

2017/2018 CASH CONTRACT GENERAL TERMS AND CONDITIONS

Emerald Grain Pty Ltd (ABN 82 109 203 054) (Us or We or Our) acts as agent on behalf of Emerald Grain Australia Pty Ltd as trustee of the Emerald Grain Trust ABN 46 861 707 683 (**Purchaser**) and where relevant references to Purchaser include references to Us.

Please read these terms and conditions carefully. These terms and conditions will apply in relation to the sale of the Commodity between you and the Purchaser. We recommend that you print a copy of these terms and conditions for future reference.

CONTRACT ARRANGEMENT

- 1. TERMS:** The terms and conditions for the cash purchase of Commodity by the Purchaser (whether the delivery is spot or forward and/or the price fixed or ascertained in the future) are comprised of the following documents and in the event of inconsistency must be interpreted in the following descending order of priority:
 - (a) the terms evidenced by Our Contract Confirmation, (where issued);
 - (b) the product description set out in our Product Sheet for the relevant cash product and Commodity;
 - (c) these General Terms and Conditions current at the date of the contract; and
 - (d) the Trade Rules of Grain Trade Australia Limited, ("GTA") and GTA's Dispute Resolution Rules in force at the date of the Contract (for a copy see www.graintrade.org.au).Together these documents evidence the terms of the contract between us (the "Contract").
- 2. COMPETING TERMS:** The Purchaser does not accept and to the extent permissible at law will not be bound by any other terms, express or implied, that purport to govern the purchase of Commodity by the Purchaser from the Seller, whether brought to the attention of the Purchaser before or after an agreement to purchase, unless expressly agreed to by the Purchaser and evidenced in the Contract Confirmation.
- 3. FORMATION OF AGREEMENT:** Agreements for future deliveries of Commodity are usually made verbally, between Us and the Seller, or, if applicable, Us and a Broker. The Seller and the Purchaser are bound from the time this verbal agreement is made and the verbal agreement constitutes a legally binding agreement and incorporates the terms of this Contract
 - (a) If a verbal agreement is reached between Us and a Broker, the Broker's confirmation of trade once received by Us will constitute prima facie evidence of the verbal agreement.
 - (b) Following verbal agreement, or upon receipt of the Broker's confirmation, if applicable, We will then provide the Seller with Our Contract Confirmation.
 - (c) Upon receipt of a Contract Confirmation, the Seller must carefully check all terms and specifications and, if the Seller finds any discrepancies, the Seller must immediately notify Us of the discrepancies by e-mail or by facsimile within two (2) business days of receipt. If so, We will investigate the discrepancy. If not, the Seller will be taken to have agreed that the Contract Confirmation is an accurate record of the terms of the Contract.
 - (d) In the case of spot delivery, the agreement for sale will be entered into at the time when the Commodity is delivered by the Seller to the Purchaser, in which case evidence of agreement will be the weighbridge ticket (and in the case of an in-store transfer, the transfer advice from the bulk store) and the Seller will be taken to be aware of and have agreed to be bound by the terms of the Contract.
- 4. ONLINE CONTRACTING:** In the case where the Seller uses Emerald Grain Mate for the cash sale of Commodity then the Seller agrees to be bound by these terms and conditions each time the Seller submits an online Contract. Each online Contract the Seller places will be a separate contract between the Seller and Purchaser for the purchase of the Commodity.

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DELIVERY TERMS

1. **TIME:** Time is of the essence in relation to the performance of this Contract, except in relation to the payment of money.
2. **HVNL:** The Seller will, and ensure that its agents, contractors, subcontractors and any other party in the supply chain who owes obligations under the *Heavy Vehicle National Law (HVNL)*, complies with the HVNL, including in relation to driver speed, fatigue and mass management. Without limiting Our rights in respect of mass management breaches, if the Seller or its agent signs or has signed a Mass Management Acknowledgement Form and has made an election thereby, We are entitled to deduct that part of the Commodity in excess of the acceptable vehicle mass limits required by law (“excess”) and, depending on the Seller’s election:
 - (a) Emerald will warehouse the excess in accordance with Emerald’s Delivery and Warehouse Terms and Conditions applicable at the time of the breach. Such excess may not be title transferred and instead will be returned to the Seller at our convenience, subject to shrinkage and payment of the Storage Charges; or
 - (b) title in the excess will vest in the Purchaser, for nil consideration, and the Purchaser may donate the excess or proceeds from its sale to a charity or rural community organisation, at its discretion.
3. **QUANTITY:** Unless otherwise stated in the contract confirmation, all quantities shall be expressed **metrically** and to the nearest one/one-hundredth [1/100] of a metric tonne.
4. **QUANTITY TOLERANCE:** Unless specifically agreed and recorded in the Contract Confirmation, the quantity required to be delivered under the Contract is the minimum and the maximum; there is zero tolerance.
5. **WEIGHTS:** Unless specifically agreed and recorded in the Contract Confirmation, destination weights, which shall be determined by qualified personnel, shall be the basis of trade. If these are not available, government or registered weighbridge weights shall be accepted. Errors in weighbridge tickets in all cases shall be excepted.
6. **QUALITY GRADES:** Unless specifically agreed otherwise, destination quality grades shall be assessed on the basis of trade and shall be determined by qualified personnel according to sampling, analysis and assessment procedures of the destination bulk store if applicable, or for any other destination, based on GTA procedures and standards. Payment will be based on binned grade.
7. **STANDARDS:** In respect to Canola, standards applicable to the Contract are in accordance with AOF technical and trading standards & terms which shall apply at the time of title transfer(s) and the Seller declares that the Commodity sold is of the declared variety/varieties, and as such, is not known to contain any unapproved genetically modified material nor any approved genetically modified material in excess of the allowed adventitious presence of approved events as per state or federal legislation.
8. **CHEMICAL AND PESTICIDES RESIDUES:** The Seller warrants that the Commodity complies with all State and Federal Laws and requirements relating to chemical and pesticide residues, pickling compounds and specified government designated maximum residue levels. The Seller is responsible for any loss caused as a result of pesticide levels exceeding maximum residue levels and indemnifies the Purchaser for loss it suffers due to maximum residue levels being exceeded.
9. **FORWARD CONTRACTING:** Emerald cannot guarantee that the contracted Delivery Point will have the available segregation for the contracted Grade of Commodity and that the Commodity will therefore be able to be delivered into that site. In the case where the contracted Delivery Point does not have the available segregation, We will advise the Seller (with reasonable notice) prior to the Delivery Period an alternative Delivery Point that has the available segregation for the Grade of Commodity which shall be the nearest geographical site that accepts that Grade. The Seller agrees that it will deliver the contracted Grade of Commodity to the nearest geographical site that accepts that Grade. The Seller’s price will be adjusted for the difference in GTA freight differential at the new site.

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- 10. DELIVERY, RISK AND TITLE:** Unless the Contract Confirmation provides otherwise, and subject to meeting minimum requirements of the Contract, delivery and therefore the transfer to the Purchaser of risk of physical loss and title to the Commodity occurs when:
- (a) **Delivery Bulk Store** - the Seller has presented Commodity to a bulk handler engaged by the Purchaser and has signed a weigh note nominating the Purchaser as the acquirer; or
 - (b) **Delivery In-Store** - the bulk handler signs or otherwise authorises on the Seller's behalf a title transfer in- store to the Purchaser;
- and for other designated points of conveyance (as per our Contract Confirmation) in accordance with the GTA Trade Rules. It is the responsibility of the Seller to arrange delivery in accordance with the Contract, including initiating in- store (warehouse) transfers if required.
- 11. SELLER'S RISK:** The Seller acknowledges that it enters onto the land of any Delivery Point listed on the Contract Confirmation at its own risk. To the extent permitted by law:
- (a) The Purchaser and Us will not be liable for any property loss or personal injury the Seller or its agents, subcontractors or employees suffers while at a Delivery Point; and
 - (b) The Seller indemnifies Us and the Purchaser for any loss the Seller suffers under clause (a).
- 12. RETENTION OF TITLE:** If indicated on the Contract Confirmation, property or title in the Commodity remains with the Seller until all amounts payable under this Contract have been received in cleared funds in specified bank account. Where retention of title is applicable (as indicated in the Contract Confirmation), in the period after delivery but before passing of property, the Purchaser (including servants and agents) hold the Commodity as bailees only. If in the ordinary course of Our business, the Purchaser on-sell the Commodity prior to passing of title, the Purchaser sells as the Seller's agent. Any associated costs are for the Purchaser's account. This clause 10 creates a Purchase Money Security Interest for the purposes of the *Personal Property Securities Act 2009 (Cth)* (PPSA). Where permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times. Neither party may disclose any information pertaining to this contract except as otherwise required by law.
- 13. LIENS:** The Seller agrees to sell the Commodity free of all liens and encumbrances, or must notify the Purchaser of any liens or encumbrances prior to contracting or spot delivery, as the case may be.

PAYMENT

- 1. ADVANCES:** The Seller agrees that if the Seller has received an advance of payment ahead of fixing a price for the purchase of a quantity of Commodity, the Seller must on demand refund to the Purchaser any shortfall to the extent that the price fixed for the quantity is less than the advance, unless the Purchaser has expressly agreed to underwrite the shortfall.
- 2. PAYMENT TERMS:** Purchaser will make payment to the Seller on terms indicated in the Contract Confirmation. Where the Seller delivers into a Participating Emerald Grain Site, the Seller may be eligible for *Fast Pay* payment terms, being payment to Seller within two business days from the date of Transfer of the grain. The Purchaser's ability to process *Fast Pay* is conditional on correct delivery by the Seller against the Contract or against the advertised spot cash price and the availability of the Participating Emerald Grain Site. Purchaser reserves its rights, and in its absolute discretion, may revert to standard payment terms or decline to process the *Fast Pay* payment at any time for any reason including without limitation:
- (a) tickets not matching the Contract;
 - (b) wrong delivery against the Contract;
 - (c) delays in delivery information from third parties; and
 - (d) unavailability of the Participating Emerald Grain Site.

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The term “**Transfer**” when used in relation to *Fast Pay* means either the Seller:

- (a) entering into a pre harvest contract with Us for delivery into a Participating Emerald Grain Site and fulfilling the Seller’s obligations under the pre harvest contract; or
- (b) selling Commodity to Us for a spot cash price at a Participating Emerald Grain Site; or
- (c) transferring current or previous season Commodity from the “Warehouse” option at a Participating Emerald Grain Site to Us for a spot cash price.

3. **PRICE SETTING:** Where, under the terms of a Product Sheet, the Purchaser is required to set or provide a purchase price in the future on a particular date or time in the future or over a particular period, a certificate of the Purchaser setting out such price will be deemed to be final and conclusive of its correctness, in the absence of manifest error.
4. **LEVIES AND STATUTORY CHARGES:** Any industry, statutory or government levies which are not included in the price shall be deducted as required by law, which may also include liabilities for End Point Royalties (EPRs) and/or Plant Breeders Rights (PBR). You agree to provide to Us any varietal information requested and consent to the release by the Purchaser of the Seller’s information to owners and managers of the variety, or their agents.
5. **SET-OFF AND ENCUMBRANCES:** The Purchaser may set-off against any payments due to the Seller any amounts owing to the Purchaser or its Related Bodies Corporate by the Seller on any account whatsoever. The Purchaser may deduct amounts required to satisfy liens and encumbrances granted by the Seller over the Commodity it has delivered under the Contract, together with the Purchaser’s standard administration fees.

LIABILITY

1. **DEFAULT:** Failure to deliver the Commodity in accordance with the Contract is a default by the Seller. If the Seller is in default and after the Purchaser has given written notice to the Seller of such default, the Purchaser may recover damages from the Seller as a result of failure to deliver in accordance with the Contract based on the true replacement cost on the day that notice of default has been sent by the Purchaser. If the Seller suffers an Insolvency Event, the Seller shall be deemed to be in Default.
2. **INDEMNITY:** The Seller indemnifies Us and the Purchaser against any claim by any person claiming an interest in any Commodity delivered by the Seller or the proceeds of sale of such Commodity, and against all costs or expenses incurred by the Purchaser in enforcing the Contract. The Seller authorises the Purchaser to pay out of the Seller’s proceeds any liens or encumbrances in respect of the Commodity notified to Us or the Purchaser, and the Seller also authorizes the Purchase to deduct its reasonable administration fees associated with doing so. The Seller indemnifies Us and the Purchaser against all losses arising directly or indirectly from or in connection with any non-compliance by the Seller and/or its agents of the HVNL or other similar and applicable legislation in force at the relevant time.
3. **WARRANTY:** The Seller warrants to Us and the Purchaser that:
 - (a) all information provided by the Seller to Us and the Purchaser is true and correct and that the Seller has disclosed to the Us and the Purchaser all information which a reasonable person would consider relevant to the Us and the Purchaser’s decision to enter into a Contract with the Seller;
 - (b) the Seller has read and understood all of the terms of the Contract and the Seller has not relied on any statement, representation or warranty in relation to the Contract other than as set out in these T&Cs, Our Contract Confirmation or otherwise as advised by Us and the Purchaser by written notice to You.

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4. EXCLUSION OF LIABILITY:

- (a) The Purchaser excludes all liability for any indirect or consequential loss suffered by the Seller, including loss of bargain and loss of profit, loss of expected savings, loss of opportunity, loss of business, damage to reputation (regardless of whether any of or all of these things are considered to be indirect or consequential losses or damage) whether arising in contract, tort (including negligence) or otherwise at law; and
- (b) The Purchaser's liability under the Contract will be limited to the contract price of the Commodity under that Contract.

GENERAL

1. **NOTICES:** All notices given under the Contract shall be given by written letter delivered by hand on the day of writing, or by facsimile, or by email (and no email failure notice is received by the sender), or by other method of rapid written communication to the last address the Seller has notified to Us. Any notices received after 1700 hours local time on a business day shall be deemed to have been received on the business day following. A notice to a party's Agent shall be deemed a notice to the party. In case of resales, all notices shall be passed on without delay. A notice to Us shall be deemed a notice to the Purchaser.
2. **FORCE MAJEURE:** The loss of a commodity due to production risks or crop failure does not constitute a condition of Force Majeure. The failure of the Seller to deliver Commodity, due to the unavailability of nearby bulk storage or the relevant segregation at a nearby bulk store, is not a condition of Force Majeure.
3. **DISPUTE RESOLUTION:** If any dispute arises out of or relates to this Contract or the breach, termination or subject matter thereof, the dispute shall be submitted to and settled in accordance with GTA Dispute Resolution Rules in the edition current at the date of the Contract. Neither party to a dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect to any such dispute until dealt with in accordance with GTA Dispute Resolution Rules.
4. **APPLICABLE LAW:** This Contract and the GTA Trade Rules are governed by and shall be construed to be in accordance with the law in Victoria, save that in the event of a dispute the governing law specified by the GTA Dispute Resolution Rules are inconsistent the GTA Governing Law shall prevail.
5. **TAX:** The Purchaser and the Seller declare that this agreement applies to supplies under the contract: the Purchaser can issue Recipient Created Tax Invoices (RCTI) in respect of the supplies. The Seller will not issue tax invoices in respect of the supplies. Both parties acknowledge that they are registered for GST and are parties to an RCTI agreement. They will notify the other party if they cease to be registered. Acceptance of this contract constitutes acceptance of the terms of this RCTI agreement. The Seller agrees to notify Us if it does not wish to accept the proposed RCTI agreement within 21 days of receiving this document.
6. **WAIVER:** If the Purchaser elects not to exercise any of its rights arising from a breach of the Contract, it shall not constitute a waiver of any rights relating to any other or subsequent breaches that may occur.
7. **INTERPRETATION:** In this Contract, headings are inserted for convenience only and do not affect the interpretation of this Agreement, and no provision of this Agreement will be interpreted against a party just because that party prepared that provision.
8. **SEVERABILITY:** If any provision of this Agreement is: void; voidable by a party; unenforceable; or illegal, it is to be read down so as to be valid and enforceable or, if it cannot be read down, the provision is or, where possible, the offending words are to be severed from this Contract without affecting the validity or enforceability of the remaining provisions (or parts of those provisions) of this Contract.

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DEFINITIONS

“Agent” means any person that:

- (a) the Seller has appointed to act as agent for the Seller;
- (b) the Seller has represented to Us or the Purchaser by words or conduct to be the Seller’s agent; or
- (c) the Seller has armed or clothed with the indicia of an agent (for example by giving the agent electronic passwords or bulk store delivery cards).

“Broker” has the strict meaning given to that term in the GTA Trade Rules and does not include any person acting as the Agent of the Seller, even though such Agent calls or represents itself to be a broker.

“Commodity” means wheat, barley, canola, sorghum, oilseed or any other commodity that is the subject of a Contract and the Purchaser may acquire from time to time.

“Force Majeure” has the meaning given to that term in the GTA Trade Rules.

“Insolvency Event” means when a party is unable to pay its debts as they fall due or is or states that it is insolvent or is treated as insolvent by any applicable legislation; or a receiver, receiver manager, administrator or liquidator is appointed over any or all of the assets or undertaking of the party; or the party takes any step to obtain protection or is granted protection from its creditors under any applicable legislation.

“Participating Emerald Grain Sites” means the Purchaser’s sites where *Fast Pay* is available and that are located in New South Wales at Goolgowi, Ardlethan, Coolamon, Tocumwal and The Rock, or in Victoria at Edenhope, Nullawil, Woorinen, Werneth, Melbourne Port Terminal and Elmore as amended from time to time.

“Related Bodies Corporate” has the meaning given to that term by the Corporations Act 2001 (Cth).

“Seller” in these General Terms and Conditions includes the Seller’s business partners, subcontractors and any company, trust or association on whose behalf the Seller is purporting to act. The Seller acknowledges that the Seller is to be bound by the acts of its Agent, whether the Agent is acting within or outside authority, except to the extent that Us or the Purchaser are actually aware of any lack of authority.

INTERPRETATION

- (a) The interpretation of these General Terms and Conditions must not be construed against the Purchaser simply because the Purchaser drafted them.
- (b) Headings are for convenience and are not intended to affect interpretation.