

# ABA Grower Warehousing Standard Terms and Conditions – 2009/10

## The Basis of Warehousing

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

Subject to these terms and conditions the Warehouse has the right to the outturn of commodity of like quantity, type and specification as the Commodity received by ABA at the site at which the commodity was received ("the Outturn Right"). The Warehouse may transfer the ownership of the Commodity and the Outturn Right to another party (a "transfer in-store").

The expression "Warehouse" in this document means the grower on whose behalf the Commodity has been received and warehoused by ABA and any subsequent grower buyer of the Outturn Right, as the context requires.

These terms and conditions do not apply to traders and marketers who have or have not signed ABA's storage and handling agreement of the season.

## Common Stocking

ABA may common stock the Commodity of a Warehouse with the commodity of the same grade or specification that has been received from other customers.

Title to common stocked commodity in a storage cell is held jointly by the relevant customers in the proportions that each customer's quantity of the commodity bears to the total quantity of commodity in that cell.

While ABA has possession of the Commodity:

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

## Receival

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

## Shrinkage

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

It is in the interest of the Warehouse to ensure that, if possible, transfers in-store are negotiated and paid on the basis of delivered weight, not shrunk weight.

## Outturn

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

The Warehouse must use best endeavours to exercise the Outturn Right, in full, before the "Outturn Date" specified in **Schedule 2**.

Notwithstanding any other provision of these terms and conditions, ABA has the right to transfer the Outturn Right in respect of the current season Commodity to a site other than the site at which Receival and Initial Storage was provided and, where appropriate, impose a freight differential charge, provided that (other than for the movements specified under "Movements" below) the Warehouse is not significantly disadvantaged overall by the change of site.

Special arrangements or restrictions may apply to outturn from some sites (refer **Schedule 3**).

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

Fumigation forward plans ('Fumigation Plans') for all ABA receival sites are posted on the *ezigrain*<sup>TM</sup> website ([www.ezigrain.com.au](http://www.ezigrain.com.au)). These Fumigation Plans comprise the sole form of notification by ABA to the Warehouse of intended fumigation treatments to be applied to Commodity. It is the responsibility of the Warehouse to ensure Commodity is available for self-outturn by monitoring the fumigation status of Commodity under warehouse in the ABA system. Fumigation Plans are subject to change.

## Outturn Standards

ABA's obligation to outturn is subject to such outturn standards as may be published by ABA from time to time. Some important standards are listed in **Schedule 4**.

## Movements

Subject to ABA providing reasonable prior notice during the harvest period and at least 5 days prior notice out of the harvest period, and at the cost of the Warehouse, ABA has the right to outturn the Commodity to another site or reposition the Commodity within the site if:

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

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

## Season Clearance

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

irrevocably appoints ABA as its agent and attorney.

## Entitlement Shortfall Adjustment

If the ABA system does not hold sufficient commodity of the type and specification of the Warehouse's Commodity at the time the Warehouse or Purchaser of the Outturn Right exercises its Outturn Right, ABA will be entitled to satisfy any such physical shortfall by payment of compensation at the season average price calculated in accordance with **Schedule 5**, or provide replacement stock.

## Entitlement Surplus Adjustment

Where the Warehouse has exercised an Outturn Right and has benefited from an outturn quantity or quality in excess of that to which it was entitled, the Warehouse will, on demand, compensate ABA by payment for that excess calculated at the season average price (refer **Schedule 5**).

## Transfers In-store

Transfers in-store may be initiated by the Warehouse providing verbal or written instructions to ABA. ABA is thereupon authorised to sign the transfer for and on behalf of the Warehouse and for this purpose the Warehouse irrevocably appoints ABA as its agent and attorney. ABA will then seek the purchasers acceptance of the transfer and confirm completion to the Warehouse.

For transfers in-store via the *ezigrain*<sup>TM</sup> web site ABA shall be entitled to assume that the instructions to transfer have been issued by or on behalf of the Warehouse if the Warehouse's *ezigrain*<sup>TM</sup> security PIN is quoted to execute the transaction.

ABA shall not be obliged to recognise any transfer in-store unless and until the purchaser of the Outturn Right agrees or has already agreed to be bound:

- (a) if the purchaser is a marketer or trader of commodities, by the terms and conditions contained in ABA's Storage & Handling Agreement for the season; or otherwise
- (b) by these terms and conditions (as amended from time to time).

Constraints on Transfers in -store are explained in **Schedule 6**.

## Effective Date of Transfers

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

## Charges

The charges for receival and Warehousing are set out in the **Attachment**. Unless otherwise stated the charges are exclusive of GST.

## Payment

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

The full amount of an invoice rendered by ABA must be paid by the purchaser of the Outturn Right or the Warehouse (where applicable) within 30 days from the date of that invoice.

For Commodities the subject of self-outturn, the Warehouse will be required to pay all accrued charges and any costs payable on an up-front

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basis (if no credit facility exists for that Warehouse).

For most in-store transfers, ABA acknowledges that the purchaser of the Outturn Right will agree to accept responsibility for payment of charges and costs that have accrued prior to the date of outturn, which have not been paid (including monthly carry and carry-over charges). In that event, ABA will invoice the purchaser of the Outturn Right. Nevertheless, each Warehouse remains responsible to ABA for payment of the charges accrued during that Warehouse's period of ownership of the Outturn Right.

Details of how to make payment are set out in **Schedule 7**.

## Default in Payment

Where the Warehouse or purchaser of the Outturn Right is in default of payment of any amounts due and payable to ABA on any account for more than 7 days and has failed to make full payment after 21 days written notice, ABA is entitled to sell the Commodity and/or the Outturn Right (to the extent required to meet the debt) in such manner as it sees fit and shall account to the Warehouse for the sale proceeds net of selling expenses and the amount owing to ABA. For these purposes the Warehouse irrevocably appoints ABA as its agent and attorney.

## Default Interest

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

## Risk

While the Commodity is in the care and control of ABA, the risk of loss occasioned by:

(a) theft, fire, flood and contamination not caused by the Warehouse, shall, subject to paragraph (b) below, lie with ABA; but

(b) spontaneous combustion, water damage caused by the action of the sea, contamination caused by or attributable to the Warehouse and all other risks, shall lie with the Warehouse, and should be insured against by the Warehouse.

## Liability

Subject to the following paragraph, ABA will not in any event be liable for any loss of interest, profit, earnings, reputation, opportunity or any other special, indirect or consequential damage suffered by the Warehouse or purchaser of the Outturn Right arising out of ABA's acts or omissions or the acts or omissions of ABA's agents or contractors. ABA excludes to the maximum extent permitted at law, all conditions or warranties implied by custom, the general law or statute. Some conditions and warranties cannot by law be excluded ("Non Excludable Warranties").

ABA's liability under any Non-Excludable Warranty is limited to:

- (a) in the case of services, the re-supply of those services;
- (b) in the case of goods, the cost of replacing those goods.

ABA may post prices for other grain marketing companies at its facilities, the Customer acknowledges that ABA makes no representations with respect to those grain marketing companies – in particular with respect to their financial viability or the terms

and conditions under which they may operate. The Customer accepts all risks associated with dealing with the other grain marketing companies.

## Indemnity

The Warehouse will indemnify and keep indemnified ABA against all losses, damages, costs and expenses ("Losses") arising out of:

- (a) any acts by, or omissions of, the Warehouse (or any person acting on behalf of the Warehouse) at the Site (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- (b) any overloading of a vehicle containing any Commodity;
- (c) any claim by a third party relating to a lien, charge or other security interest in the Commodity or the Outturn Right;
- (d) any claim by a third party relating to the acts or omissions of the Warehouse in respect of the Commodity or any transfer in-store;
- (e) any breach of warranty or representation given by or on behalf of the Warehouse in respect of the Commodity;
- (f) damaged or contaminated grain at the risk of the Warehouse; and
- (g) the Warehouse or the Warehouse's Agent is responsible for ensuring compliance with all relevant mass limits prescribed by legislation or regulation for the vehicles (**the Laws**) used when carrying Commodities to or from the Company's site, and the Customer indemnifies the Company against all loss, damage, cost and expenses incurred by the Company that arise in connection with any non-compliance by the Customer;

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

## Carriage Warranties

The Warehouse or the Warehouse's Agent warrants that:

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

## Release

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

## Lien

Notwithstanding that the Commodity may be mixed with commodities of like type and specification, ABA shall have a lien on the Commodity and each of such other commodities for all monies owing to ABA (whether contingently or otherwise on any account whatsoever) by the Warehouse and

such other owners. ABA may enforce the lien by selling the Commodity and/or the Outturn Right (refer "Default in Payment")

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

## ABA's Records

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

## ABA's Joint Venture

ABA is a joint venture between ABB Grain Ltd ABN 59 084 962 130 and Sumitomo Australia Ltd ABN 81 000 371 497. Anything to be done by ABA pursuant to these terms and conditions may be done by the joint venturers on behalf of ABA and any rights, authorities or consents granted to ABA shall be deemed also granted to the joint ventures.

## Information Use and Disclosure

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

- (a) joint venturers for the purpose of marketing their services to the Warehouse;
- (b) other marketers /traders for the purpose of promoting their services to the Warehouse
- (c) National Grower Register Pty Ltd or its agents for the purposes of the NGR or for promoting goods or services of other companies of relevance to the Warehouse.
- (d) Any organisation to which the Warehouse has donated Commodity for the purpose of allowing the organization to identify the donor.

And otherwise may only be provided to other parties with the consent of the Warehouse. All notices, requests to access information or privacy complaints should be made in writing to "The Privacy Officer", ABA GPO Box 1169 Adelaide SA 5001.

## Governing Law and Jurisdiction

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

## Variations

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

Any such changes will not have any adverse retrospective effect on the Warehouse.

## Attachment Storage and Handling Charges - 2009/10

This attachment outlines the basic charges for storing and handling commodities at the Australian Bulk Alliance country facilities in New South Wales and Victoria. The country facilities are located at:

- Coolamon-Marrar (NSW)
- Goolgowi (NSW)
- Nhill (VIC)
- Tatyoon North (VIC)
- Nullawil (VIC)
- The Rock (NSW)
- Woorinen (VIC)

	Wheat	Barley & Triticale	Canola & Oats	Pulses
	\$/tonne	\$/tonne	\$/tonne	\$/tonne
<b>RECEIVAL FEE</b>				
	\$10.50	\$11.50	\$12.50	\$13.50
<b>MONTHLY CARRYING CHARGES*</b>				
1/01/10 to 31/01/10	\$1.35	\$1.35	\$1.40	\$1.40
1/02/10 to 28/02/10	\$1.35	\$1.35	\$1.40	\$1.40
1/03/10 to 31/03/10	\$1.35	\$1.35	\$1.40	\$1.40
1/04/10 to 30/04/10	\$1.35	\$1.35	\$1.40	\$1.40
1/05/10 to 31/05/10	\$1.35	\$1.35	\$1.40	\$1.40
1/06/10 to 30/6/10	\$1.35	\$1.35	\$1.40	\$1.40
1/07/10 to 31/07/10	\$1.35	\$1.35	\$1.40	\$1.40
1/08/10 to 31/08/10	\$1.35	\$1.35	\$1.40	\$1.40
1/09/10 to 30/09/10	\$1.35	\$1.35	\$1.40	\$1.40
1/10/10 to outturn or transfer of Commodity (per month)	TBA	TBA	TBA	TBA

\*Monthly Carrying Charges commence 1/01/10 for all Commodities at all sites except Tatyoon North.

**Tatyoon North Monthly Carrying Charges commence 1/03/10 for all Commodities, (\$1.35 (\$1.40 for canola & oats)) per month until 30/11/10**

Notes. 1) All Fees are GST exclusive

2) An outturn fee of \$2.00 per tonne will apply to Warehouse's outturning grain in their own name (additional \$2.00 per tonne for weekend & Public Holidays and must have the Agreement of the Site Manager).

3) Monthly Carrying Charges accumulate for every month in store

# Attachment

## Storage and Handling Charges - 2009/10

### Schedule 1

Shrinkage Allowance:

0.6% of delivered weight of the Commodity for wheat, barley & triticale.

0.75% of delivered weight of the Commodity for canola & oats.

0.85% of delivered weight of the Commodity for pulses.

### Schedule 2

Outturn Date: The next 30 September following delivery of the Commodity.

### Schedule 3

Special Outturn Conditions: A minimum 2 (two) working days notice applies for Self Outturn and minimum tonnage requirements (or otherwise charges) also apply. Warehouseurs may only outturn commodity on the days and times specified by ABA and as varied by ABA from time to time. Outturn time and day information is available from all ABA sites.

### Schedule 4

Outturn Standards:

Until further advice:

- The outturn standard for cereals will be as per ABA's Register of Outturn Standards (a copy of which is available to the Warehouseur upon request).
- The outturn standard for pulses and oilseeds will be as per ABA's Register of Outturn Standards, a copy of which is available to the Warehouseur upon request. Note that ABA's standards allow an additional tolerance over GTA standards for defective levels on certain commodities
- ABA will not be responsible for Outturn Standards which are not specified in ABA's Register of Outturn Standards. (Please note ABA's Register of Outturn Standards may vary from Grain Industry Representative Body(ies) outturn standards).

### Schedule 5

Season average price:

The basis for this adjustment will be the net pool return of the season of adjustment as quoted by the AWBI for wheat and the net pool return of the season of adjustment quoted from all barley pools operating in Victoria and New South Wales for barley. For all other commodities, a season average cash price will be calculated based on weighted season average cash prices (grower bids) posted by clients over harvest at Company Facilities with average freight deducted from the net port return. The adjustments will be finalised at base grade quality.

### Schedule 6

The Warehouseur hereby acknowledges that there are certain limitations to the marketing options for a transfer in –store of the Outturn Right. For example, a potential purchaser of the Outturn Right may not accept transfers to cash purchase options or transfers of malting/milling quality commodities after a certain date (please check these conditions with your potential marketer).

### Schedule 7

ABA's bank account details:

Commonwealth Bank of Australia

BSB No. 064433

Account No. 10485851

Bank cheque or money order:

Send to:

1. Area Office or Local Depot; or
2. Australian Bulk Alliance  
Attention: Accounts Receivable  
GPO Box 1169 Adelaide SA  
5001