

ABA Warehouse Terms and Conditions – 2011/12

NSW and Victorian Sites only



1. The Basis of Warehousing

These terms and conditions (as amended from time to time) apply to any commodity (“**Commodity**”) stored under warehouse in the Australian Bulk Alliance ABN 39 087 280 260 (“**ABA**”) system.

Subject to these terms and conditions, the Warehouseur has the right to the outturn of commodity of like quantity, type and specification as the Commodity received by ABA at the site at which the commodity was received (“the **Outturn Right**”). The Warehouseur may transfer the ownership of the Commodity and the Outturn Right to another party (“**Buyer**”) in accordance with clause 11 of these terms and conditions (a “**Title Transfer**”).

The term “Warehouseur” in this document means:

- the grower on whose behalf the Commodity has been received and warehoused by ABA; and
- any Buyer of the Outturn Right on whose behalf the Commodity has been warehoused by ABA,

as the context requires. Growers are identified by their NGR card number.

These terms and conditions do not apply to traders and marketers who have signed ABA’s storage and handling agreement of the season (“**Clients**”).

2. Common Stocking

ABA may common stock the Commodity of a Warehouseur with commodity of the same type that has been received from other Warehouseurs or Clients.

Title to common stocked commodity in a storage cell is held jointly by the relevant Warehouseurs and Clients in the proportions that each Warehouseur or Client quantity of the commodity bears to the total quantity of commodity in that cell.

While ABA has possession of the Commodity:

- (a) the relationship between ABA and the Warehouseur in respect of the possession of the Commodity is one of bailment only; and
- (b) that relationship will continue to exist despite the Commodity losing its identity by being common stocked, or the inability of ABA to redeliver to the Warehouseur the particular Commodity the subject of the bailment.

3. Receival

ABA will receive the Commodity in accordance with the Receival Terms and Conditions published on its website.

ABA may in its absolute discretion accept or refuse to accept the Commodity for warehousing. ABA will consider factors such as quality, hygiene, safety, and the capacity and efficiency of the ABA system.

Receival Charges as outlined in **Schedule 2** will be accrued and become payable by the Warehouseur when the Outturn Right is outturned or by the Buyer if the Outturn Right is Title Transferred.

4. Shrinkage

The Outturn Right is subject to a weight deduction for shrinkage. The shrinkage allowance is set out in **Schedule 1**. Note that the fees charged for Receival is calculated on delivered weight, and Storage Charges are calculated on shrunk weight.

It is in the interest of the Warehouseur to ensure that, if possible, Title Transfers are negotiated and paid on the basis of delivered weight not shrunk weight.

5. Storage

Storage Charges as outlined in **Schedule 2**. All Receivals will receive free storage until the 1st January 2012, or 1st February 2012 for the Tatyoon North and Werneth receival site. Storage Charges will accrue and become payable in accordance with these terms and conditions by the Warehouseur when the Outturn Right is outturned or is Title Transferred.

6. Outturn

ABA will outturn the Commodity in accordance with the Outturn Protocol published on its website.

ABA will, subject to these terms and conditions and considerations of quality, hygiene, safety, efficiency, practicality and its treatment regime, exercise its best endeavours to outturn at the time and in the manner requested by the Warehouseur.

The Warehouseur must use best endeavours to exercise the Outturn Right, in full, before the “Outturn Date”, which is the next 30th September following Receival of the Commodity. Notwithstanding any other provision of these terms and conditions, ABA has the right to transfer the Outturn Right in respect of the current season Commodity to an ABA site other than the ABA site at which Receival was provided and, where appropriate, impose a freight differential charge, provided that (other than for the movements specified under “Movements” below) in ABA’s reasonable opinion the Warehouseur is not significantly disadvantaged overall by the change of ABA site.

Special arrangements or restrictions may apply to outturn from some ABA sites. These arrangements or restrictions are available at the ABA site.

A minimum 2 (two) working days’ notice applies for Outturn and minimum tonnage requirements (or otherwise charges) also apply across all ABA sites. Warehouseurs may only outturn Commodity on the days and times specified by ABA or as varied by ABA from time to time. Information relating to outturn times and days is available from the Head Office or the Site Manager at all ABA sites.

The Warehouseur acknowledges that ABA must apply treatments to Commodity stored under warehouse in the ABA system (ABA does so in accordance with its treatment regime) and that during the course of such treatments, the Commodity will not be available for outturn.

It is the responsibility of the Warehouseur to ensure Commodity is available for outturn by monitoring the Site Availability status on ABA’s website

Outturn Charges as outlined in **Schedule 2** will be payable by the Warehouseur in accordance with these terms and conditions when the Outturn Right is outturned.

7. Movements

Subject to ABA providing at least 5 days prior notice, and at the cost of the Warehouseur, ABA has the right to outturn the Commodity to another ABA site or relocate the Commodity within the site if:

- (a) the site fills (or is expected to fill) during the season harvest;
- (b) the Outturn Date is exceeded;
- (c) consolidation of small quantities of Commodities is required (in ABA’s reasonable opinion) for the efficiency of the ABA system;
- (d) (the volume in the cell in which the Commodity is stored is down to sweeping stage and/or less than 5% capacity;
- (e) the quality of the Commodity that has been received has potential to contaminate other Warehouseur’s or Client’s commodities; or
- (f) ABA determines (in ABA’s reasonable opinion) that it is operationally efficient to move the Commodity.

And in each case the Warehouseur will bear any additional costs or charges that may arise out of the outturn or relocation relative to the site of origin, including, but not limited to, freight differentials.

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8. Season Clearance

If the Outturn Right has not been exercised, in full, before the Outturn Date, ABA may, after providing at least 10 days' notice and consulting during that period with the Warehouse, Title Transfer on behalf of the Warehouse at the best available price for such quality and quantity of Commodity and account to the Warehouse for the sale proceeds net of selling costs and expenses. For this purpose the Warehouse irrevocably appoints ABA as its agent and attorney.

9. Entitlement Shortfall Adjustment

If the ABA system does not hold sufficient commodity of the type and specification of the Warehouse's Commodity at the time the Warehouse exercises its Outturn Right, ABA will be entitled to satisfy any such physical shortfall by payment of compensation at the Season Average Price.

10. Entitlement Surplus Adjustment

Where the Warehouse has exercised its Outturn Right and has benefited from an outturn quantity or quality in excess of that to which it was entitled, the Warehouse will, on demand, compensate ABA by payment for that excess calculated at the Season Average Price.

The term "**Season Average Price**" in relation to a Commodity in this document means a price calculated on the season average cash prices per grade per Commodity posted by Clients over harvest at ABA Facilities.

11. Title Transfers

Title Transfers may be initiated by the Warehouse:

- providing written instructions to ABA that it wishes to undertake a Title Transfer to a Buyer or Client. ABA is thereupon authorised to sign the transfer for and on behalf of the Warehouse and for this purpose the Warehouse irrevocably appoints ABA as its agent and attorney. ABA will then seek the Buyer's or Client's acceptance of the transfer and confirm completion to the Warehouse; or
- undertaking a Title Transfer via ABA's website, in which case ABA shall be entitled to assume that the instructions to transfer have been issued by or on behalf of the Warehouse if the Warehouse has used their user id to execute the transaction.

ABA shall not be obliged to recognise any Title Transfer unless and until:

- the Buyer of the Outturn Right agrees to be bound by these terms and conditions (as amended from time to time); or
- if the buyer is a Client (i.e. marketer or trader of commodities), it agrees to be bound by the terms and conditions contained in ABA's Storage & Handling Agreement for the season.

12. Effective Date of Transfers

The effective date, for charging purposes, of a Title Transfer will be the date that ABA receives instructions from the Warehouse to effect the transfer. ABA will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

13. Charges

The charges for Receival and storage are set out in **Schedule 2**. Unless otherwise stated the charges are exclusive of GST.

14. Payment

All accrued charges and any costs payable on any account in respect of the Commodity that is the subject of the Outturn Right, must be paid in accordance with the invoice rendered by ABA.

The full amount of an invoice rendered by ABA must be paid by the Buyer of the Outturn Right or the Warehouse (where applicable) within 14 days from the date of that invoice.

For Commodities the subject of outturn, the Warehouse will be required to pay all accrued charges and any costs payable on an up-front basis (if no credit facility exists for that Warehouse).

For most Title Transfers, ABA acknowledges that the Buyer of the Outturn Right will agree to accept responsibility for payment of the Receival and Title Transfer charges and the Warehouse will be responsible for payment of the Storage charges. Nevertheless, each Warehouse remains responsible to ABA for payment of all charges accrued during that Warehouse's period of ownership of the Outturn Right.

Details of how to make payment are set out in **Schedule 3**.

15. Default in Payment

Where the Warehouse is in default of payment of any amounts due and payable to ABA on any account for more than 7 days after the due date and has failed to

make full payment after 21 days written notice, ABA is entitled to sell the Commodity and/or the Outturn Right (to the extent required to meet the debt) in such manner as it sees fit and shall account to the Warehouse for the sale proceeds net of selling expenses and the amount owing to ABA. For these purposes the Warehouse irrevocably appoints ABA as its agent and attorney.

16. Default Interest

The Warehouse shall pay interest on overdue monies at the rate equivalent to 5% per annum above the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time calculated on daily rates from the due date until payment.

17. Risk

The Warehouse acknowledges that it bears all risk of loss or damage to the Commodity at all times except when the Commodity is in the care and control of ABA.

18. Liability

- (a) Subject to paragraph 18(b), ABA will not in any event be liable for any loss of interest, profit, earnings, reputation, opportunity or any other special, indirect or consequential damage suffered by the Warehouse, however caused, arising out of or in connection with ABA's acts or omissions or the acts or omissions of ABA's agents or contractors. ABA excludes to the maximum extent permitted at law, all conditions or warranties implied by custom, the general law or statute. Some conditions and warranties cannot by law be excluded (including the Competition and Consumer Act 2010 (Cth)) ("**Non Excludable Warranties**").
- (b) ABA's liability under any Non-Excludable Warranty is limited to:
 - i. in the case of services, the re-supply of those services;
 - ii. in the case of goods, the cost of replacing those goods.

ABA may post prices for grain marketing companies at its sites, the Warehouse acknowledges that ABA makes no representations with respect to those grain marketing companies – in particular with respect to their financial viability or the terms and conditions under which they may operate. The Warehouse accepts all risks associated with dealing with the grain marketing companies.

19. Indemnity

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The Warehouse will indemnify and keep indemnified ABA against all losses, damages, costs and expenses however caused (“Losses”) arising directly or indirectly from or in connection with:

- (a) any acts by, or omissions of, the Warehouse (or any person acting on behalf of the Warehouse) at the ABA sites at which its Commodities are stored] (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- (b) any overloading of a vehicle containing any Commodity;
- (c) any claim by a third party relating to a lien, charge or other security interest in the Commodity or the Outturn Right;
- (d) any claim by a third party relating to the acts or omissions of the Warehouse in respect of the Commodity or any Title Transfer;
- (e) any breach of warranty or representation given by or on behalf of the Warehouse in respect of the Commodity; and
- (f) damaged or contaminated grain at the risk of the Warehouse,

except for, and to the extent of, any Losses caused by the gross negligence or default of ABA.

The Warehouse or the Warehouse’s Agent is responsible for ensuring compliance with all relevant mass limits prescribed by legislation or regulation for the vehicles (the “Laws”) used when carrying Commodities to or from ABA’s site, and the Warehouse indemnifies ABA against all Losses incurred by ABA that arise in connection with any non-compliance with the Laws by the Warehouse.

20. Carriage Warranties

The Warehouse or the Warehouse’s Agent warrants that it:

- (a) has addressed and remedied any non-compliance issues with respect to the Laws;

- (b) has in place compliance assurance conditions in relevant commercial arrangements with other responsible persons under the Laws; and
- (c) is not relying on any oral or written representations or statements made by ABA with respect to the carriage of the Commodity other than what is set out in this document.

21. Release

Provided ABA has acted in good faith and in accordance with these terms and conditions, the Warehouse releases ABA from any liability in respect of the sale by ABA, on behalf of the Warehouse, of the Commodity or the Outturn Right.

22. Lien

Notwithstanding that the Commodity may be mixed with commodities of like type and specification, ABA shall have a lien on the Commodity and each of such other commodities for all monies owing to ABA (whether contingently or otherwise on any account whatsoever) by the Warehouse and such other owners. ABA may enforce the lien by selling the Commodity and/or the Outturn Right (refer to clause 15 “Default in Payment”).

ABA may nominate and identify any particular quantity of common stocked Commodity as being the Warehouse’s Commodity for the purpose of enforcing ABA’s lien. The Warehouse irrevocably appoints ABA as its agent and attorney to sell a sufficient quantity of the Warehouse’s Commodity to satisfy the monies owing and to account to the Warehouse for any balance of sale proceeds. Any such lien sales of the Warehouse’s Commodity reduce the Warehouse’s Outturn Right commensurately.

23. ABA’s Records

In the absence of obvious error, ABA’s records concerning the quantity or quality of the Commodity that is being, or has been, warehoused shall be deemed to be conclusive.

ABA at its discretion may, without consultation and without compensation adjust the Warehouse’s Outturn Entitlement for any Commodity and/or grade to zero where the entitlement is within + or – 2 tonnes of zero.

24. Information Use and Disclosure

The Warehouse agrees that the Warehouse’s delivery details may be provided by ABA at its discretion to:

- (a) the marketers /traders for the purpose of promoting their services to the Warehouse;
- (b) the National Grower Register Pty Ltd (“NGR”) or its agents for the purposes of the NGR or for promoting goods or services of other companies of relevance to the Warehouse; and
- (c) any organisation to which the Warehouse has donated Commodity for the purpose of allowing the organization to identify the donor,

and otherwise may only be provided to other parties with the consent of the Warehouse.

All notices, requests to access information or privacy complaints should be made in writing to “The Privacy Officer”, ABA GPO Box 498 North Melbourne Vic 3051.

25. Governing Law and Jurisdiction

These terms and conditions will be governed by the laws of Victoria and ABA and the Warehouse submits to the non-exclusive jurisdiction of the courts of Victoria.

27. Variations

ABA may vary these terms and conditions at any time and from time to time by notice to the Warehouse.

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Schedule 1

Charge Type	Wheat	Barley	Oilseeds	Pulses	Other
Shrinkage Allowance	0.60%	0.60%	0.75%	1.00%	POA

Schedule 2

Country Sites

Standard charges (per tonne)

Charge Type	Wheat	Barley	Oilseeds	Pulses	Other
Receival	\$11.30	\$12.00	\$13.30	\$14.30	POA
Outturn	\$2.00	\$2.00	\$2.00	\$2.00	POA
Storage (per month)					
• 2011/12 season ¹	\$1.40	\$1.40	\$1.50	\$1.50	POA
• Prior seasons	\$2.70	\$2.70	\$3.20	\$3.20	POA

1. Commences 1st January 2012. For Tatyoon North and Werneth commences 1st February 2012

Service charges (per tonne)

Charge Type	Charge
Outturn Efficiency Surcharges	
• Weekend & Public Holiday Outturns	\$2.00
Title Transfer (Buyer pays)	
• Service Centre	\$0.15
• Manual	\$0.50
Re-delivery	As per Receival Charges

All charges are quoted exclusive of GST.

Event	Who Pays the Charges	
	Warehouse	Buyer
Warehouse Title Transfers	Storage	Receival & Title Transfer
Warehouse Outturns	Receival, Storage & Outturn	

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Schedule 3

ABA's bank account details:

Account name	Australian Bulk Alliance Pty Limited
Bank / Branch	Commonwealth Bank of Australia, Toowoomba, Qld
BSB	064 433
Account	1048 5851

Bank cheque or money order:

Mail	Australian Bulk Alliance Pty Limited Attention: Accounts PO Box 498 North Melbourne Vic 3051
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