



# Terms and Conditions

Clear Grain Pty Ltd trading as  
Clear Grain Exchange  
ABN 63 615 342 026

Effective Date: 24 June 2018

# Clear Grain Exchange Terms and Conditions

Clear Grain Pty Ltd trading as Clear Grain Exchange  
ABN 63 615 342 026

*Effective Date: 24 June 2018*

## Highlights<sup>1</sup>

Clear Grain Exchange (Clear) is an electronic exchange developed to facilitate the trading of grain harvested in Australia, and intended to provide Australia-wide industry transparency. It facilitates both spot trading of physical grain and trading on a forward basis.

All industry participants (including growers, traders, brokers, agents, consultants, accumulators, speculators and end users) are eligible to become Registered Users on Clear and may create bid and offer orders for grain on behalf of themselves, or via an Authorised Representative.

Clear has engaged Perpetual Nominees Limited<sup>2</sup> as the independent Custodian to settle all trade proceeds. Perpetual disburse the trade proceeds to the relevant parties. On request funds may be held for Registered Users in a Cash Management Account.

Clear is accessible 24 hours, 7 days a week and is open for trading between the hours of 10:00-10:05am and 6:30-6:35pm AEST time zone each Business Day. Bids and Offers entered on Clear outside these hours will be recorded, time and date stamped (in the sequence they are received by Clear) ready for matching at the commencement of business the following Business Day.

## Spot Contracts

Spot Sale Contracts can be made in respect of:

- 1) **Automatic Grain:** This is grain in respect of which Clear is automatically nominated as the "client", and which is entered into the Clear system prior to an offer being made.
- 2) **Nominated Grain:** This is grain which is not in the Clear system prior to an offer being made, but for which Clear will be nominated as the "client" prior to settlement.
- 3) **Integrated Bulk Grain:** This is grain that has been deposited with an integrated storage provider, prior to an offer being made, and which does not fall under 1 or 2 above.

Warehoused grain can be automatically viewed in the inventory of a Registered User's Clear account, **except** at those Storage Providers (Bulk Handlers) that still require Registered Users to nominate Clear. For nominated grain, Clear will hold the entitlement to that grain on a bare trust so that at all times the Registered User remains the owner of the grain until full payment is received.

gTickets are issued as Clear's unique electronic identification record of warehoused grain. Registered Users or their Authorised Representatives are in control of determining when, and for how much, they wish to buy or sell their grain.

Integrated Bulk Grain stored with an Integrated Storage Provider can be offered for sale on Clear without any requirement to transfer the entitlement to Clear first. Once offered, Clear will validate the availability of the offer quantity and automatically cancel the offer in the event the offer quantity becomes unavailable. Upon trading, the Integrated Bulk Grain will be held on a bare trust so that at all times the Registered User remains the owner of the grain until full payment is received.

For nominated grain, a Registered User is free to remove their grain from Clear at any time before an offer or bid for that grain is accepted, subject to paying applicable storage and handling fees.

### **Forward Contracts**

Growers and Buyers can use Clear to enter into forward contracts for the delivery of grain at a set time in the future. Once one party has matched the other party's offer/bid, the Buyer will have the opportunity to approve the identity of the Grower and the secondary delivery site prior to the relevant Sale Contract coming into force. For multi-grade trades, Buyers will also have the opportunity to specify a Grade Spread, which, where the Buyer has matched the Grower's offer, will need to be approved by the Grower prior to the relevant Sale Contract coming into force.

For all forward contracts a calendar month will be specified as the delivery period, and settlement must occur at the end of the delivery period. Grain must be transferred to Clear, and a g-ticket issued for that Grain, during the delivery period. Settlement and payment will occur through the Clear secure settlement process.

### **Track Contracts**

Clear enables Sellers and Buyers to trade Track Contracts which have minimum tonnage increments of 1,000t and standardised terms including fixed grades and delivery periods. A Registered User must be approved to access Track contracts and are required to set trading limits for other Registered Users.

A trade can only occur if it does not exceed the trading limits that the counterparties have for each other. At time of trade a Broker Contract Note is provided to counterparties however counterparties will not be disclosed at the time of trade unless a trade occurs during delivery period. Counterparties will be disclosed to each other before delivery period or at any earlier time at the absolute discretion of Clear.

Payment terms are in full against title transfer as per Grain Trade Australia (GTA) Contract No 2. It is Clear's usual practice to only settle Track Contracts where a Circle per GTA Trade Rules is considered to exist but Clear reserves its rights to settle any Track Contracts at its absolute discretion.

1. These Highlights are for general guidance only and do not form part of the Terms and Conditions
2. Perpetual Nominees Limited acts as an Authorised Representative of Perpetual Trustee Company Limited ("PTCL") under PTCL's Australian Financial Services Licence number 236643 (Authorised Representative number 266798)

**The Terms and Conditions bind all Registered Users and govern the use of the Clear System. Without affecting the application of the previous sentence, by nominating Clear as the 'Client' of the Storage Provider for your Grain, by Depositing your Grain or having your Grain Deposited on the Clear System or by placing an Offer or a Bid, you agree to be bound by the following Terms and Conditions.**

## **1. Registration**

### **1.1. Use of the Clear System**

- (a) Use of the Clear System is subject to the Terms and Conditions.
- (b) The Clear System can only be used by a Registered User.

### **1.2. Registration**

- (a) A person may apply to Clear to become a Registered User.
- (b) In order to be registered as a Registered User, a person must either:
  - (i) deposit Grain with a Storage Provider, where the Applicant's Storage Provider Agreement provides that a person makes an application to become a Registered User by depositing Grain with their Storage Provider; or
  - (ii) complete the following application process:
    - (A) submit a completed Application Form to Clear (including but not limited to providing Clear with all information required by Clear in order for it to undertake a background and financial check on each Applicant as well as ascertain whether an Applicant is a member of any applicable national or state industry body in order for Clear to make a determination whether to approve an Applicant's application and whether any trading limits should be applied to a Registered User's registration as a Registered User);
    - (B) inform Clear of the person's bank account details to be used with respect to dealings on Clear by the Custodian;
    - (C) agree to be bound by the Terms and Conditions and, in this regard, by applying to Clear to become a Registered User a person is deemed to have agreed to be bound by the Terms and Conditions; and
    - (D) confirm on the Clear System the username and password provided to the Applicant by Clear under clause 1.2(f).
- (c) A Registered User that appoints an Authorised Representative to act on its behalf must:
  - (i) notify Clear of the identity of the Authorised Representative and whether the Authorised Representative is a DCP Representative;
  - (ii) confirm the authority of the Authorised Representative to act on behalf of that Registered User on the Clear System; and
  - (iii) provide Clear with the Authorised Representative's User Details or procure its Authorised Representative to provide Clear with its User Details.

The Authorised Representative (other than a DCP Representative) must provide to Clear written confirmation that it acts for the said Registered

User on the Clear System.

- (d) Subject to compliance with clause 1.2(c) and except where the Authorised Representative is a DCP Representative, Clear will provide the Authorised Representative with the necessary access to the Clear System in relation to the Registered User that it represents in order for that Authorised Representative to be able to act on behalf of that Registered User in accordance with the Terms and Conditions.
- (e) Clear may accept or reject an application in its sole discretion.
- (f) Clear will provide each person approved as a Registered User with a unique username and password to access, use and/or view the Clear System. A Registered User must not reveal the password to any other person (including Clear) or allow any other person to access their account on the Clear System. Clear will provide separate access for an Authorised Representative concerning that Authorised Representative's Registered Users.

### **1.3. Cancellation of Registration**

- (a) The registration of a Registered User may be cancelled:
  - (i) by Clear at any time in its sole discretion without providing any reason or cause, and Clear shall inform the former Registered User by 5pm on the next Business Day;
  - (ii) at the request of a Registered User made in writing to Clear by giving 10 Business Days notice to Clear, all Offers and Bids of that Registered User not Accepted at the date of that notice are deemed to be withdrawn by the Registered User from the Clear System at the date of that notice.
- (b) If a Registered User is the subject of an Insolvency Event, the Registered User's registration will be deemed to be immediately cancelled.
- (c) On cancellation of the registration of a Registered User pursuant to clause 1.3(a) or 1.3(b):
  - (i) any open Bids or Offers made by the Registered User will be deemed cancelled and removed from the Clear System;
  - (ii) subject to compliance with clause 1.3(c)(iv), any gTickets held by the Registered User will be available for Release to the Registered User in accordance with clause 14.3;
  - (iii) if the Registered User is a party to a Sale Contract which has not yet been settled, the Registered User will be deemed to be in breach of that Sale Contract;
  - (iv) the Registered User will be indebted to Clear for the payment of Fees as described in clause 16 for the period that Registered User holds the gTickets Released pursuant

to this clause 1.3(c) and must pay the said Fees to Clear within 5 Business Days of the notice of cancellation (unless Clear agrees otherwise). Pending payment of the said Fees, the relevant gTicket will be deemed Suspended; and

- (v) the person will cease to be a Registered User.

#### 1.4. Suspension of Registration

- (a) The registration of a Registered User may be suspended by Clear at any time in its sole discretion without providing any reason or cause, and Clear shall inform the suspended Registered User by 5pm on the next Business Day.
- (b) The period of suspension under clause 1.4(a) is at Clear's discretion.
- (c) The suspension of registration ceases at 9am on the Business Day following the date Clear notifies the suspended Registered User to that effect in writing or through the Clear System.

#### 1.5. Designated Credit Providers

- (a) A Registered User may apply to Clear to be designated as a Designated Credit Provider by completing an application form and providing such information, in each case as prescribed by Clear from time to time.
- (b) Clear may accept or reject an application for designation as a Designated Credit Provider in its sole discretion.
- (c) A Designated Credit Provider may appoint Registered Users who are the Designated Credit Provider's customers as a DCP Representative in accordance with clause 1.2(c).
- (d) The Designated Credit Provider and DCP Representative process can only be used in relation to Spot Contracts and does not apply in relation to Forward Contracts.

## 2. Recording Grain Deposits on the Clear System

### 2.1. Depositing Grain

- (a) Where a Registered User wishes to record a Deposit of Grain into the Clear System and the Storage Provider with which the Registered User deposits the Grain requires the Registered User to make a nomination that the Grain be Deposited into the Clear System ("Nominated Grain"), the Registered User must at the time of making the deposit provide the Storage Provider with all information required by the Storage Provider (including the information required for the Storage Provider to complete the Deposit Information) and specify with the Storage Provider that the "Client" in respect of that Grain is Clear. In respect to this clause, a Storage Provider may Deposit Grain into the Clear System on behalf of a Registered User on receipt of a Sale Contract by Clear. Where this is the case the Registered User will be notified at the time of placing an Offer on the Clear System.
- (b) Where the terms of the Registered User's Storage Provider Agreement with the Storage Provider automatically nominate the particular type of Grain to be Deposited into the Clear System ("Automatic Grain"), the Registered User agrees and warrants

that, unless the Registered User has withdrawn or cancelled that nomination by notice in writing to the Storage Provider prior to the deposit of that Grain, depositing that Grain with that Storage Provider constitutes a direction to that Storage Provider to nominate that Automatic Grain as being Deposited into the Clear System, in which case, the Registered User warrants and represents to Clear that it has granted the Storage Provider holding the Registered User's Automatic Grain the authority to act on behalf of the Registered User to nominate the Grain as Deposited in the Clear System.

- (c) A Deposit of Grain in the Clear System is not effective and the record of the Deposit of that Grain will not be accepted by Clear (and a gTicket will not be created in respect of that Grain) unless confirmation of the deposit of the Grain with the Storage Provider (including the User Details) is confirmed in such form as Clear may from time to time require. This clause 2.1(c) does not apply to the Deposit of Grain in respect of a Replacement gTicket under clause 13.2(c)(ii).
- (d) With respect to Nominated Grain, Clear (as nominee of the Registered User who has nominated Clear as the "Client" in accordance with clause 2.1(a)) will hold on a bare trust the Registered User's entitlement to Nominated Grain which has been deposited with the Storage Provider. The Registered User will at all times remain the beneficial owner entitled to the Nominated Grain until contract settlement in accordance with clause 13. Clear will hold the entitlement to Outturn of the Nominated Grain on a bare trust for the Owner and Clear will not at any time have any beneficial interest in the Nominated Grain.
- (e) The Registered User (or the person if any on whose behalf the Registered User acts in accordance with the representation made under clause 2.6(a)(iii)) remains the legal and beneficial owner of the Automatic Grain Deposited into the Clear System until contract settlement in accordance with clause 13. Clear will not at any time have any interest in the Automatic Grain.
- (f) Clear may accept or decline a Deposit of Grain into the Clear System in its absolute discretion.

### 2.2. Integrated Storage Providers

- (a) The Registered User acknowledges that it is bound by, and will comply with, the Storage Provider Agreement of the Integrated Storage Provider in respect of any Grain that is deposited with the Integrated Storage Provider and is Deposited on the Clear System and/or any Integrated Bulk Grain that is the subject of an Offer.
- (b) The Registered User acknowledges further that it is not obliged to deposit any Grain with the Integrated Storage Provider.
- (c) The Registered User waives all rights it has or may have against Clear in respect of any claim resulting (whether directly or indirectly) from Grain deposited with an Integrated Storage Provider and in respect of any act or omission of an Integrated Storage Provider in respect of that Grain.

### 2.3. Creation of a gTicket

Once Grain has been Deposited into the Clear System by a Registered User in accordance with clause 2.1 and the Storage Provider has provided the Deposit Information to Clear:

- (a) Clear, on receipt of the Deposit Information, must create and issue a gTicket in respect of the Grain to the Registered User, who will then be the Owner of the gTicket and Clear will provide a copy of the gTicket to the Registered User; and
- (b) Clear must cause the Clear System to record the Registered User as the Owner of the gTicket.

### 2.4. Amendment of gTickets

- (a) If a Registered User believes that the quantity or Specifications contained in a gTicket do not accurately describe the Grain Deposited, the Registered User must query the information directly with the Storage Provider. If the Storage Provider amends the quantity or Specifications in response to the query, Clear will amend the gTicket to accord with the amendments required by the Storage Provider. If the query cannot be resolved between the Registered User and the Storage Provider, the gTicket must be Released to the Registered User, in accordance with clause 14.3.

### 2.5. Amendment of gTickets by Clear

- (a) Registered Users acknowledge that Clear may amend gTickets from time to time if the Storage Provider notifies Clear of changes in the location, Specification or other details of the Grain the subject of that gTicket.
- (b) While Clear will endeavour to update each gTicket in respect of location, Specification and other details of the Grain in accordance with clause 2.5(a), if Clear is advised by the Storage Provider that the Grain has been moved or reclassified by the Storage Provider, Clear does not guarantee that the:
  - (i) Grain will be physically located at the location specified in the gTicket; or
  - (ii) Grain available for Outturn will be of the same Specification specified in the gTicket.
- (c) The Registered User acknowledges that its sole rights in respect of any changes to the location or Specification of Grain represented on a gTicket is against its Storage Provider pursuant to, and limited by, the provisions of the Registered User's Storage Provider Agreement. The Registered User hereby waives all rights it has or may have against Clear in respect of any claims it has or may have regarding any changes to the location or Specification of Grain represented on a gTicket.

### 2.6. Registered User's Representations and warranties

- (a) By Depositing Grain pursuant to clause 2.1 or by making an Offer in respect of Integrated Bulk Grain or Nominated Grain, the Registered User represents and warrants that:
  - (i) the Registered User has the legal and beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain) and that the Registered User's

ownership is Unencumbered; or

- (ii) the Registered User has the legal and/or beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain) and that if the Registered User's ownership is Encumbered, the Registered User has the requisite authority from the third party holding the Encumbrance over the Grain to deal with the Grain in accordance with the Terms and Conditions; or
  - (iii) if the Registered User does not have the legal and beneficial ownership of the Grain (or the right to deal with the beneficial ownership of the Grain), it has the requisite authority from the legal owner of the Grain and/or any third party holding an Encumbrance over the Grain to deal with the Grain in accordance with the Terms and Conditions.
- (b) The Registered User represents and warrants to Clear that the Specifications contained in a gTicket are true and accurate by making that Offer using the Clear System.
  - (c) The Registered User represents and warrants to Clear that the Specifications contained in an Offer to sell Integrated Bulk Grain and each Nominated Grain Offer are true and accurate by making that Offer using the Clear System.

## 3. Rights attaching to gTickets and dealings in gTickets

### 3.1. Owner of a gTicket

- (a) Subject to the Terms and Conditions, the Owner of a gTicket has the right in accordance with clause 14.2 to request the Release of the gTicket.
- (b) Subject to clause 3.2, the Owner of a gTicket is entitled to deal with the gTicket using the Clear System in accordance with the Terms and Conditions.

### 3.2. Suspended gTickets

A Suspended gTicket cannot be subject to an Offer, a Bid or a direction to Release under clause 14.2.

### 3.3. Dealings outside the Clear System not permitted

The Owner of a gTicket must not deal with a gTicket, or the corresponding Grain, other than in accordance with the Clear System and the Terms and Conditions. Any proposed change to the rights relating to a gTicket or the corresponding Grain is of no effect until Accepted on and processed through and in accordance with the Clear System.

### 3.4. Special Crossings

The Clear System permits the fixing of a Bid with an Offer by way of a Special Crossing rather than being a Bid at large, capable of Acceptance by any matching gTicket (or Integrated Bulk Grain or Nominated Grain Offer). Special Crossings will be recorded by the Clear System and be subject to the same procedures as if Accepted on the Clear System, including the payment of all Fees.

### 3.5. Transaction Reversal and Cancellation

Each Registered User irrevocably appoints Clear as its attorney with respect to authorising Clear, in its absolute discretion and, in addition to the operation of clause 4.4, to reverse a Sale Contract (not yet settled) or cancel a Bid or Offer where:

- (a) there is an error or default in the operation or continuity of the Clear System; or
- (b) Clear deems it necessary for the integrity of the Clear System or orderly transaction of business on the Clear System, in which case Clear may also suspend trading on the Clear System for such purposes.

### 3.6. Completing Transactions

Each Registered User irrevocably appoints Clear as its agent to do all acts and things necessary to complete the sale of Grain through the Clear System, including without limitation to invoice the Buyer for the Net Sale Proceeds on behalf of the Seller. Nothing in this clause 3.6 affects any other capacity in which Clear acts under these Terms and Conditions.

## SPOT CONTRACTS

The following clauses 4 to 7 of these Terms and Conditions apply to Spot Contracts.

### 4. Making Bids and Offers

#### 4.1. Making Bids

- (a) A Buyer makes a Bid to buy Grain using the Clear System in one of two ways:
  - (i) providing a Bid Sheet to Clear in accordance with clause 4.1(b); and
  - (ii) directly through the Clear System in accordance with clause 4.1(e).
- (b) A Buyer may make a Bid pursuant to clause 4.1(a)(i) by doing the following:
  - (i) completing a Bid Sheet with the relevant Bid Parameters;
  - (ii) submitting that Bid Sheet directly into the Clear System in a manner approved by Clear, or to a Storage Provider, which, in its Storage Provider Agreement, is obliged to pass that Bid Sheet to Clear (subject to the Registered User directing the Storage Provider not to do so); and
  - (iii) not indicating to the Storage Provider at or before providing that Bid Sheet that the Buyer does not wish to make a Bid on the Clear System in respect of the Grain.
- (c) The Buyer agrees the following in respect of all Bids made pursuant to clause 4.1(b):
  - (i) the provision of a completed Bid Sheet in accordance with clause 4.1(b) constitutes the making of a Bid to buy Grain on the Clear System; and
  - (ii) the terms of the Bid, being the Bid Price, the maximum quantity of Grain to be bought, the Commencement Time of the Bid and the Expiry Time of the Bid, are as set out on the Bid Sheet or as determined as follows:
    - (A) the Bid Price is as calculated by the Clear System
    - (A1) in the case of storage sites other than in Western Australia, on a Delivered Site

basis, where all Storage Provider receival charges and any other in-bound charges (including shrinkage) are for Buyers' account, payable with the purchase price and calculated at the Storage Provider's Public Tariff rates current at the time of transfer, based on the price set out on the Bid Sheet;

- (A2) in the case of storage sites in Western Australia, on a Free-in-Store basis, based on the price set out on the Bid Sheet;
  - (B) the quantity of Grain to be bought is the quantity indicated by the Buyer to Clear or the Buyer's trading limit;
  - (C) the Commencement Time is Market Open on the date on which the Bid is received into the Clear System (or for the next Business Day, if the Bid Sheet is received after the applicable Market Close on any Business Day or on any day that is not a Business Day); and
  - (D) the Expiry Time is the time of the applicable Market Close on the same date.
- (d) The Buyer acknowledges that the Clear System will calculate the Bid for the purposes of clause 4.1(c)(ii):
    - (i) in multiples of minimum price increments of one (1) cent or any such other increments Clear publishes from time to time;
    - (ii) using the Bid Parameters set out in the Bid Sheet to adjust for Grain with different Specifications and to account for the Location Differentials; and
    - (iii) using or applying any further information provided by the Buyer and accepted by Clear (in its absolute discretion), including offsets and formulas.
  - (e) A Buyer may make a Bid pursuant to clause 4.1(a)(ii) by doing the following:
    - (i) access the Clear System;
    - (ii) specify a Bid for:
      - (A) a maximum quantity of Grain;
      - (B) a Commencement Time, which must not be any earlier than the applicable Market Open on a particular Business Day; and
      - (C) an Expiry Time, which, if not specified, is the applicable Market Close on the day the Bid is entered on Clear;
    - (iii) enter, and/or review Bid Parameters, in the Clear System, which the Clear System will use to calculate a range of Bids, acknowledging that Bids are calculated by using the Bid Parameters to adjust for Grain with different Specifications and to account for the Location Differentials; and
    - (iv) agree that the Bid will be generated on, and in accordance with, the Clear System;
    - (v) acknowledge that the Bid Price will be calculated in multiples of minimum price increments of one (1) cent or any such other increments Clear publishes from time to time.
  - (f) The Registered User acknowledges that a Bid that is not Accepted on one Business (between the applicable Market Open and the applicable Market

Close) is renewed on the same terms on each subsequent Business Day until it is cancelled under the terms of clause 4.4 or Accepted.

- (g) By agreeing to generate a Bid, the Buyer is taken to have made all of the Bids which are calculated by the Clear System on the basis of the Bid Parameters.

#### 4.2. Making Offers

- (a) A Seller who is the Owner of a gTicket may make an Offer using the Clear System to sell Automatic Grain in accordance with clause 4.2(b), being the Grain which is represented by that gTicket, with a quantity of Grain equivalent to at least the minimum tonnage (if any) as Clear may publish from time to time.
- (b) A Seller who is a Grower may make a Nominated Grain Offer using the Clear System in accordance with clause 4.2(e).
- (c) A Seller can make an Offer to sell Integrated Bulk Grain using the Clear System in accordance with clause 4.2(e).
- (d) A Seller makes an Offer to sell Automatic Grain using the Clear System by depositing the Grain with a Storage Provider in accordance with clause 2.1(b), in respect of which the Seller agrees to the following:
  - (i) the depositing of Automatic Grain with the Storage Provider in accordance with clause 2.1(b) constitutes the making of an Offer on the Clear System to sell Grain;
  - (ii) the terms of that Offer, being the Offer Price and the Specifications of the Grain (including locations and Storage Providers) are as set out on the gTicket and/or Offer Sheet;
  - (iii) in the case that the Offer Price is not determined in accordance with clause 4.2(d)(ii), the Offer Price is as calculated by the Clear System, based on the price set out on the Offer Sheet or otherwise as agreed between the Seller and Clear in writing; and
  - (iv) that Offer is made subject to the Terms and Conditions.
- (e) A Seller makes an Offer under this clause by specifying:
  - (i) a minimum Offer quantity equivalent to at least the Minimum Spot Quantity
  - (ii) a maximum quantity of Grain (in the case of an Offer to sell Integrated Bulk Grain, being no greater than the Seller's total available Integrated Bulk Grain);
  - (iii) the User Details;
  - (iv) the Offer Parameters;
  - (v) a Commencement Time, which must not be any earlier than the applicable Market Open on a particular Business Day; and
  - (vi) an Expiry Time, which, if not specified, is the applicable Market Close on the day the offer is entered on the Clear System or as published by Clear from time to time.
- (f) The Seller acknowledges that the Clear System will calculate the Offer Price for the purposes of clause 4.2(d)(iii) and 4.2(e)(iv) in multiples of minimum price increments of one (1) cent or such other increments Clear publishes from time to time.
- (g) The Seller acknowledges that the Clear System

may calculate a number of Offers based on the Offer Parameters or otherwise in accordance with clauses 4.2(d) and 4.2(e) and the Seller agrees that each constitutes an Offer to sell Grain on the Clear System.

- (h) An Offer made by a Seller in respect of Grain produced by or on a Share Farm is binding on all Sharers in that Share Farm and, further to which, each Sharer agrees as follows:
  - (i) each other Sharer in the same Share Farm has the authority to Offer to sell on the Clear System all or any of the Grain produced by or on that Share Farm; and
  - (ii) Clear is not liable in respect of any costs or losses incurred (whether directly or indirectly) by the Sharer as a result of one of the other Sharers in the same Share Farm making an Offer on the Clear System to sell all or any of the Grain produced by or on that Share Farm and/or the sale of that Grain on the Clear System.

#### 4.3. Offer Price adjustment

- (a) This clause 4.3 will not apply to any Offer in respect of which the Seller provides notification to Clear to that effect. All such notifications must be provided using the Clear System.
- (b) The Seller acknowledges that the Clear System will remove each Offer from the Clear System ("Affected Offers") at any time where all Bid Prices on the Clear System at that time exceed all Offer Prices for the same Specification Grain.
- (c) If clause 4.3(b) applies, the Seller agrees that its Affected Offers must be varied in accordance with clause 4.3(d) and re-entered as new Offers on the Clear System.
- (d) An Affected Offer may be varied in accordance with clause 4.3(c) by the Offer Price being made equal to the highest Bid Price available on the Clear System as at the time of the variation is affected.

#### 4.4. Cancellation of a Bid or Offer

- (a) A Buyer or Seller who has made a Bid or an Offer may cancel that Bid or Offer in accordance with clause 4.4(b) at any time before it is Accepted.
- (b) A Bid or Offer is cancelled if and only if the Buyer or Seller (as the case may be) makes the request for cancellation on the Clear System. The cancellation takes effect at the time the Clear System records the Bid or Offer as cancelled.
- (c) Clear may in its sole discretion cancel a Bid or Offer at any time before it is Accepted and the cancellation takes effect at the time the Clear System records the Bid or Offer as cancelled.
- (d) The cancellation of a Bid or Offer does not affect the validity of a Sale Contract which is created in accordance with clause 7 prior to cancellation.

#### 4.5. Automatic cancellation

Periodically following the making of an Offer, including immediately prior to a Offer and a Bid being automatically Accepted, in respect of Integrated Bulk Grain, Clear shall validate the existence of the Grain which is the subject of the Offer. If a validation is unsuccessful, the Offer will be automatically cancelled

by Clear and Clear will notify the Seller accordingly.

## **5. Automatic Acceptance of Offers and Bids**

### **5.1. Automatic Acceptance**

Subject to clause 5.3, the Clear System will at any time during the applicable Business Hours match and deem Accepted an Offer to a Bid where:

- (a) the Offer has the same Specifications as the Bid;
- (b) the Offer location and Storage Provider is the same as the Bid location and Storage Provider;
- (c) the Offer Price matches the Bid Price recorded on the Clear System; and
- (d) the Offer Quantity matches the Bid Quantity consistently with clauses 5.2 and 5.3, provided that clauses 5.2(a)(ii), 5.2(a)(iv) and 5.3(a) do not apply in relation to Nominated Grain Offers.

### **5.2. Acceptance Conditions**

- (a) The Sellers and Buyers acknowledge that:
  - (i) a Bid may be split and automatically matched and Accepted with more than one Offer; and
  - (ii) an Offer may be split and automatically matched and Accepted with more than one Bid, and that upon this basis:
  - (iii) where there is one Offer capable of being matched with and Accepted by more than one Bid (or a succession of Bids, each for a partial Acceptance of the Offer), the Clear System will automatically match the Offer with the Bid (or a succession of Bids) in the order in which the Bids were entered on the Clear System, from earliest entered to last; and
  - (iv) if there is more than one Offer capable of being matched with and Accepted by a Bid (or a succession of Offers, each for a partial Acceptance of the Bid), the Clear System will automatically match that Bid with the Offer (or a succession of Offers) in the order in which the Offers were entered on the Clear System, from earliest entered to last.
- (b) Sellers and Buyers acknowledge that Clear is not obliged to split Offers and/or Bids consistent with clause 5.2(a) and that, if not split, may not be Accepted.
- (c) Sellers and Buyers acknowledge that the amendment by a Seller or Buyer to an existing Bid or Offer in the Clear System, shall constitute the remaking of that Bid under clause 4.1(a), or Offer under clause 4.2(a), 4.2(b) or 4.2(c), by the Buyer or Seller, and the priority of matching and Acceptance of that Bid or Offer within the Clear System under clauses 5.2(a)(iii) and 5.2(a)(iv) will apply accordingly.

### **5.3. Excess Offer Quantity or Bid Quantity**

- (a) Where the Sale Quantity of an Accepted Bid is less than the Offer Quantity of the Offer to which it is matched for the purposes of clause 5.1 ("Matched Offer"), the Seller is taken to make a new Offer on the same terms as the Matched Offer, save that the Offer Quantity will equal the unmatched quantity of the quantity specified in the Offer.
- (b) Where the Sale Quantity of an Accepted Offer is less than the Bid Quantity of the Bid to which it is

matched for the purposes of clause 5.1 ("Matched Bid"), the Buyer is taken to make a new Bid on the same terms as the Matched Bid, save that the Bid Quantity will equal the unmatched quantity requirement of the Matched Bid.

- (c) Where the Offer Quantity exceeds the Bid Quantity by no more than the Accepted Tolerance, the Bid and Offer may be matched in accordance with clause 5.1.

## **6. Validity of Bids and Offers**

### **6.1. Acceptance of Bids and Offers**

A Bid or an Offer can only be Accepted if it is valid.

### **6.2. Commencement and Expiry Times**

A Bid or an Offer will not be valid:

- (a) before its Commencement Time; or
- (b) after its Expiry Time.

## **7. Creation of a binding contract**

### **7.1. Creation**

On the automatic Acceptance of a Bid or Offer in accordance with clause 5, a binding Sale Contract is deemed created between the Seller and the Buyer.

### **7.2. Terms of contract**

A Sale Contract created by clause 7.1 creates binding contractual obligations on the Buyer and Seller, including the requirement that the Buyer must buy the Sale Quantity of Sale Grain from the Seller for the Total Sale Price and that the parties must comply with the Terms and Conditions.

### **7.3. Consequences of creation of Sale Contract**

- (a) When a Sale Contract is created (other than in respect of Integrated Bulk Grain or a Nominated Grain Sale Contract):
  - (i) the gTicket corresponding to the Sale Grain will be Suspended;
  - (ii) an Offer is not able to be matched to another Bid for the Sale Grain while the gTicket remains Suspended;
  - (iii) the Seller will continue to be the Owner of the Suspended gTicket until the Settlement Date;
  - (iv) if the Sale Quantity is less than the quantity of Grain corresponding to the gTicket:
    - (A) a new gTicket will be created in respect of the Grain which is not Sale Grain;
    - (B) the Seller will be the holder of that new gTicket;
    - (C) that new gTicket will not be Suspended; and
    - (D) any other Offers in respect of the Sale Grain will be cancelled.
- (b) Where a Sale Contract is created in respect of Integrated Bulk Grain:
  - (i) the Seller is deemed to nominate Clear to hold on a bare trust the Seller's entitlement to Integrated Bulk Grain which has been deposited with an Integrated Storage Provider;
  - (ii) the Seller will at all times remain the beneficial owner entitled to the Integrated

- Bulk Grain until contract settlement in accordance with clause 9;
- (iii) Clear will hold the entitlement to Outturn of the Integrated Bulk Grain on a bare trust for the Seller and Clear will not at any time have any beneficial interest in the Integrated Bulk Grain; and
- (iv) an Offer is not able to be matched to another Bid for the Sale Grain
- (c) When a Nominated Grain Sale Contract is created an Offer is not able to be matched to another Bid for the Sale Grain.
- (d) If the Sale Contract is for Canola, the Offer Price and the Bid Price are made on the basis of 42% oil bonification and 0% admixture. Clear will calculate any amendment to the Price to take into account the difference between the assumed and actual oil bonification and admixture levels in accordance with the formula published by Clear from time to time.

#### 7.4. Notification

- (a) As soon as reasonably practicable after the creation of a Sale Contract, Clear must:
  - (i) provide the Seller, Buyer and Custodian with details of the Sale Contract (including details of the Settlement Period) and the corresponding Trade Settlement Note; and
  - (ii) notify the Custodian of the identity and bank account details and User Details of the Seller.
- (b) Neither the Buyer nor the Seller needs to notify the other of the creation or settlement of a Sale Contract. The Seller does not need to provide the Buyer with weight, grade or other certificates issued by the Storage Provider.

#### 7.5. Quantity

Except to the extent that the Law requires otherwise, the Bid Quantity, Offer Quantity and Sale Quantity of Grain on the Clear System and all other amounts based on the quantity of Grain are calculated, taking into account any shrinkage, spillage, spoilage and other similar considerations in accordance with the relevant Storage Provider Agreement.

### FORWARD CONTRACTS AND TRACK CONTRACTS

**The following clauses 8 to 11 of these Terms and Conditions apply to Forward Contracts and Track Contracts.**

## 8. Making Bids and Offers

### 8.1. Making Bids

- (a) A Buyer makes a Bid to buy Grain using the Clear System in one of two ways:
  - (i) providing a Bid Sheet to Clear in accordance with clause 8.1(b); and
  - (ii) directly through the Clear System in accordance with clause 8.1(e).
- (b) A Buyer may make a Bid pursuant to clause 8.1(a)(i) by doing the following:
  - (i) completing a Bid Sheet with the relevant Bid Parameters; and
  - (ii) submitting that Bid Sheet directly into the Clear System in a manner approved by Clear.
- (c) The Buyer agrees the following in respect of all Bids made pursuant to clause 8.1(b):

- (i) the provision of a completed Bid Sheet in accordance with clause 8.1(b) constitutes the making of a Bid to buy Grain on the Clear System; and
- (ii) the terms of the Bid, being the Bid Price, the quantity of Grain to be bought, the Commencement Time of the Bid and the Expiry Time of the Bid, are as set out on the Bid Sheet or as determined as follows:
  - (A) the Bid Price is as calculated by the Clear System based on the price set out on the Bid Sheet and in accordance with clause 11.4;
  - (B) the quantity of Grain to be bought is the quantity indicated by the Buyer to Clear;
  - (C) the Commencement Time is the applicable Market Open on the date on which the Bid is received into the Clear System (or for the next Business Day, if the Bid Sheet is received after the applicable Market Close on any Business Day or on any day that is not a Business Day); and
  - (D) the Expiry Time is the time of the applicable Market Close on the same date.
- (d) The Buyer acknowledges that the Clear System will calculate the Bid for the purposes of clause 8.1(c)(ii):
  - (i) in multiples of minimum price increments of one (1) cent or any such other increments Clear publishes from time to time; and
  - (ii) using or applying any further information provided by the Buyer and accepted by Clear (in its absolute discretion), including offsets and formulas.
- (e) A Buyer may make a Bid pursuant to clause 8.1(a)(ii) by doing the following:
  - (i) access the Clear System;
  - (ii) specify a Bid for:
    - (A) a quantity of Grain (which is equal to or more than the Minimum Forward Quantity);
    - (B) a Commencement Time, which must not be any earlier than the applicable Market Open on a particular Business Day; and
    - (C) an Expiry Time, which, if not specified, is the applicable Market Close on the day the Bid is entered on Clear;
  - (iii) enter, and/or review, Bid Parameters in the Clear System; and
  - (iv) agree that the Bid will be generated on, and in accordance with, the Clear System.
- (f) The Registered User acknowledges that a Bid that is not Accepted on one Business (between the applicable Market Open and the applicable Market Close) is renewed on the same terms on each subsequent Business Day until it is cancelled under the terms of clause 8.3 or Accepted.

### 8.2. Making Offers

- (a) A Seller may make an Offer using the Clear System to sell Grain.
- (b) A Seller makes an Offer to sell Grain under 8.2(a) using the Clear System by specifying:
  - (i) the Offer quantity (which is equal to or more

- (ii) than the Minimum Forward Quantity);
  - (iii) the User Details;
  - (iv) the Offer Price;
  - (v) the Offer Parameters;
  - (vi) the Specifications;
  - (vii) a Commencement Time, which must not be any earlier than the applicable Market Open on a particular Business Day; and
  - (viii) an Expiry Time, which, if not specified, is the applicable Market Close on the day the offer is entered on the Clear System or as published by Clear from time to time.
- (c) An Offer made by a Grower in respect of Grain produced by or on a Share Farm is binding on all Sharers in that Share Farm and, further to which, each Sharer agrees as follows:
- (i) each other Sharer in the same Share Farm has the authority to Offer to sell on the Clear System all or any of the Grain produced by or on that Share Farm; and
  - (ii) Clear is not liable in respect of any costs or losses incurred (whether directly or indirectly) by the Sharer as a result of one of the other Sharers in the same Share Farm making an Offer on the Clear System to sell all or any of the Grain produced by or on that Share Farm and/or the sale of that Grain on the Clear System.

### 8.3. Cancellation of a Bid or Offer

- (a) A Buyer or Seller who has made a Bid or an Offer may cancel that Bid or Offer in accordance with clause 8.3(b) at any time before it is matched in accordance with clause 9.1.
- (b) A Bid or Offer is cancelled if and only if the Buyer or Seller (as the case may be) makes the request for cancellation on the Clear System. The cancellation takes effect at the time the Clear System records the Bid or Offer as cancelled.
- (c) Clear may in its sole discretion cancel a Bid or Offer at any time before it is matched in accordance with clause 9.1 and the cancellation takes effect at the time the Clear System records the Bid or Offer as cancelled.
- (d) The cancellation of a Bid or Offer does not affect the validity of a Sale Contract which is created in accordance with clause 11 prior to cancellation.

## 9. Matching of Offers and Bids

### 9.1. Matching and Acceptance for Forward Contracts

- (a) A Buyer may, through the Clear System, match a Grower's Offer. If a Buyer matches a Grower's Offer:
  - (i) Clear will disclose to the Buyer the details of the Grower and the Secondary Delivery Site. If the Buyer wishes to proceed it must approve the match within the Short Acceptance Window.
  - (ii) if the Offer was a Multi-grade Offer and the match has been approved in accordance with 9.1(a)(i) above, Clear will disclose the Buyer's Grade Spread specified in the Bid to the Grower. If the Grower wishes to proceed it must approve the match within the Long Acceptance Window.
- (b) A Grower may, through the Clear System match a

Bid. If a Grower matches a Bid, Clear will disclose to the Buyer the details of the Grower and the Secondary Delivery Site. If the Buyer wishes to proceed it must approve the match within the Long Acceptance Window.

- (c) Once the Buyer and the Grower have approved the match in accordance with 9.1(a) or 9.1(b) (as applicable), the match is Accepted and a binding Sale Contract is deemed created between the Grower and the Buyer which will be evidenced by the Broker Contract Note.
- (d) If any Buyer or any Grower does not approve a relevant match within the applicable acceptance window, the match will be declined and the relevant Bid and Offer will be reinstated on the Clear System.
- (e) Each Buyer will be able to create a Grower Forward Contract Exclusion List. Each Grower acknowledges that it will not be able to match a Bid if the Grower's National Grower Registry number is on the relevant Buyer's Grower Forward Contract Exclusion List. For transparency, all Growers will be able to see all Bids, even if their National Grower Registry number is on the relevant Buyer's Grower Forward Contract Exclusion List.

### 9.2. Automatic Acceptance for Track Contracts

The Clear System will at any time during the applicable Business Hours match and deem Accepted an Offer to Bid where:

- (a) the Offer has the same Specifications as the Bid;
- (b) the Offer location and Storage Provider is the same as the Bid Location and Storage Provider;
- (c) the Offer Price matches the Bid Price recorded on the Clear System; and
- (d) the Offer Quantity matches the Bid Quantity and does not exceed Counterparty Trading Limits per clause 9.3.

### 9.3. Counterparty Trading Limits

Each Registered User will be able to create Counterparty Trading Limits for Forward Contracts and Track Contracts. Each Registered User acknowledges that it will not be able to match a Bid or Offer respectively if the resulting Sale Contract would exceed a Counterparty Trading Limit set by a Registered User. Clear reserves the right at its absolute discretion to notify the relevant Registered Users if a Sale Contract is not Accepted because a Counterparty Trading Limit is exceeded.

## 10. Validity of Bids and Offers

### 10.1. Acceptance of Bids and Offers

A Bid or an Offer can only be matched in accordance with clause 9.1 and 9.2 if it is valid.

### 10.2. Commencement and Expiry Times

A Bid or an Offer will not be valid:

- (a) before its Commencement Time; or
- (b) after its Expiry Time.

## 11. Creation of a binding contract

### 11.1. Terms of contract

A Sale Contract created by clause 9.1 and 9.2 is binding contractual obligations on the Buyer and Seller, including the requirement that the Buyer must buy the Sale Quantity from the Seller for the Total Sale Price (calculated in accordance with clause 11.4) and that the parties must comply with the Terms and Conditions.

### 11.2. Notification

- (a) As soon as reasonably practicable after the creation of a Sale Contract, Clear must provide the Seller and the Buyer with details of the Sale Contract on the Broker Contract Note. In the case of Forward Contracts and Track Contracts, the details of the Buyer and Seller may not be disclosed to the relevant Counterparty at the time a Sale Contract is created, however the details of the relevant parties may be disclosed at any time prior to the Delivery Period at the absolute discretion of Clear.
- (b) Neither the Buyer nor the Seller needs to notify the other of the creation or settlement of a Sale Contract.
- (c) If the Sale Contract is terminated by the Buyer or the Seller in accordance with its terms, the Buyer and/or the Seller will immediately notify Clear in writing.

### 11.3. Quantity

Except to the extent that the Law requires otherwise, the Bid Quantity, Offer Quantity and Sale Quantity of Grain on the Clear System and all other amounts based on the quantity of Grain are calculated, taking into account any shrinkage, spillage, spoilage and other similar considerations in accordance with the relevant Storage Provider Agreement. The quantity tolerance for all Forward Contracts and Track Contracts will be zero.

### 11.4. Price

- (a) The Offer Price and the Bid Price are made on the basis of the Base Bin Grade. In the case of a Multi-Grade Sale Contract, Clear will calculate the Price on the basis of the Grade Spread in the Bid and the actual grade of the Grain delivered.
- (b) For Forward Contracts the Offer Price and the Bid Price are made on the basis of delivery to the Delivery Site. If the Seller is unable to deliver the Grain to the Delivery Site, and delivers the Grain to the Secondary Delivery Site (in accordance with the Sale Contract), Clear will calculate any adjustment to the Price using the difference in the relevant Location Differentials for the relevant season. For Track Contracts the Offer Price and the Bid Price are made on the basis of Natural Terminal Port and the Delivery Site(s) is to be nominated by the Seller pursuant to the Sale Contract.
- (c) If the Sale Contract is for the delivery of Canola, the Offer Price and the Bid Price are made on the basis of 42% oil bonification and 0% admixture. Clear will calculate any amendment to the Price to take into account the difference between the assumed and actual oil bonification and admixture levels in accordance with the formula published by Clear from time to time.
- (d) Where Clear provides Contract Settlement of the

Sale Contract, Clear will provide the Buyer with a Trade Settlement Note, which will include the final Price, on the first Business Day of the Settlement Period, and will give the Custodian notice of the settlement details.

### 11.5. Clear as broker

To avoid doubt, in relation to facilitating any Forward Contract or Track Contract, Clear is acting as a "Broker" (in relation to the GTA Contract), not as an "Agent" (as defined in the GTA Contract).

## 12. Contract Payment

### 12.1. Payment by Buyer

Where Clear provides Contract Settlement, the following provisions of this clause 12.1 will apply:

- (a) On or before the Settlement Expiry Date the Buyer must pay to the Custodian the Total Sale Price in cleared funds without deduction.
- (b) If:
  - (i) on the day of the creation of a Sale Contract (in the case of a Spot Contract); or
  - (ii) on the day 5 Business Days prior to the Settlement Expiry Date (in the case of a Forward Contract); or
  - (iii) on the day 1 Business Day prior to the Settlement Expiry Date (in the case of a Track Contract),

a Buyer has money in a Cash Management Account of an amount equal to, or greater than, the Total Sale Price, the Buyer is deemed to have instructed Clear to pay the Custodian on the Buyer's behalf the Total Sale Price from that Cash Management Account and:

    - (iv) on the day of the creation of a Sale Contract (in the case of a Spot Contract); or
    - (v) on the day 5 Business Days prior to the Settlement Expiry Date (in the case of a Forward Contract); or
    - (vi) on the day 1 Business Day prior to the Settlement Expiry Date (in the case of a Track Contract),

Clear shall instruct the Custodian to transfer the Total Sale Price, without deduction, from the Cash Management Account to the Custodian for the purposes of clause 12.1(a).

Clear at no time will hold funds due to either a Buyer or Seller.

### 12.2. Custodian

- (a) The Custodian will hold the money received under clause 12.1 in accordance with the terms of the Custody Agreement pending settlement of the Sale Contract, pursuant to clause 13.
- (b) Each Registered User irrevocably appoints Clear as their attorney in relation to providing the Custodian with instructions for holding any money received from a Buyer under clause 12.1 or in respect of money held in a Cash Management Account required solely for the purpose of satisfying payment from a Buyer under clause 12.1.
- (c) Each Registered User acknowledges that any rights or entitlements it holds under these Terms and Conditions in relation to money held in a Cash

Management Account or money received under clause 12.1 are held subject to the terms of the Custody Agreement.

### 13. Contract Settlement

#### 13.1. Deposit of Sale Grain

- (a) For each Forward Contract, the Sale Quantity must be Deposited into the Clear System (as Nominated Grain) and a g-Ticket issued in respect of the Sale Quantity by the Delivery Period Expiry Date. Clear will immediately suspend the g-Ticket for the Sale Quantity.
- (b) For each Nominated Grain Sale Contract, the Sale Quantity must be Deposited into the Clear System (as Nominated Grain) and a g-Ticket issued in respect of the Sale Quantity before the Settlement Expiry Date. Clear will immediately suspend the g-Ticket for the Sale Quantity.

#### 13.2. On receipt of the Total Sale Price

- (a) When the Custodian receives payment in cleared funds of the Total Sale Price, the Custodian must do the following, which the Registered User hereby acknowledges:
  - (i) notify Clear that it has received the Total Sale Price and provide Clear on-line viewing access to the relevant bank account; and
  - (ii) subject to the terms of the Custody Agreement and any instructions to the contrary from Clear, from the Total Sale Price received:
    - (A) forward to Clear (or to any other person Clear nominates) the Clear Fee, any Storage Provider Fees and any Interest and any amounts referred to in clause 13.2(a)(ii)(C);
    - (B) retain the Custody Fee; and
    - (C) in relation to Forward Contracts and Nominated Grain Sale Contracts subject to the Deposit of and issue and suspension of the g-Ticket in relation to the Sale Quantity, pay to the Seller, or to a Cash Management Account (or otherwise as instructed by the Seller) the Net Sale Proceeds and all GST in respect of the Net Sale Proceeds less any other fees, levies, charges and/or other undisputed amounts owing by the Seller to Clear;
- (b) Where the Seller is a Sharer in a Share Farm, the amount paid to the Seller will be that Seller's share of the Net Sales Proceeds, in which case each of the other Sharers in the Share Farm will be paid their respective shares in the Net Sale Proceeds.
- (c) When the Custodian receives payment in cleared funds of the Total Sale Price, and in the case of a Nominated Grain Sale Contract the Sale Quantity has been Deposited and a g-Ticket issues and suspended for the Sale Quantity, and Clear receives notification to that effect from the Custodian in accordance with clause 13.2(a)(i), Clear must, within 2 Business Days, do the following:
  - (i) cancel the Suspended gTicket (other than in respect of Integrated Bulk Grain); and

- (ii) create and issue to the Buyer a gTicket ("Replacement gTicket") in respect of the Sale Grain, who will then be the Owner of the Replacement gTicket, and Release the Replacement g-Ticket.
- (d) Clear must forward the Storage Provider Fees, Interest and the Levies & Other Fees to the applicable recipients.

#### 13.3. Total Sale Price not received

- (a) If, by the Settlement Expiry Date pursuant to clause 7.4(a)(i), the Custodian has not received the Total Sale Price in cleared funds, or if the Buyer is deemed to be in breach of the Sale Contract under clause 1.3(c)(iii):
  - (i) Clear must immediately advise the Seller of the failure by the Buyer to pay the Total Sale Price; and
  - (ii) At the option of the Seller:
    - (A) the Settlement Period may be extended by the Seller giving written notice to Clear specifying the new Settlement Expiry Date and Clear must then notify the Buyer of the new Settlement Expiry Date; or
    - (B) the Sale Contract may be terminated by the Seller for breach by the Buyer, by the Seller giving written notice to Clear of the termination of the Sale Contract, in which case the Buyer will remain liable to the Seller for breach of the Sale Contract.
- (b) If the Seller provides notice to Clear of the termination of the Sale Contract:
  - (i) Clear must notify the Buyer;
  - (ii) if so directed by the Seller, Clear must reinstate the Seller's gTicket, so that it is no longer Suspended (or, in respect of Integrated Bulk Grain, transfer ownership back to the Seller); and
  - (iii) the Custodian must hold any payment received from the Buyer in relation to the Sale Contract pending written direction from Clear (or the order of a Court) as to how those funds held are to be disbursed.
- (c) The rights of the Seller pursuant to this clause 13.3 shall be in addition to, and not in derogation of, any of the Seller's other rights and remedies under any Law in respect of the breach of the Sale Contract by the Buyer. Any limitations contained in the relevant GTA Contract on the Seller's rights on default by the Buyer are expressly excluded.

#### 13.4. Grain not received

- (a) If:
  - (i) for Integrated Bulk Grain Sale Contracts, by the Settlement Expiry Date pursuant to clause 7.4(a)(i), Clear does not hold the Sale Quantity; or
  - (ii) for a:
    - (A) Forward Contract, by the Delivery Period Expiry Date pursuant to clause 13.1; or
    - (B) for a Nominated Grain Sale Contract, by the Settlement Expiry Date, the Sale Quantity has not been Deposited into

the Clear System, and a g-Ticket issued and suspended in relation to the Sale Quantity,

then

- (iii) Clear must immediately advise the Buyer of the failure by the Seller to have the Grain available for transfer; and
- (iv) at the option of the Buyer:
  - (A) the Settlement Period may be extended by the Buyer giving written notice to Clear specifying the new Settlement Expiry Date and Clear must then notify the Seller of the new Settlement Expiry Date; or
  - (B) the Sale Contract may be terminated by the Buyer for breach by the Seller, by the Buyer giving written notice to Clear of the termination of the Sale Contract, in which case the Seller will remain liable to the Buyer for breach of the Sale Contract.
- (b) If the Buyer provides notice to Clear of the termination of the Sale Contract:
  - (i) Clear must notify the Seller;
  - (ii) the Custodian must return to the Buyer any payment received from the Buyer in relation to the Sale Contract.
- (c) The rights of the Buyer pursuant to this clause 13.4 shall be in addition to, and not in derogation of, any of the Buyer's other rights and remedies under any Law in respect of the breach of the Sale Contract by the Seller. Any limitations contained in the relevant GTA Contract on the Buyer's rights on default by the Seller are expressly excluded

### **13.5. Termination of Sale Contract by Agreement**

- (a) A Sale Contract may be terminated at the discretion of Clear, and the Seller and Buyer reinstated to the position in which they were prior to the creation of the Sale Contract if, prior to the Settlement Expiry Date, the Buyer and Seller both provide separate requests by notice in writing to Clear, for Clear to terminate the Sale Contract.
- (b) The Buyer and Seller acknowledge that and agree that any termination of a Sale Contract by Clear under this clause 13.5, is conducted at the sole and unfettered discretion of Clear, and nothing in this clause 13.5 conveys any right on any Buyer or Seller to have a Sale Contract terminated.
- (c) The Buyer and Seller acknowledge and agree that Clear may render to the Buyer or Seller (or both) an invoice for an administration fee payable in respect of a termination of a Sale Contract under this clause 13.5, and any Sale Contract under this clause 13.5, and any Buyer or Seller so invoiced is obliged to pay that invoice on the terms set out on that invoice.

### **13.6. Circle Trade**

In the case that a Circle Trade is considered to exist between a series of Buyers and Sellers of Track Contracts, whether through the Clear System only or through a combination of the Clear System and third parties, Clear reserves the right to notify all parties to the Circle Trade and provide Contract Settlement of all individual Sale Contracts that comprise the Circle

Trade. Contract Settlement will occur pursuant to either:

- (a) the terms of the Trade Rules; or
- (b) pursuant to these Terms and Conditions and as published by Clear from time to time on the Clear Site,

and Clear will charge fees for providing Contract Settlement as published from time to time on the Clear Site.

## **14. Release of a gTicket**

### **14.1. Application of Clause**

The terms and conditions contained in this clause 14 apply to Nominated Grain only.

### **14.2. Voluntary Release**

The Owner of a gTicket which is not Suspended can, at any time, notify Clear (via the Clear System) that it wants the gTicket to be Released. On receipt of such notice, Clear must Release the gTicket in accordance with clause 14.5 within 7 Business Days.

### **14.3. Compulsory Release**

Clear must Release any gTicket in accordance with clause 14.5 if:

- (a) the person who Deposited the Grain the subject of the gTicket into the Clear System is not a Registered User;
- (b) the Owner of that gTicket has ceased to be a Registered User; or
- (c) there is an unresolved dispute as to the Deposit Information relevant to that gTicket, in accordance with clause 2.4(a).

### **14.4. Deemed Release**

Where an Insolvency Event occurs with respect to Clear and Clear is unable to remedy that Insolvency Event within 7 Business Days of its occurrence, the following are deemed to have occurred immediately prior to the happening of the Insolvency Event:

- (a) all gTickets are automatically Released to their respective Owners in accordance with clause 14.5 (except that the approval by Clear of the terms of the Storage Provider Agreement is not required);
- (b) the Custodian is granted by Clear a royalty free perpetual licence to access, store and use all data stored or hosted on the Clear System relating to User Details, gTickets and the Grain corresponding to those gTickets to enable the Custodian to distribute such data as contemplated by the Terms and Conditions;
- (c) the Custodian is by the Terms and Conditions authorised and directed to promptly advise each Storage Provider with respect to Grain held by that Storage Provider and represented by gTickets:
  - (i) of the happening of the Insolvency Event and the inability of Clear to remedy that Insolvency Event,
  - (ii) the identity, User Details, Grain Specifications and all other details of the Owner corresponding to gTickets (as stored on the Clear System) representing Grain stored with that particular Storage Provider (each such gTicket being a relevant gTicket),

- (iii) all details of all current Sale Contracts and the current status;
- (iv) to register on the Storage Provider's records the Owner of the relevant gTicket as the Client of the Grain corresponding to the relevant gTicket; and
- (v) the entitlement of the Storage Provider to use all information contained on the relevant gTicket for the purposes of updating the Storage Provider's records;
- (d) the Custodian is authorised and empowered to direct the Storage Provider to Release the Owner's Grain (as represented by a relevant gTicket) to the Owner once the Owner has entered into a Storage Provider Agreement (if required by the Storage Provider) and paid the Storage Provider Fees and Interest (if any);
- (e) the Custodian is authorised and empowered at the date of the Insolvency Event to complete its obligations regarding any Sales Contract that is pending completion as at that date; and
- (f) the Custodian will not be responsible or liable to a Registered User, a third party or Clear for any inaccurate information stored or uploaded in the Clear System by Clear from time to time or as required to be distributed from the Clear System by the Custodian under these Terms and Conditions.

#### **14.5. Release**

- (a) In order to Release a gTicket, the Owner of the gTicket must first:
  - (i) confirm with Clear (to Clear's satisfaction) that the Owner has already entered a Storage Provider Agreement; and
  - (ii) have made arrangements satisfactory to Clear (which may include immediate payment to Clear) for the payment of the Storage Provider Fees and any Interest (not otherwise payable pursuant to a Sale Contract) and any Clear Release Fees;
- (b) Subject to clause 14.5(a) being satisfied, Clear must Release the relevant gTicket and, in this regard, do the following:
  - (i) cancel any Offers based on the relevant gTicket;
  - (ii) notify the relevant Storage Provider that the Owner of the relevant gTicket is the Client in respect of the Grain corresponding to that gTicket and is to be registered as such on the records of the Storage Provider;
  - (iii) cancel the relevant gTicket; and
  - (iv) notify the Owner and the Custodian of the status of the relevant gTicket.

#### **14.6. Clear Discretionary Release**

- (a) Clear can, in its absolute discretion, at any time and for any reason, with seven (7) Business Days prior notice (via the Clear System) notify the Owner of a gTicket that Clear is Releasing the gTicket to the Owner.
- (b) On receipt of a notice under clause 14.6(a), the Owner of the gTicket must make arrangements satisfactory to Clear (which may include immediate payment to Clear) for the payment of the Storage Provider Fees and any Interest (not

- otherwise payable pursuant to a Sale Contract) and any Clear Release Fees.
- (c) Clear must do the following on receipt of the amounts provided for in clause 14.6(b) in cleared funds (without set off):
  - (i) cancel any Offers which are based on the relevant gTicket; and
  - (ii) notify the Storage Provider that the Owner of the relevant gTicket is the Client in respect of the Grain corresponding to that gTicket and is to be registered as such on the records of the Storage Provider;
  - (iii) cancel the relevant gTicket; and
  - (iv) notify the Owner and the Custodian of the status of the relevant gTicket.

#### **15. Storage Provider Outturn**

Clear is in no way responsible or liable for arranging the Outturn of any Grain by a Storage Provider. The Owner of a gTicket is entirely responsible for the Outturning of Grain by a Storage Provider.

#### **16. Fees**

##### **16.1. Clear Fee**

- (a) The Buyer agrees to pay the Clear Fee in respect of the following:
  - (i) all Grain purchased through the Clear System, which obligation is discharged in accordance with clause 13.2; and
  - (ii) any Sales Contract that is terminated pursuant to clauses 13.3(a)(ii)(B) or 13.4(a)(iv)(B).
- (b) The Seller agrees to pay any Clear Fee (identified by Clear as being payable by Sellers) in respect of all Grain sold through the Clear System.
- (c) Subject to clause 16.1(d), all Clear Fees comprise the fee as published by Clear from time to time on the Clear Site.
- (d) The amount of any Clear Fee or the method of calculating it may be amended by Clear by providing twenty eight (28) days' notice.

##### **16.2. Custodian Fee**

- (a) Subject to clause 16.2(b), the Custodian Fee is \$0.10 per metric tonne of Grain traded on the Clear System and is deducted from the Total Sale Price.
- (b) The amount of the Custodian Fee or the method of calculating is determined by the Custodian and may be amended by the Custodian subject to Clear providing twenty eight (28) days' notice of such change in accordance with the Terms and Conditions.

##### **16.3. Storage Provider Fees**

- (a) Storage Provider Fees shall accrue with respect to Grain as from the date the Grain is deposited with the Storage Provider (or transferred into the Clear System) and, subject to clause 16.7 and this clause 16.3, are deducted from the Total Sale Price upon receipt of proceeds by the Custodian under the Sale Contract.
- (b) With respect to Nominated Grain or Integrated Bulk Grain, if Clear makes any payment of Fees

on behalf of a Registered User, or is liable to make payment of Fees on behalf of a Registered User ("Pre-paid Fees"), Clear may render an invoice to the Registered User for such Pre-paid Fees and that Registered User is obliged to pay that invoice on the terms set out on that invoice.

- (c) Subject to this clause 16.3, the Storage Provider Fees and any Interest payable in accordance with clause 16.5 are to be deducted from the Total Sale Price and remitted to Clear (or at Clear's instruction, directly to the Storage Provider) by the Custodian in accordance with the Custody Agreement.
- (d) Unless the Storage Provider Fees are paid directly to the Storage Provider in accordance with clause 16.3(a), from the amount received by Clear in accordance with clause 16.3(a):
  - (i) Clear must forward all amounts received from the Custodian in respect of Storage Provider Fees to the appropriate Storage Provider (other than those fees received being reimbursement of Storage Provider Fees already paid to the Storage Provider); and
  - (ii) Clear may retain the Interest (if any) included in the amount remitted to Clear pursuant to clause 16.3(a) or otherwise and must forward all Storage Provider Fees (apportioned if necessary so as to correspond to the Grain applicable to the gTicket the subject of the Sale Contract) to the appropriate Storage Provider (other than those fees received being reimbursement of Storage Provider Fees already paid to that particular Storage Provider).

#### **16.4. Levies & Other Fees**

Subject to Clear directing the Custodian to pay all amounts it receives in respect of Levies & Other Fees directly to the appropriate collecting authorities, Clear agrees to forward those amounts to the appropriate collecting authorities (other than those amounts received being reimbursement of Levies & Other Fees already paid to the appropriate recipient).

#### **16.5. Interest on Storage Provider Fees**

Without limiting the fees payable as described in clause 16.3:

- (a) Interest shall accrue on a daily basis at the Interest Rate on the accrued unpaid Storage Provider Fees until the Grain is Released;
- (b) Clear is entitled and authorised by the Terms and Conditions to capitalise all accrued unpaid Interest on Storage Provider Fees every 30 days and include that amount in the total accrued Storage Provider Fees upon which Interest accrues pursuant to this clause 16.5;
- (c) With respect to Nominated Grain, if Clear makes any payment of Pre-paid Fees, Clear may charge the Registered User Interest on the Pre-paid Fees, calculated from the date Clear pays the said amounts.

#### **16.6. Interim Fees or Levies**

Where for any reason any fees or levies as outlined in this clause 16 (collectively, "Interim Fees") become due and payable prior to receipt of payment pursuant to a

Sale Contract Clear may render an Owner of the applicable gTicket an invoice for payment of those Interim Fees by the Owner and until those Interim Fees are paid to Clear the gTicket may be Suspended by Clear. If the Owner fails to pay these Interim Fees within 5 Business Days after the Owner receiving the applicable invoice Clear is authorised and empowered by the Terms and Conditions to sell on the Clear System sufficient of the Grain represented by the Owner's gTicket so that the Net Sale Proceeds equal the outstanding Interim Fees.

#### **16.7. Late Fees and Interest for Late Payment**

- (a) If clause 13.3 applies in respect of a Sale Contract, then Clear may render an invoice to the Buyer in respect of a Late Fee and/or interest calculated under clause 16.7(b), whether or not the Sale Contract is terminated. A Buyer must pay the amounts in an invoice rendered under this clause within 7 days of the date of the invoice.
- (b) Interest will be calculated for the purpose of clause 16.7(a) on the Total Sale Price in respect of a Sale Contract on a daily basis at the Interest Rate from the day after the Settlement Expiry Date until the day full payment of the Total Sale Price is received by the Custodian, or, if the Sale Contract is terminated, until the day on which the Sale Contract is terminated.

#### **16.8. Apportionment**

The Buyer shall be liable for all Non Clear Fees accruing as and from the Settlement Date and the Seller for all unpaid Non Clear Fees as at the day prior to the Settlement Date.

#### **16.9. No Part payments**

All payments to be made pursuant to the Terms and Conditions in respect of a Sale Contract must be made in full and no part payments will be accepted.

#### **16.10. Clear Not Liable for Determining Fees**

Each Registered User agrees and acknowledges that:

- (a) The only Fees for which Clear is responsible for determining are the Clear Fee, the Late Fee and the Interest Rate;
- (b) Clear is not responsible for, and plays no part in, determining, calculating or setting any of the following fees and levies ("Non Clear Fees"):
  - (i) Storage Provider Fees;
  - (ii) Levies & Other Fees;
  - (iii) Custodian Fee;
- (c) The relevant third party is responsible for determining, calculating and setting the Non Clear Fees;
- (d) Clear is not liable to a Registered User nor to any other person for any movement or increase in Non Clear Fees;
- (e) Clear is not liable to pay Non Clear Fees for or on behalf of any Registered User or any other person; and
- (f) Each Registered User indemnifies and must keep indemnified Clear against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Clear or which Clear may pay,

sustain or incur as a direct or indirect result of a Registered User failing and/or refusing to pay any Non Clear Fees payable by such Registered User in accordance with the Terms and Conditions.

## 17. GST

### 17.1. Definitions

In this clause 17:

- (a) the expressions Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act); and
- (b) Supplier means any party treated by the GST Act as making a Supply under the Terms and Conditions.

### 17.2. Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with the Terms and Conditions are exclusive of GST.

### 17.3. Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with the Terms and Conditions, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Terms and Conditions.

### 17.4. Reimbursement of expenses

If the Terms and Conditions requires a party (the First Party) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or incurred by the other party (the Other Party), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (Net Amount); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply, such that after the Other Party meets the GST liability, it retains the Net Amount.

## 18. Authorised Representatives

### 18.1. Registered Users bound by acts of Representing Authorised Representative

- (a) A Registered User may appoint an Authorised Representative to act on that Registered User's behalf in respect of the trading in Grain on the Clear System by following the process set out in clause 1.2(c).
- (b) Any Authorised Representative appointed

pursuant to clause 1.3(a) must be a Registered User and must remain a Registered User at all times it acts as an Authorised Representative.

- (c) Subject to clauses 18.1(e) and 18.1(f), where a Registered User has appointed an Authorised Representative to act on that Registered User's behalf, the Registered User agrees to be bound by all acts of its Authorised Representative on the Clear System and agrees to complete all Sale Contracts which are created on its behalf as a result of those acts, regardless of whether the Authorised Representative has acted outside the scope of its authority, in breach of the Terms and Conditions, in breach of any agreement between the Registered User and the Authorised Representative, negligently or contrary to the Registered User's instructions or directions.
- (d) Where a Registered User has appointed an Authorised Representative that is not a DCP Representative, it must give its Authorised Representative written authority to do any and all of the acts which are permitted to be done by a Registered User under the Terms and Conditions (excluding the right to access or change a Registered User's password or cancel registration of a Registered User, which acts an Authorised Representative is expressly prohibited from doing).
- (e) Where a Designated Credit Provider has appointed a DCP Representative:
  - (i) the Designated Credit Provider must give the DCP Representative written authority to do any and all of the acts required in order to purchase Grain on behalf of the Designated Credit Provider using the Clear System; and
  - (ii) the Designated Credit Provider may impose a limit on the daily aggregate value of Grain that the DCP Representative may purchase on the Designated Credit Provider's behalf in accordance with clause 18.1(f) ("Daily Purchase Limit").
- (f) A Designated Credit Provider may impose or amend a Daily Purchase Limit in respect of a DCP Representative by giving notice to Clear either via the Clear System or otherwise in writing. A Daily Purchase Limit or an amendment to a Daily Purchase Limit shall take effect:
  - (i) if notice is received by Clear at or before 6am on a Business Day, from the applicable Market Open on that Business Day; and
  - (ii) if notice is received by Clear after 6am on a Business Day, from the applicable Market Open on the next Business Day.

### 18.2. Change of Authorised Representative

- (a) If a Registered User terminates the appointment of an Authorised Representative appointed to act on that Registered User's behalf, the Registered User must notify Clear either via the Clear System or otherwise in writing of that termination, noting the date of termination.
- (b) If the Registered User changes its Authorised Representative, the Registered User must notify Clear via the Clear System of all relevant details of the replacement Authorised Representative, noting the date of appointment.
- (c) The appointment of an Authorised Representative

remains effective for the purposes of these Terms and Conditions until Clear receives a notice from the Registered User pursuant to clauses 18.2(a) or 18.2(b) and, subject to the receipt of any such notice, Clear is entitled to rely upon any conduct of the existing Authorised Representative.

### **18.3. Consequences of Authorised Representative ceasing to be a Registered User**

If an Authorised Representative's registration as a Registered User is cancelled for any reason:

- (a) Without limiting the application of clause 18.3(c), the Authorised Representative must immediately cease acting as an Authorised Representative for the purposes of the Clear System;
- (b) Clear shall inform the Registered User for which the Authorised Representative acts of the cancellation; and
- (c) The Registered User must direct the Authorised Representative to cease acting on its behalf in respect of the trading in Grain on the Clear System.

## **19. Privacy**

### **19.1. Offers and Bids**

By making an Offer or a Bid, the Registered User consents to the Offer or Bid being communicated to other Registered Users of the Clear System. However, the identity of the persons making the Offers and Bids will not be disclosed and the Clear System will not disclose the identity of a Registered User to any other Registered User, other than in accordance with the terms of these Terms and Conditions. For the purposes of this clause 19.1, the Registered User consents to Clear providing the Registered User's details to the other party under a Sale Contract to enable the parties to a Sale Contract to exchange supporting certifications and documentation.

### **19.2. Disclosure to Authorised Representatives**

Where an Authorised Representative has been appointed to act on behalf of a Registered User, the Clear System will provide a mechanism for an Authorised Representative to access all of the information contained in the Clear System which relates to the Registered User(s) for whom the Authorised Representative is acting (other than details of the Registered User's password). This clause does not apply to an Authorised Representative that is a DCP Representative.

### **19.3. Disclosure on breach of a binding contract**

Where there is a breach of contract as outlined in clause 13.3 or 13.4, the Registered User consents to Clear notifying the Seller and the Buyer of their respective identity and providing details of the Bid and Offer giving rise to the breach.

## **20. Use of Trade Information**

- (a) All intellectual and industrial property rights associated with or otherwise incorporated in the following vests in Clear:
  - (i) any Document created by Clear or the Clear System on the basis of Trade Information;

- and
- (ii) any Trade Information created by Clear or the Clear System.
- (b) To the extent that intellectual and industrial property rights associated with or otherwise incorporated in Trade Information is owned by the Registered User, the Registered User hereby grants Clear an irrevocable and perpetual (royalty free) licence to use that information for the purposes of the Clear System and any other purpose consistent with Clear's rights and obligations under these Terms and Conditions.
- (c) Without limiting the generality of clause 19, Clear may publish any Trade Information or cause any Trade Information to be published in accordance with this clause 20 in any manner and in any forum Clear considers appropriate.
- (d) Clear's rights under clause 20(c) are limited to the publication of information in a form such that the identity of any Registered User or that Registered User's Bids and/or Offers for the sale and/or purchase of Grain is not revealed and cannot be determined.
- (e) Notwithstanding anything to the contrary in this clause 20 or clause 19, Clear is permitted to disclose any Trade Information to any third party:
  - (i) for the purposes of processing that information and/or publishing that information in accordance with clause 20(c); or
  - (ii) if compelled to do so by law; or
  - (iii) if written permission is obtained from the Registered Users for which the Trade Information pertains.For the sake of clarity, the information disclosed in accordance with this clause 20(e) need not be in a form that complies with clause 20(d).
- (f) The Registered User consents to Clear engaging in any conduct consistent with its powers under this clause 20.
- (g) The Registered User hereby waives all of its rights (whether vested or otherwise) and any rights it may have in future concerning any losses, costs, damages, fines and any other liabilities that the Registered User incurs or may incur, whether directly or indirectly, as a result of Clear acting in accordance with this clause 20.
- (h) The Registered User hereby consents to Clear using any Trade Information for the purposes of marketing the goods and services offered or that may be offered by Clear, including, and without limitation, corresponding directly with the Registered User.
- (i) Clear's rights in respect of the Trade Information under this clause 20 is perpetual and irrevocable.

## **21. Representations and warranties**

### **21.1. General representations and warranties**

Each Registered User represents and warrants that, as at the date it completes an Application Form and on each day on which the Registered User is a Registered User:

- (a) if it is a corporation, it is registered and validly existing under the laws of the jurisdiction in which it was incorporated;

- (b) it has full legal capacity and power to undertake to comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate;
- (c) all corporate action has been taken that is necessary or desirable to authorise its compliance with the Terms and Conditions and its carrying out of the transactions that the Terms and Conditions contemplate;
- (d) it holds each Authorisation that is necessary or desirable to:
  - (i) accept and comply with the Terms and Conditions and to carry out the transactions that the Terms and Conditions contemplate; and
  - (ii) ensure that the Terms and Conditions are legal, valid, binding and admissible in evidence, and it is complying with any conditions to which any of these Authorisations is subject;
- (e) the Terms and Conditions constitute legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping
- (f) neither its acceptance of the Terms and Conditions, nor the carrying out by it of the transactions that the Terms and Conditions contemplate, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
  - (ii) contravene any Authorisation;
  - (iii) contravene any undertaking or instrument binding on it or any of its property; or
  - (iv) contravene its constitution;
- (g) there are no actions, claims, proceedings or investigations pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of the Terms and Conditions;
- (h) it is not the subject of an Insolvency Event;
- (i) it is not agreeing to be bound by the Terms and Conditions as trustee of any trust or settlement unless otherwise approved by Clear;
- (j) all information supplied by the Registered User to Clear, in the Registered User's application or otherwise, is complete, correct and is not misleading;
- (k) the Registered User intends to complete and is capable of completing any Sale Contract which would be created if any of the Registered User's Bids or Offers are Accepted;
- (l) it shall at all times comply with the provisions of the Terms and Conditions;
- (m) where the Registered User has appointed an Authorised Representative to act on its behalf:
  - (i) the Registered User has not terminated the appointment of the Authorised Representative; and
  - (ii) in respect of:
    - (A) an Authorised Representative other than a DCP Representative, the Registered User has given the Authorised Representative written authority to do any and all of the acts which are permitted to be done by a

Registered User under the Terms and Conditions (excluding the right to access or change a Registered User's password or cancel registration of a Registered User); and

- (B) a DCP Representative, the Registered User has given the DCP Representative written authority to do any and all of the acts required in order to make Bids to buy Grain using the Clear System (except in relation to any Forward Contracts).

#### **21.2.Warranty of authority for Authorised Representative to act**

Each Registered User and each Registered User's Authorised Representative represents and warrants that at all times whilst they remain Registered Users and the Registered User's Authorised Representative remains duly appointed by the Registered User:

- (a) the Authorised Representative has been duly authorised to act on behalf of the nominated Registered User;
- (b) the Authorised Representative and Registered User have given each other authority to do any and all acts permitted to be done by an Authorised Representative or Registered User (as the case may be under the Terms and Conditions); and
- (c) the Authorised Representative acknowledges that it is bound by these Terms and Conditions and warrants that the capacity in which it is so bound is not as a trustee for any trust or settlement.

#### **21.3.Reliance on representations and warranties**

Each Registered User acknowledges that Clear has registered it and agreed to provide the Clear System and to facilitate the transactions contemplated by the Terms and Conditions in reliance on the representations and warranties that are made in this clause 21.

#### **21.4.Survival of clause**

Despite any other provision of the Terms and Conditions, this clause 21 survives the expiry or termination of the Terms and Conditions.

### **22. Limitation of liability**

#### **22.1.Limitation**

To the extent permitted by Law, neither Clear nor the Custodian is liable to a Registered User or to any other person for:

- (a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of an Authorised Representative appointed to act on behalf of a Registered User;
- (b) any error, omission or inaccuracy with respect to the Deposit Information, quantity of Grain, Grain information and/or Specifications in respect of a gTicket provided by and/or entered into the Clear System by any Storage Provider with respect to Grain;
- (c) any use by a Registered User or any other third

- party of a Storage Provider's website or any other third party website referred to in, or containing a link from, the Clear Site;
- (d) any person's failure to perform its obligations under or in connection with a Sale Contract;
  - (e) any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination or any other cause, in connection with the furnishing, performance, operation, maintenance, use of or inability to use all or any part of the Clear System;
  - (f) any loss or damage of any kind that is directly or indirectly caused by or results from any errors or inaccuracies in information in the Clear System or any interruption to the Clear System;
  - (g) any loss or damage of any kind that is directly or indirectly caused by or results from any unauthorised access to or use of the Clear System;
  - (h) any loss or damage of any kind that is directly or indirectly caused by or results from the cancellation of a Registered User's registration;
  - (i) any loss or damage of any kind that is directly or indirectly caused by or results from the destruction or spoilage of Grain which has been Deposited into the Clear System while in the possession of a Storage Provider;
  - (j) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of Clear or any of its officers, employees, agents or contractors; whether such a claim arises in contract, tort, negligence, strict liability, contribution or under statute or otherwise and whether the claim is brought directly or as a third party claim.
  - (k) To the extent permitted by Law, neither Clear, the Buyer, nor the Custodian is liable to a Registered User or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:
    - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
    - (ii) Clear or any other person was previously notified of the possibility of the loss or damage,
 whether such a claim arises in contract, tort, negligence, strict liability, contribution or under statute or otherwise and whether the claim is brought directly or as a third party claim.

### 22.2.Exclusion of warranties by Clear

- (a) To the maximum extent permitted by Law and subject to any rights imposed by Law that cannot be limited or excluded, any representation, warranty, condition or undertaking by Clear that would otherwise be implied in the Terms and Conditions is excluded.
- (b) If implied warranties or conditions cannot be excluded, but limitation is permitted, Clear's liability is limited to the supply of the services again or the payment of the cost of having the service supplied again.
- (c) Without limiting clause 22.2(a), Clear shall not be

taken to have represented or warranted that:

- (i) the Owner of a gTicket is the owner of or has any rights in respect of the corresponding Grain;
- (ii) any particular Authorised Representative is authorised to act on behalf of any particular Registered User;
- (iii) the Specifications in respect of a gTicket accurately describe the corresponding Grain;
- (iv) a Buyer or Seller has the capacity to enter into or complete a Sale Contract;
- (v) once Clear has provided the Custodian with instructions and/or notification in accordance with the Terms and Conditions, that the Custodian will in fact perform any or all of its duties as described in the Terms and Conditions; or
- (vi) the Clear System will be available on any particular date or time.

### 22.3.Acknowledgments by Registered Users

Each Registered User agrees and acknowledges that:

- (a) Clear does not, by providing the Clear System or otherwise, provide advice or make recommendations and that it is the Registered User's responsibility, before making a Bid or Offer or accepting a Bid or Offer, to assess and evaluate these in light of the Registered User's financial situation and particular needs and Clear is not liable in any way for any loss or damage of any kind (including but not limited to consequential loss) suffered by a Registered User as a result of its decision to make a Bid or Offer or match or accept a Bid or Offer using the Clear System;
- (b) there may be a delay between the time a Registered User communicates an instruction to place, amend, cancel, match or accept a Bid or an Offer to Clear and the time when the Clear System gives effect to that instruction due to the outcome of the instruction being an automated process;
- (c) Clear is in no way liable to the Registered User in respect of losses and costs incurred or that may be incurred as a result (whether directly or indirectly) of the destruction or spoilage of the corresponding Grain;
- (d) it permits and authorises Clear to:
  - (i) use, and permits Clear's Related Companies to use, its User Details and its other details supplied to Clear by a Storage Provider, NGR or any other source to market to the Registered User;
  - (ii) share the User Details and its other details supplied to Clear by a Storage Provider with other organisations as is required or permitted by Law;
  - (iii) provide and share with the Custodian its User Details and its other details supplied to Clear by a Storage Provider for the purpose of enabling the Custodian to retain a secure record and back up of the Registered User's User Details and other details for use in accordance with the Terms and Conditions;
  - (iv) provide and share the User Details and its other details supplied to Clear by a Storage

- Provider, the Custodian or any third party with the User and the relevant Storage Provider, the Custodian and to companies who perform services for Clear, such as specialist information technology companies, mail houses or other contractors to Clear on the basis that Clear requires those companies to protect such personal information; and
- (v) publicise the fact that a Registered User is a Registered User of the Clear System;
  - (e) it has permitted and authorised any Storage Provider with which it has a Storage Provider Agreement to provide and share with Clear its User Details and its other details submitted to the relevant Storage Provider;
  - (f) Clear does not, at any stage, have ownership in any Grain or have any right to receive a quantity of Grain from a Storage Provider in respect of Grain which is Deposited into the Clear System; and
  - (g) Clear does not, by providing a link to any Storage Provider's website or any other third party website referred to in, or containing a link from, the Clear Site and/or the Storage Provider's website and/or any third party's website or otherwise ("Non Clear Site"), provide advice (including but not limited to financial advice) or make recommendations and that it is the Registered User's responsibility, before using any services offered through a Non Clear Site, to assess and evaluate these in light of the Registered User's financial situation and particular needs and Clear is not liable in any way for any loss or damage of any kind (including but not limited to consequential loss) suffered by a Registered User as a result of its decision to use any services offered through a Non Clear Site.

#### **22.4.Survival of clause**

Despite any other provision of the Terms and Conditions, this clause 22 survives the expiry or termination of the Terms and Conditions.

#### **23. Indemnity**

Each Registered User must keep indemnified Clear and its related bodies corporate (referred to collectively in this clause 23 as "Clear") against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against Clear or which Clear may pay, sustain or incur as a direct or indirect result of:

- (a) any breach or non-performance of the Terms and Conditions by that Registered User;
- (b) any breach or non-performance by that Registered User and/or any third party of the provisions of any other agreement (and/or agreements) contemplated by the Terms and Conditions to which that Registered User is a party, including any Sale Contract;
- (c) any wrongful, wilful or negligent act or omission of that Registered User or any of its employees, agents or contractors; and/or
- (d) any one or more of any representations or warranties made or repeated by that Registered User being untrue or misleading in any material

respect (including by omission) when made or repeated.

#### **24. General**

##### **24.1.Nature of obligations**

- (a) Any provision in the Terms and Conditions which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by the Terms and Conditions in favour of another is a separate obligation.

##### **24.2.Time of the essence**

In the Terms and Conditions, time is of the essence unless otherwise stipulated.

##### **24.3.Entire understanding**

- (a) The Terms and Conditions contain the entire understanding between the Registered User and Clear concerning the Clear System and supersedes all prior agreements and communications between the parties.
- (b) The Registered User acknowledges that, except as expressly stated in the Terms and Conditions, the Registered User has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of the Terms and Conditions.

##### **24.4.No adverse construction**

The Terms and Conditions are not to be construed to the disadvantage of Clear because Clear was responsible for its preparation.

##### **24.5.Further assurances**

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to the Terms and Conditions

##### **24.6.No waiver**

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on that party by the Terms and Conditions does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under the Terms and Conditions.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

##### **24.7.Severability**

Any provision of the Terms and Conditions which is invalid in any jurisdiction must, in relation to that jurisdiction:

- (a) be read down to the minimum extent necessary to achieve its validity, if applicable; and
- (b) be severed from the Terms and Conditions in any other case, without invalidating or affecting the remaining

provisions of the Terms and Conditions or the validity of that provision in any other jurisdiction.

#### **24.8. Successors and assigns**

The Terms and Conditions bind and benefit the participating Registered Users (and their respective successors and permitted assigns under clause 24.9, if any).

#### **24.9. Assignment**

- (a) A Registered User cannot assign the Registered User's registration or assign or otherwise transfer the benefit of the Terms and Conditions without the prior written consent of Clear.
- (b) Clear may assign all of its rights and obligations under these Terms and Conditions to any company and the Registered User consents to that assignment.
- (c) Clear will endeavour to notify the Registered User of any assignment.

#### **24.10. Consents and approvals**

Where anything depends on the consent or approval of Clear, unless the Terms and Conditions provide otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of Clear.

#### **24.11. Variation**

Clear may in its absolute discretion at any time and from time to time without notice to a Registered User amend or vary the Terms and Conditions by posting the amended or varied Terms and Conditions on the Site. The amended or varied Terms and Conditions will take effect fourteen (14) days after they are posted on the Site or such longer period as may otherwise be advised. The Terms and Conditions cannot be amended or varied by a Registered User. Any amendment or variation of the Terms and Conditions will not adversely affect a Registered User with respect to a Sale Contract that has already been entered as at the time of the amendment or variation.

#### **24.12. Duty**

- (a) Any duty (including related interest or penalties) payable in respect of the Terms and Conditions or any instrument created in connection with it must be paid by the Buyer.
- (b) The Buyer undertakes to keep the Seller, Clear and the Custodian indemnified against all liability relating to the duty, and any related interest and penalties.

#### **24.13. Governing law and jurisdiction**

- (a) The Terms and Conditions is governed by and must be construed in accordance with the laws in force in Victoria.
- (b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Terms and Conditions, its performance or subject matter.

#### **24.14. Notices**

Any notice or other communication:

- (a) to a Registered User may be given by:
  - (i) posting the notice on the Clear Site in accordance with the time frame specified by a particular clause of the Terms and Conditions; and/or
  - (ii) email to the email address specified in the Application Form (or as subsequently advised in writing by the Registered User);
- (b) to Clear via the email link on the Clear System, and where notice is given via an email it is deemed to be given by the sender and received by the addressee on the date and time the email was sent.

#### **24.15. Conflicting provisions**

- (a) If there is any conflict between the main body of the Terms and Conditions and any schedules or annexures comprising it, then the provisions of the main body of the Terms and Conditions prevail.
- (b) If the event of any conflict between the Terms and Conditions and the terms and conditions of any other agreement (and/or agreements) contemplated by the Terms and Conditions with respect to the use of the Clear System by a Registered User, the Terms and Conditions prevail.

#### **24.16. Non merger**

A term or condition of, or act done in connection with, the Terms and Conditions does not operate as a merger of any of the rights or remedies of the parties under the Terms and Conditions and those rights and remedies continue unchanged.

#### **24.17. Operation of indemnities**

Unless the Terms and Conditions expressly provides otherwise:

- (a) each indemnity in the Terms and Conditions survives the expiry or termination of the Terms and Conditions; and
- (b) a party may recover a payment under an indemnity in the Terms and Conditions before it makes the payment in respect of which the indemnity is given.

#### **24.18. No right of set-off**

Unless the Terms and Conditions expressly provides otherwise, a Registered User has no right of set-off against a payment due to another Registered User.

#### **24.19. Relationship of parties**

Except to the extent the Terms and Conditions expressly provide otherwise, nothing in the Terms and Conditions may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

#### **24.20. Custodian Disclaimer and Limitation of Liability**

The Custodian's role is limited to holding the Custody Account, Cash Management Accounts and Beneficial Ownership Files as agent of Clear. The Custodian has no supervisory role in relation to the operation of the

Clear System and is not responsible for protecting the interests of any Registered User. The Custodian has no liability or responsibility to the Registered User for any act done or omission made (including for negligence or breach of Custody Agreement) in accordance with the terms of the Custody Agreement. The Custody Agreement that Clear has entered into with the Custodian includes terms that also limit the Custodian's liability.

## 25. Custodian Bank Accounts

- (a) Companies within the Perpetual Group between them hold a large number of bank accounts on behalf of their respective clients. Because of this and arrangements which the Perpetual Group has with some of its banks, the Custodian may be entitled to receive from the bank with which a bank account is held, a commission calculated by reference to the balance in the relevant bank account from time to time. This commission is separate from and in addition to the interest which otherwise could accrue on the bank account and will not appear on any bank statement. The Registered User acknowledges that neither it, Clear nor any third party will be entitled to any interest as the account (other than a Cash Management Account) will be set by the bank as a non-interest bearing account.
- (b) The Registered User acknowledges that, by becoming a Registered User, it consents to the Custodian's receipt of the abovementioned commissions.

## 26. Definitions

In the Terms and Conditions:

**Accept** and **Accepted** means the acceptance of a Bid or an Offer by operation of the Clear System, in accordance with clause 5, or in accordance with clause 9.

**Affected Offers** has the meaning ascribed to that term in clause 4.3(b).

**Accepted Tolerance** means the quantity of Grain in excess of the Bid Quantity that the Buyer will accept for the purposes of clause 5.3(c), as set out as a variation in the Bid Parameters.

**Applicant** means a person seeking to be registered as a Registered User.

**Application Form** means a form prescribed by Clear to be used by an Applicant, which form will designate the information that is required for the capacity in which the Applicant is seeking registration.

**Authorisation** means:

- (a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and
- (b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by

law if the Government Agency takes action within a specified period, that period expires without that action being taken.

**Authorised Representative** means a person appointed in accordance with clause 1.2(c) who acts on behalf of a Registered User for the purposes of these Terms and Conditions and includes (but is not limited to) any broker, industry adviser, consultant, DCP Representative, accumulator, agent or other such representative or agent duly appointed and authorised to act on behalf of a Registered User.

**Automatic Grain** has the meaning ascribed to that term in clause 2.1(b).

**Base Bin Grade** means the base grade of Grain to be delivered under a Forward Contract.

**Beneficial Ownership File** means the file containing the details of the beneficial ownership of the Grain as forwarded to the Custodian by Clear.

**Bid** means a bid by a Buyer to buy Grain with particular Specifications, from a particular or any location, from a particular or any Storage Provider, for a Bid Price as recorded on the Clear System, either as a Spot Contract or as a Forward Contract.

**Bid Sheet** means any document or any other repository of information (including computer or electronic file) on or in which the Buyer indicates its intention to purchase Grain.

**Bid Parameters** means:

- (a) a Price for Grain with particular Specifications;
- (b) in the case of a Spot Contract:
- (i) variations from the above Price for Grain with different Specifications;
  - (ii) the locations and Storage Providers from which the Buyer is willing to buy Grain;
- (c) in the case of a Forward Contract:
- (i) the Base Bin Grade and whether it is a Multi-grade Bid or not;
  - (ii) for a Multi-grade Bid, the Grade Spread for the Grain;
    - (A) the season;
    - (B) the Delivery Site; and
    - (C) the Delivery Period; and
    - (D) any other variation which the Buyer specifies or agrees to; and
- (d) in the case of a Track Contract the Natural Terminal Port from which Delivered Sites the Buyer is willing to buy Grain.

**Bid Price** means the Price contained in a Bid on the Clear System.

**Bid Quantity** means the quantity of Grain the subject of a Bid.

**Broker Contract Note** means summary of an Acceptance of match of a Bid and an Offer for a

Forward Contract issued by Clear, including all parameters required specified on Clear's form of broker contract note. The Broker Contract Note will not set out the Clear Fees, which are published by Clear from time to time.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.

**Business Hours** means the hours between the applicable Market Open and the applicable Market Close on a Business Day;

**Buyer means** a Registered User who is seeking to purchase Grain, a gTicket or part of a gTicket.

**Cash Management Account** means a bank account held by the Custodian for the purpose of holding money of a Registered User or of Registered Users.

**Circle Trade** has the meaning ascribed to that term in the Trade Rules as amended from time to time, or as otherwise notified by Clear from time to time.

**Clear** means Clear Grain Pty Ltd trading as Clear Grain Exchange ABN 63 615 342 026.

**Clear Fee** means the amount charged by Clear to a Registered User as published from time to time on the Clear System.

**Clear Release Fee** means the fee payable to Clear and published by Clear (from time to time) with respect to the Release of a gTicket.

**Clear's Storage Provider Agreement** means the agreement between a particular Storage Provider (storing the Grain the subject of the relevant gTicket) and Clear concerning Grain the subject of a gTicket, the terms of which agreement (including terms relating to the storage, handling and dealing with the Grain) are accessible via the Site.

**Clear System** means the web based platform enabling users to deal in Grain, including to record Bids and Offers for the purchase and sale of Grain, through the Site.

**Client** means the person entitled to an Outturn of Grain corresponding to a gTicket, who may be described as the "client", "acquirer", "purchaser", "owner", "buyer", "trader", "grower" or any other term in a Storage Provider Agreement.

**Commencement Time in respect of a Bid or an Offer** means the date and time (being the commencement of the applicable Business Hours for that date) on which the Bid or Offer commences.

**Contract Settlement** means the service of transferring title of Grain and money in accordance with clause 13

of these Terms and Conditions, or as otherwise notified by Clear from time to time.

**Controller** means, in relation to a person:

- (a) receiver, receiver and manager, administrator or liquidator (whether provisional or otherwise) of that person or that person's property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that person's property to enforce an Encumbrance.

**Counterparty Trading Limits** means the specific list of Sellers and Buyers that a Registered User may set trading limits on in the Clear System to restrict the volume a Registered User may trade with any other Registered User in a Forward Contract or a Track Contract. A Registered User's Counterparty Trading Limits are specific to that particular Registered User.

**Court** means a court of law having jurisdiction to make a determination in relation to matters arising connected to the Terms and Conditions or transactions contemplated by the Terms and Conditions.

**Custodian** means Perpetual Nominees Limited ABN 37 000 733 700.

**Custody Account** means the bank account nominated by the Custodian and communicated to the Buyers by Clear to pay all Fees and the Total Sale Price and any other amounts to be paid by the Buyer in accordance with these Terms and Conditions.

**Custody Agreement** means the Custody Agreement between Clear Grain Pty Ltd and the Custodian dated 15th October 2008 amended and supplemented from time to time.

**Custody Fee** means the amount calculated in accordance with clause 16.2.

**Daily Purchase Limit** has the meaning ascribed to that term in clause 18.1(e)(ii).

**DCP Representative** means a person appointed by a Registered User in accordance with clause 1.2(c);

**Delivered Site** (also referred to as "Delivered Silo") has the meaning ascribed to that term in the GTA Trade Rules and Contracts as amended from time to time, or as otherwise notified by Clear from time to time. That is, all Storage Provider receival charges and any other in-bound charges (including shrinkage) are for Buyers' account, payable to Sellers with the purchase price and calculated at the Storage Provider's Public Tariff rates current at the time of transfer. Any transfer fees by the relevant Storage Provider are to be for Seller's account.

**Delivery Period** means the calendar month in which Grain must be delivered under a Forward Contract or Track Contract.

**Delivery Period Expiry Date** means the date 2 Business Days prior to the end of the Delivery Period.

**Delivery Site** means the location to which the Grain will be delivered in a Forward Contract or Track Contract.

**Deposit means** the entry of Grain into the Clear System by any one of the following:

- (a) nomination pursuant to clause 2.1(a);
- (b) transfer; or
- (c) automatic operation pursuant to clause 2.1(b).

**Deposit Information** means:

- (a) the name, User Details and any other details of the person who Deposits the Grain into the Clear System or for whom the Grain is Deposited into the Clear System;
- (b) the quantity of Grain; and
- (c) the Specifications.

**Designated Credit Provider** means a person that Clear has designated as a Designated Credit Provider in accordance with clause 1.5.

**Dispute Resolution Rules** means the document entitled "Grain Trade Australia Dispute Resolution Rules", that is in effect at the time of Arbitration (as defined in those rules) and published by Grain Trade Australia (or its successor), or any other document of any other name that addresses the same issues as the "Grain Trade Australia Dispute Resolution Rules".

**Document** has the same meaning as the term "Work" in the *Copyright Act*.

**Encumbrance** means:

- (a) an interest or power reserved in or over an interest in an asset, including any retention of title;
- (b) an interest or power created or arising in or over an interest in an asset under a bill of sale, mortgage, charge, lien, pledge, trust or other similar instrument, device or power; or
- (c) any other adverse right, title or interest of any nature, by way of security for the payment of a debt or the performance of any other obligation,

and includes any agreement or arrangement (whether legally binding or not) to grant or create any of the above (and for clarity, Encumbered shall have a corresponding meaning).

**Expiry Time** in respect of a Bid or an Offer means the close of the applicable Business Hours on the date on which the Bid or Offer expires.

**Fees** means collectively the Custody Fee, Storage Provider Fees, Late Fees and the Clear Fee, and any Interest, Levies & Other Fees in respect of those fees.

**Forward Contract** means a contract for Grain to be delivered in the future, Accepted in accordance with clauses 8 to 11.

**Grade Spread** means the grade spread specified in a Multi-grade Bid, which specifies the effect on the Price of a particular grade of Grain being delivered in a Multi-grade Sale Contract.

**Grain** means:

- (a) any commodity which can be deposited with a Storage Provider; and
- (b) any other products which Clear nominates as being able to be deposited in the Clear System.

**Grower** means the grower of Grain who as part of their farming business delivers Grain to a Storage Provider.

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental, local governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

**Grower Forward Contract Exclusion List** means the list of the National Grower Registry numbers of the Growers that a Buyer will not purchase Grain from in a Forward Contract, which the Buyer may create in the Clear System.

**GST** has the meaning as provided in clause 17.

**GTA Contract** means any relevant standard form contract of sale, as published from time to time by Grain Trade Australia (or such successor or replacement association or organisation), the Trade Rules and the Dispute Resolution Rules and, if the standard form contract and the Trade Rules and/or the Dispute Resolution Rules are inconsistent, the Trade Rules and/or the Dispute Resolution Rules prevail to the extent of the inconsistency.

**gTicket** means an electronic certificate in respect of a quantity, Storage Provider, bin grade and location of Grain which has been deposited into the Clear System.

**Insolvency Event** means, in relation to a Registered User or Clear, any one or more of the following events or circumstances:

- (a) an order being made, or the person passing a resolution, for its winding up;
- (b) an application being made to a court for an order for its winding up unless the application is withdrawn or dismissed within 5 Business Days;
- (c) the person suspending payment of its debts, ceasing to carry on all or a material part of its business or becoming otherwise insolvent;
- (d) the person being taken by applicable law to be unable to pay its debts or be otherwise insolvent;
- (e) the holder of any security interest taking possession of any of the person's property;
- (f) being in liquidation or provision liquidation or under administration;
- (g) having a Controller or analogous person

- appointed to it or any of its property;
- (h) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
  - (i) the person taking any step towards entering into a formal compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
  - (j) any analogous event,

unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, compromise, arrangement, merger or consolidation approved by Clear.

**Integrated Bulk Grain** means Grain deposited with an Integrated Storage Provider that is not Nominated Grain nor Automatic Grain.

**Integrated Storage Provider** means a Storage Provider that provides Clear with integrated access to its warehousing and/or storage and handling systems.

**Interest** means interest payable (if any) pursuant to any clause of the Terms and Conditions, such Interest which will:

- (a) have an annual interest rate equal to the Interest Rate;
- (b) be calculated daily;
- (c) compounded monthly; and
- (d) with respect to a Registered User's Grain, shall accrue from the date of any invoice issued by or to Clear.

**Interest Rate** means the rate published and updated on the Clear Site from time to time.

**Late Fee** means the late fee published and updated on the Clear Site from time to time.

**Law** means:

- (a) principles of law or equity established by decisions of courts;
- (b) statutes, regulations or by-laws of the Commonwealth, a State a Territory or a Government Agency; and
- (c) requirements and approvals (including conditions of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.

**Levies & Other Fees** includes all:

- (a) Australian Federal and State government and instrumentality taxes, fees, duties, levies and charges;
- (b) non-government industry fees, duties, levies and charges;
- (c) industry membership fees and levies;
- (d) intellectual property royalties;
- (e) any other fees, levies and/or charges agreed by a Registered User to be the responsibility of the Registered User,

applicable to a transaction contemplated by the Terms and Conditions (including GST).

**Location Differentials** has the meaning ascribed to

that term in the GTA Contract, as amended from time to time, or as otherwise notified by Clear from time to time.

**Long Acceptance Window** means the shorter of 2 hours from the match being made in accordance with clause 9 and the period between the match being made and the applicable Market Close.

**Market Close** means a computer generated random time between 6:30pm and 6:35pm in Sydney or the time at which the Clear System ceases matching Bids and Offers in a location on any Business Day.

**Market Open** means a computer generated random time between 10:00am and 10:05am in Sydney or the time at which the Clear System commences matching Bids and Offers in a location on any Business Day.

**Matched Bid** has the meaning ascribed to that term in clause 5.3(b).

**Matched Offer** has the meaning ascribed to that term in clause 5.3(a).

**Minimum Forward Quantity** means the minimum forward quantity published by Clear for Forward Contracts or Track Contracts from time to time.

**Minimum Spot Quantity** means the minimum quantity for Spot Offers (other than in respect of Automatic Grain) published by Clear from time to time.

**Multi-grade** means in relation to delivery of a range of possible grades of Grain, with an accompanying Grade Spread.

**Natural Terminal Port** or **NTP** has the same meaning ascribed to that term in the Trade Rules as amended from time to time, or as otherwise notified by Clear from time to time.

**Net Sale Proceeds** means the Total Sale Price less the applicable Fees.

**National Grower Registry** or **NGR** means the National Grower Registry Pty Limited CAN 095 857 266 and any successor or assign or any other entity that performs the same or similar function.

**Nominated Grain** has the meaning ascribed to that term in clause 2.1(a).

**Non Clear Fees** has the meaning ascribed to that term in clause 16.10(b).

**Non Clear Site** has the meaning ascribed to that term in clause 22.3(g).

**Offer** means an offer by a Seller to sell a quantity of Grain with particular Specifications, from a particular

location, from a particular Storage Provider, for a particular Price as recorded on the Clear System.

**Offer Parameters** means:

- (a) a Price for Grain and its Specifications;
- (b) in the case of a Spot Contract, the locations and Storage Providers to which the Seller is willing to sell Grain;
- (c) in the case of a Forward Contract:
  - (i) the Delivery Site and the Secondary Delivery Site;
  - (ii) the Base Bin Grade and whether it is a Multi-grade Offer or not;
  - (iii) the season; and
  - (iv) the Delivery Period.

**Offer Price** means the Price contained in an Offer on the Clear System.

**Offer Quantity** means the quantity of Grain the subject of an Offer.

**Offer Sheet** means any document or any other repository of information (including computer or electronic file) on or in which the Seller indicates its intention to sell Grain.

**Outturn** means the physical removal of Grain from a Storage Provider storage facility.

**Owner in respect of a gTicket** means the owner of the gTicket.

**Perpetual Group** means Perpetual Limited and its related bodies corporate, including the Custodian.

**Pre-paid Fees** has the meaning ascribed to that term in clause 16.3(b).

**Price** means a price per metric tonne that is expressed GST exclusive.

**Registered User** means a person who is registered to use the Clear System in accordance with clause 1.2, whose registration has not subsequently been cancelled.

**Related Company** means a body corporate which is related to Clear under section 50 of the Corporations Act 2001 (Cth).

**Release** means the cancellation of a gTicket and the removal of the Grain the subject of that gTicket from the Clear System, preventing either the gTicket or the said Grain from being subject to an Offer or a Bid.

**Replacement gTicket** has the meaning ascribed to that term in clause 13.2(c)(ii).

**Sale Contract** means the contract which comes into force between a Buyer and a Seller pursuant to clause

7 or clause 11, which contract incorporates all relevant parts of the Terms and Conditions, the details of the Settlement Period and the Broker Contract Note (in a Forward Contract and Track Contract) and, by reference, the provisions of the GTA Contract, in respect of which:

- (a) where the Sale Contract is a Spot Contract and is between a Seller (who is not a Grower) and a Buyer, the 'GTA Contract number 2 – Grain and Oilseed in Bulk' shall apply;
- (b) where the Sale Contract is a Spot Contract and is between a Seller (who is a Grower) and a Buyer, the 'GTA Contract number 3' shall apply;
- (c) where the Sale Contract is a Forward Contract, the 'GTA contract number 3' shall apply;
- (d) where the Sale Contract is a Track Contract, the 'GTA contract number 2 – Grain and Oilseed in Bulk; shall apply; and
- (e) in no case may the provisions of the GTA Contract forming part of the Sale Contract include those provisions in the GTA Contract that relate to title transfer and retention of title.

and if the Terms and Conditions and the provisions of the GTA Contract are inconsistent, the Terms and Conditions prevail to the extent of the inconsistency.

**Sale Grain** means the Grain which is the subject of a Sale Contract.

**Sale Price** means the Price contained in the relevant Sale Contract.

**Sale Quantity** means the quantity of Grain which is the subject of a Sale Contract.

**Secondary Delivery Site** means the location to which the Grain may be delivered in a Forward Trade (in accordance with the Sale Contract) if the Grain is not able to be delivered to the Delivery Site.

**Seller** means a Registered User who is seeking to sell:

- (a) the Grain represented by a gTicket or part of a gTicket and/or
- (b) Integrated Bulk Grain or a Grower who is seeking to sell Grain in a Forward Contract or a Nominated Grain Sale Contract or a Track Contract.

**Settlement Date** means the date upon which:

- (a) the Custodian provides notification that it has received payment in cleared funds of the Total Sale Price;
- (b) in the case of a Nominated Grain Sale Contract, the Sale Quantity has been Deposited and a g-Ticket issued and suspended for the Sale Quantity; and
- (c) the Custodian and Clear complete the events outlined in clause 13.2.

**Settlement Expiry Date** means 5pm (Sydney time) on the day being the last day of the Settlement Period.

**Settlement Period** means:

- (a) in the case of a Spot Contract, five (5) Business Days after the creation of a Sale Contract (excluding the day the Sale Contract is created) or such shorter or longer period as notified by Clear in accordance with the terms and conditions from time to time; and
- (b) in the case of a Forward Contract, five (5) Business Days from the date on which the Sale Quantity is Deposited into the Clear System and Clear has issued and suspended a g-Ticket in respect of the Sale Quantity (excluding the day the Grain is Deposited).

**Share Farm** means any farm or other agricultural enterprise in respect of which two or more Registered Users are entitled either to the Grain produced on or by that enterprise or the proceeds from the sale of that Grain.

**Sharer** means a Registered User that is a party to or otherwise involved in a Share Farm.

**Short Acceptance Window** means the shorter of 10 minutes from the match being made in accordance with clause 9 and the period between the match being made and the applicable Market Close.

**Site** means the website located at [www.cleargrain.com.au](http://www.cleargrain.com.au) which provides access to the Clear System, or any other website (if any) as advised by Clear.

**Specification** means the information that describes Grain, being information that would ordinarily be included in a warehouse receipt, weighbridge notice or any other "ticket", "receipt", "docket" or similar document issued by a Storage Provider to a person depositing Grain with a Storage Provider and which includes the commodity, type, protein content, bin grade, and moisture content of the Grain.

**Special Crossing** means a Bid and Offer which has been fixed by the relevant parties and specified as a special crossing or a pool transfer on the Clear System.

**Spot Contract** means a contract for the delivery of Grain already in existence, agreed in accordance with clauses 4 to 7.

**Storage Provider** means a bulk handling company which stores Grain on behalf of the grain industry participants and with whom Clear has entered into an agreement to participate in the Clear System.

**Storage Provider Agreement** means the agreement between the Storage Provider (storing the Grain the subject of the relevant gTicket) and the Owner entitled to the Outturn of that Grain (including terms relating to the storage, handling and dealing with the Grain), including, but not limited to, warehousing agreement and storage and handling agreement.

**Storage Provider Fees** means the receipt, storage, handling and other fees charged by or payable to a Storage Provider with respect to Grain corresponding to a gTicket, accruing as from the time the Grain is deposited with the Storage Provider until the day the Grain is Released.

**Suspended gTicket** means a gTicket that has been suspended in accordance with these Terms and Conditions, and "Suspended" has a corresponding meaning.

**Terms and Conditions** means these terms and conditions, including the background, any schedules and any annexures and all amendments and changes thereto from time to time.

**Total Sale Price** means the Sale Price multiplied by the Sale Quantity plus the Clear Fee and, in the case of a canola spot contract, calculated in accordance with clause 7.3(d), and in the case of a Forward Contract, calculated in accordance with clause 11.4.

**Track Contract** means a contract for Grain to be delivered in the future or the delivery of Grain already in existence, Accepted in accordance with clauses 8 to 11.

**Trade Information** means any information (including statistics), in whatsoever form, concerning the following:

- (a) the Bids and Offers on, or otherwise generated by, the Clear System;
- (b) gTickets;
- (c) Registered Users, insofar as it is relevant to the Bids and Offers on, or otherwise generated by, the Clear System or to gTickets;
- (d) the Grain that corresponds to any gTicket; and
- (e) any other trading activity on the Clear System or otherwise facilitated by Clear in respect of Grain,

which includes (and without limitation) the following:

- (f) the daily cash price for Grain;
- (g) Grower payments for Grain on the Clear System;
- (h) Share Farm splits;
- (i) freight rates relevant to the transport of Grain on the Clear System;
- (j) Grower information;
- (k) Specifications;
- (l) Deposit Information; and
- (m) traded prices for Grain.

**Trade Rules** means the document entitled "Grain Trade Australia Trade Rules", that is in effect at the time a Sale Contract is generated and published by Grain Trade Australia (or its successor), or any other document of any other name that addresses the same issues as the "Grain Trade Australia Trade Rules".

**Trade Settlement Note** means:

- (a) in the case of a Spot Contract, a summary of an Acceptance of a Bid or Offer and at the discretion of Clear may include applicable invoices, details of one or more of the gTicket, User Details, Sale

Price, Sale Quantity, Fees, applicable Levies & Other Fees, Total Sale Price and the applicable Settlement Date; and

- (b) in the case of a Forward Contract, a notice of the Final Sale Price and at the discretion of Clear may include applicable invoices, details of one or more of the gTicket, User Details, Sale Price, Sale Quantity, Fees and applicable Levies & Other Fees.

agency or body which performs most closely the functions of the defunct body.

**Unencumbered** means not subject to an Encumbrance.

**User Details** means the document issued by a Storage Provider to the Client when the Client deposits grain with that Storage Provider and also includes the personal identification details of the Client, the Specifications, the relevant banking details of the Client and the terms of any Storage Provider Agreement (entered into by the Client and the Storage Provider) or Clear's Storage Provider Agreement (entered into by Clear and the Storage Provider) and may include information from NGR and/or from Storage Providers and if NGR and/or any particular Storage Provider cease to exist or fail or refuse to provide access to Clear to an information system that will capture and transmit data such as described above, "User Details" means similar information provided by another source, such source as determined by Clear in its discretion.

## 27. Interpretation

In the Terms and Conditions, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings are used for convenience only and do not affect the interpretation of the Terms and Conditions;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) the word "person" includes a natural person and any body or entity whether incorporated or not;
- (g) the word "month" means calendar month and the word "year" means 12 months;
- (h) the words "in writing" include any communication sent by letter, facsimile transmission or email or any other form of communication capable of being read by the recipient;
- (i) a reference to a thing includes a part of that thing;
- (j) a reference to all or any part of a statute, rule, regulation or ordinance (statute) includes that statute as amended, consolidated, re-enacted or replaced from time to time;
- (k) wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)";
- (l) money amounts are stated in Australian currency unless otherwise specified; and a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed (defunct body), means the