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**Plum Grove South Australia Aggregated Grain Program
General Terms & Conditions**

30/10/2015

For “AGG Protect Barley”

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1. Definitions & Interpretation

1.1 Definitions

Advance Payment means the payment options set out in clause 10.4 and calculated in clause 10.7.

AGG means Australian Grain Growers Co-op Ltd (ABN 33 719 186 591), the promoter of this Aggregated Grain Program.

Aggregated Grain Program means a quantity of grain aggregated by the Buyer from one or more sources (sellers) which grain is determined by the Buyer to be generally homogenous according to relevant location, harvest time, characteristics and Grades and which the Buyer will collectively market and sell.

Aggregated Grain Program Costs means for each Aggregated Grain Program, the aggregate of the fees set out in clause 9 (including the Aggregated Grain Program Management Fee) plus any applicable GST.

Aggregated Grain Program Mandate means the manner in which the Buyer seeks to sell, risk manage or otherwise obtain the return for the Seller.

Aggregated Grain Program Management Fee means the fee described in clause 9.2.

Authorise, Authorised and Authorising means (in the context of a Contract Confirmation) signing or otherwise communicating acceptance, affirmation or authorisation by conduct, word, or document.

BHC means a bulk handling company approved by the Buyer from time to time and notified as approved on the Website.

Buyer means Plum Grove SA (PGSA) PTY LTD (ACN 137 073 851). PGSA PTY LTD manage this product and market grain committed to the product independently under contract to Australian Grain Growers Co-op Ltd. PGSA PTY LTD does not engage in any activity other than those directly connected with and necessary for the purpose of operating Aggregated Grain Programs.

Cash Sales Program means the Aggregated Grain Program for barley delivered by the Seller.

Contract means the contract formed between the Buyer and the Seller and set out in a Contract Confirmation in combination with These Terms.

Contract Confirmation means any method by which the Seller communicates to the Buyer that it intends to sell a quantity of grain to the Buyer on the terms of the Aggregated Grain Program (either then on offer, or next to be offered) by the Buyer whilst These Conditions are publicly expressed to apply to the Cash Sales Program. For the absence of doubt:

- (a) any document or set of documents or electronic instructions directing a BHC to transfer a delivery of grain at a BHC Silo to the account of the Aggregated Grain Program will constitute a Contract Confirmation.

Deferred Payment has the meaning given by clause 10.5 and as calculated in clause 10.7.

Deliver and **Delivery** mean actual transfer of full legal title to, or possession of, physical grain from the Seller to the Buyer by:

- (a) in the case of a physical delivery of Grain directly to the account of the Buyer with a BHC, when that Grain is unloaded in accordance with the instructions of a representative of a BHC;
- (b) in the case of an In Store Transfer of the Grain, when a BHC notifies the Buyer that it now holds the Grain on behalf of the Buyer and not for the Seller.

Distributions means regular payments from an Aggregated Grain Program as set out on the Website as detailed in clause 11.

Encumbrance means any security for the payment of money or the performance of obligations, including any mortgage, charge, hypothecation, lien, crop lien, pledge, trust, Security Interest, Purchase Money Security Interest or any other interest in or over property.

Encumbrancer the holder of an Encumbrance over the Grain the subject of a Contract.

Estimated Costs means, in respect of each Aggregated Grain Program, the Buyer's best estimate of the amount payable under clause 9, per tonne of Grain delivered to that Aggregated Grain Program.

Estimated Product Return (EPR) means the estimate of the Final Price that the Buyer (in its absolute discretion in all respects) publishes on the Website from time to time

Final Price means the amount (excluding GST) per tonne of Grain on a Port basis which is published by the Buyer on the Website following Final Payment for the Aggregated Grain Program.

Final Payment means the payment of the balance of the Price after taking into consideration all other payments made or to be made between the Seller and the Buyer.

Flexi Loan means the option for the seller to flexibly drawdown up to a credit limit provided by the buyer as requested by the seller as detailed in clause 10.2 and as calculated in clause 10.6.

Grain means the grain specified in a Contract Confirmation

Grade means each classification into which the Buyer divides Grain according to its qualities and characteristics, as is set out in the Contract Confirmation.

Gross Final Price means the amount (excluding GST) per tonne of Grain on a Port basis which is achieved by the Buyer for the Aggregated Grain Program.

GST means goods and services tax as is imposed by the GST Law, or any other consumption based tax imposed upon the supply of the Grain by the government of the Commonwealth of Australia or any State or Territory of Australia.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

Harvest Loan means the provision by the buyer of a credit limit to the seller if the grower requests as detailed in clause 10.3 and as calculated in clause 10.6.

In Store Transfer means a transfer of beneficial ownership of grain within the books of account of a BHC, from the Seller to the Buyer.

Interest Rate means the interest rate published from time to time under the heading “Aggregated Grain Program Interest Rate” in the “Estimated Final Prices” section of the Website calculated daily and charged or compounded monthly. Any increase or decrease in the Interest Rate will apply immediately from the date on which it is published at the above location.

NGR means the register of grower details operated by National Growers Register Pty Ltd

Nomination Period is the period during which the Aggregated Grain Program is open for deliveries. This is the ‘harvest period’ and will be published on the Website by the Buyer.

Payment means a payment of a portion of the Estimated Final Price, to the credit of the Seller.

PPSA means the Personal Property Securities Act (2009) (Cth) as amended or replaced from time to time.

Price means the total consideration payable by the Buyer to the Seller in respect of any particular Contract.

Privacy Act means Privacy Act 1988 (Cth)

Purchase Money Security Interest has the meaning ascribed to that term in the PPSA

Quality means variations in Grade characteristics identified from time to time on the Website, which are material to the market price of the relevant Grade of Grain (either positively or negatively)

Season means the annual grain harvesting and delivery season for any particular Grain

Security Interest has the meaning ascribed to that term in the PPSA

Seller means the person named in the Contract Confirmation as the Seller of the Grain to be supplied to the Buyer

These Conditions means the general terms and conditions of the Cash Sales Program set out in this document.

Website means <http://www.aggcoop.com.au/>

1.2 Interpretation

In These Terms, the Contract Confirmation, unless the contrary appears;

- (a) a reference to the singular includes the plural and vice versa;
- (b) a reference to a natural person includes a reference to a body corporate and a reference to a company includes any body corporate;
- (c) words denoting gender will include all genders;
- (d) a reference to a clause or paragraph is a reference to a clause or paragraph in These Conditions;
- (e) references to any statute include a reference to that statute as amended, modified or replaced and include orders, ordinances, regulations, rules and by-laws made under or pursuant to that statute;
- (f) “includes” and “including” are not words of limitation;
- (g) where a word or phrase is given a particular meaning in this document, other parts of speech and grammatical forms of that word or phrase have corresponding meanings

2. Interaction with Contract Confirmation

2.1 Contract Confirmation

The terms of any Contract Confirmation will only include details as listed in the Contract Confirmation.

- (a) particulars of the load or loads of grain being sold by the Seller to the Buyer, including:
 - (i) NGR of the Seller;
 - (ii) particulars of the individual BHC grain weigh bridge tickets to be transferred to the Buyer and all information set out in those weigh bridge tickets;
- (b) particulars of any Advance Payment Option selected by the Seller.

The Contract Confirmation will not incorporate any other data, terms or information communicated by the Seller to the Buyer or any agent of the Buyer except to the extent that the information is incorporated into one or more documents which themselves form part of the Contract Confirmation. In the event of any inconsistency between These Terms and a Contract Confirmation, These Terms will prevail to the extent of the inconsistency.

2.2 Entire Agreement

The terms of each Contract Confirmation between the Buyer and the Seller and These Terms together form an entire and separate Contract between the Buyer and the Seller. For the absence of doubt, the Grain Trade Australia (“GTA”) standards are hereby excluded, as is access to GTA arbitration.

3. Purchase of Grain

3.1 Agreement to Buy & Sell

The Buyer agrees to buy and the Seller agrees to sell the Grain of such Grades and in such quantity or quantities as is set out in the Contract Confirmation for the Price.

3.2 Price

The Price will be determined according to the method set out in clause 8.5(c).

3.3 Payment

The Buyer will pay the Seller for the Grain the subject of a Contract, at the time or times determined according to These Conditions.

4. Seller Warranties & Indemnities

4.1 Warranties

Subject to clause 4.2, the Seller and each person Authorising a Contract Confirmation on behalf of the Seller, represents and warrants to the Buyer, as an express representation intended to induce the Buyer into the Contract that:

- (a) the Seller has good right and title to the Grain and is in all respects able to convey good, proper and unencumbered title to the Grain to the Buyer;
- (b) the Grain is not subject to any Encumbrance;
- (c) the Seller is solvent and able to pay all of its debts as and when they fall due;
- (d) title to the Grain will pass to the Buyer according to clause 6;
- (e) the Grain meets the quality and other standards prescribed by the Buyer for the Grades and volumes set out in the Contract Confirmation;
- (f) if the Seller holds the Grain as trustee of a trust, the Seller has proper authority to sell the Grain to the Buyer free of encumbrances;
- (g) all particulars supplied by the Seller and set out in the Contract Confirmation are true, correct and not misleading in any way and that the Seller will promptly advise the Buyer of any material change in any of those particulars;
- (h) the Seller has disclosed to the Buyer all information which a reasonable person in the position of the Buyer would consider relevant to their decision to purchase the Grain or to exercise any right or power under any Contract;
- (i) if Delivery has been effected by an In Store Transfer, that the BHC holds the Grain specified in the Contract Confirmation.

- (j) the Seller has provided the correct NGR details to the Buyer and the Seller is at all times responsible for the accuracy of the NGR database data.

Each warranty set out in this clause 4.1 is made upon the formation of each Contract and repeated and affirmed on each occasion that the Seller delivers Grain to the Buyer. The Warranty in clause 4.1(h) is an obligation of continuous disclosure, requiring the Seller to inform the Buyer immediately upon becoming aware of any relevant circumstance or thing.

4.2 Encumbrances

If the Grain is subject to any Encumbrance:

- (a) the Seller will not be in breach of clauses 4.1(a) or 4.1(b) to the extent that it has fully disclosed the Encumbrance, its nature and the details of the Encumbrancer to the Buyer in the Contract Confirmation; and
- (b) the Seller unconditionally and irrevocably authorises and directs the Buyer to:
 - (i) deduct from any amount payable to the Seller, the total of:
 - (A) the amount secured by any Encumbrance over the Grain and pay that amount to the relevant Encumbrancer; and
 - (B) the Buyer's reasonable calculation of its costs of dealing with and discharging the Encumbrances attaching to the Grain;
 - (ii) rely on the information provided by any Encumbrancer for the purposes of determining the payment necessary to discharge an Encumbrance and calculating any payment to be made under clause 4.2(b)(i)(A).
- (c) the Seller releases the Buyer from any claim, risk, liability or demand arising in connection with any deduction or inquiry made by the Buyer under clause 4.2(b).

4.3 Indemnities

The Seller and each person Authorising a Contract Confirmation on behalf of the Seller hereby jointly and severally undertakes to indemnify and forever hold the Buyer harmless against any loss, cost, demand, suit, liability or other adverse consequence arising from or in connection with any:

- (a) breach by the Seller of any provision of any Contract; and without limitation;
- (b) claim by any person claiming to hold an Encumbrance over the Grain, whether disclosed to the Buyer, or not;
- (c) any breach of any warranty set out in clause 4.1;
- (d) any incorrect, misleading or deceptive information provided by the Seller, or any person acting for or on behalf of the Seller, to the Buyer;

- (e) any failure by the Seller or any person acting for or on behalf of the Seller, to disclose any information to the Buyer, which a reasonable person in the position of the Buyer would have considered relevant to their decision to purchase the Grain or to the exercise of any right or power under any Contract;
- (f) any claim, cost, loss or damage arising out of any circumstance in connection with the collection or return of Grain rejected by the Buyer under clause 4.4.

4.4 Right to Reject Grain

If any Grain of the Seller is the subject of a Contract and/or subject to any Encumbrance (whether disclosed by the Seller to the Buyer or not) or the Buyer becomes aware that:

- (a) any person claims an Encumbrance over the Grain, whether registered or not; or
- (b) the Seller has breached any warranty set out in clause 4.1; or
- (c) the Seller has committed any material breach of a Contract; or
- (d) the Grain is not of a Grade or grain type acceptable to the Buyer;

the Buyer may at any time which is within thirty (30) days after the date on which the Buyer becomes aware of the relevant circumstance, elect to reject the Seller's Grain. If the Buyer notifies the Seller under this clause 4.4 that it has rejected the Seller's Grain:

- (e) the Seller must at its own cost collect its Grain, or if the Grain has been combined or comingled with other Grain, such other grain of the same Grade and quantity as the Buyer determines, from the location at which the BHC is then storing the relevant Grain; and
- (f) if the Seller fails to collect its grain within seven (7) days of receiving notice under this clause 4.4, the Buyer may deliver the Seller's grain to the Seller, less such portion of the Grain as the Seller considers is reasonable to cover its costs of the processing and returning of the Seller's Grain (and the Seller hereby grants to the Buyer an irrevocable license to enter into the Seller's property to deliver and return the Grain); and
- (g) subject to the Buyer's obligation to return the Grain, the Seller's rights under the Contract relating to the Grain will be entirely discharged and the Seller will have no further claim against the Buyer under the Contract.

4.5 Acceptance of Grain

The Buyer will be taken to accept any Grain the subject of a Contract:

- (a) when the Buyer expressly notifies the Seller that the Buyer has accepted the Grain; or
- (b) fourteen (14) days from the date on which the Grain is Delivered to the Buyer; or
- (c) if the Buyer makes a payment to the Seller in respect of or in connection with the Grain;

BUT such acceptance is at all times subject to the Buyer's right to reject the Grain under clause 4.4, whether such right accrues to the Buyer before or after deemed acceptance under this clause 4.5.

5. Grain Delivery, Quality & Inspection

5.1 Delivery of Grain

All Grain the subject of a Contract must be delivered by the Seller to a silo operated by a BHC, at the cost of the Seller. If the Seller purports to deliver Grain to an Aggregated Grain Program and that Grain does not meet the requirements as to Grade, Quality or grain type published from time to time by the Buyer on The Website, or the delivery is made other than in accordance with the Contract, the Seller will bear all of the Buyer's costs associated with rectifying or rejecting that delivery.

5.2 Inspection of Grain

The Buyer may (itself or by its authorised representative) inspect the Grain to determine its weight, Grades and any Quality variations within given Grades. The Buyer's determination of Grade and Quality variations will be final and binding except in the case of manifest error. The weight of a delivery of Grain will be determined:

- (a) in the case of a physical delivery of Grain, by an approved weighing facility with the relevant BHC; and
- (b) in the case of an In Store Transfer of Grain, according to the original weigh bridge ticket supplied by the relevant BHC for that Grain.

The Buyer may reject any Grain that does not meet its published Grade requirements, or is delivered other than in accordance with a Contract or after the Buyer announces on the Website that it is no longer accepting contributions to the Aggregated Grain Program.

5.3 Failure to Deliver Contracted Grain

If the Seller fails to deliver Grain to the Buyer in accordance with a Contract:

- (a) the Seller will remain liable to AGG for the Aggregated Grain Program Management Fee that the Buyer would have been entitled to claim or charge in respect of the contracted volume of Grain, had the Seller delivered the Grain; and
- (b) the Buyer may also charge a contract administration fee of \$200, to cover its costs associated with the Buyer's entry into and default of the relevant contract; and
- (c) the Seller will indemnify and forever hold the Buyer harmless against any trading or operational loss, cost, exposure or risk incurred or suffered by the Buyer in connection with or as a consequence of the Seller's failure to deliver Grain.

The Seller will bear the Buyer's costs (including legal costs on a full indemnity basis) of recovering any sum owing to the Buyer under this clause 5.3, or otherwise in connection with the Seller's failure to deliver grain in accordance with a Contract.

6. Title & Risk

6.1 Title

Legal and beneficial title to all Grain the subject of a Contract will pass to the Buyer when the Grain is accepted by the Buyer in accordance with clause 4.5; notwithstanding that the Buyer may not have paid any Part of the price to the Seller; BUT the Seller may not under any circumstances:

- (a) reclaim or repossess any Grain the subject of a Contract; or
- (b) or rescind a Contract prior to acceptance under clause 4.5; or
- (c) register a Financing Statement in respect of the Buyer or do any other act or thing in order to claim or perfect a Security Interest or a Purchase Money Security Interest as against the Buyer;

6.2 Risk

Without prejudice to the Buyer's rights to recover any debt or sum from, or exercise any other right against the Seller under or in connection with These Terms, physical risk associated with all Grain the subject of a Contract will pass to the Buyer when the Grain is Delivered by the Seller. Market and credit risk associated with the Grain will remain with the Seller at all times.

7. Lien

7.1 Waiver of Lien

The Seller waives any claim to a lien or other form of Encumbrance over the Grain the subject of a Contract Confirmation, whether arising at law, equity, or otherwise.

8. Aggregated Grain Program Establishment & Operation

8.1 Risks of Entering the Aggregated Grain Program

The Seller should be aware that entering the Aggregated Grain Program can come with considerable risks. These risks can be, but are not limited to, the following:

- (a) Commodity price risk, which is defined as an adverse movement in the price of the commodity affecting your anticipated returns. The Aggregated Grain Program works to a mandate however the mandate followed may not yield the best result that could have otherwise been achieved by the Seller;
- (b) Basis price risk, is the risk that the Buyer will not be able to sell the physical component of the Grain in an optimum manner due to seasonal, market or other conditions;
- (c) Foreign currency risk, is the risk that the value of the Grain will be adversely affected by movements in the Australian dollar;

- (d) Mandate risk, is the risk that the Buyer will not be able to stay within the confines of the Aggregated Grain Program Mandate due to unforeseen or circumstances out of its control;
- (e) Production risk, is the risk that between the time of contracting and the time of delivery, the Seller will not be able to meet the contract specifications. The Seller should adequately provide for a buffer to ensure the ability to meet the contract specifications.
- (f) Logistics risk, is the risk that in the performance of its obligations under the Aggregated Grain Program, the Buyer will encounter issues with the physical movement, shipment or storage of the Grain that will adversely affect the returns of the Aggregated Grain Program.

8.2 Aggregated Grain Program Mandate

The Buyer will publish on The Website the sales and hedging mandate for the Aggregated Grain Program

8.3 Use of Risk Mitigation Tools (Derivatives)

The Seller acknowledges that the Aggregated Grain Program is a risk management product that may use derivative financial instruments such as, but not limited to, exchange traded or 'over the counter' futures, options and swaps for both grain and currency.

8.4 Establishment of Aggregated Grain Programs

The Buyer will from time to time (generally each Season) operate an Aggregated Grain Program for the marketing of Grain under the style of the Cash Sales Program. All grain purchased by the Buyer from any seller of Grain under a Contract (during the period that any given Aggregated Grain Program remains open) will be contributed into the open Aggregated Grain Program and (subject to These Terms) treated equally with all other Grain so contributed.

8.5 Operation of Aggregated Grain Programs

The Seller acknowledges to the Buyer:

- (a) that the Buyer will operate one or more Aggregated Grain Programs in respect of grain of one or more Grades and will contribute the Grain to the Aggregated Grain Program which the Buyer considers to be most consistent with the Grain.
- (b) the Buyer may:
 - (i) sell Grain contributed to an Aggregated Grain Program at such times, in such manner, for such consideration and to such persons (including the Buyer or any entity associated with, or related party to, the Buyer); and
 - (ii) in respect of each Aggregated Grain Program, use such risk management and hedging strategies and techniques; and

- (iii) accept such quantity of grain into a given Aggregated Grain Program; and
- (iv) close any given Aggregated Grain Program at such time and with or without such notice;

as the Buyer may determine in its absolute and unfettered discretion. The Buyer will publish The Website details of the port zones and BHCs within which it can accept Grain into the Aggregated Grain Program.

- (c) the Price payable to the Seller in respect of a particular Contract will be the aggregate of the separate amounts payable by the Buyer to the Seller for each Grade and Quality of Grain delivered by the Seller under that Contract. The amount payable by the Buyer to the Seller per Aggregated Grain Program, will be the Final Price (on a “per tonne” basis) for each Aggregated Grain Program multiplied by the total number of tonnes of grain delivered to that Aggregated Grain Program by the Seller, less the Aggregated Grain Program Costs (on a “per tonne” basis).
- (d) the Buyer has no liability to the Seller arising out of or in connection with the exercise of its discretions set out in clause 8.1(b) and the Seller hereby releases the Buyer to the maximum extent possible at law, from any claim, loss, action, suit or demand that the Seller might have against the Buyer but for the operation of this clause 8.1(d).

8.6 Independent Review of Aggregated Grain Program

The Buyer will cause each Aggregated Grain Program to be independently reviewed within six (6) months of its Final Payment and the Seller may obtain a copy of the report relating to any Aggregated Grain Program into which the Grain has been contributed upon request.

9. Aggregated Grain Program Costs

9.1 Aggregated Grain Program Costs

All costs associated with the establishment, promotion, management and operation of the Aggregated Grain Program will be accounted for as a cost to the Aggregated Grain Program in determining the Final Price. Those costs include, but are not limited to, costs associated with receipt, transport, transfer, insurance, storage, handling, outturn, distribution, finance, audit functions, underwriting and interest and any statutory and other levies. Aggregated Grain Program costs also include all costs of complying searching, investigating and discharging securities on all Grain contributed to a Cash Sales Program, including but not limited to compliance with PPSA.

The Seller acknowledges that the Buyer will use ‘Grain Trade Australia’ (GTA) Location Differentials for that Season as published by GTA from time to time.

9.2 Aggregated Grain Program Management Fees

The Aggregated Grain Program Management Fee will be five dollars and ninety five cents (\$5.95) per metric tonne of the total aggregate Gross Final Price.

10. Advanced Payment Options

10.1 Options

The Seller may, prior to formation of a Contract, elect to receive a payment under that Contract in one of the following ways:

- (a) Flexi Loan – on the terms set out in clause 10.2;
- (b) Harvest Loan – on the terms set out in clause 10.3;
- (c) Advance Payment – on the terms set out in clause 10.4;
- (d) Deferred Payment – on the terms set out in clause 10.5;

Growers not electing an Advanced Payment Option will receive payment subject to clause 11.0.

10.2 Flexi Loan

A “Flexi Loan” is:

- (a) a loan facility to be made available by the Buyer to the Seller; and
- (b) with a facility limit set according to the formula in clause 10.6(a); and
- (c) otherwise on the terms set out in clause 10.6.

10.3 Harvest Loan

A “Harvest Loan” payment is:

- (a) a loan payable by the Buyer to the Seller;
- (b) in an amount calculated according to the formula in clause 10.6(a); and
- (c) otherwise on the loan terms set out in clause 10.6.

10.4 Advance Payment

An “Advance Payment” is a part payment of the Price by the Buyer to the Seller, on the following terms:

- (a) the amount of the actual payment will be the amount determined by the formula set out in clause 10.7(a); and
- (b) an amount calculated according to the formula in clause 10.7(b) will be offset against the Price; and
- (c) The Buyer will pay an Advance Payment, to the Seller on or before the date being five (5) days from the date of Delivery of the last of the relevant Grain (if that day is a Sunday) or otherwise from the Sunday in the calendar week following the date of Delivery of the last of the relevant Grain.

10.5 Deferred Payment

A “Deferred Payment” is a part payment of the Price by the Buyer to the Seller, on the following terms:

- (a) the amount of the actual payment will be the amount determined by the formula set out in clause 10.7(a); and
- (b) an amount calculated according to the formula in clause 10.7(b) will be offset against the Price; and
- (c) The Buyer will pay the Deferred Payment, to the Seller within fourteen (14) days of the first day of the month of July next following the relevant Delivery.

10.6 Loan Terms

- (a) The maximum amount of a Harvest Loan, or the facility limit of a Flexi Loan, will be an amount calculated as follows:

$A = [(EPR \times T) \times P] - (EC \times T)$

Where:

- A is the maximum amount to be loaned to the Seller or the facility limit (as the case requires) in respect of the relevant Grain;
 - EPR is the Estimated Product Return for the relevant Aggregated Grain Program delivered excluding GST (adjusted according to its constituent Grades and Qualities);
 - T is the number of tonnes of Grain delivered by the Seller into the Aggregated Grain Program;
 - P is the then current percentage draw down permitted by the Buyer (and published on the Website) for any Loans as the case may be; and
 - EC is the Estimated Costs for the Aggregated Grain Program excluding GST
- (b) The Buyer will make a Harvest Loan, to the Seller on or before the date being five (5) days from the date of Delivery (or Date of notification in the case of a Flexi Loan) of the last of the relevant Grain (if that day is a Sunday) or otherwise from the Sunday in the calendar week following the date of Delivery of the last of the relevant Grain.
 - (c) Interest will be payable on the outstanding maximum daily balance of the loan at the Interest Rate. For the purposes of this clause 10.6(c) a sum will only be outstanding once it has been drawn by the Seller.
 - (d) If the amount drawn on a Harvest or Flexi Loan exceeds the Price payable to the Seller in respect of the particular Contract:

- (i) the amount of the excess will be immediately repayable by the Seller to the Buyer, with or without demand; and
- (ii) the Buyer may offset any amount owed to the Buyer by the Seller against any other amount owed by the Seller to the Buyer under any other contract or otherwise.

10.7 Payment Terms

- (a) The maximum amount of an Advance Payment or Deferred Cash Payment, will be an amount calculated as follows:

$A = [(EPR \times T) \times P] - (EC \times T)$

Where:

- A is the amount to be paid to the Seller in respect of the relevant Aggregated Grain Program including GST;
- EPR is the Estimated Product Return for the relevant Aggregated Grain Program including GST;
- T is the number of tonnes of Grain delivered by the Seller into the relevant Aggregated Grain Program;
- P is the then current percentage draw down permitted by the Buyer (and published on the Website) for Cash Advance Payments or Deferred Cash Payments as the case may be; and
- EC is the Estimated Costs for the Aggregated Grain Program including GST.

- (b) If the Seller elects to take up an Advance Payment the amount to be offset against the Price will be the total amount of the Advance Payments made ("the Paid Sum") plus an amount of notional interest calculated on the aggregate daily balance of the Paid Sum at the Interest Rate. Any Payment paid by the Buyer will be taken to offset the then outstanding balance of the Paid Sum.
- (c) Deferred Payments are treated as in 10.7(b) above for Advance Payments, save that where the offsetting amount results in a negative difference (that is, when any Payment precedes a Deferred Payment) the Price will be increased by a notional amount at two and one quarter percent (2.25%) per annum less than the Interest Rate.

10.8 Failure To Select Option

If in the Contract Confirmation establishing a Contract the Seller does not elect to take up any Advanced Payment Option, the Seller will be deemed to have elected to receive the Price only by way of Aggregated Grain Program payments under clause 11.

11. Aggregated Grain Program Payments

11.1 Payment(s)

The Buyer will make two Payments from the Aggregated Grain Program ("Distributions"). Such payments may be paid to the Seller or offset against any sum owing by the Seller to the Buyer or paid to any Encumbrancer, as the Buyer reasonably determines.

11.2 Final Payment

The Buyer will determine the Final Payment to be made from the Aggregated Grain Program, after sale of all Grain forming part of the Aggregated Grain Program and payment of all Aggregated Grain Program Costs. The Seller hereby authorises (but does not oblige) the Buyer to pay the Final Payment in satisfaction of:

- (a) any claim by any Encumbrancer known to the Buyer; and
- (b) in discharge of any sum owing by the Seller to the Buyer;

before payment of any surplus to the Seller. The Buyer will not be liable to the Seller in respect of any loss associated with any delay in the declaration or payment of a Final Payment. The Buyer will be under no duty to enquire into the existence or bona fides of any Encumbrancer or any person who claims to be an Encumbrancer.

11.3 Contested Payments

If the Seller disputes the right of any person who purports to be an Encumbrancer, to any security interest in or over the Grain or the proceeds of sale of the Grain, or a dispute arises as to the priority of interest of two or more Encumbrancers, the Buyer may discharge its responsibilities to the Seller in respect of a Final Payment by paying the disputed sum into:

- (a) court; or
- (b) a bank account in the joint names of the Seller and the disputed Encumbrancer.

The Buyer may deduct its reasonable legal and other expenses associated with taking any action under this clause 11.3, from the disputed sum prior to paying out the balance of the disputed sum.

12. Goods & Services Tax

12.1 In this clause 12, the term "Base Payments" means:

- (a) any payment of the Price required to be made by the Buyer to the Seller under a Contract; and
- (b) Aggregated Grain Program Management Fees; and

BUT does not mean a payment to be made under clause 10.

12.2 Unless otherwise expressly stipulated, all base payments ("Base Payments") specified in These Terms are exclusive of GST.

- 12.3 If a party is liable under the GST law for the payment of any GST in respect of the receipt of any Base Payment, the Base Payment must be calculated in a manner that includes the GST payable (“the Adjusted Base Payment”) calculated in accordance with the following formula:

$$\text{ABP} = \text{BP} + (\text{BP} \times \text{R})$$

Where: ABP is the Adjusted Payment;

BP is the Payment;

R is the rate of goods and services tax specified in the “A New Tax System (Goods and Services Tax Imposition - General) Act 1999”.

- 12.4 The party liable to make the Base Payment must pay the Adjusted Base Payment calculated under clause 13.3 in the same manner and at the same time as the party is required to pay the Base Payment.

13. Privacy

13.1 Privacy

The Buyer hereby acknowledges that it is a “record keeper” for the purposes of the Privacy Act and, subject to These Terms, undertakes to adhere to the terms of the Privacy Act in respect of its treatment of any records of the Seller.

13.2 AGG

The Seller hereby irrevocably consents to the Buyer providing to AGG as the provider of the product:

- (a) a copy of each Contract Confirmation between the Buyer and the Seller,
- (b) information pertaining to all transactions or relevant events occurring or expected to occur in connection with each Contract, including but not limited to:
 - (i) details of the performance of any Cash Sales Program;
 - (ii) any breach of any Contract by the Seller;
 - (iii) details of the timing and amounts of any payments made by the Buyer to the Seller under any Contract;
 - (iv) Seller’s NGR and any associated information held by PGSA.
- (c) The Seller hereby acknowledges that it is aware that each Aggregated Grain Program operated by the Buyer in South Australia and Victoria is offered and each Contract is entered into by the Buyer in connection with and subject to a contractual agreement with AGG. Pursuant to the terms of this contractual agreement certain services, data and fees relating to Contracts will be exchanged between the Buyer and AGG, and the Seller consents to such exchange.
- (d) The Seller further acknowledges that if the Buyer commits a default of the contractual agreement, AGG may appoint a suitable third party to assume or

oversee the Buyer's duties under each Aggregated Grain Program any Contract. The Seller irrevocably consents to AGG making any such appointment, PROVIDED THAT no such appointment will relieve the Seller of any duty or liability hereunder.

This clause 13.2 inures to the benefit of AGG notwithstanding that it is not a party to any particular Contract.

13.3 Disclosure of Contracts

The Seller hereby authorises the Buyer to disclose the existence and terms of any Contract to the Buyer's bank, lending institution, financier, accountant, taxation advisor or legal advisor.

14. General

14.1 Notices

All notices notifications offers requests consents demands and other documents of communications authorised or required under a Contract must be in writing and delivered personally or sent by prepaid letter, or facsimile and will be deemed to have been duly given or made when delivered (in the case of personal delivery) or two (2) days after posting (in the case of letter) and the day following the date of dispatch (in the case of a facsimile) and in each case addressed to the party at its address as set out:

- (a) In the case of delivery to the Seller, to the Seller's address set out in the Contract Confirmation; or
- (b) In the case of delivery to the Buyer, to the Buyer's address for notices as published on the Website on the date of dispatch of the notice.

A notice in respect of an Aggregated Grain Program which is published on the Website, will be effective on the date specifically set out in These Terms and in the absence of specific treatment of the notice or type of notice, seventy two (72) hours after the moment of posting on the Website.

14.2 Governing Law

This document and each Contract will be governed by, and construed in accordance with, the laws of the State of South Australia and the applicable laws of the Commonwealth of Australia in force from time to time, and the Parties agree to submit to the non-exclusive jurisdiction of their courts.

14.3 Force Majeure

If the performance of any Contract, or of any obligation hereunder is prevented, restricted or interfered with by reason of fire, explosion, breakdown, strike, labour dispute, accident, lack of transportation, epidemic, cyclone, flood, earthquake, drought or lack of raw materials, power or supplies or war, revolution, civil commotion, acts of God, blockade or embargo or any law, order, proclamation, decree or requirement of any government or any authority or

representative thereof or any other acts whatsoever beyond the reasonable control of a party hereto, then:

- (a) The party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; and
- (b) The other party shall likewise be excused from performance of its obligations to the extent such obligations relate to the performance so prevented, restricted or interfered with,

PROVIDED THAT the party so affected shall use its best efforts to avoid and to remove such causes of non-performance and both parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed. This clause 14.3 will not apply to the Seller's obligations under clause 5.3.

14.4 Severability & Read Down

- (a) If, any provision of a Contract or part of a provision of a Contract is or becomes legally ineffective, under the general law or by force of legislation, but would not have such effect if it were read down; if it is capable of being read down, such provision or part of a provision must be read down accordingly.
- (b) If, notwithstanding sub clause 14.4(a) a provision or part of a provision of a Contract still is or becomes legally ineffective:
 - (i) if the provision would not have such an effect if a word or words were omitted, that word or those words are hereby severed;
 - (ii) in any other case, the whole provision is hereby severed;

and the remainder of the Contract will be of full force and effect.

14.5 Assignment

Subject to clause 13.2(d), neither the Buyer nor the Seller may assign their rights or obligations under a Contract without the consent of the other of them. That consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Buyer may assign a Contract to its financier, without the Seller's consent.

14.6 Costs

Save as is set out in These Terms, each party will bear its own costs of entry into a Contract.

14.7 Waiver

The failure of a party at any time to require performance by the other party of any provision of a Contract will not affect in any way the full right of the waiving party to require such performance at any time thereafter nor will the waiver by any party of a breach of any

provision of These Terms be deemed a waiver of the provision itself or any other provision of These Terms.

14.8 Counterparts

Each Contract may consist of a number of copies (including facsimile or electronic copies), each Authorised by one or more parties to the Contract. If there are a number of Authorised copies they are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement.