect any Contract entered into by the Seller prior to the date of publication of the amendment on GrainCorp's website. An amendment of the Contract by the Seller will only be effective if in writing and executed by the Seller or confirmed by an exchange of written correspondence.
- (d) The Seller acknowledges and agrees that the Contract does not create any relationship of trust, partnership or agency between GrainCorp and the Seller. The Seller also acknowledges that GrainCorp trades in agricultural commodities on its own account. The Seller has no implied or express right to direct or advise GrainCorp as to how it operates GrainCorp Pools/ PriceGuard Plus.
- (e) This Contract can be executed in counterparts, with each party to be provided with a copy of the other party's executed Contract. Unless otherwise specified in this Contract, time is of the essence in every respect. The Contract is governed by and shall be construed in accordance with the laws in NSW.
- (f) Prior to entry into the Contract, the Seller acknowledges the following:
- (i) While GrainCorp utilises robust hedging strategy and risk management practices to determine the percentage required to be hedged based on local flat price grain values all risks as with GrainCorp Pools/ PriceGuard Plus' returns relate to the variable nature of grain markets.
  - (ii) GrainCorp uses derivative options and futures on international and local exchange markets;
  - (iii) When buying or selling grain in foreign currency, GrainCorp trades may use various currencies to offset the exposure from the underlying or derivative trade;
  - (iv) GrainCorp Pools/PriceGuard Plus is open to all grower deliveries in the GrainCorp network – refer to website) for listing of sites in the GrainCorp network in QLD, NSW and VIC, at sites accepting grower grain deliveries in the Viterro network, and in WA at sites accepting grower grain in the CBH network ([www.graincorp.com.au/grain-marketing/pool-with-us/faqs](http://www.graincorp.com.au/grain-marketing/pool-with-us/faqs));
  - (v) There is clear identification of grain belonging to the Pool from other Pools and the Pool Provider, which is achieved through segregation in the trading application and at the bulk handling;
  - (vi) GrainCorp has a consistent strategy of protecting initial pools equity, whilst maintaining participation through the life of the pool to add value to the equity of the pool, market conditions permitting;
  - (vii) GrainCorp's sales strategy and program of each GrainCorp Pools/PriceGuard Plus will be amended from time to time to reflect the season and market conditions;
  - (viii) GrainCorp's Pools and Marketing functions are managed independently of each other with individual stock positions, hedging, currency and bank accounts and when GrainCorp contracts with GrainCorp Marketing it is because that transaction results in the best value for GrainCorp Pools participants. All such transactions are audited bi-annually for independence against industry market benchmarks.

For any enquiries, please call GrainCorp on 1800 809 482.