

# Warehousing Terms & Conditions (“Agreement”)

Date ..... /..... /.....

## The Storer

MSM Milling Pty Ltd  
 ABN: 57115070150  
 PO Box 30 Manildra NSW 2865

## The Warehouser

|                       |     |                    |     |
|-----------------------|-----|--------------------|-----|
| Grower (First Name)   |     | Grower (Last Name) |     |
| Grower (Trading Name) |     |                    |     |
| Grower Address        |     |                    |     |
| Town                  |     | Postcode           |     |
| Phone                 | ( ) | Fax                | ( ) |
| Email Address         |     |                    |     |
| NGR Number(s)         |     |                    |     |

## 1. Background

- I. These terms and conditions apply to the storage and handling of any commodity specified in Schedule 2 stored under warehouse in The Storer’s system and any subsequent transfer of the Commodity.
- II. The Warehouser acknowledges that services under this Agreement will be provided to the Warehouser by The Storer.
- III. The Commodity must only be of a standard as detailed in Schedule 2.
- IV. The Warehouser must be registered with National Grower Register (NGR) before any services relating to this agreement will be provided by The Storer.
- V. The Warehouser acknowledges that the sites listed in Schedule 1 (Sites) are operated exclusively for the use of The Storer and for the Commodity as detailed in Schedule 2.
- VI. The Storer comingles deliveries from various sources at the Sites, and that Commodity warehoused at these Sites may be consumed in production by the Storer prior to the 31<sup>st</sup> July regardless of whether the Commodities are sold or remain in warehouse.
- VII. The Warehouser agrees, that this agreement manages the sale of the Commodity in the Site from the Warehouser to the Storer.

## 2. Agreement

- I. The Warehouser must only provide the type of Commodity as detailed in Schedule 2.
- II. The Storer agrees to store that Commodity subject to the terms and conditions of this agreement in a clean, dry and in all circumstances appropriate storage facilities including without limitations silos, storage bins, storage sheds and/or covered bunkers.
- III. Under this agreement, The Storer’s weighbridge docket and quality test results shall be conclusive evidence of the quantity and specification of the Commodity being

stored, and in the absence of a manifest error shall be final and binding on both parties.

### **3. Common Stocking**

- I. The Storer will commingle the Commodity of The Warehouse with Commodity of the same type (i.e. grade/season) that has been received from other warehousemen or clients of the Storer. In this case all commingled grain shall be partially owned by all parties whose seed has been commingled including, but not limited to the Storer as tenants in common, to the exclusion of all other persons.

### **4. Receival**

- I. The Storer will receive the Commodity in accordance with Grain Trade Australia Ltd (GTA) standards and methodology unless otherwise agreed and the seed provided as Commodity must comply with Schedule 2.
- II. The Warehouseman warrants that the Commodity complies with Schedule 2.
- III. The Storer will sample, provide quality testing results, classify into available grades, weigh and store using testing and weighing equipment that has been approved under GTA standards for the relevant commodity.
- IV. The Storer may in its absolute discretion accept, or refuse to accept, the Commodity for warehouse and/or storage based on genetic modification, quality, hygiene, safety or its capacity or efficiency at or before the point of receival.
- V. If the Storer rejects the Commodity, the Warehouseman will, at the cost of the Warehouseman, immediately remove that Commodity from the storage upon receipt of a notice from the Storer requiring it to do so.
- VI. The Storer may segregate the Commodity at its absolute discretion.
- VII. Only current season Commodities will be accepted unless otherwise approved by The Storer.
- VIII. At all times, The Warehouseman must comply with all road safety laws and have working knowledge of all relevant road safety laws.
- IX. The Warehouseman will comply with all instructions and direction of site staff whilst on the grounds of The Storer.

### **5. Guarantee of Quality**

- I. The Storer must ensure that all Commodities are received under Grain Trade Australia (GTA) receival standards and Schedule 2.
- II. If at any time, the Storer establishes that the Commodity does not comply with Schedule 2 (Contaminant), the Warehouseman must remove from the site at their cost:
  - (a) the Contaminant that does not comply with Schedule 2;
  - (b) any other Commodity, that the Storer reasonably considers may have been comingled or contaminated by the Contaminant.
- III. If there is any doubt as to the quality of the Commodity or the testing procedure used by The Storer upon receival an independent sample will be taken, in the presence of a representative of The Storer or a person nominated by The Storer, and will be sent to an approved testing agency, who will conduct an independent test of the Commodity which will determine if the Commodity is in line with GTA receival standards and schedule 2 or if it is non-compliant (Independent Test).
- IV. If the Independent Test finds that the Commodity is not compliant with GTA standards or Schedule 2, that it was received under, The Warehouseman will be liable for any costs associated with dealing with the distressed load including but not limited to freight, dockage, independent testing and stack contamination. i.e. non-disclosure of

- genetically modified organism (GMO).
- V. Commodity samples will be retained on a load by load basis until the warehousing period ends or the stack has been out turned in full.

## **6. Transfers**

- I. The Warehouse may only transfer the Commodity to The Storer as stated in this agreement by completing the relevant title transfer through the nominated warehousing system or through the contracting process at the time of sale. This sale is based on the standard terms and conditions of the Storer relevant at the time of the sale including the method for determining the price at that point in time (Commodity Sale).
- II. Title of the seed is not transferred until the Transfer is executed by the Warehouse, and/or the Storer.
- III. The Storer may deduct any overdue amounts owing to the Storer by the Warehouse from the proceeds of the sale.
- IV. The Warehouse may sell the warehoused seed to the Storer in part or in whole in one or a series of Commodity Sales.
- V. If there is any volume of the warehoused seed that has not been purchased via a Commodity Sale as at 5pm on 31 July of the relevant season, the Storer will acquire that seed, under the standard terms and conditions of the Storer relevant at the 31<sup>st</sup> July including the spot price of the Storer applicable for that day.
- VI. The Warehouse acknowledges that loads shall be applied to all open/existing contracts in full in sequential order of delivery before any loads can be placed into warehouse. i.e. all contracts will be fulfilled before warehousing can be applied.
- VII. Once loads have been applied there will be no amendments to the allocation of deliveries to the contracts they were applied to.

## **7. Outturn**

- I. Subject to clause 5, there is no outturn from sites permitted unless the Storer considers the Commodity does not comply with the GTA receival standard or schedule 2.

## **8. Fees and Charges**

- I. No storage fees apply for warehousing seed with Storer

## **9. Ownership & Lien**

- I. The Storer has the right to register a personal property security interest to protect its lien and as purchase money security interest in relation to the right and obligation to buy the Commodity under this agreement.

## **10. Weight & Measures**

- I. The Storer and The Warehouse agree that all receival weights shall be determined by The Storer's certified weighbridge.
- II. Any grain testing and quality testing equipment the Storer uses will be provided at its expense and in line with industry practice.

## **11. Record Keeping**

- I. The Storer will maintain and keep complete accurate electronic records of all commodities stored by it and of all actions taken by it in relation to the stored

- Commodity in an approved weighbridge management software program.
- II. Such records will be sufficient, as a minimum, to identify the amount, location and ownership of any stored Commodity, including the joint ownership of any commingled Commodity.
  - III. The Storer will provide The Warehouseur with details of its stored Commodity.

## **12. Exclusion of Liability**

- I. Except as expressly stated herein, the Storer is not liable for damage, destruction, contamination or loss of Commodity unless caused by the negligence of the Storer.
- II. The Warehouseur acknowledges that the Storer is unable to test on receipt for toxic or other chemical residues, GMO or other contamination. The Storer is not liable for any direct or consequential damage caused by or otherwise relating to the storage or handling of contaminated Commodity.
- III. The Warehouseur acknowledges that if false, misleading, incomplete, or inaccurate information is placed in the declaration (especially regarding season and variety) The Warehouseur is in breach of the terms of this agreement.

## **13. Indemnity**

- I. The Warehouseur indemnifies and holds harmless the Storer against any claim, action, demand, loss or other liability of any nature whatsoever which the Storer suffers or incurs or for which the Storer may become liable in connection with or arising out of:
  - (a) any accident or damage to property or injury or death suffered by any person caused or contributed to by the Warehouseur, or arising wholly or in part by reason of, any act or omission of, the Warehouseur in connection with this agreement;
  - (b) any act or omission of the Warehouseur in respect of the Site;
  - (c) any act, default or omission by the Warehouseur under this agreement;
  - (d) any notice, claim or demand to pay or perform any obligation of the Warehouseur under this agreement;
  - (e) Clause 13 I. does not apply to the extent that a claim, action, demand, loss or other liability arises out of or in connection with the gross negligence or wilful Default of the Storer, its agents, employees or contractors; and
  - (f) Clause 13 I. applies regardless of whether or not the Warehouseur was negligent.

## **14. Insurance**

- I. The Storer will maintain insurance over the Commodities delivered by the Warehouseur against loss, damage, destruction.

## **15. Governing Law**

- I. The laws of the State of New South Wales apply to this Agreement

## **16. Rules of Trade**

- I. This Agreement is to be read concurrently with GTA Trade Rules, as varied from time to time.
- II. The terms of this Agreement will prevail to the extent of any inconsistency between these terms and:
  - a. GTA Trade Rules; or
  - b. any conditions sought to be imposed by The Warehouse.

## **17. Arbitration**

- I. If any dispute arises regarding any matter relating directly or indirectly to this Agreement (other than a dispute relating to non-payment) (Dispute):
  - i. a party must not commence proceedings (other than for urgent interlocutory relief) in respect of such Dispute until the procedures set out in this clause have been exhausted; and
  - ii. any party may commence the procedure set out in this clause by giving written notice of the Dispute to the other party (Dispute Notice).
- II. Within 7 days of the service of the Dispute Notice, the parties authorised representatives must meet in good faith and use their best endeavours to resolve such Dispute to their mutual satisfaction.
- III. If any Dispute cannot be resolved by good faith negotiations between the parties, such Dispute shall be referred to arbitration in accordance with the Dispute Resolution Rules of GTA in force at the date of this Agreement, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring an action or other legal proceedings against the other of them in respect of any such dispute.

## **18. Miscellaneous**

- I. Force Majeure: The Warehouse releases the Storer from any claim, liability or responsibility concerning late delivery or failure to deliver Commodity if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, government law or regulation or requirement or any other cause beyond the control of the Storer and no such failure shall entitle the Warehouse to cancel and order or withhold payment.

## **19. Confidentiality**

- I. The Warehouse acknowledges the confidential nature of its dealings with the Storer.

## **20. Signatory Warranty**

- I. The signature by the Warehouse or its carrier or agent on the front of the Receival Weighbridge note confirms the Warehouse's acknowledgement of the terms and conditions within this agreement.
- II. In the event that the Warehouse does not execute and return this agreement to The Storer, the Warehouse will be deemed to have unconditionally accepted the terms on and from the date that Commodity is received at a Site or the Warehouse seeks

to unload at the site.

## 21. Definitions

The following words have the corresponding following meanings in this Agreement unless a contrary intention appears:

- I. **Bulk** means, in the case of commingled grain,
  - (a) all grain of the same kind at the Facility; failing which
  - (b) all grain in a shed, silo, storage bin and/or covered bunkers.
- II. **Certified Weighbridge** means a weighbridge that can be used for trade purposes, which has been calibrated and has Certificate of Verification issued by the National Measurement Institute or alternative government authority.
- III. **Charges** means those charges calculated in accordance with Agreement.
- IV. **Commingled** where the commodity owned by different Clients may be stored together in the same Cell. The commodity can include the same, similar and different grades and specifications.
- V. **Commodity** means the commodity specified in Schedule 1 and (as the context requires) any bulk into which the Commodity has been commingled.
- VI. **Delivered** means, in respect of the Commodity, the point and time at which the Commodity first arrives at a Facility.
- VII. **Facility** means all Commodity receipt, storage Cells and handling facilities used by the Storer in connection with the provision of services under this agreement.
- VIII. **Fair Market Price** is defined and will be calculated in accordance with the GTA Trade Rules.
- IX. **Grade** means the grade of Commodity of a given Season specified in the Receipt Standards applied by the Storer of that same Season, or any other grade agreed by the Parties.
- X. **GTA** means Grain Trade Australia Ltd.
- XI. **GST** means the tax imposed by the GST Law.
- XII. **Outturn** means:
  - (a) The loading of Commodity from Facility for transportation to Non Storer Facility or such other place as directed by the Client;
  - (b) The disposal of Damaged Commodity ; or
  - (c) Any other outturn required and directed by the Client for the purpose of stock accounting.
- XIII. **Party** means, depending upon the context, either the Storer or the Client.
- XIV. **PPSA** means the Personal Property Securities Act 2009 (Cth).

- XV. **Receival** means the process of testing, weighing, tipping, inwardly elevating and placing of Commodity into the Facilities on behalf of a Grower or Client.
- XVI. **Receival and Outturn Standards** means the standards as published on the Storer website in respect of Receival, at the time the Commodity is received, and in respect of Outturn, at the time of Outturn.
- XVII. **Certified Weighbridge** means a weighbridge that can be used for trade purposes, which has been calibrated and has Certificate of Verification issued by the National Measurement Institute or alternative government authority.
- XVIII. **Season** means the period of 12 calendar months commencing on the date specified in Schedule 1 or where no date is specified the period from 1 November to 31 October.
- XIX. **Stock Entitlement** has the meaning described at clause 8.
- XX. **Storage** means storage of the Commodity in clean, dry, ventilated and in all circumstances reasonably (in the Storer's sole opinion) appropriate storage facilities including, without limitation, sheds, silos, storage bins and/or covered bunkers.
- XXI. **Storer** means the person or company specified on page 1 of this Agreement.
- XXII. **Transfer** means effecting and recording in the Storer's electronic records the purchase or sale of Commodity while in storage in a Facility or the physical transfer of the Commodity to a separate facility at another location.
- XXIII. **Warehouser** means a person that uses the Facilities for storage of Commodity and may, if the context permits, include the Storer.

## Schedule 1 – Operating Sites

| Site Name    | State |
|--------------|-------|
| Manildra     | NSW   |
| Cumnock      | NSW   |
| Gunningbland | NSW   |

## Schedule 2 – Commodity Standards

| Site Name    | Grade          |
|--------------|----------------|
| Manildra     | CAN<br>CSO1-a  |
| Cumnock      | CAN<br>CSO1-a  |
| Gunningbland | CAN<br>CSO1-a  |
| Gunningbland | Barley<br>BAR1 |