



# Australian **Bulk Alliance**

ABN 39 087 280 260

For Country Facilities in New South Wales and Victoria and the Melbourne Bulk Commodity Terminal at Appleton Dock F. Port Melbourne.

## **Storage & Handling Agreement**

**Client Name:**  
**Client Number:**  
**ABN:**

**Annual Schedule of Charges and Operational Schedules Applicable for the period 1 October 2009 to 30 September 2010**

This **AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_ 2009

**BETWEEN**

Australian Bulk Alliance Pty Ltd ... "**Company**"  
18-20 Enterprize Road  
Appleton Dock Berth F  
WEST MELBOURNE VIC 3003

AND

**Legal Entity Name** \_\_\_\_\_ "**Client**"

**Client ABN** \_\_\_\_\_ (must be inserted)

**Postal Address** \_\_\_\_\_  
\_\_\_\_\_

**Client Number** – CSD to provide (if required)

**Client's Short Code** – CSD to provide (if required)

**RECITALS**

- (a) The Company carries on the business of receiving, handling, transporting and storing grain and other Commodities at facilities in New South Wales and Victoria. Facilities include the Port Melbourne Terminal and the Country Facilities.
- (b) The Client is the owner of certain Commodities.
- (c) The Parties have agreed for the Company to receive and store at the Facilities certain Commodities of the Client and provide other services on the following terms and conditions.

**This Agreement between** Australian Bulk Alliance Pty Ltd, “**Company**”  
18-20 Enterprize Road  
Appleton Dock Berth F  
WEST MELBOURNE VIC 3003

and The Client as described above

The parties to this Agreement agree to be bound by the provisions hereafter appearing and confirm that they each have the authority and capacity to enter into this Agreement on behalf of their respective organisations.

Executed as an Agreement.

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**Simon McNair**  
**General Manager, Australian Bulk Alliance**

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**Witness Signature**

**Date / /**

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**(Signature of Client’s Authorised Representative)**

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**(Full Name)**

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**(Title)**

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**(Signature of Witness)**

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**(Dated)**

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## 1. Preamble

- 1.1 The Company receives and stores Commodities at Country Facilities in New South Wales and Victoria and the Melbourne Bulk Commodity Terminal at Appleton Dock F, Port Melbourne.
- 1.2 Unless otherwise stated, the normal operating hours of Company Country Facilities are on Working Days between 7:30am – 3:30pm (EST). The operating hours may change at the discretion of the Company.
- 1.3 Subject to this Agreement and in consideration of the Client paying the Company the amount applicable in Schedule A of this Agreement, the Company agrees to provide storage and handling services, amongst other services to the Client from 1 October 2009 to 30 September 2010 under the terms and conditions hereafter appearing. The Client will be bound by the terms and conditions of this Agreement from the earlier of the date of execution of this Agreement or the date the Company stores and handles Grain on behalf of the Client between the period 1 October 2009 and 30 September 2010 whether this Agreement is executed by the Client or not.
- 1.4 If the Company continues to provide storage and handling services to the Client after the date of 30 September then the terms and conditions of this Agreement will continue to apply until this Agreement is cancelled by either Party. If the Company issues the Client with a new agreement for the season following the expiry date, then the date of issuing the new agreement (or posting on the ABA website (whichever is earlier) will be the effective date of the Company's notice of cancellation of this Agreement. Any new agreement issued by the Company after the cancellation or expiry date will also apply to Grain of prior Seasons remaining within the Company Facilities.
- 1.5 For the avoidance of doubt, if Grain of Seasons prior to the 2009/2010 Season is held in a Company Facility as at the Commencement Date, the terms and conditions in this Agreement, including pricing, will apply to the prior Seasons' Grain unless the context requires otherwise or until these terms and conditions are replaced in accordance with clause 1.4.
- 1.6 This Agreement supersedes any previous agreement between the Company and the Client for the provision of storage and handling services.
- 1.7 Definitions

The following definitions apply in this Agreement:

**"Accidental Loss or Damage"** means loss or damage to Client's Grain caused or occasioned by events not reasonably within the control of the Company

**"AQIS"** means Australian Quarantine and Inspection Service.

**"Binned Grade"** means the Grade of Grain stored in a Cell. The binned Grade may contain different payment Grades.

**"Blending"** means either the mixing of originally segregated binned Grades within a Site or during the outturn process.

**"Business Day"** means any day on which the principal office of the Company is open for business.

**"Carrying"** means Grain of the 2008/2009 season or earlier Seasons which is still in the custody of the Company at the start of this agreement.

**"Carryover Commodity"** means the Client's 2008/09 Season Grain, which is still in the custody of the Company after the end date of this Agreement and any earlier seasons Grain which is in the custody of the Company at the start of this agreement.

**"Cell"** means a unit of storage of Grain.

**"client"** means a person that uses the Company's Sites for storage of Grain (but not including a Grower).

**"Client"** means the party to this agreement that is not the Company and where applicable its contractors and agents and their successors and permitted assigns.

**"Client's Grain"** means that quantity of Grain held by the Company on behalf of the Client within the Company's storage system as adjusted for shrinkage and other matters allowed or required under this Agreement.

**"Commingling"** means where different Grades of Grain owned by the Client are stored in the same Cell.

**"Common Stock"** has the meaning given to that term in clause 12.1

**"Company"** means Australian Bulk Alliance Pty Ltd ABN 39 087 280 260 and is also referred to in this Agreement as "ABA".

**"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 any Receival (Classification) Standards and is only of salvage value or suitable for disposal.

**"Dust"** means Grain dust attributable to the Client's Grain extracted from dust collection plants in the Company's Facilities, but excluding Damaged Grain.

**"ESR"** means the Estimated Silo Return for a Site which, in relation to a Grade of Grain sold by a Grower to the Client on a particular date, is the Client's estimate as at that date of the likely pool return that may be achieved by a Grower from delivery of the relevant Grade of Grain into the Client's applicable pool at that Site.

**"Facility"** means a Receival Facility (Station or Site) or Port Terminal.

**"GMO"** means a Grain Movement Order in writing and as authorised by the Client.

**"Grade"** means a grade of Grain of a given Season specified in the Receival (Classification) Standards and Outturn 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 has the corresponding meaning of Commodity in this Agreement.

**"Gross Negligence"** means conduct (by act or omission) which falls outside the generally applicable practices of Grain bulk handlers in Australia and allowing for the limitations of the age, nature and state of the equipment and storage premises available for use by the Company at the time of storing and handling the Client's Grain.

**"Grower"** means any 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.

**"Grower Warehousing"** means Grain stored by the Company on behalf of a Grower.

**"GST"** means the tax imposed by the GST Law.

**"GST Law"** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

**"GTA"** means Grain Trade Australia

**"Industrial Dispute"** includes a strike, stop-work, boycott or lockout.

**"Insolvency Event"** means in relation to a Party:

- 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 (Commonwealth);
- 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 (Commonwealth) and, except in the case of an appointment by the Party or its directors, is not withdrawn or removed within 14 days;

**"Interest"** means in respect of a Co-owner, the portion of the Stored Grain to which legal title as Co-owner is held, and which is equivalent to the percentage the grain of the relevant type and grade received from that Co-owner makes up of the total Stored Grain.

**"NGR"** means National Grower Register.

**"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:

- i. the loading of Grain from a Site for transportation to facilities external to the Company;
- ii. the disposal of Damaged Grain; or
- iii. any other outturn required and directed by the Client for the purposes of stock accounting and as evidenced by a GMO. It includes Damaged Grain that might be outturned before a GMO is raised.

**"Party"** means, depending upon the context, either the Company or the Client

**"Port Terminal"** means the Company's seaboard terminal at Appleton Dock Port Melbourne or such other port terminals as may be operated by the Company.

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

**“Purchase Options”** means the various alternative products offered or to be offered to Growers by the Client for the purchase of Grain as submitted to and displayed by the Company in accordance with Schedule B of this Agreement or as otherwise agreed. Purchase Option and Price at depot has a corresponding meaning in this Agreement.

**"Receival"** means the process of testing, classifying, weighing, tipping, inwardly elevating and placing the Grain into the storage facilities on behalf of a Grower or client.

**“Receival Standards”** means the standards as prescribed in the Commodity (Grain) Classification Manual or other standards as notified by the Company.

**"Receival Docket"** means a receipt issued by the Company for Receival of Grain by the Company from a Grower or client setting out the information prescribed under clause 6.2.

**"Receival Station"** means a Company facility for Receival from Growers and storage of Grain, other than the Port Terminal.

**“Regrade”** means with the agreement of the Parties the re-grading of Grain of the Grade of one Season to the same Grade of Grain of another Season or as the case may be the re-grading of Grain of one Grade of a Season to a different Grade of Grain of the same Season.

**“Reserve a Cell”** means prohibiting the Company from moving without the Client’s consent the quantity of Grain owned by the Client in a Cell specified by the Client in notice of a reservation and provided all applicable charges have been paid.

**"Season"** means the period in which most of the Grower’s Grain is harvested and delivered to Company sites, typically commencing in November in one year and going through to the February of the following year.

**“Segregation”** means the physical separation of the storage of Grain by type, Grade, variety or such other distinguishing quality as may be determined by the Company.

**“Segregation Change”** includes;

- i. a new segregation opening;
- ii. the closure of a segregation; and
- iii. the removal of a segregation (whether by Outturn or otherwise).

**"Shrinkage"** means that quantity of the Client’s Grain, which is lost in the normal storage and handling process including loss of mass through changes in moisture content, Grain lost in handling and Waste. Shrinkage does not include Grain lost as Dust.

**“Shrinkage Allowance”** means the allowance for Shrinkage specified in Schedule A of this Agreement for the account of the Client or such other allowance for Shrinkage as may be agreed between the Company and the Client from time to time. The Shrinkage Allowance excludes Dust.

**“Site”** means any Grain receival, storage and handling facilities 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, including the Receival Stations and the Port Terminal.

**"Stock Swap"** means the procedure whereby the stock balance, or part thereof, of the Client and another client's Grain at two or more specific Sites, as recorded in the Company’s stock systems, is transferred between the Client and that other client.

**"Stock Swap Form"** means the Company’s form entitled "Stock Swap Form" used to process the Stock Swap of Grain.

**“Stored Grain”** means, in respect of a particular type and grade of Grain, all of the grain of that type and grade received by the Company for storage and/or handling at any particular time pursuant to a Storage and Handling Agreement and which the Co-owners collectively own.

**“Throughput Service”** means the service of providing temporary storage and handling of Grain from bulk handling facilities that are not Company Sites.

**“Title Transfer”** means the transfer of Grain held at a Receival Station or Port Terminal from one client to another client, as recorded in the Company’s stock systems.

**“Warehousing”** means the storage of Grain of a Grower at a Company Site.

**“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, grain mixed with dirt and stones.

**“Weather Working Day”** means a day on which weather permits continuous work.

**“Working Days”** means all days except Saturday, Sunday and Public Holidays relevant to the State in which the Company facility required to respond or affected is located.

## 1.5 Rules for Interpreting this Agreement

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- i. A reference to:
  - a. legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - b. a document, terms and conditions, or a provision of a document or terms and conditions, is to that document, terms and conditions or provision as amended, supplemented, replaced or novated;
  - c. a Party to this Agreement or to any other document or terms and conditions includes a permitted substitute or a permitted assign of that Party;
  - d. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person;
  - e. anything (including a right, obligation or concept) includes each part of it.
  - f. ‘A\$', ‘\$A’, ‘dollar’, ‘\$’ or any charge making reference to a monetary amount is a reference to Australian currency; and
  - g. to a clause, part, schedule or annexure is a reference to a clause, part, schedule or annexure of this Agreement unless otherwise stated.
- ii. A singular word includes the plural, and vice versa.
- iii. A word which suggests one gender, includes the other genders.
- iv. If a word or phrase is defined, a matching word or phrase containing another part of speech has a corresponding meaning, whether or not the word or words in the matching phrase commence with a capital letter.
- v. If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- vi. The word "agree" includes an undertaking or other binding arrangement or understanding, and, unless otherwise qualified in this terms and conditions, whether or not in writing.
- vii. A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement.

This Agreement is subject to any overriding Legislation.

## **2. Term of Agreement**

- 2.1. This Agreement applies to all Grain owned by the Client and held in the Company's system and is for the term commencing 1 October 2009 and ending 30 September 2010 ("**the Expiry Date**"), unless earlier cancelled under clause 22.

## **3. Receipt and Storage**

- 3.1. The Company will:
  - a) Receive each Commodity (singularly called "Commodity" and together called "Commodities") tendered at such of the Company's facilities as may be approved by the Company during the period of this Agreement provided that in the opinion of the Company the Commodity in each case is in fit condition for safe, hygienic storage and storage space permits;
  - b) Store and handle the Commodities for the Client at the Company's facilities; and
  - c) Outturn the Commodities for the Client at such time or times and in such quantities as the Client requires in accordance with Clause 7.
- 3.2. If the Client requires any services not specifically required to be provided by the Company to the Client under this Agreement, the Company may agree to provide those services upon such terms and conditions as the Parties agree prior to the provision of those services.
- 3.3. Unless specifically agreed otherwise, the Company reserves the right to mix the whole or any part of any Commodity delivered to it by the Client or by any other Client or by any growers or agents on behalf of the Client or any other Client with a Commodity of similar specification received on behalf of the Client or any other Clients or other users of the storage facilities of the Company and any and all such Commodities so received will be deemed to be common Commodity of specified quality stored in bulk.
- 3.4. The Company may decline receipt of a Commodity on behalf of a Client if at the Company's Facility the capacity allowed to a particular Binned Grade fills and the Client is unable to make additional space available, for that Binned Grade by either movement of the Commodity to another of the Company's Facilities or by outturn of the Commodity.
- 3.5. The Company reserves the right to outturn the Client's Grain at a Company Facility other than the Company Facility at which the Client acquired the Grain if:
  - a) sufficient evidence exists to indicate the quality of the Grain of Company Facility may be adversely affected if the Grain remains in any particular location;
  - b) the Company Facility fills (or is expected to fill during the Season); or
  - c) the Company determines (in the Company's reasonable opinion) that it is operationally efficient to move the Grain; or
  - d) The Company Facility where the Client acquired the Grain no longer holds the required quantity and/or grade of grain.
- 3.6. Any movements described in Clause 3.5 will be at the expense of the Client. The Company will use freight rates published by the Company prior to the commencement of the Season in order to charge the Client for the movement (and fuel variations may apply).

- 3.7. Without limiting the operation of any other clauses in this agreement, the Company may, at its discretion, overflow Grain from any Company Facility or swap Grain to an alternative Company Facility provided that the Client is compensated for any freight differential.

#### **4. Purchase Options Service Procedure**

- 4.1. The Company will make available to growers the Client's base prices at Company Facilities. This service is subject to the conditions specified in Schedule B (Purchase Options Service Procedure).
- 4.2. The Parties agree to be bound by the procedures, terms, warranties and conditions set out in Schedule B in respect of the posted Client's prices at Company Facilities.
- 4.3. In the event of an inconsistency or conflict between the provisions of the main body of the Agreement and Schedule B, the provisions of Schedule B shall apply.

#### **5. Receival Standards**

- 5.1 The Company will publish Receival Standards for all Commodities prior to the receipt of those commodities into the Companies facilities.
- 5.2 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 for which a receipt is neither published or agreed, the Company may refuse to receive that Grain.
- 5.3 For Wheat and Barley, protein, moisture, screenings, defective grains and contaminants testing will be provided. Falling number testing will be provided in accordance with the Company's Sprouting Management Strategy.
- 5.4 For Canola, oil content, test weight, impurity, defective seed and contaminant testing will be provided (Please note no Free Fatty Acid testing will be provided on Receipt).
- 5.5 All other testing will be in accordance with the receipt standards and sampling methods as published by the Company from time to time. The Company's sampling methods and classification procedures are available on request.

#### **6. Outturn Entitlement**

- 6.1. The Client acknowledges and agrees that Commodities will suffer weight loss whilst in storage due to normal handling and storage losses.
- 6.2. The Client will be entitled to an outturn by weight ("**Outturn Entitlement**") of the Commodity initially received on behalf of the Client after deduction of the shrinkage factor set out in Schedule A.
- 6.3. The Company will, where practical, undertake to perform reconciliations of movements to recognised non-Company Facilities on a regular basis due to the application of lower shrinkage rates at the Company's Country Facilities in some circumstances. The Company may reflect amendments to weights for Commodity movements to non-Company Facilities at the time of completing the final outturn adjustment.
- 6.4. Following the complete outturn from all the Company's sites of a Commodity an adjustment will be made between the Company and the Client in respect of any variation between the Outturn Entitlement and the tonnage actually outturned. Where the Outturn Entitlement has not been completely received by the Client, the Company will have in its absolute discretion the choice of either replacing the physical short Outturn Entitlement of the Client or applying an adjustment

based on a price equivalent to the highest bid obtained from two independent brokers (or one where two are not available) on the day elected by the Company as the day of sale. An average freight component (determined by the Company) will then be deducted from the net port return. The adjustment will be finalised at base grade quality. In the event that the Client has outturned in excess of their Outturn Entitlement, they will compensate the Company in the same manner as the calculation for the highest bid as described above. The Client will not have the option to replace the physical.

- 6.5. The Client may elect to transfer title to all or part of the Outturn Entitlement held in storage on its behalf by the Company provided that prior written notice of such transfer is given to the Company (In-Store Transfer). Where title is transferred, the transferee or transferees will be entitled to an outturn without any further reduction for shrinkage.

The Company may require In-Store Transfers to take place at individual weighnote level, thus allowing calculations of the value of the Commodity to be ascertained between the seller and the buyer.

In-Store Transfers will not be processed by the Company if the In-Store Transfer results in the selling Client's Outturn Entitlement going into a negative position at any particular site.

- 6.6. In-Store Transfers will be deemed effective from the date of the selling Client's signature for Client to Client transfers, and date of seller's instruction for Grower Warehouse to Client transfers. Transfers will not be processed on other than the deemed effective date, unless the Company at its discretion decides there are reasonable grounds for doing so. The Company's intention is to process transfers within 48 hours of receiving all relevant approvals and will use its best endeavours to do so (weekends and public holidays excluded).

Where an In-Store Transfer is effected from Warehouse to Client or from Client to Client, the rights and obligations under this Agreement are transferred accordingly. In the case of a Warehouse to Client transfer, the responsibility for charges accumulated in respect of that Commodity will also be transferred to the Client. However, in the case of a Client to Client transfer, the first purchasing Client will remain responsible for the Initial receival fee and accumulated carry charges until the effective date of transfer.

- 6.7. The parties agree that for the purposes of accepting or rejecting Warehouse transfers of ownership the Company is entitled to rely on orders/instructions:
- i. issued by e-mail transmitted from the Client's domain address and purporting to have been sent by an officer of the Client (or such named officers as the Client may from time to time advise the Company in writing signed under the hand of the Client's chief executive); or
  - ii. executed via the ezigrain™ web site as accessed through entry of the Client's security PIN.

Provided the Company has acted in accordance with these protocols the Client releases and holds the Company harmless against any claim that a communication was not issued by the Client either at all or without authority and indemnifies the Company against any losses, damages or costs ensuing therefrom.

- 6.8. The Client warrants and represents to the Company that it is the sole legal and beneficial owner of all of its Commodities 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 Commodity; or
  - b) Receipt of a request from the Client to note a transfer of ownership of that Commodity.
- 6.9. The Company is not required to outturn Commodity if it has received notice from a person holding a security interest over that Commodity until;
- a) The person holding the security interest has consented to; or

- b) The Company receives a court order requiring it to.
- 6.10. The Client will indemnify the Company against all costs, losses, damages and expenses (including without limitation legal costs) the Company incurs or sustains as a result of a claim made against the Company by any person holding a security interest over Commodity held by the Company on behalf of the Client relating to that Commodity.
- 6.11. Subject to 6.13 below, Commodities, including malting barley which is also subject to 6.12 below, will be outturned to meet the minimum requirements of the Receival Standards and only those tests that were applied during the receival process in relation to the commodity being outturned, Notwithstanding the above, the Company is not liable for any damage caused whether directly or indirectly by the storage, mixing, handling or outturn of commodities which may contain characteristics, qualities, toxic properties, chemical treatments or contaminants on receival for which the Company does not or cannot test.
- 6.12. The Company does not make any warranty or representation that malting barley will germinate after Outturn.
- 6.13. The Client acknowledges that the Company cannot guarantee complete freedom from Grain defects and contaminants listed with a nil tolerance in the Approved Receival Specifications and Sampling Methodology, and is not liable for any quality claims resulting from the detection of defects and contaminants whenever detected at levels of 0.05% by weight or less.
- 6.14. If the Company is requested by the Client to undertake any classification testing, at the time of outturn, which is over and above that normally conducted by the Company to ensure outturned Commodity meets the minimum standard for the Binned Grade stored; the Company may charge the Client for this classification.
- 6.15. As soon as practicable after the completion of harvest receivals the Company will provide the Client with a planned treatment/maintenance program. This treatment/maintenance program will identify when Commodities at particular sites will not be available for outturn. Variation from this program by the Company at its discretion may be required if insect infestation or unscheduled break-downs occur.

## **7. Outturn of Commodity**

- 7.1. The Company undertakes to outturn Commodities in accordance with the Outturn Conditions for Road / Rail specified in Schedule D.
- 7.2. The Company will prioritize the Outturn of Commodity for the loading of the Client's vessels (where applicable) in the following order:
- (a) the Cargo Assembly Plan in conjunction with the confirmed delivery schedule (as per clause 9.2(a)) that depicts the quality parameters of the grades to be delivered;
  - (b) any written instructions from the Client for blending of grades, and subject to agreement with the Company on additional charges (if applicable); and
  - (c) the Outturn Standards for the relevant Grade(s) unless variations through (a) and (b) above have been instructed.
- 7.3. The Client will use its best endeavours to outturn each Commodity from a Facility of the Company by no later than the 10th September next after the date the Commodity is delivered to the Facility.
- 7.4. If the Commodity is still in the Facility after 1st September following delivery of the Client's Grain, the Company may undertake movements of the Commodity to another site or within the same Site for the purpose of consolidation. If the Commodity is not out-turned by 30th September in that year then the Company will be entitled to:

- (a) Impose the carrying charges and carryover charges as set out in Season 2008/09 Schedule of Charges. These charges will be payable by the Client within 30 days of date of invoice or statement; and/or
- (b) Regrade the physical stock to the new season; and/or
- (c) Consolidate the physical stock within or between the Company's facilities. All costs will be to the Client's account.
- (d) Regrade malting barley to feed barley grade where the germination quality is less than 95% and it is impractical to maintain the Commodity segregation or upon 20 days notice to the Client where malting grade barley remains in the Company's Facilities after the 31<sup>st</sup> of July of the year following the year in which the season of delivery ended and in each case the Company will not be liable for any loss the Client may suffer from regrading malting barley to feed.

## **8. Transport and Freight**

- 8.1 The Company will coordinate scheduling of transport of the Commodity to the Port Terminal on behalf of the Client to accommodate the Client's pre-arranged shipping or domestic program. All freight costs must be paid by the Client unless the Client is purchasing the freight through the Company.

The Client will ensure that non-Company Facilities are advised of any intention to outturn product to Melbourne Port Terminal, including confirmation to the Company of fumigation clearance, treatment details, stock tonnages and availability. The Client will also ensure the relevant Outturn Authorities for such Commodity are raised accordingly.

- 8.2 The Client undertakes to perform the following when the Client either engages the Company as the rail freight provider or contracts direct with the rail service provider, and requests the Company to outturn grain to rail or road transport. The Client must:
- a) Provide the required Outturn Order Placement notice period specified in Schedule D and as advised by the Company from time to time.
  - b) Provide the confirmation notice period as specified in Schedule D and as advised by the Company from time to time;
  - c) Indemnify the Company for any labour costs incurred by the Company due to train or road truck arrivals later than thirty (30) minutes of the original estimated time of arrival (ETA) in cases where the Client has failed to notify the Company of the delay by 1.00pm on the Working Day immediately prior.
  - d) Where freight is contracted by the Client directly or indirectly with rail or road freight providers, ensure that rail wagons, road trucks and other related equipment utilised in the transport of grain are clean, free from contaminants, well maintained and take all reasonable precautions to minimise risk of injury to Company employees.
- 8.3 The Company undertakes to perform the following when the Client engages the Company as its rail service provider and requests the Company to outturn grain to rail transport:
- a) Coordinate and execute movement orders on behalf of the Client;
  - b) Make available as required country loading facilities and port discharge facilities in accordance with the agreed raiing program;
  - c) Commence country loading and port discharge within 30 minutes of train arrival provided that the train is placed within 30 minutes of the agreed time;
  - d) Invoice the Client for the rail freight service provided where the Company performs as the contracted rail service provider.
- 8.4. When outturning Commodities by rail to the Company's Bulk Terminal at Appleton Dock F, Pt Melbourne, the Client accepts and agrees that the outturned weight will be determined using the

belt weigher at that Terminal. When outturning to any other facility the outturned weight will be determined by the outturn weights at the Company's Facilities.

- 8.5. The Client must arrange and present adequate roadworthy, insect-free and contaminant-free road transport for the outturn of Commodity. Commodity will be loaded to road vehicles in accordance with the relevant vehicle loading laws, by-laws and regulations. The Company may refuse to receive or out-load Commodity to any road vehicle, including (but not limited to) reasons of un-roadworthiness, insect infested, contaminated or otherwise unsuitable for loading.
- 8.6. The Client will ensure that all deliveries of Commodity to Facilities, or if as agreed with the Company to Port, will be made in self-emptying vehicles. Non-self-emptying vehicles will not be unloaded.

## **9. Port Terminal and Operational Conditions**

### **9.1 Shipping Notification**

- a) Where the Client intends to place a vessel for loading at the Company's facilities, the Client must indicate to the Company its intention to ship 30 days out from the start of the required shipping month. The Company will subsequently accommodate the intention within the total shipping program subject to available shipping capacity.
- b) Where the Client has advised the Company in accordance with 9.1(a) and the Company has included the vessel within the forward shipping program, the Client may subsequently present a firm vessel for loading at the Company's facilities. The Client will give to the Company at least 21 days notice in writing and will nominate in such notice the quantity of the commodity to be loaded, the quality specifications of the commodity to be loaded, the name of the vessel, the estimated time of arrival (ETA), the port(s) of loading, the locations of the commodity to be moved to port and any other relevant details. Payment for the Company's shipping Nomination Fee must accompany the nomination. A nomination will not be considered by the Company without payment of this fee. See Schedule "A" for further details on the Nomination Fee.

This notification should represent the Client's best available information, however it is not a guarantee that the vessel will be at the berth or in a state where loading can commence on the ETA specified in the original notification.

- c) The Company reserves the right to accept or refuse the written vessel nomination provided according to the appropriate notification period on the basis of prior firm commitments. The Company, in these circumstances, must notify the Client within 24 hours of receipt of the vessel nomination advice and provide a reasonable estimate of the most likely loading dates.
- d) When the vessel arrives with less than fourteen days notice, the Company will use its best endeavours to load the vessel subject to prior shipping commitments, but reserves the right to reject loading the vessel until the expiration of fourteen days from the date notice was given. The Company must notify the Client in writing of any intention to delay or reject the vessel within 24 hours of nomination.
- e) Factors outside the control of the Company (such as variation in vessel arrival times; failure of vessel to pass quarantine; stability and ship worthiness inspections; vessel congestion; variation in cargo requirements; lack of performance of freight providers) may mean the Company cannot guarantee all of the cargo will be available for loading when the vessel berths and is ready to commence loading. The Company will make every effort to ensure the cargo is available to load without delay and will advise the Client of any potential delays.

At the time of first agreeing upon the vessel nomination, the Company will not guarantee

the positioning of stock other than that held in the Client's name.

- f) If the Client's vessel is delayed for more than 5 days, or is cancelled, and the Client advises the Company less than 5 days prior to the ETA specified in the original notification, the Client may be liable for the Company's costs for the transfer of the Client's stocks to enable other vessels to load and/or where rail freight is provided by the Company, any costs associated with changes or delays to rail loading or unloading.

If the Client has met all conditions pertaining to this Agreement, and the Company acts in a manner which can be proven to be negligent or in contravention of this Agreement, and this action results in delays to the loading of the Client's vessel, then the Company may be liable for the Client's costs up to a limit of \$20,000.

## 9.2. Road and Rail Notification

- a) Once a vessel nomination is received, the delivery schedule must be agreed between the Client and the Company, including details of all rail and road movements, before any Commodity is despatched to the Port Terminal. Where the Company is the Client's freight provider and the Client intends to ship Commodity stored at facilities other than the Company's Facilities, the Client must ensure the same details are provided in the delivery schedule.

This detail includes origin, tonnage by origin, transport provider and Commodity quality if applicable. The Company will use its best endeavours to co-ordinate the Client's transport with other receivals, to ensure any delays are minimised.

- b) All deliveries to the Port Terminal, prior to vessel nomination, must be approved by the Company prior to their commencement.
- d) Where the Client is arranging its own freight, the Client must give the Company at least 72 hours prior written notice of the expected time of arrival of any road or rail transport at Melbourne Terminal for the intake of that Commodity.
- e) The Company must give the Client at least 24 hours prior written notice of its inability to discharge any road or rail transport nominated under this clause.
- f) The Company may refuse to provide all or any of the services relating to intake or loading of the particular commodity where;
- (i) The Company has not received notice or written confirmation from the Client as to the time of arrival of any road or rail transport under clause 9.2 (a) and 9.2 (d); or
  - (ii) The road or rail transport does not arrive at the time notified under clause 9.2 (a) and 9.2 (d); or
  - (iii) The Company has given notice under clause 9.2 (e) of its inability to discharge any road or rail transport.

## 9.3. Requirements for Provision of Services

The Company may refuse to provide the services on a particular day, where;

- a) The vessel (including its crew) is in any way unsuitable for loading of the Commodity, including, but not limited to the vessel not complying with Vessel Size Restrictions or such other requirements notified in writing by the Company from time to time or its vessel holds are not clean and clear in all respects and ready to load the Commodity immediately; or
- b) That day is not a Weather Working Day; or
- c) On that day, there are other vessels awaiting berthing or loading that have priority over the vessel nominated by the Client; or
- d) The Client experiences credit problems or other delays beyond the Company's control.

**9.4. Priority of Vessels**

- a) A vessel will have priority over the vessel nominated by the Client for the purposes of clause 9.3(c) where it arrived at the Port Terminal before the vessel nominated by the Client, is in a condition ready for immediate loading of Commodity and the specific stock to be loaded has been accumulated.
- b) If a vessel is allowed to berth but for any reason is unable to load for a period exceeding 24 hours, or is later found to be unsuitable, the Company may order the vessel to stand off the Berth in favour of the vessel with the next highest priority. The Client must ensure that any vessel nominated by the Client, which vessel is ordered to stand off the berth, does so promptly.

**9.5. Cancellation of Nomination/Substitute Vessels**

An additional charge may apply where there is a cancellation of a vessel within 5 days of the original ETA or residual tonnage remains after the vessel sails. In such circumstances a further Nomination Fee is payable upon nomination of a substitute vessel.

**9.6. Loading of Accepted Vessels**

- a) The Company will aim to commence loading on the first available shift after berthing providing sufficient grain is available at the Terminal, stevedoring labour is available and the vessel has passed survey.
- b) The Company may elect to hold out a vessel or move a vessel off the berth if insufficient Commodity is in the Facility or en route to the Facility. Such action will be taken only if the estimated delay to the completion of the vessel is in excess of 24 hours. The Company must keep the Client informed of any planned action.

**9.7. Remaining Tonnage**

Where tonnage remains in the Terminal after loading a vessel, storage charges will apply as per Schedule A.

Where such tonnage remains in the Terminal in excess of one month after vessel departure and where, at the Company's sole discretion, it is deemed to be hindering accumulation for subsequent vessels The Company may, after giving 14 days written notice to the client of its intention, sell such tonnage at the highest bid obtained from two independent brokers (or one where two are not available) on the day of sale and arrange its immediate outturn. Funds received will be forwarded to the client less accumulated ABA charges, with the client's stock holding reduced accordingly.

**9.8. Industrial Disputes**

If there is an Industrial Dispute affecting the loading of the Client's Commodity to the vessel nominated by the Client, the Company may require the vessel to stand off the berth in favour of any vessel not affected by the Industrial Dispute. The Client must ensure that any vessel nominated by the client that is ordered to stand off the berth does so promptly.

**9.9. Port Melbourne Terminal Specifications**

FACILITY:	Melbourne Bulk Commodity Terminal Appleton Dock F Port of Melbourne FOOTSCRAY VIC 3011
VESSEL SIZE RESTRICTIONS:	Berth Length: 200 metres 10.8m draft
AGREED WEIGHING MECHANISM:	For Road Deliveries: Terminal Weighbridge. For Rail Deliveries: Terminal Belt Weigher. For Outturn to Vessels: Terminal Batch Weigher. For Outturn to Road Transport: Terminal Weighbridge.
SPECIAL CONDITIONS:	The Client must make appropriate stevedoring arrangements on a 24 hour per day basis. The Company may submit a tender to the Client to provide stevedoring services under this Agreement at competitive rates.

## **10. Contaminants and Residues**

- 10.1 The Client will ensure that all of its suppliers are advised that a Commodity known or suspected to contain chemical contaminants or residues or both will not be delivered to any of the Company's facilities.
- 10.2 If any load of Grain is found to be contaminated, the Client will not be permitted to deliver to the Company Facility until the Client has provided the Company with evidence in the form of independent expert verification that there is no further risk of contamination. If the contaminant is manageable and removed then the Client must produce a new sample for testing prior to any further deliveries
- 10.3 Where a Commodity of any other client or warehouse is affected by a contaminant or residue but is nevertheless delivered to the Company's facilities the Company will not be liable to the Client nor to any other person for any loss (including consequential loss) cost, damage or expense suffered or incurred directly or indirectly as a result of the contaminated delivery.

## **11. Reservations**

Clients may request, in writing, reservations of stock held by the Company. All applications for reservations will be considered and determined by the Company at its discretion. A charge may apply to the service of 'reserving' Commodity for the Client.

Wherever possible, the Company will use its reasonable endeavours to accommodate requests for reservations of Commodity.

## **12. Common Stock**

- 12.1 The Client acknowledges that when the Company receives the Client's Grain, it becomes Stored Grain. Unless specifically agreed otherwise, the Company reserves the right to mix (Common Stock) the whole or any part of the Client's Grain with Grain of the same specification stored on behalf of any other Clients or other users of the Facility.
- 12.2 Where the Client's Grain is Common Stocked, title to the Common Stocked Grain is held jointly by the Client and other Clients and other users whose Grain forms part of the Common Stocked Grain at the applicable Company Facility.
- 12.3 For the purposes of clause 12.2, at any time the Client's interest in the Common Stocked Grain will be equal to that proportion which the quantity of the Client's Grain at the time bears to the quantity of that Common Stocked Grain at that time.
- 12.4 For the purposes of this Agreement, the percentage of the Stored Grain which the Grain makes up and therefore the Client's Interest in the Stored Grain will be determined by the Company, using the Books and Records the Company keeps pursuant to Clause 14.
- 12.5 Subject to clause 16, the Company has possession of the Stored Grain but no legal or equitable title to any part of it, unless the Company is a Co-owner.
- 12.6 The Company may become a Co-owner by adding Grain to the Stored Grain. Full ownership in any grain added to the Stored Grain by the Company is transferred to the Co-owners. In return, the Co-owners transfer to the Company an Interest.
- 12.7 The Company must maintain a record in respect of its Interest.

- 12.8 Unless the Company suffers an Insolvency Event, the Client does not have the right to nominate any particular parcel or cell of Grain that is Common Stocked as being owned by the Client.
- 12.9 While the Company has possession of the Client's Grain:
- a) the relationship between the Company and the Client in respect of the possession of the Commodity is one of bailment only;
  - b) that relationship will continue to exist despite the Commodity losing its identity by being part of Common Stock, or despite the inability of the Company to redeliver to the Client the same Grain the subject of the bailment; and
  - 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 consistent with the Client Outturn Entitlement.
- 12.10 Where the Company suffers an Insolvency Event the Client will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Common Stock, to re-take possession of the Client's Grain from the sites at which the Client's Outturn Entitlement is located.

### **13. Storage and Handling Charges**

- 13.1 The charges of the Company for storing and handling the 2009/2010 season Commodities is set out in the attached Schedule "A" ("**Storage and Handling Charges**").
- 13.2 The Client will pay to the Company within 14 days of the date of an invoice (excluding shipping invoices) or statement from the Company the Storage and Handling Charges set out therein in respect of quantities of Commodities progressively received by the Company for the Client. For shipping invoices, the Client will pay the Company within 7 days of the date of an invoice.

Payment terms of 14 days will only be granted subject to the Client satisfying standard credit worthiness criteria and subsequently gaining notification of approval and limits (if applicable) from the Company.

Payment methods to the Company include:-

- a. direct credit by the Client through any nominated bank account;
- b. cheque or money order by post with the remittance advice attached sent to the following address:-

**Australian Bulk Alliance Pty Ltd**  
Attention: Accounts Receivable  
GPO Box 1169  
Adelaide SA 5001

- 13.3. If a Client requests special or extraordinary treatments (ie outside of the Company's normal treatment regime) be administered to its Commodities, the Client will meet all costs involved in positioning the Commodity and undertaking such treatments.

The Company reserves the right to charge the Client for all costs incurred in undertaking either an intra or inter site movement of these Commodities after the 30 June 2010, in order to place these Commodities into a position for fumigation.

- 13.4. If the Client purchases Commodity which is already warehoused or is or has been stored, handled or treated by the Company, and there are unbilled and/or unpaid fees and charges in respect of the Commodity for any period or for anything done prior to the purchase, then the purchasing Client accepts liability for these fees and charges and agrees to pay them to the

Company, unless otherwise agreed with the Company.

- 13.5. The Client agrees to pay any charges levied by the Port Authority or AQIS, relating to the Commodities or the provision of Services (including, but not limited to, wharfage, berth hire, harbour dues and quarantine inspection fees). In addition, to the extent that the Company has any liability to pay those charges, the Client agrees to indemnify the Company against that liability, unless the Company specifically agrees to pay these charges on the Client's behalf.

#### **14. Books and Records**

- 14.1. The Company will keep at its principal place of business proper complete and up to date records, books of account and documents relating to transactions in the Commodities and such books of account, records and documents will be available for inspection by officers of the Client at any reasonable time upon request.
- 14.2. All information provided to the Client will be treated as conclusive evidence of the correctness of the details set out in that information unless:
- i. the Client notifies the Company in writing within 14 days of receipt of that information that there exists a bona fide dispute concerning the correctness of that information, or
  - ii. it is demonstrated at any time that there is a clear and manifest error in that information.

A notice served by the Client under sub-paragraph (a) above, must set out in detail the reasons why the Client believes the information is incorrect and the basis for holding that belief.

- 14.3. The Company will send an Owner Acquisition Report on a twice weekly basis during the harvest period providing that the Client receives Commodities during that period. Outside the harvest period the Company will send within one week details of all transactions that have occurred during the preceding week (unless otherwise negotiated).
- 14.4. The Company will send a 'Purchase Option Exposure Report' on a daily basis (working days only) during harvest period. This report will provide Clients the most up to date unofficial confirmation of receivals against Purchase Options plus contract deliveries.
- 14.5. The Company will send Stock Summary Reports to Clients where requested, on a fortnightly basis during harvest and on a monthly basis outside of this period (unless otherwise arranged).

#### **15. Nomination By Grower or Agent**

- 15.1. The Client will ensure that where a Commodity is delivered by a grower or agent on behalf of the Client the grower or agent will nominate in writing the Client for each delivery at the time of delivery. All nominations will be irrevocable. The Client will also ensure that the grower's or agent's nomination of the Client contains a statement to the effect that the grower or agent transfers all of the grower's or agent's right title and interest to and in the Commodity to the Client.
- 15.2. Thereafter on production of the original of the weighnotes upon which is entered the name of the Client the Company will be bound to enter the name of the Client in its records as owner of the Commodity without any enquiry as to the title of the Client and will hold the Commodity for the Client subject to the terms of this Agreement.

#### **16. Lien**

- 16.1. Notwithstanding that the Commodities received by the Company under this Agreement may be deemed to be common Commodities under clause 3.3, the Company shall have a first and paramount lien on each of the Commodities for all monies payable (on any account whatsoever) by the Client to the Company under this Agreement or otherwise.

- 16.2. Where the Client's Grain is common stocked with other Grain, the Company may nominate and identify any particular quantity of Grain comprising the common stocked Grain as being the Client's Grain for the purposes of enforcing its lien.
- 16.3. Subject to any requirement of law the Company will be entitled for the purpose of enforcing such lien to retain possession of the whole or any part of the Client's Grain until all amounts due and payable are paid, or to sell all or any of the Client's Grain in such manner as it thinks fit (after giving the Client at least 7 days prior notice) whereupon the proceeds of such sale will be applied in or towards the satisfaction of the moneys due to the Company and the costs of effecting the sale and the balance (if any) will be paid by the Company to the Client. Where the Company sells all or any of the Client's Grain for the purpose of enforcing its lien, the Client irrevocably appoints the Company as its agent and attorney.
- 16.4. In enforcing a lien in respect of any other Client's Commodity the Company will ensure that its actions do not affect the right of the Client to receive the Outturn Entitlement under this Agreement.

## **17. Security**

- 17.1. The Client will, if required by the Company -
- i. arrange for its directors and/or shareholders to personally guarantee the Client's performance of this Agreement by signing a written guarantee in a form and on conditions specified by the Company.
  - ii. obtain or deposit with the Company an unconditional bank guarantee or bond in a form and for an amount and given by a bank or insurer approved by the Company by way of guarantee for the performance of this Agreement ("security").
- 17.2. Any written guarantee or security required by the Company must be established:
- i. prior to the Company receiving Commodity for storage on behalf of the Client; and
  - ii. within 7 days after it has been requested by the Company.
- 17.3. 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:
- i. 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
  - ii. 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.

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.

## **18. Risk and Insurance**

- 18.1 Each Commodity will be at the risk of the Client in all respects whilst being stored and handled by the Company or in transit between the Company's facilities.
- 18.2 The Client will at all times during the continuation of this Agreement insure and keep insured against all risks each Commodity the property of the Client held by the Company at its facilities. The Client will ensure that the Company is named in each and every policy of insurance as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against the Company is to be included in each such policy of insurance.

- 18.3 The Company reserves the right to request the Client to submit to the Company written evidence that the Client has insured the Commodity in accordance with Clause 18.2.

## **19. Liability**

- 19.1 Subject to other provisions of this clause 19, the Company will be liable for its failure to outturn the Client's Commodity to the quality required by the applicable outturn standard if caused by its Gross Negligence. The Company will not be liable for failure to outturn at the applicable standard if such failure has arisen directly or indirectly from a special or unusual event or any natural process (as determined by the Company) causing loss or damage to the Commodity while at the risk of the Client.
- 19.2 Subject to clauses 19.1 and 19.4, the Company will not be liable to the Client for any loss (including claims for loss of profit, loss of opportunity or indirect or consequential loss such as 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 Commodity 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).
- 19.3 Subject to clause 9.1, the Company will neither be responsible nor liable for any costs or expenses incurred by the Client as a result of:
- i. The incidence or effect or both of any delays in the loading of trains, trucks, containers or ships ("Transport Vessels") with Commodities;
  - ii. Commodities passing or failing to pass inspection by the Department of Primary Industry inspectors, or similar, during the outturning process; or
  - iii. Any quality or quantity deficiencies which may be claimed on outturn at a Transport Vessel's destination,
- 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).
- 19.4 The Company's liability will not exceed \$100,000 in total in respect of all events occurring within the term of this Agreement and will be limited to \$30,000 per event.
- 19.5 The Company's liability to compensate the Client for Accidental Loss or Damage to the Client's Grain is limited to the Client's proportion (based on ownership of the common stock) of the proceeds of insurance recovered by the Company in respect of such event.
- 19.6 The Company does not exclude any condition or warranty that by reason of the *Trade Practices Act 1974* or any other relevant legislation may not be excluded, but the Company does exclude all other conditions and warranties implied by custom, general law or statute.
- 19.7 The Company's liability under any non-excludable implied condition or warranty is limited to:
- i. in the case of services, the lowest of the costs of supplying the services again and having the services supplied again; and
  - ii. in the case of goods, the lowest of the costs of replacing the goods, acquiring equivalent goods or having the goods repaired.
- 19.8 The Company will not be, under any circumstances, liable for consequential losses such as loss of revenue, loss of opportunity, loss of profits or loss of reputation on the part of the Client or the Client's customers.
- 19.9 Notwithstanding clause 19.1, while it is commercially impractical for the Company to test Commodity on receipt for toxic or other chemical residues, other contamination or to identify genetically modified origin, the Company will not be liable for any damage or loss caused by or

otherwise relating to the storage, handling or outturn of Commodity so affected.

- 19.10 In the case of loss or damage to Commodity caused by the Company's Gross Negligence, the Company may negotiate with the Client in good faith a contribution by the Company to the Client's losses and damages, after taking into account recoveries of insurance proceeds pursuant to clause 18.2.

## **20. Indemnity**

The Client will indemnify the Company and keep the Company indemnified from and against all losses, costs, damages, expenses, charges and surcharges suffered or incurred by the Company arising directly or indirectly out of or in relation to:

- 20.1. Any breach non-observance or non-performance by the Client of any of its obligations under this Agreement;
- 20.2. Any claim by a third party relating to the Commodity; or
- 20.3. Any claim by a third party relating to the operation of the Purchase Options Service, including but without limitation claims arising out of the failure of the Client to provide information or the inaccuracy of information supplied by the Client under the Purchase Options Service.

These provisions will apply except in those situations where explicit Service Guarantees are applicable or the losses or damages arose as a direct result of any gross negligence on the part of the Company or any wilful or deliberate failure by the Company to comply with its obligations under this Agreement.

## **21. Application and Variations to this Agreement**

- 21.1 This Agreement sets out the terms and conditions on which the Company will accept, store and handle Commodity on behalf of the Client, and will apply to all Commodity received for storage and handling after a copy of this Agreement is provided to the Client whether or not it has been signed.
- 21.2 The Client agrees to be bound by and to comply with all the terms and conditions of this Agreement, including all variations made under clause 21.4 and all Schedules and Procedures incorporated in this Agreement.
- 21.3 The Client warrants to the Company that Commodity stored and handled under this Agreement are exempt from all acquisition and marketing legislation of any State or of the Commonwealth. This clause does not apply where the Client is the statutory authority or body in whom Commodity has been vested pursuant to legislation.
- 21.4 The Company may at any time delete, vary, amend or add to this Agreement ("variation") subject to the following conditions:
- i. the Company must give prior written notice ("notice of variation") to the Client specifying the variation;
  - ii. if the Client does not wish to be bound by the variation, it may terminate this Agreement by giving written notice of termination to the Company within 5 Business days after receipt of the notice of variation;
  - iii. if the Client does not terminate under paragraph (ii), then the variation becomes binding on the parties from the date of the notice of variation.

## **22. Termination**

- 22.1 This Agreement may be terminated by either party giving to the other at least 3 months prior written notice in that regard.
- 22.2 The Company may terminate this Agreement immediately upon giving written notice in that regard to the Client if the Client enters into liquidation (except for the purposes of amalgamation

or reconstruction) or if the Client calls a meeting of its creditors or proposes any composition or arrangement with its creditors or if a receiver is appointed of its assets or any of them or if any petition is presented for the compulsory winding up of the Client or if the Client suspends payment of its debts or commits or suffers any execution to be levied against any of its property.

- 22.3 If the Client commits a serious or persistent breach or breaches of any terms of this Agreement, provided the Company presents the Client a written notice specifying the breach or breaches and requires the Client to remedy it within a period of not less than 30 days, then If the Client does not remedy the breach or breaches within the time period stipulated in this clause, the Company may terminate this Agreement at any time by notice in writing to the Client.
- 22.4 The Client must remove any Commodity that remains after the cancellation of the Agreement from the Facilities within four weeks. The Company may dispose of any Commodity still remaining after that time. Surplus proceeds from the sale of that Commodity after deducting costs incurred by the Company in its disposal shall be returned to the Client.
- 22.5 Termination will not affect any rights or remedies accrued to a party under this Agreement.

## **23. Interest**

If default is made by the Client in the due payment of any monies payable under this Agreement then although no demand for payment may have been made the amount in respect of which such default is made or so much thereof as may from time to time remain unpaid 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.

## **24. Force Majeure**

### **24.1 Force Majeure Event**

For the purpose of this Agreement, a "Force Majeure Event" affecting a Party means anything outside that Party's reasonable control including without limitation:

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
- (b) strikes, stop works, lockouts, boycotts or any other form of labour dispute or labour shortage;
- (c) breakdown, damage or destruction of any of the Company's Storages or Facilities;
- (d) failure, disruption or delay in transportation;
- (e) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
- (f) acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or Clients).

### **24.2 Suspension of Obligations**

If a party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event (in this clause 24 called the "Affected Party"), then the Affected Party's obligations to perform in accordance with the terms of this Agreement, will be suspended for the duration of the Force Majeure Event.

### **24.3 Notice**

As soon as possible after the Force Majeure Event arises, the Affected Party must notify the other party of:

- (a) the nature of the Force Majeure Event;
- (b) the cause of the Force Majeure Event;
- (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (in this clause 24 called the "Affected Obligations");
- (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
- (e) the expected duration of the delay arising as a result of the Force Majeure Event;
- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and
- (g) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event.

#### 24.4. **Minimisation of Impact**

Upon receiving a notice under clause 24.3 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligations or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

#### 24.5. **Obligation to Mitigate**

The Affected Party must:

- (a) keep the other party fully informed of its plan to minimise the effect of the Force Majeure Event; and
- (b) subject to reaching agreement concerning any modifications or addition required to give effect to any proposal to minimise the effect of the Force Majeure Event;
  - i. comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
  - ii. use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

#### 24.6. **Payments**

An obligation to pay money is never excused by a Force Majeure Event.

#### 24.7. **Labour Disputes**

The requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

### **25. Disputes**

- 25.1 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.
- 25.2 If the parties cannot resolve themselves within 60 days of one party giving notice of the dispute to the other they will immediately:
  - i. appoint an arbitrator to determine the dispute within the following 30 day period; or
  - ii. if the parties are unable to agree upon an arbitrator, either party may refer the dispute for arbitration by an arbitrator nominated by the then President of the Law Society of Victoria.

- 25.3 Any arbitration will be conducted in Melbourne in accordance with the *Commercial Arbitration Act 1984 (VIC)* except that:
- i. the arbitrator must observe the rules of natural justice but is not required to observe the rules of evidence;
  - ii. a party may have legal representation; and
  - iii. the arbitrator must apportion costs of the arbitration and each party's costs of and incidental to the arbitration as the arbitrator sees fit.
- 25.4 During any dispute resolution process, the pre-dispute status quo will continue. Accordingly:
- i. each party will comply with its obligations, and may exercise its rights under this Agreement; and
  - ii. the fact that a party ceases to do anything in dispute will not be taken to be an admission by that party that it had breached, or had been in breach of, this Agreement.

## **26. Notices**

Any notice to be served under this Agreement will be sufficiently served personally or if delivered or left addressed to the relevant party at or forwarded by pre-paid post to its registered office for the time being or last known place of business and a notice sent by post will be deemed to have been given at the time when it ought to have been delivered in the ordinary course of post.

## **27. Assignment**

The Agreement is personal to the Client and the Client is prohibited from assigning its rights and obligations under it.

The Client acknowledges that the Company shall have the right to assign this agreement or otherwise delegate all or any of its rights and obligations under this agreement upon notice to the Client.

## **28. Costs**

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

## **29. Compliance with Laws**

- 29.1 The Company will at its cost (with the Client's assistance if necessary):
- a) obtain and maintain any necessary licenses and approvals; and
  - b) comply with all Acts, Regulations, By-laws and other Legislation; and
  - c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation,

relating to the provision of Services by the Company, including any requirements relating to any environmental risk or damage or contamination of land that may be caused by or relate to the storage or loading of the Commodity under this Agreement.

- 29.2 The Client will at the Client's cost (with the Company's assistance if necessary):
- a) obtain and maintain any necessary licenses and approvals; and
  - b) comply with all Acts, Regulations, By-laws and other Legislation; and
  - c) comply with all lawful restrictions, directions, orders, notices or instructions given or made by any Body, Authority, Port Authority or the like acting under any Acts, Regulations, By-laws or other Legislation, relating specifically to the Commodity and the export of the Commodity.

### **30. Governing Law**

This Agreement and the rights and liabilities of the parties under this Agreement will be governed by the law of the State of Victoria. The courts of Victoria will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement.

### **31. Goods and Services Tax**

- 31.1 The Company and the Client acknowledge that all fees and charges payable pursuant stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.
- 31.2 If the Company makes a taxable supply under any law relating to goods and services tax, the Company must issue an invoice to the Client which complies to those laws and vice versa.
- 31.3 Any reimbursement of money pursuant to this Agreement paid by a Party to a third party shall be net of the benefit of GST input tax credits claimable by the Party in respect of the payment.

### **32. Schedules and Explanatory Notes**

In the event of an inconsistency or conflict between the provisions of the main body of the Agreement and the relevant Schedule or Explanatory Notes, the provisions of the relevant Schedule or Explanatory Notes shall prevail.

### **33. Execution**

- 33.1 The Client acknowledges that for expedition this Agreement may be submitted to the Client pre-signed by the Company.
- 33.2 The Client agrees that no variation made by the Client on the face of the Agreement shall be valid or have any effect unless initialled by both the Client and the Company.

### **34. No Endorsement**

- 34.1 The Client must not (without the prior written consent of the Company):
  - (a) make any reference, comment or statement either written or oral, that could be construed as an endorsement by the Company of the Client or of the Client's products or services; or
  - (b) refer to the Company or the services provided by the Company to the Client in any publication, promotional or advertising material.
- 34.2 The Client acknowledges that:
  - (a) the Company will treat the obligation provided by the Client to the Company in clause 34.1 as a serious undertaking; and
  - (b) it is aware that any breach of this serious undertaking may result in the Company suffering damage.

### **35. 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.

### **36. Waiver**

- 36.1 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.

- 36.2 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.

### **37. Right To Withhold Grain/Withdraw Services**

Notwithstanding any other provisions of this Agreement, the Company may refuse to provide Services or outturn the Client's Grain if the Client has not paid any amounts owing to the Company pursuant to clause 13 of this Agreement.

### **38. No Partnership**

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties. No Party is liable for an act or omission of another Party, except to the extent set out in this Agreement.

**Schedule A – 2009/10 Storage and Handling Charges**

This schedule outlines the maximum charges for storing and handling Commodities at the Australian Bulk Alliance country facilities in New South Wales and Victoria and the Melbourne Bulk Commodity Terminal at Appleton Dock F Berth, West Melbourne.

ABA reserves its right to vary these charges at its discretion. ABA will give at least one month’s clear notice of any change. Any changes will become effective from the date nominated and will not be applied retrospectively.

Explanatory notes are attached. If the client wishes to use the services at these facilities, full Storage and Handling Agreements must be entered into (copies available from ABA’s website or will be forwarded upon request). All prices quoted are exclusive of GST.

All charges AUD are per tonne unless otherwise stated.

Country Facility Charges								
	Wheat		Barley & Triticale		Canola & Oats		Pulses	
<b>a. Receival</b>	\$10.50		\$11.50		\$12.50		\$13.50	
<b>b. Shrink</b>	0.60%		0.60%		0.75%		0.85%	
<b>c. Storage</b>	2009/10 season	Prior seasons	2009/10s eason	Prior seasons	2009/10s eason	Prior seasons	2009/10s eason	Prior seasons
1 <sup>st</sup> October 2009	\$0.00	\$2.50	\$0.00	\$2.50	\$0.00	\$3.00	\$0.00	\$3.00
1 <sup>st</sup> November 2009	\$0.00	\$2.50	\$0.00	\$2.50	\$0.00	\$3.00	\$0.00	\$3.00
1 <sup>st</sup> December 2009	\$0.00	\$2.50	\$0.00	\$2.50	\$0.00	\$3.00	\$0.00	\$3.00
1 <sup>st</sup> January 2010*	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> February 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> March 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> April 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> May 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> June 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> July 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> August 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
1 <sup>st</sup> September 2010	\$1.35	\$2.50	\$1.35	\$2.50	\$1.40	\$3.00	\$1.40	\$3.00
<b>d. Outturn</b> (all Commodities)								
Rail	Mon. to Fri (excl. Public Hols)				\$2.00			
	Weekend & Public Holidays				\$4.00			
Road	Mon. to Fri (excl. Public Hols)				\$2.00			
	Weekend & Public Holidays				\$4.00			
<b>e. Outturn Efficiency</b> (all Commodities)	200 or more tonnes per day				\$0.00			
	100 to 199 tonnes per day				\$0.25			
	50 to 99 tonnes per day				\$0.75			
	Less than 50 tonnes per day				\$1.25			
<b>f. Rail Outturn Weighing</b> (all Commodities)	\$2.00							
<b>g. Re-delivery</b>	\$10.50		\$11.50		\$12.50		\$13.50	

\* Note that for deliveries into Tatyoon North storage charges will commence 1<sup>st</sup> February 2010.

Melbourne Port Terminal Charges				
	Wheat	Barley & Triticale	Canola & Oats	Pulses
<b>h. Receival</b> rail ex ABA site	\$4.50			
(all Commodities) road ex ABA site	\$5.00			
rail ex non-ABA site	\$5.00			
road ex non-ABA site	\$5.50			
<b>i. Shrink</b> from non-ABA sites only	0.30%	0.30%	0.30%	0.40%
<b>j. Storage</b> (all Commodities) Commingled Non-commingled	\$1.00 per week \$1.50 per tonne bin capacity / week			
<b>k. Ship Nomination</b> (all Commodities)	\$5.00			
<b>l. Ship Loading</b> t  Trimming	\$5.50 POA	\$6.20 POA	\$7.00 POA	\$7.50 POA
<b>m. Outturn to Road</b> (all Commodities)	\$4.00			
<b>n. Container Packing</b>	\$21.50	\$24.00	\$24.50	\$25.00
<b>o. Quality/Treatment Certificate</b> (all Commodities)	\$100 per certificate			
Charges at All Facilities				
	Wheat	Barley & Triticale	Canola & Oats	Pulses
<b>p. Extraordinary Fumigation</b> (all Commodities)  Methyl Bromide Phosphine	\$3.00 \$8.00			
<b>q. Re-grade</b> (all Commodities)	\$5.00			
<b>r. Blending</b> (all Commodities)	POA			
<b>s. Transfers</b> (all Commodities) Warehouse to Client Internet/ezigrain Manual Client to Client Internet/ezigrain Manual	\$0.30 \$0.40 \$0.30 \$0.40			
<b>t. Sample Requests</b> (all Commodities) Site / Grade composite	In harvest*	Per Sample (5kg)	\$50.00	
	Outside harvest*	Per sampled location (minimum \$100 fee per request)	\$25.00	
Stock Check samples	Per sampled location (minimum \$100 fee per request)			\$25.00
Other in-store samples	Per sampled location (minimum \$100 fee per request)			\$25.00
Courier charges	Per consignment			Cost plus 25%
Individual Truck-load samples	Per sample			\$5.00
<b>u. Reports</b> (all commodities)				

Stack Average Quality Reports	Per report	\$1,000
<b>v. Price Increase to Reflect Cost Increases Related to Carbon Emissions</b>	Refer Explanatory Notes	

POA means Price on application.

# 2009/10 STORAGE & HANDLING CHARGES

## EXPLANATORY NOTES

### Country Facility Charges

**(a.) Receival** - *applies to receival tonnage (i.e. pre shrunk tonnes)*

This charge incorporates the services of receival, weighing, sampling, classifying including protein and oil testing where applicable, initial storage, initial insecticide treatment (where applied) and ongoing Phosphine fumigation treatment in accordance with the Company's fumigation regime.

**(b.) Shrink** - *applies to receival tonnage (i.e. pre shrunk tonnes)*

A shrinkage factor in accordance with the schedule will be deducted from each load at the time of initial delivery into the Company system. The receival tonnage less the shrinkage deducted will be credited to the stock account of the owner.

There will be no rebate of shrinkage on Commodity received into ABA's country sites and outturned to other BHC facilities.

**(c.) Storage** – *applies to shrunk tonnes*

Applies to all season's Commodities commingled in storage and is to be applied to the opening stock balance at the first day of each month.

Storage for non-commingled Commodity can be negotiated.

**(d.) Outturn** – *applies to shrunk tonnes*

Applies to all Commodities outturned during normal day shift operations of 07:00 – 15:30. Services provided during overtime periods may be negotiated. Outturns at other times incur a \$1.00/mt surcharge.

The container outturn service is for Farmer Dressed bulk Commodity (FD bulk) and includes AQIS and container inspection, fitting bulkhead, filling container, weighing but excludes container freight and handling. Operational conditions relating to this service may be found in Schedule E.

**(e.) Road Outturn Efficiency** – *applies to shrunk tonnes*

Applies to the tonnes out turned on each individual Outturn order per day.

**(f.) Rail Outturn Weighing-** *applies to shrunk tonnes*

Applies to Commodity outturned to facilities (other than the Company's facilities) by rail transport so as to provide trade certified outturn weights.

**(g.) Redelivery**

Applies to Commodity out turned from the Company's facilities and rejected at it's destination for reasons beyond the control of the Company and then tendered for re-delivery to any of the Company's facilities. Rejections for quality parameters that the Company does not, or cannot test for during harvest receivals are deemed to be reasons beyond the control of the Company.

## Port Melbourne Facility Charges

**(h.) Receival** - *applies to receival tonnage (i.e. pre shrunk tonnes)*

This charge applies to all Commodities received during normal working days and normal working hours of 07:00 – 15:30 hours and incorporates the services of receival, weighing, sampling, classifying, including protein and oil testing where applicable and elevation into storage.

Receival during extended hours of operation, including 24 hours per day for rail receivals incurs a \$1.00/mt surcharge.

**(i.) Shrink** - *applies to receival tonnage (i.e. pre shrunk tonnes)*

A shrinkage factor in accordance with the schedule will be deducted at the time of delivery from each load received from non-Company country facilities into the Melbourne Terminal. The receival tonnage less the shrinkage deducted will be credited to the stock account of the owner.

For the avoidance of doubt, Commodity received at Melbourne Terminal from the Company's country facilities does not incur additional shrinkage. Commodity received from other BHCs or ex-farm will incur shrinkage.

**(j.) Storage** – *applies to shrunk tonnes*

Applies to all season's Commodities in storage as at the start of business each Monday commencing 1<sup>st</sup> October 2009.

A higher separate charge applies to non-commingled Commodities where the customer requests their Commodity not to be commingled with Commodity of the same grade of other owners.

**(k.) Nomination fee** – *applies to shrunk tonnes*

This fee is to accompany each vessel nomination. Upon receipt of the nomination and nomination fee ABA at its sole discretion may accept the nomination. If the nomination is accepted ABA will allocate storage capacity to accumulate Commodity at the terminal and a date for commencement of loading. If ABA rejects the nomination the nomination fee is refunded.

A vessel nomination is deemed not to have been received if the fee is not paid within one business day of the nomination being received.

No vessel will be loaded without prior payment of the nomination fee.

The minimum vessel nomination period is 21 days.

A nomination lapses if a vessel's amended ETA or actual arrival time is 5 days earlier or later than the nominated ETA and the nomination fee forfeited. If a substitute vessel is nominated and its ETA is within 5 days of the originally nominated vessel's ETA then no further nomination fee is payable. If a substitute vessel is nominated and its ETA is 5 days earlier ABA may at its sole discretion reject the nomination. If a substitute vessel is nominated and its ETA is 5 days later than the originally nominated vessel's ETA then another nomination fee is payable.

If a vessel's notice of readiness to load is not presented within 5 days of the assigned date for commencement of loading a further nomination fee must be paid before loading will commencement.

**(l.) Ship Loading** – *applies to shrunk tonnes*

This charge covers untrimmed loading of Commodities into vessels from the Port Melbourne Terminal for 2 shifts (07:00 – 23:00) per day 7 days per week. It also covers, shipping related positioning, preparation and any related documentation.

Trimming of a cargo may incur additional charges. Charges will be subject to vessel configuration.

For 24 hours per day shiploading operations an additional charge of \$1.00/mt applies.

Fumigation charges, AQIS charges, port charges, stevedoring charges and any blending or shipping variation charges are additional to this charge.

This charge is applied to all Commodities outturned to ship regardless of destination whether intrastate, interstate or export.

**(m.) Outturn to Road** – *applies to shrunk tonnes*

This charge applies to Commodities outturned to road from the Port Melbourne Terminal. Minimum tonnage per day is 200 tonnes. It applies to services provided on normal working days and normal working hours of 07:00 – 15:30. Services provided during overtime periods incur a \$1.00/mt surcharge.

**(n.) Container Packing** – *applies to shrunk tonnes*

This service applies to 20' containers and is for Farmer Dressed bulk Commodity (FD bulk) and includes container pickup, AQIS and container inspection, fitting bulkhead, filling container, weighing and delivery to wharf. Operational Conditions relating to this service may be found in Schedule E. It applies to services provided on normal working days and during normal working hours of 07:00 – 15:30. Services provided during overtime periods at the Client's request incur a \$1.00/mt surcharge.

**(o.) Quality/Treatment Certificates**

An Outturn certificate (and copies) in the standard Company format, outlining treatment and quality details, can be provided if reasonably requested by the Client at the applicable fee.

Where the Client requests the Company to issue subsequent certificates (other than the original Outturn certificate) (and copies) with any amended details, (e.g. consignee name, quantity or format) then the Client will also incur the applicable fee.

## Charges at all Facilities

### **(p.) Extraordinary Fumigation – applies to shrunk tonnes**

This charge applies where either

- I. a Client requests a fumigation, or
- II. where ABA accepts infested Commodity and fumigates the infested commodity., or
- III. where Commodity received from a non-ABA storage facility into Melbourne Terminal is found to be infested upon loading into ships, containers or road transport.

It applies to the capacity of a storage unit (cell, shed, bunker) in which the Commodity is to be fumigated, not the tonnage of Commodity received and stored.

### **(q.) Re-grades – applies to shrunk tonnes**

Applies to all Client requested regrades across grades or across seasons:

Where a regrade across seasons is performed, subsequent carry charges will be levied according to the rates applicable for the new season thereafter.

The Company will assess all Client requests for regrades on a case-by-case basis, and final approval will be made at the Company's sole discretion. Where an across season regrade is deemed necessary by the Company for operational reasons, the Company will liaise with the Client, and the Client will act in good faith and use its best endeavours to allow the Company to effect the regrade.

The Company will not approve regrades that may compromise outturn quality at the Company's Site.

### **(r.) Blending – applies to shrunk tonnes**

A blending fee will apply where Binned Grades that have been binned separately by ABA are, at the request of the Client, mixed together. Mixing will be deemed to have occurred if previously identifiable Binned Grades are no longer able to be separated back into the original Binned Grades.

The blending charge will apply to mixing either within the ABA facility or during the outturn process. The blending charge will also apply if the Client directs that different Binned Grades be out turned into the same storage vessel of any transport unit. The charge applies to all tonnes blended.

Charge to be negotiated on a case by case basis.

### **(s.) Transfers – applies to shrunk tonnes**

Applies where the Warehouse or Client transfers Commodity (by way of a Title transfer) to another Client. The transfer charge will be applied to the purchasing Client's account.

### **(v.) Price Increase to reflect cost increases related to carbon emissions**

(a) Each of the following circumstances is a Pass Through Event for the purpose of this Agreement:

- i. an Emissions Trading Scheme Event;
- ii. a Change in Taxes Event; and
- iii. a Cost of Business Inputs Event.

(b) If a Pass Through Event occurs, the Company is entitled, in accordance with the procedures set out in this clause, to increase the charges set out in this agreement for the provision of any of the Services in order to pass through to the Client the financial effect of the Pass Through Event.

(c) If the Company intends to pass through the financial effect of a Pass Through Event to the Client then it must give the Client at least 30 days written notice specifying:

- i. details of the relevant Pass Through Event;
- ii. the dollar value increase in Price necessary to absorb the financial effect of the Pass Through Event; and
- iii. the date on which the increase in Price will take effect.

(d) In this clause:

**Change in Taxes Event** means:

- i. the imposition of a new Tax; and/or
- ii. a change in the way or rate at which a Tax is calculated,  
to the extent that the imposition or change:

iii. occurs after the commencement date of this Agreement; and

iv. is referable to the amount of greenhouse gases emitted by:

(a) the person who pays or is required to pay the Tax;

(b) that person's Controlling Corporation;

(c) that person's subsidiaries; and/or

(d) any joint ventures or partnerships of which that person is a member.

**Controlling Corporation** has the meaning given by section 7 of the *National Greenhouse and Energy Reporting Act 2007*.

**Cost of Business Inputs Event** means any increase in the cost of a component or material, including fuel, used or consumed in the provision of the Services to the extent that the cost increase is attributable to one or more of the other Pass Through Events referred to in clause (a) above, whether or not the impact of the relevant Pass Through Event on the Company is direct or indirect (including for the sake of clarity, any cost increase passed

onto the Company by the supplier of a component or material used or consumed in the provision of the Services if the cost increase to the Company is attributable to a Pass Through Event.).

**Emissions Trading Scheme Event** means the introduction of a law which imposes an obligation upon certain persons to acquire and surrender permits (or some other analogous compliance mechanism) which permits are referable to the amount of greenhouse gases emitted by that person, that person's Controlling Corporation, its subsidiaries and/or any joint ventures or partnerships of which that person is a member.

**Greenhouse gases** means gases that cause global warming and/or climate change and includes:

- a. carbon dioxide;
- b. methane;
- c. nitrous oxide;
- d. hydrofluorocarbons;
- e. perfluorocarbons; and
- f. sulphur hexafluoride.

**Tax** means any tax, rate, duty, charge, levy or other like or analogous impost whether at State or Federal level.

## Schedule B – Purchase Options Service Procedures

### 1. Introduction and Definitions

#### 1.1 Introduction

This service is operated by the Company at all Company Facilities.

Clients are advised to submit their Purchase Options as soon as practicable to avoid transmission delays that may occur from time to time when using internet facilities. The Company will not be held liable where delayed transmission of information prevents the successful submission of Purchase Options to the Purchase Option service.

#### 1.2 Definitions

In this Schedule;

**Cut off Time** means (subject to clause 4.1 below):

- for a Purchase Option submitted by the DPE system method, 5.00 pm on the day preceding the Effective Date; or
- for a Purchase Option submitted by the Text File method, 4.00 pm on the day preceding the Effective Date; or
- in either case, such later time as the Company allows.

**Effective Date** means the date on which the Client wishes a Purchase Option to take effect.

**Effective Period** means the period for which the Client, in its submission of a Purchase Option, requests the Purchase Option to be effective.

**Posted Price** means the purchase price offered by the Client in a Purchase Option.

### 2. Notification of Information

All information relating to Purchase Options must be submitted by one of the methods described in clause 3 below to whichever of the following addresses is applicable to that method

DPE System: [www.ezigrain.com.au](http://www.ezigrain.com.au)

E-mail: [receival.prices@abb.com.au](mailto:receival.prices@abb.com.au)

### 3. Method of Submission

Unless the Company agrees otherwise, the Client must submit Purchase Options by the DPE system method described below unless the DPE system is unavailable to all Clients for any reason, in which case Purchase Options may be submitted by the Text File method for so long as the DPE system ) remains unavailable.

### 3.1 Ezigrain's Direct Price Entry (DPE) system Method

- 3.1.1 Purchase Options may be submitted by the Client to the Company using the DPE system available on [www.ezigrain.com.au](http://www.ezigrain.com.au) . For security reasons, the Client must obtain password access for each person whom it wishes to access the system on its behalf.
- 3.1.2 Purchase Options submitted by this method must be in the electronic format prescribed by the Company for the purpose and all the fields must be completed.
- 3.1.3 The Company reserves the right to withdraw the availability of this service from time to time for routine maintenance or to deal with any issue that arises. The Company will advise clients at least 24 hours prior to the service being withdrawn for routine maintenance. If the service is withdrawn for any other reason, the Company will endeavour to advise Clients of the unavailability of the service prior to the closure of submissions for each affected day.

### 3.2 Text File via e-mail (format provided by the Company)

- 3.2.1 This method of submission will only be accepted if there is a problem with the Company's DPE system. A Purchase Option submitted by this method must be submitted to [receival.prices@abb.com.au](mailto:receival.prices@abb.com.au) and must contain all the information prescribed for submissions by the DPE system
- 3.2.2 The Client is responsible for the successful e-mail of Text Files to the Company prior to the cut-off time and bears the risk of system failure. Where an email of Text Files is out of time, the Text Files will not be processed by the Company, irrespective of when it was sent.
- 3.2.3 Where incorrect Purchase Options are submitted to the Company, it is the Client's responsibility to issue a **replacement** Text File with the correct Purchase Option information prior to the submission closing time. Text Files will not be amended by the Company at the Client's request.

## 4. Submission of Purchase Options

In the submission of Purchase Options the following rules apply:

- 4.1 Purchase Options may be submitted 5 days per week (excluding Saturdays and Sundays and Public Holidays) for the period determined by the Company to be the harvest duration. The Company, in its discretion, may make the DPE system available for service on Saturdays, in which case the cut off time is noon (CST)
- 4.2 A Purchase Option submitted to the Company on a Friday for the entire weekend period will be published by the Company on the Saturday, Sunday and Monday (and, if the Monday is a holiday, the Tuesday). It may be amended during the weekend only at the discretion and with the prior consent of the Company. If the Client wants to amend a submission, the Client must contact the Service Centre Manager on Freecall 1800 018 205. If the Company consents to the amendment, the replacement submission must be received at the Company by noon (CST) on the Saturday prior to its Effective Date.
- 4.3 A Purchase Options must be received by the Cut Off time to ensure its publication. A Purchase Option received after the Cut Off Time will not be published unless the Company, in its discretion, elects to do so.
- 4.4 Purchase Options may only be withdrawn during an Effective Period and in accordance with clause 6 of this Schedule.
- 4.5 Details provided for each Purchase Option submitted must adhere to the guidelines provided by the Company. Submissions by way of DPE or Text File will be according to a pre-determined electronic format. Clients are required to record all the applicable details including the Purchase

Option Code and Description, the Grain, Pay-grade, Site, Price, and the Effective Date for each Purchase Option required. The Effective Period must only be recorded if applicable. (Note: It is preferable that all Pool Purchase Options remain open until their subsequent closure).

- 4.6 The Client is responsible to ensure the submission of all Purchase Options required prior to the cut-off time and to check whether they have been successful.. Where a submission is unsuccessful, the Client may request the Company's Client Account Manager to consider accepting the submission anyway. If the Client Account Manager agrees to consider accepting the submission, a written copy of the necessary Purchase Options information may then be forwarded to the Client Services Department. Acceptance of the submission is then at the sole discretion of the Client Account Manager or his/her duly authorised delegate.
- 4.7 The Client must provide the Company, on request, with any information that the Company requires to clarify any matter relating to the Client's Purchase Options. That includes (but is not limited to) information that the Company requires to enable it to make a decision under Clause 14 of this Schedule. If the Company requests any information under this clause, it may withhold publication of the Purchase Option until the information is provided.
- 4.8 the Company has no liability to the Client arising from any faulty email or fax transmission, illegibility of figures, corruption of electronic data, or any other issue that prohibits the successful submission or publication of a Purchase Option.

## 5. Quotation Of Base Purchase Options

- 5.1 All Posted Prices must be offered (and will be published on the Client's behalf) on a free in store basis (i.e. excluding all freight, receival and storage and handling charges). The Company's charges (including, but not limited to Receival Service, Storage and Segregation Fees) will be directly charged to the Client by the Company.
- 5.2 To ensure a fair and equitable service is offered to Growers, Clients must outline the cumulative cost of all other deductions (exclusive of GST) that will impact upon the Client's Purchase Options (eg. underwriting, financing fees etc).

## 6. Withdrawal of Purchase Options

- 6.1 The Client may withdraw a Purchase Option at any time during its Effective Period by giving notice in writing to the Company no later than 5.00 pm on the working day preceding the day on which the withdrawal is to take effect (**Withdrawal Day**). The Client may not withdraw a Purchase Option on the Withdrawal Day except with the prior approval and at the discretion of the Company's Client Services Manager or his/her duly authorised delegate.
- 6.2 A request for approval to withdraw a Purchase Option on a Withdrawal Day must be made in writing (preferably by facsimile or email at [receival.prices@abb.com.au](mailto:receival.prices@abb.com.au)) to the Service Centre. Upon approval, the Company will endeavour to withdraw the relevant Purchase Options within 2 hours of receiving notification from the Client, but the Company will not be liable to the Client if the withdrawal is not made within 2 hours or at all.
- 6.3 A request for approval to withdraw a Purchase Option on a day that is not a Business Day must be made by telephone to the Service Centre Manager or his or her authorised delegate by 12pm on 1800 018 205:
- on the day if the day is a Saturday or a Public Holiday that follows a Business Day: or
  - on the immediately preceding Saturday, if the day is a Sunday or a Public Holiday that does not follow a Business Day

and, if it is approved, the withdrawal must be confirmed by the Client in writing as soon as is practicable thereafter in writing.

- 6.4 Where a Purchase Option is withdrawn, the Service Centre Manager will, as soon as reasonably practicable, update the Purchase Options Service and arrange for the withdrawn Purchase Options to be removed from the display notice.
- 6.5 The Client must indemnify the Company against any liability, direct or indirect, that the Company incurs following the withdrawal of a Purchase Option and release the Company from any such liability to the Client itself.
- 6.6 A Purchase Option that is withdrawn may be reinstated by the submission of a new Purchase Option to the Company by the Client in accordance with these terms and conditions. However, the Company will not effect reinstatement before the day following the prior withdrawal.

## **7. Prices on Weighbridge Tickets**

- 7.1 Where applicable, the price per tonne will be recorded on weighbridge tickets by Company staff based on the actual information supplied to the Purchase Options Service.
- 7.2 If there is a discrepancy between the price recorded on a weighbridge ticket at the time the Grain is delivered and the Posted Price at that time the price to be paid to the Grower will be the Posted Price at the time of delivery. A Company disclaimer to this effect accompanies each weighbridge ticket issued.

## **8. Operational Constraints**

Where a site reaches its storage capacity for a particular Binned Grade or Grain, the Company may, at its option, remove some or all of the Client's Purchase Options for that Binned Grade or Grain or refuse to accept any more Purchase Options for that Binned Grade or Grain (or both).

## **9. Purchase Option Reporting**

- 9.1 As a service to Clients, a summary of all the Purchase Options submitted for each Company Facility is published on the Company's ezigrain™ website
- 9.2 However, the Company does not warrant the accuracy of the summary and has no liability to the Client for any inaccuracy or other shortcoming in the summary

## **10. Service Guarantee**

- 10.1 If;
- the published Posted Price exceeds the actual price submitted by the Client; and
  - the inaccuracy was caused by the Company's error in publishing data provided by the Client through the electronic submission of Purchase Options to the Company via the ezigrain DPE system or Text file method

then, the Company will compensate the Client under clause 10.2.

10.2 The Company will compensate the Client under clause 10.1 by paying the difference between the Posted Price and the submitted price up to \$10.00 per tonne, capped at \$5000 per any one error occurring, with a cumulative seasonal cap to a maximum of \$10000.

10.3 Except as provided in clause 10.2, the Company has no liability to the Client for errors in publishing a Purchase Option

## 11. **Warranty**

The Client warrants to the Company that:

- all information provided to the Company by the Client will be correct and accurate; and
- The Client will purchase Grain under the Purchase Options notified to the Company from time to time in accordance with the terms of this Procedure.

## 12. **Release**

Subject to clause 10 above, the Client releases the Company from any liability in respect of the failure of the Company to post or publish Purchase Options in a timely manner or at all, or in accordance with the instructions of the Client.

## 13. **Communication Protocols**

13.1 If the Company receives a submission or any other communication that relates to a Purchase Option and purports come from the Client either:

- i via the DPE system from a person using the Client's password; or
- ii by email from an address in the Client's domain,

the Company is entitled to treat the communication as having come from the Client with the Client's authority.

13.2 If the Company is entitled under to act on Purchase Options purportedly submitted by the Client, and if the instructions were not in fact issued by or with the authority of the Client, the Client indemnifies the Company against any losses, damage, costs or expenses incurred by the Company in reliance on such instructions.

## 14. **Refusal to Publish**

Despite anything contained anywhere in this schedule, the Company reserves the right to refuse to publish a Purchase Option if, in the reasonably held opinion of the Company, the submitted Purchase Option is inconsistent with industry practice or is otherwise likely to mislead or deceive Growers. The Company has no liability to the Client arising from the Company's refusal to publish pursuant to this clause.

## **Schedule C – Not Used**

This schedule purposely left blank

## **Schedule D – Outturn Conditions for Road / Rail**

### **Part 1. Access and Operating Conditions for Road / Rail Movements at Company Facilities**

Movements of Grain from Company Facilities using road or rail transport must meet the following operating conditions, as applicable to the mode of transport.

These conditions are necessary to ensure the Company achieves the efficiency and productivity levels assumed in the storage and handling charges.

However, the conditions also reflect the legal responsibilities imposed by law [and particularly by the legislation commonly known as “chain of responsibility”], on all parties involved in the freight task (i.e. freight provider, infrastructure provider and freight purchaser).

Where reasonably practical this Schedule should be provided by a Client to any road service provider engaged by the Client to conduct movements to or from a Company Facility.

#### **Note:**

- The safety of all employees, the community and contractors is of paramount importance to the Company. This is a responsibility that is taken very seriously and at all times the Company will endeavour to ensure the working environment is as safe as possible.
- The Company will adhere to the principles expressed in the chain of responsibility legislation. The Company is committed to occupational health and safety requirements and has initiatives in place to address mass limit management and fatigue management.

## **OPERATIONAL REQUIREMENTS**

### **Access Road Routes**

All road movements in and out of a Company Facility must be by the specified carriageway. The Company may amend access points from time to time.

### **Weather Working Day**

The standard hours of a weather working day for the operations of outloading at Company country sites is 7:30am to 3:30pm on a Business Day . Site loading ceases immediately the eight (8) hour loading period has ended.

These hours are subject to change without notice.

By negotiation with the Company, an extension of hours may agreed. If the extension of the number of hours results in the Company incurring additional costs, the reimbursement of those costs must be negotiated and agreed by the Client before any change in operating hours occurs.

### **Outturn Order placement**

Client written orders for outturns must be received by the Company at least:

- 10 working days prior to the date on which the outturn is requested for Rail outturns; and
- 2 clear working days prior to the date on which the outturn is requested for Road outturns.
- Outturn orders must be received by the Company by no later than 3.00pm on Working Days to be deemed to have been received on that day.

The Company will provide the Client with an outturn protocol to be used when arranging outturns by Road or Rail. The Company may vary the protocol as it alone deems necessary, and changes will be notified to the Client in writing from time to time.

**No movement will commence until:**

- the Client has authorised the movement in writing (such authorisation to be issued on a timely basis); and
- the Company has confirmed the date and time that the movement can commence (such confirmation to be issued on a timely basis); and
- in the case of road outturn, the vehicle operator has quoted the Client's order number or the Inter-site Movement Number in order to verify that the order request is valid.

The Company cannot guarantee that all movements can take place at the time required by the Client. However, the Company will try to accommodate all notices correctly issued in conformity with these Access & Operating Conditions.

### **Delays**

In the event of a delay at a Company Facility that is not caused by the Client or its carrier, the Company will use its best endeavours to advise the Client and / or any of the Client's carrier(s) as soon as reasonably practicable after the Company becomes aware of the delay.

### **Vehicles**

- All equipment used by the Client or the Carrier at a Company Facility must be operationally suitable and well maintained.
- Vehicles operating with increased mass limits or b-double or greater vehicle configuration must provide the Company on request with the appropriate Road Traffic Act permit.
- Vehicle operators must select the correct Mass Limit Code from the Company's Mass Limit chart for loading or delivery.
- Vehicles are to have purpose built ground-operated tarping.
- No wooden hungry boards are permitted on vehicles.
- Vehicles must operate a reversing alarm/buzzer when reversing at Company Facilities.
- Maintenance, repair and service/grease of the motor vehicle and its trailer are not permitted at a Company Facility except in the case of vehicle breakdown.

### **Vehicle (includes rail wagons) Cleanliness**

- Vehicles must be in a clean condition free of any material, insect or contaminant that could adversely affect the Grain.
- The Client must ensure vehicles and associated equipment are cleaned down before they enter the Company site for loading.
- The Company may refuse to load vehicles that are not adequately cleaned.
- Vehicles may not be cleaned down on Company property. Should a vehicle clean down on Company property the Client will be liable for clean up cost.
- The Client must ensure that the carrier has adequate quality procedures to ensure that no contamination occurs from any equipment used by the carrier.
- Road vehicle operators are required to complete a Road Hygiene Log prior to loading at Outturn Company Facility.

## **Vehicle Loading**

For road vehicles, the legal loading weight of the combined vehicle must be displayed on the right hand side of the prime mover or truck. The Company will refuse to load a vehicle above its legal mass limits. The Client must ensure all road carriers agree to unload any excess tonnage above the legal limit upon request. Refusal to comply with a request by the Company to unload will result in suspension of the vehicle operator and the vehicle from loading at Company Facilities for a period of time to be determined by the Company.

Note - Vehicles must be loaded according to a mass limit code selected by the vehicle operator from the Company mass limits charts.

## **Grain Loss or Spillage**

If Grain spills from the carrier's vehicle either inside or outside a Company Facility, the responsibility to clean up the spillage lies with the Client.

## **Insect and Quality Issues**

The Company will provide the Client with information on the insect treatment program but will not guarantee that Grain is insect free and will not accept any freight or consequential costs in the event that insects are found on the Outturn of Grain.

The Company will sample and test loads in accordance with the Outturn Standards and Company Classification Procedures prior to departure of the vehicle.

If the Client or the Client's carrier accepts a load and leaves the Company's Facilities with that load, the Company is not liable to the Client for freight or other costs or losses of any kind if that Grain is subsequently rejected due to insects or quality issues at its destination.

## **Compliance with Laws**

The Client must ensure that the Client's carrier complies with and observes at its cost any law, by-law, regulation, or requirement of any federal, state or local authority. Specifically, the Client must comply with recently introduced transport legislation, focussing on the chain of responsibility in the transport, ordering and delivery of grain parcels.

## **Amendments**

The access and operating conditions may be amended by the Company from time to time.

## **SAFETY**

### **Site SHE Rules**

Vehicle operators must comply with the Company's General Safety Rules Handbook. All site safety rules must be adhered to without negotiation. Site safety rules may vary between sites. It is the responsibility of vehicle operators to understand the requirements at each Company Facility.

### **Instructions**

Vehicle operators must follow instructions given by Company Facility personnel.

### **Clothing**

All vehicle operators must wear suitable footwear and high visibility jackets that comply with Australian Standards at all times. Road vehicle operators must also have access (in the truck) to long trousers, long sleeved shirts, safety glasses, hard hats, gloves, dust masks and any other protection that are to be

worn if required by the General Safety Rules Handbook or Site Rules or as directed by Company Facility Personnel.

### **Climbing on vehicles**

Bulk vehicles must have a safe system of tarping. There should be no circumstances in which a vehicle operator leaves the ground in order to 'tarp'.

Entry into bulk vehicles for any activity must be via safety platforms, steps or ladders, complying with Australian Standards suitable for the task of maintaining three-point contact.

Access to and alighting the tray of a flat top vehicle must only be by way of safety platforms, steps or ladders, complying with Australian Standards. Vehicle operators must not ascend from the tray top onto loaded material.

If bulk product needs to be adjusted, the vehicle operator must only access via safety platforms, steps or ladders and work from platforms, complying with Australian Standards. The vehicle operator must not leave the platform.

Convertibles are recognised as high-risk equipment. Vehicle operators must provide the Company with a "safe system of work" for assembly, disassembly or loading of a convertible that meets working at heights legislative requirements and Australian Standards.

Non-compliance with the above conditions may result in the Company refusing to load the vehicle.

### **Visitors**

Children must remain in the vehicle whilst on site. Animals must remain in vehicles and dogs must be leashed.

### **Vehicles on site**

Speed limits and other specific traffic regulations while on Company property or whilst operating in the Company area of responsibility adjoining a silo must be adhered to at all times. Parking for personal motor vehicles is not provided on site.

### **Smoking**

Smoking is prohibited in all Grain out-loading and in-loading areas. Smokers may smoke only in designated areas. Any vehicle whose operator is not complying will not be loaded.

### **Incident Reports**

Any incident that results in personal injury or property damage must be reported to the Company within twenty-four (24) hours.

## **Part 2. Outturn Standards**

Where any contaminant or grain defect is not detected during normal sampling and testing procedures, the failure to detect does not provide a guarantee that the contaminant or grain defect is not present within the bulk of grain from which the sample was drawn.

This applies equally to sampling and testing at Receipt and to Outturn.

Later detection of contaminants or grain defects in grain using different samples from those obtained and assessed during receipt is at the risk of the Client.

Generally, the Outturn Standards are the applicable Receipt Standards combined with normal quality changes that may occur during storage and handling.

For all grains including Pulses, the Company does not guarantee to meet NIL tolerances for qualities that may change in storage such as but not limited to heat damaged, bin burnt, storage mould, sticks, stones and animal excreta. Acceptable levels for these and other storage related quality aspects will be determined by the Company taking into account the susceptibility of the commodity to changes in storage and the length of time in storage.

Additional information about Outturn Standards for Pulses may be obtained from the Company on application.

### **Part 3. Load Rejection from Domestic Delivery**

#### **1. Aim**

This procedure details how to action and document a Grain rejection by either the Client or the End-user, where the Client or the End User claims that the load(s) outturned by the Company have failed to meet the Company's required Outturn Standard. This procedure will also show how to administer weigh notes and deal with compensation for rejected loads if the Company accepts the Client or End User's claim.

#### **2. Outcomes**

The Company has initiated this procedure to ensure a quick, consistent and effective resolution to Client complaints regarding rejected loads.

#### **3. Definitions**

'**End user**' means the domestic end user that has taken delivery of grain Out turned from a Company Facility. The End user may be the Client.

'**Responsible Manager**' ('**RM**') means any one of the following Company officers:

- the Site Manager responsible for the outturn at the relevant Company Facility, or
- the Company's Client Services Officer (or nominated delegate).

#### **4. Procedure**

If a load of Grain is rejected by the End user and the Client or the End User claims that the load(s) Outturned by the Company failed to meet the Company's required Outturn Standard, the Company will have no liability to the Client arising out of the failure unless the following procedures are strictly adhered to.

- Either the Client or the End user must immediately contact an RM.
- The rejected load of Grain must remain on the vehicle and under the control and responsibility of the Client and the End user must not bin the allegedly out of specification Grain with other grain or otherwise deal with it until the Grain can be properly inspected and assessed by the Company. (If the RM considers it necessary, they will arrange an inspection of the Grain within a reasonable time. The End user will be advised who will make the inspection and how long before they will be in attendance.)

- If, on inspection at the End-Users facility, the RM is satisfied that the load of Grain is out of specification and that the Company is at fault, the RM will contact the Client and, typically, will direct the vehicle and its load to return immediately to the source of Outturn, or to go to some other site nominated by the RM and the Client must comply with the direction.
- If the RM directs the vehicle to a Company Facility, on arrival at that Company Facility the vehicle must be unloaded and swept clean by the vehicle operator. If required the vehicle will then be completely cleaned down by Company personnel.
- The vehicle must not be presented for further loading from any Company Facility until the vehicle and its equipment are in such a condition they will not contaminate any Grain or other commodities Outturned from the Company Facility.
- The Client must promptly provide the Company with any information or documentation that the Company requires to enable it to assess and quantify the Client's claim.

#### 5. **Client Claim's**

Subject to clause 19 of the main body of this agreement, If the Company is satisfied that the load of Grain is out of specification and the Client has complied with its obligations under this procedure set out in clause 4 above, then the Client must act in accordance with the regime set out in clause 6 below, if it chooses to pursue a claim against the Company.

#### 6. **The Claims Regime**

If the Client is entitled to compensation under clause 4 & 5 above, the Company will, by way of that compensation and in full settlement of the Client's claim, reimburse the Client all its reasonable freight costs of transporting the defective load from the Company Facility from which it was Outturned to the End user's site and from there to any other place to which it was directed by the RM. Those costs will be the maximum extent of costs permissible to be claimed by the Client for any one event.

#### 7. **No Other Liability for the Company**

The Company has no liability to the Client arising out of a load Outturned by the Company that fails to meet the Company's required Outturn Standard except under the preceding clause 6 of this Schedule

## **Schedule E - Container Packing Conditions (Port Melbourne 2009/10)**

The following conditions apply to Commodity which is the subject of ABA's container packing service at Port Melbourne terminal (please note other conditions may be imposed by the packing operator at the Terminal):

### **Notification**

1. The Client must provide the Company the following information, at least 21 days prior to a vessel's estimated time of departure ('ETD'):

- (a) Tonnage to be packed/Number of containers required/ or to be supplied;
- (b) Vessel Name and ETD;
- (c) Commencement and end dates for receipt of Commodity which is to be packed; and
- (d) Current Location of Commodity to be received into ABA for packing (including a site accumulation plan for draw- down)

2. Client to provide the packing instructions the week prior to vessel's ETD. This information to include -

- (a) shipping line;
- (b) relevant Authority/Release Nos. (eg ECN, PIG etc);
- (c) place of pick up and delivery of containers;
- (d) port of discharge/final destination;
- (e) container weight instructions (eg max/min of each container);
- (f) documentation/sampling requirements; and
- (g) special cargo requirements (eg quality specs, fumigation requirements etc)

Please note- The charge for container packing at Port Melbourne (as listed in Schedule A) includes only Grain receipt, container pickup, AQIS and container inspection, fitting bulkhead, filling container, weighing and delivery to wharf. Other Services are to be negotiated with ABA.