

Emerald Delivery and Warehouse Terms and Conditions – 2019/2020

1. Context and Interpretation

These terms and conditions (as amended from time to time) apply as and between EMERALD, the Deliverer and the Warehouse, for any commodity (“**Commodity**”) brought on to an EMERALD site for the purposes of delivery and, if received, storage and handling under Warehouse.

In these terms and conditions:

“**EMERALD**” means Emerald Logistics Pty Ltd ABN 39 087 280 260 and includes any party operating a grain receival site under the “*Emerald Grain*” name.

“**Deliverer**” means a person who enters, or authorises the entry by the Deliverer’s agent, onto an EMERALD site for the purpose of Delivery.

“**Delivery**” means the road entry onto an EMERALD site of a vehicle and the process of seeking receival by the site of the load.

“**EMERALD Group**” means Emerald and its *related bodies corporate*, as that term is defined in the Corporations Act 2001 (Cth).

“**Outturn Protocol**” means the document of that name for road/rail outturns published on the web site, save that references in the protocols to “clients” shall be deemed and should be read as references to “Warehouses”.

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

“**Warehouse**” means the receival and storage by EMERALD of grain for a grower who is not a Client.

“**Warehouse**” means:

- the grower on whose behalf the Commodity has been received and warehoused by EMERALD; and
- any grower buyer by Title Transfer of warehoused Commodity,

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

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

A reference to the **web site** means a reference to www.emeraldgrain.com.

2. Delivery

It is a condition of entry onto an EMERALD receival site that the Deliverer agrees to these terms and conditions, even where receival of a particular parcel of Commodity does not occur.

Receival is offered at EMERALD’s discretion.

Receival shall be deemed to occur when the Deliverer’s nominated vehicle has been weighed out, the quantity/quality of grain delivered is ascertained by EMERALD and recorded on a weighbridge ticket and the ticket has been signed by the Deliverer or its agent.

The Deliverer agrees that, upon receival, the nomination by the Deliverer or its agent of the acquirer of the grain is an irrevocable direction to transfer title in the relevant parcel of grain to the relevant acquirer at the relevant EMERALD receival site.

The Deliverer and its agents will not make or attempt to make a Delivery that contains a contaminant likely to adversely affect the quality of grain held at the relevant receival site.

The Deliverer and its agents will comply with all work, health and safety rules and directions of the relevant EMERALD receival site.

3. Transport

The Deliverer will ensure that it complies with the *Heavy Vehicle National Law* or other similar and applicable legislation in force at the relevant time, including ensuring that:

- (a) all vehicle loads entering an EMERALD site comply with their respective mass, load and dimension management limit obligations; and
- (b) the drivers of all vehicles entering an Emerald site are in compliance with their relevant speed and fatigue obligations;
- (c) all vehicles entering EMERALD’S site must comply with minimum vehicle standards under the *Heavy Vehicle National Law*; and
- (d) the driver of vehicles are not under the influence of drugs or alcohol, and as a condition of entry to EMERALD’S site, the driver voluntarily submits to random drug and alcohol testing at EMERALD’S discretion.

If the Deliverer fails to comply with any of these obligations, Emerald may refuse the Deliverer entry to EMERALD’S site or direct the Deliverer to leave EMERALD’S site. EMERALD is a party to the Victorian Grain Harvest Management Scheme and the NSW Grain Harvest Management Scheme. The Deliverer agrees that any breaches of the *Heavy Vehicle National Law* by the Deliverer when it presents at an EMERALD site may be recorded by Emerald and may be reported to the relevant state or national regulator at Emerald’s sole discretion without notice to the Deliverer.

4. Warehousing

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 EMERALD at the site at which the Commodity was received (the “**Outturn Entitlement**”). The Warehouse may transfer the ownership of the Commodity and the Outturn Entitlement to another party (“**Buyer**”) in accordance with clause 13 of these terms and conditions (a “**Title Transfer**”).

5. Common Stocking

EMERALD may common stock the Commodity of a Warehouse with commodity of the same variety and grade as has been received from other Warehouses or Clients.

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

While EMERALD has possession of the Commodity:

- (a) the relationship between EMERALD 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 EMERALD to redeliver to the Warehouse the particular Commodity the subject of the bailment.

6. Shrinkage

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

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

7. Storage Charges

Storage Charges are as outlined in **Schedule 2**. Storage Charges will accrue and become payable in accordance with these terms and conditions by the Warehouse when the Outturn Entitlement is outturned or is Title Transferred.

8. Outturn

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

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EMERALD 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 reasonable endeavours to outturn the Outturn Entitlement, in full, before the “**Outturn Date**”, which is the next 30th September following Receipt of the Commodity.

Notwithstanding any other provision of these terms and conditions, EMERALD has the right to transfer the Outturn Entitlement in respect of the current season Commodity to an EMERALD site other than the EMERALD site at which Receipt was provided and, where appropriate, impose a freight differential charge, provided that (other than for the movements specified under “**Movements**” below) in EMERALD’s reasonable opinion the Warehouse is not significantly disadvantaged overall by the change of EMERALD site.

Special arrangements or restrictions may apply to outturn from some EMERALD sites. Details of these arrangements or restrictions are available at each relevant EMERALD site.

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

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

It is the responsibility of the Warehouse to ensure Commodity is available for outturn by monitoring the site availability status on EMERALD’s website or by contacting Head Office or the Site Manager at the relevant EMERALD site.

Outturn charges as outlined in **Schedule 2** will be payable by the Warehouse in accordance with these terms and conditions when the Commodity is outturned.

9. Movements

Subject to EMERALD providing at least 5 days prior notice, and at the cost of the Warehouse, EMERALD has the right to

outturn the Commodity to another EMERALD site or relocate the Commodity within the site if:

- (a) the site fills (or is expected to fill) during the season harvest;
- (b) the Outturn Date is exceeded;
- (c) consolidation of small quantities of Commodities is required (in EMERALD’s reasonable opinion) for the efficiency of the EMERALD system;
- (d) the volume in the cell in which the Commodity is stored is down to sweeping stage and/or less than 5% capacity;
- (e) the quality of the Commodity that has been received has potential to contaminate other Warehouse’s or Client’s commodities; or
- (f) EMERALD determines (in EMERALD’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 outturn or relocation relative to the site of origin, including, but not limited to, freight differentials.

10. Season Clearance

If the Outturn Entitlement has not been outturned, in full, before the Outturn Date, EMERALD may, after providing at least 10 days’ notice and consulting during that period with the Warehouse, Title Transfer on behalf of the Warehouse at the best available price for such quality and quantity of Commodity and account to the Warehouse for the sale proceeds net of selling costs and expenses. For this purpose the Warehouse irrevocably appoints EMERALD as its agent and attorney. Malting barley grades not outturned by the Outturn Date may be regraded to Feed grade at EMERALD’s discretion, acting reasonably.

11. Entitlement Shortfall Adjustment

If the EMERALD system does not hold sufficient Commodity of the type and specification of the Warehouse’s Commodity at the time the Warehouse outturns its Outturn Entitlement, EMERALD will be entitled to satisfy any such physical shortfall by payment of compensation at the Season Average Price.

12. Entitlement Surplus Adjustment

Where the Warehouse has outturned its Outturn Entitlement and has benefited from an outturn quantity or quality in excess of that to which it was entitled, the Warehouse will, on demand, compensate

EMERALD by payment for that excess calculated at the Season Average Price.

13. Title Transfers

A Title Transfer may be initiated by the Warehouse by:

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

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

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

14. Effective Date of Transfers

The effective date, for charging purposes, of a Title Transfer will be the date that EMERALD receives instructions from the Warehouse to effect the transfer. If it is received after 4 pm or on a non-working day the effective date will be considered the following working day. EMERALD will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

15. Payment

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

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

For Commodities the subject of outturn, the Warehouse will be required to pay all

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accrued charges and any costs payable on an up-front basis (if no credit facility exists for that Warehouse).

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

The Warehouse agrees that a Buyer may elect to offset the Grower storage charges against the purchase price of the Commodity and pay such storage charges directly to Emerald.

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

16. Default in Payment

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

17. 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.

18. Risk

EMERALD bears all risk of loss or damage to the Commodity arising from usual insurable events except events occurring when the Commodity is in the care and control of the Warehouse or Deliverer.

The Warehouse bears the risk of loss or damage to its Commodity arising from

- (a) the natural deterioration of grain over time and
- (b) contamination from Commodity of other owners which is not easily detectable though the reasonably diligent application of EMERALD's standard receival and sampling methodologies.

19. Liability

- (a) Subject to paragraph 19(c), EMERALD will not in any event be liable for any loss of interest, profit, earnings, reputation, goodwill, contract, opportunity or any other special, indirect or consequential damage suffered by the Warehouse, however caused, arising out of or in connection with EMERALD's acts or omissions or the acts or omissions of EMERALD's agents or contractors.
- (b) EMERALD excludes to the maximum extent permitted at law, all conditions or warranties implied by custom, the general law or statute. Some conditions and warranties cannot by law be excluded (including the Competition and Consumer Act 2010 (Cth)) ("**Non Excludable Warranties**").
- (c) EMERALD's maximum liability under any Non-Excludable Warranty or in connection with this document is limited to:
 - i. in the case of services, the re-supply of those services;
 - ii. in the case of goods, the cost of replacing those goods.

20. Commodity Buyers at Site

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

21. Indemnity - Warehouse

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

- (a) any acts by, or omissions of, the Warehouse (or any person acting on behalf of the Warehouse) at the EMERALD sites at which its Commodities are stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- (b) any overloading of a vehicle containing any Commodity;
- (c) any claim by a third party relating to a lien, charge or other security interest in the Commodity or the Outturn Entitlement;
- (d) any claim by a third party relating to the acts or omissions of the

Warehouse in respect of the Commodity or any Title Transfer;

- (e) any breach of warranty or representation given by or on behalf of the Warehouse in respect of the Commodity; and
- (f) damaged or contaminated grain at the risk of the Warehouse,

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

22. Indemnity - Deliverers

The Deliverer will indemnify and keep indemnified EMERALD, its agents, officers and employees against all **Losses** arising directly or indirectly from or in connection with:

- (a) any non-compliance by the Deliverer or its agents of the *Heavy Vehicle National Law* or other similar and applicable legislation in force at the relevant time;
- (b) any non-compliance by the Delivery or its agents with any relevant mass limits prescribed by legislation, regulation or other appropriate limit applied under a scheme recognised by the relevant State or Commonwealth authority for the management of road vehicle mass;
- (c) any acts by, or omissions of, the Deliverer (or any person acting on behalf of the Deliverer) at the EMERALD sites at which its Commodities are stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);

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

23. Release

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

24. Lien

Notwithstanding that the Commodity may be mixed with commodities of like type and specification, EMERALD shall have a first and paramount lien on the Commodity and each of such other commodities for all monies owing to the EMERALD Group (whether contingently or otherwise on any account whatsoever) by the Warehouse and such other owners. Subject to any requirement of law EMERALD will be entitled for the purpose of enforcing such a

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lien to retain possession of the whole or any part of the Warehouse's Commodity until all amounts due and payable are paid. EMERALD may enforce the lien by selling the Commodity and/or the Outturn Entitlement (refer to clause 16 "Default in Payment").

EMERALD may nominate and identify any particular quantity of common stocked Commodity as being the Warehouse's Commodity for the purpose of enforcing EMERALD's lien. The Warehouse irrevocably appoints EMERALD 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 will reduce the Warehouse's Outturn Entitlement commensurately.

25. EMERALD's Records

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

EMERALD at its discretion may, without consultation and without compensation adjust the Outturn Entitlement for any

Commodity and/or grade to zero where the entitlement is within + or – 2 tonnes of zero.

26. Goods and Services Tax ("GST")

Unless otherwise stated the consideration for any services payable under these terms and conditions is exclusive of GST and such GST is recoverable from the recipient.

27. Agents

A person shall be deemed to be an agent of a Deliverer/Warehouse if the person has express, implied or ostensible authority of that party to undertake the services or transactions contemplated by these terms and conditions and includes, without limitation, carriers and persons lawfully possessing the NGR delivery cards or electronic personal identification number of the party.

27. Information Use and Disclosure

EMERALD collects personal information from the Deliverer and Warehouse for the purpose of providing the services set out in these terms and conditions. The Warehouse and Deliverer agree that their delivery details may be provided by EMERALD at its discretion to:

- marketers /traders for the purpose of promoting their services to the Warehouse and Deliverer;
- the National Grower Register Pty Ltd ("NGR") or its agents for the purposes

of the NGR or for promoting goods or services of other companies of relevance to the Warehouse; and

- the relevant regulator of the *Heavy Vehicle National Law*,
- any adviser, auditor or member of the EMERALD Group, including companies which may be located in Singapore and Japan

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

EMERALD's privacy policy is set out on the web site. All notices, requests to access or change information or privacy complaints should be made in writing to "The Privacy Officer", Emerald Grain 600 Victoria Street Richmond Vic 3121.

28. Governing Law and Jurisdiction

These terms and conditions will be governed by the laws of Victoria and EMERALD and the parties submit to the jurisdiction of the courts of Melbourne.

29. Variations

EMERALD may, within the season, vary these terms and conditions for prospective application at any time and from time to time by notice to the Warehouse, acting reasonably.

Schedule 1 - Shrinkage Allowance

Charge Type	Wheat	Barley	Oilseeds	Maize	Pulses
Shrinkage Allowance	0.70%	0.70%	0.75%	0.75%	1.00%

Schedule 2 Country Site Charges

Charge Type (per tonne)	Wheat	Barley	Oilseeds	Maize ²	Pulses
Receival	\$12.50	\$13.00	\$17.50	\$17.50	\$17.50
Outturn	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00
Storage (per month)¹ From 1 March 2020 to 30 Sept 2020	\$1.65	\$1.65	\$1.75	\$1.75	\$1.75
Storage (per month) Prior seasons	\$3.00	\$3.00	\$3.50	\$3.50	\$3.50

- Commence 1st of the month, From 1st March 2020 . [Fee applied to stock on hand 1st of each month]
- Maize Storage charges commence 1st May 2020.

Service Charge Type (per tonne)	Charge
Title Transfer (Buyer pays) EMERALD Service Centre, faxed to EMERALD or call 1800 255 426	\$0.25

All charges are quoted exclusive of GST.

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Event	Who Pays the Charges		
	<u>Selling Warehouser</u>	<u>Grain Buyer</u>	<u>Buying Warehouser</u>
Warehouser Title Transfers to Buyer	Storage Charges	Receival & Title Transfer Charges ³	
Warehouser Title Transfers to Warehouser	No Charges		Receival, Storage & Title Transfer Charges
Warehouser Outturns	Receival, Storage & Outturn Charges		

3. Grain buyer may elect to offset the Grower storage charges against a Purchase Contract.

Schedule 3 – EMERALD Bank Account Details

Bank / Branch	Westpac		
BSB	033 039	Account	365462
Bank cheque or money orders to be Mailed to:	Emerald Grain Pty Ltd Attention: Accounts Level 2, 600 Victoria Street, Richmond Vic 3121		