

**GROWER WAREHOUSE AGREEMENT
2019 / 2020**



BOORT GRAIN CO-OPERATIVE LTD
ABN 83 769 289 733

1st November 2019 – 31st October 2020

STORER: Boort Grain Co-Operative Ltd (ABN 83 769 289 733)
Facility: BOORT GRAIN CO-OP
Agent: Australian Storage Alliance Pty Ltd (ABN 13 620 645 767)
Contact: Jon Bucknall
Address: PO Box 164, Boort VIC 3537
Phone: 0447 652 716
Fax: 03 8679 0315
Email: admin@auststoragealliance.com.au

WAREHOUSER: Individual grower or grower entities

1. BACKGROUND

- 1.1** These terms and conditions apply to the storage and handling of any Commodity specified in Schedule 1, stored in the Storer's system and any subsequent transfer and outturn of the Commodity.
- 1.2** The Warehouseur acknowledges that services under this Agreement will be provided to the Warehouseur by the Storer.

2. AGREEMENT

- 2.1** The Warehouseur agrees to store the Commodity identified in Schedule 1 to this Agreement for the fees specified in Schedule 1
- 2.2** The Storer agrees to store that Commodity subject to the terms and conditions of this Agreement in clean, dry, ventilated and in all circumstances reasonably appropriate storage facilities including without limitation silos, storage bins and/or covered bunkers.
- 2.3** Under this Agreement, the Storer's weighbridge docket and quality testing results issued on Receival shall be conclusive evidence of the quantity and specification of the Commodity being stored.

3. COMMON STOCKING

- 3.1** The Storer may commingle the Commodity of the Warehouseur with Commodity of like type and specification that has been received from other Warehouseurs or Clients. In this case all comingled Commodity shall be owned by all parties whose Commodity has been so comingled to the exclusion of all other persons including, but not limited to, the Storer, as tenants in common.

4. RECEIVAL

- 4.1** The Storer will receive the Commodity in accordance with Grain Trade Australia (**GTA**) Trading Standards and any sampling methodology unless otherwise agreed.
- 4.2** The Storer will sample, provide quality testing results, classify into available grades, weigh, store and load road transport or transfer the commodity to another party under this Agreement.
- 4.3** The Storer may in its absolute discretion, accept or refuse to accept the Commodity for warehouse and/or storage based on quality, hygiene, safety or its capacity or efficiency.
- 4.4** The Warehouseur will, at the cost of the Warehouseur, immediately remove the Commodity from the storage upon receipt of a notice from the Storer requiring it to do so.

5. GUARANTEE OF QUALITY

- 5.1** The Storer must ensure that all Commodities are received under GTA Trading Standards and will comply with the same GTA Trading Standards when tested on outturn.
- 5.2** If on outturn or upon delivery to an end-user a Commodity does not comply to the relevant GTA Trading Standard the non-compliant Commodity will be returned to the Storer. Any costs associated with the return of non-compliant Commodity and redelivery of compliant Commodity will be for the account of the Storer and will be invoiced directly to the Storer once agreed upon by both parties.
- 5.3** In the event of a dispute in relation to the quality of the Commodity or the testing procedure used at the Storer's facility or the delivery destination, an independent sample will be taken at the delivery destination and will be sent to Commodity Inspection Services (CIS), or another Warehouseur approved testing agency, who will conduct an independent test of the Commodity which will determine whether the Commodity meets GTA Trading Standards or is non-compliant. If CIS, or any other Warehouseur approved testing agency, finds that the Commodity is not compliant with the GTA Trading Standard that it was received under, the Storer will be liable for any costs associated with return of non-compliant Commodity and re-delivery of compliant Commodity including, but not limited to freight, dockage and independent testing.

6. OWNERSHIP & LIEN

- 6.1** The Storer has possession of the stored Commodity and a lien in respect of any unpaid storage charges, but otherwise has no legal or equitable title in the Commodity, unless it is an owner of the Commodity.

7. TREATMENT

- 7.1 The Storer may at its expense treat the Commodity with chemicals in accordance with industry practice to prevent infestation, disease and/or contamination at all times within applicable levels as determined by industry maximum residue limits unless otherwise specified. Where fumigants are applied, it is acknowledged by the Warehouser that the Commodity will not be accessible for outturn for a period of approximately four (4) weeks. The period will be determined at the reasonable discretion of the Storer.
- 7.2 The Storer is not required to provide notice or obtain the Warehouser's approval to treat the Commodity pursuant to clause 7.1.
- 7.3 The Storer will not be liable to the client for any delay in outturning the Commodity as a result of the Storer treating the Commodity in accordance with this clause.

8. SHRINKAGE

- 8.1 The Storer will deduct a shrinkage allowance as specified in Schedule 1 from the first delivery of each load of Commodity received in the Warehouser's name.
- 8.2 Receival fees will be levied against the delivered tonnage, but all other charges will be levied against the shrunk tonnage.

9. OUTTURN

- 9.1 The Warehouser must give the Storer at least 2-day's written notice of a request to outturn Commodity (**Outturn Request**) advising;
- (a) Quantity;
 - (b) Grade;
 - (c) Name of Transport Provider;
 - (d) Estimated time of arrival of Transport Provider.
- 9.2 As soon as is practicable following receipt of an Outturn Request under clause 9.1 the Storer will confirm particulars of outturn (**Outturn Confirmation**).
- 9.3 The Warehouser acknowledges that the Storer has no obligation to outturn Commodity other than as provided in an Outturn Confirmation.

10. ADJUSTMENTS

If for any reason the Storer does not hold sufficient Commodity of the type and specification of the Warehouser's Commodity at the time of receipt of an Outturn Request, the Storer must satisfy any such physical shortfall by (at Storer's option) provision of replacement stock of equivalent or higher quality or payment of compensation at market price as at the date of outturn which market price shall be the average price provided by two (2) independent grain brokers with one such broker appointed by each party.

11. **TRANSFER**

- 11.1** The Warehouse may only transfer the Commodity to a third party (**Purchaser**) by completing and executing a Title Transfer in the form set out in Schedule 2 (**Warehouse Transfer Form**)
- 11.2** Title in the Commodity is not transferred until the Transfer Form is executed by the Warehouse, the Purchaser and the Storer.
- 11.3** The Warehouse warrants that the Purchaser is on notice of these terms and conditions and has agreed to be bound by them, except in the case where the Purchaser is a Client who is bound by the Terms & Conditions contained in the Storer's **Storage & Handling Agreement**
- 11.4** The Storer may refuse to sign a Transfer Form until any amounts owing to the Storer by either the Warehouse or the Purchaser have been paid in full.

12. **FEES & PAYMENT**

- 12.1** In accordance with this Agreement the Warehouse must pay the Storer all charges and fees specified in Schedule 1.
- 12.2** All accrued charges and any costs payable on any account in respect of stored Commodity must be paid by the Warehouse in accordance with the invoice rendered by the Storer.
- 12.3** The full amount of each invoice rendered by the Storer must be paid by the Warehouse within thirty (30) days of the date of that invoice, by telegraphic transfer or bank transfer to the Storer's nominated bank account, free of expense to the Storer.
- 12.4** The storage fees set out in Schedule 1 shall apply only from the date of this Agreement to 30th September of the year following commencement and may be varied by the Storer annually on that date.
- 12.5** The Storer and Warehouse acknowledge that all fees and charges payable as stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.

13. **CARRY-OVER OF COMMODITY**

If any Commodity remains in the Storer's facilities on 1 November (**Carry-Over Date**) the Warehouse must pay the Storer the applicable monthly storage fees, as in Schedule 1, up to the Carry-Over Date, and the Carry-Over Fees as listed in Schedule 1.

14. **CHAIN OF RESPONSIBILITY**

The Warehouse acknowledges and warrants that;

- (a) it is aware of and is bound by the *Heavy Vehicle National Law* (HVNL) including without limitation those parts of the HVNL commonly referred to as the *Chain of Responsibility*;
- (b) it has policies and procedures in place to ensure that it is compliant with the HVNL and will produce evidence of and copies of those policies and procedures on request;
- (c) it will indemnify the Storer in respect of any liability incurred by the Storer arising solely from the Warehouse's failure to comply with its obligations under the HVNL;
- (d) To the extent that any obligation of the Storer under this agreement conflicts (in the reasonable opinion of the Storer) with its obligations under the HVNL, the obligations under the HVNL prevail.

15. INTEREST

If any payment is not made on or before the due date for payment the Warehouse must pay interest on any overdue amount at a rate of 1.5% per calendar month, calculated daily, the Warehouse shall also be liable for any legal costs incurred by the Storer in recovering or seeking to recover overdue amounts on an indemnity basis.

16. TAXES

Where a Goods and Services Tax (GST) is applicable to the storage per these terms and conditions, subject to the issuing of a valid tax invoice, The Storer will recover from the Warehouse an amount on account of GST, such amount to be calculated by multiplying the price for the supply by the prevailing GST rate.

17. WEIGHTS & MEASURES

17.1 The Storer will ensure that all weights are determined by a registered weighbridge.

17.2 Any Commodity testing and quality testing equipment the Storer uses will be provided at its expense and in-line with industry practice.

18. RECORD KEEPING

18.1 The Storer will maintain and keep complete and accurate electronic records of all commodities stored by it (including the Commodity) and of all actions taken by it in relation to the stored Commodity.

18.2 Such records will be sufficient, as a minimum, to identify the amount, location and ownership of any stored Commodity, including joint ownership of any commingled commodity.

18.3 The Storer will provide the Warehouse with details of its stored Commodity on a daily basis during receipt periods.

19. INSOLVENCY

- 19.1** In the event of the Storer's insolvency, the Warehouse or any Purchaser retains title in the Commodity.
- 19.2** The Warehouse will be entitled to immediate discharge of its Commodity, on demand, subject to any lien.

20. EXCLUSION OF LIABILITY

- 20.1** Unless otherwise stated, the Storer is not liable for damage, destruction, contamination or loss of Commodity unless caused by the negligence of the Storer.
- 20.2** The Warehouse acknowledges that the Storer is unable to test on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified seed or other contamination and is not liable for any claims, damages or loss associated with non-conformance to industry standards where the attribute cannot be reasonably and practically ascertained by the Storer on receipt.
- 20.3** The Storer is not liable for and the Warehouse releases the Storer from any direct, indirect or consequential loss, damages or costs caused by or otherwise relating to the storage or handling of commodity contaminated as described in clause 19.2.

21. INSURANCE

The Storer will ensure the Commodity is adequately insured against loss / damage while it is held at the nominated facility/facilities.

22. GOVERNING LAW

This Agreement and the rights and liabilities of the parties under this Agreement will be governed by the law of the State of Victoria. The courts of Victoria have jurisdiction to hear and determine any cause of action arising under this Agreement

23. RULES OF TRADE

These terms are subject to the Trade Rules of Grain Trade Australia Limited (GTA) currently in effect, except to the extent the same are in conflict with the terms expressed herein. In the event of any conflict between these terms and the Trade Rules, these terms will prevail.

24. ARBITRATION

Any dispute in any way arising out of or relating to this Agreement and these terms and conditions, including the existence of the Agreement and any question of law arising in

connection therewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of GTA in force at the commencement of the Arbitration and of which both parties hereto shall be deemed to be cognizant.

25. FORCE MAJEURE

The Warehouse releases the Storer from any claim, liability or responsibility concerning late delivery or failure to deliver Commodity if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, extreme weather event, act of God, government law or regulation or requirement or any other cause beyond the control of the Storer and no such failure shall entitle the Warehouse to cancel any order or withhold payment.

26. SIGNATORY WARRANTY

The person who signs this Agreement on behalf of the Warehouse warrants that he or she is authorised to enter into legally binding contracts on behalf of the Warehouse.

27. CONFIDENTIALITY

The Warehouse acknowledges the confidential nature of its dealings with the Storer.

28. DEFINITIONS

The following words have the corresponding following meanings in this Agreement unless a contrary intention appears:

Agent means Australian Storage Alliance Pty Ltd ('ASA')

Business Day means any day on which the principal office of the Storer is open for business and does not include Saturday, Sunday or a day that is a gazetted public holiday.

Charges means those charges calculated in accordance with Schedule 1

Commingling is the situation where different grades of Commodity are stored in the same Cell

Cell means a physical unit for storage of a Commodity

Commodity means the seed of any crop or pasture species including Pulses and oilseeds.

Damaged commodity means Commodity that has been damaged in an unusual incident or event to such an extent that it can no longer be classified by any Receipt (Classification) Standards and is only of salvage value or suitable for disposal.

Delivered means, in respect of the Commodity, the point and time at which the Commodity first arrives at a Facility.

Facility means any Commodity receipt, storage and handling facilities used by the Storer in connection with the provision of Receipt or other services to the Growers and/or the provision of the Services to the Warehouse.

Grade means the grade of Commodity of a given Season specified in the Receipt Standards of that same Season, or any other grade agreed by the Parties

GTA means Grain Trade Australia Ltd

Grower means a person or entity involved in the growing of a Commodity, the contact details for whom have been registered by the Warehouse or the Storer or a national grower register.

GST means the tax imposed by the GST Law

GST Law has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

Harvest means the period of time during which Commodity may be harvested and Delivered.

Industrial Disputes includes a strike, stop-work, boycott or lockout.

Insolvency Event means in relation to a Party:

- a) A receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days.
- b) The Party suspends payment of its debts generally;
- c) The Party is insolvent within the meaning of the Corporations Act 2001 (Cth);
- d) The Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- e) An application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in case of an application, the application is not withdrawn or dismissed within 60 days: or
- f) An administrator is appointed under Division 2 of Part 5.3A of the Corporations Act 2001 (Cth) and, except in the case of an appointment by the Party of its directors, is not withdrawn or removed within 14 days.

Outturn means:

- a) The loading of Commodity from Facility for transportation to Non Storer Facility or such other place as directed by the Warehouseur;
- b) The disposal of Damaged Commodity; or
- c) Any other outturn required and directed by the Warehouseur for the purpose of stock accounting.

Party means, depending upon the context, either the Storer or the Warehouseur.

Pulses means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and any other grain legumes.

Receival means the process of Testing, weighing, tipping, inwardly elevating and placing of Commodity into the Facilities on behalf of a Grower or Warehouseur.

Receival Standards means the standards as published on the Storer website in respect of Receival, at the time the Commodity is received, and in respect of Outturn, at the time of Outturn. Receival Standards will be in accordance with GTA Trading Standards.

Season means the period in which most of the Grower's Commodity is harvested and delivered to the Storer's facilities, typically commencing in October in one year and going through to the February of the following year.

Services means the services provided by the Storer to the Warehouseur under this Agreement in respect of all Commodities at the Facilities and includes:

- a) Receival
- b) Storage
- c) Commodity handling and Outturn

Shrinkage and **Shrink** mean the quantity of Warehouseur Commodity, which is lost in the normal storage and handling process including:

- a) Loss of mass through changes in moisture content;
- b) Handling; and
- c) Waste;

But does not include Commodity lost as Damaged Commodity.

Storage means the warehousing, control and movement of Commodity.

Storer means Boort Grain Co-Operative Ltd

Warehouseur means a person that uses the Facilities for storage of Commodity and may, if the context permits, include the Warehouseur.

Washout Price means the price determined in clause 10.

Waste means Commodity that, as a result of the normal handling process, has been downgraded to Commodity of no commercial value, for example, mouldy grain, grain mixed with dirt and stones.

STORER

SIGNED on behalf of the **Storer** : _____

(Representative of Boort Grain Co-Operative Ltd or Australian Storage Alliance Pty Ltd)

Date:

WAREHOUSER

Grower Name: _____

Grower Trading Name: _____

NGR Number/s: _____

Phone number: _____

Email: _____

Signed by or on behalf of the **Grower / Warehouser:** _____

Date:

SCHEDULE 1.

FACILITIES

- **BOORT GRAIN CO-OPERATIVE LTD.**

Silo Woolshed Road, Boort, VIC 3537

Site Manager : Gary Wilson (0427 760 768)

Weighbridge : 03 5455 2600

NOTICES

All correspondence and notices to be sent to:

Australian Storage Alliance Pty Ltd

PO Box 164

Boort VIC 3537

SCHEDULE OF FEES AND CHARGES

FEES & CHARGES PER MT					
BOORT GRAIN CO-OP	WHEAT	MALT BARLEY	FEED BARLEY	CANOLA	PULSES
Receival Fee	\$ 8.50	\$ 8.50	\$ 8.50	\$ 8.50	\$ 8.50
Outturn Fee	\$ 6.50	\$ 6.50	\$ 6.50	\$ 6.50	\$ 8.00
Monthly Storage 1st March 2020 - 31st Oct 2020	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50	\$ 1.50
Carryover Fee (monthly) 1st November 2020 Nil monthly fee until 1st March 2021	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00
Shrink	0.60%	0.60%	0.60%	0.70%	1.00%

* All fees are exclusive of GST

- Receival fees are invoiced on the 31st January 2020 (basis unshrunk tonnes)
- Storage fee is charged monthly
- Interest will be charged on overdue accounts as per Clause 14.

SCHEDULE 2. - WAREHOUSE TITLE TRANSFER FORM

SELLER (Owner of warehoused tonnes)		
NAME :		
CONTACT PERSON:		
ADDRESS:		
NGR:		
TEL:		
FAX:		
EMAIL:		

BUYER		
NAME:		
CONTACT PERSON:		
ADDRESS:		
NGR:		
TEL:		
FAX:		
EMAIL:		

STOCK TO BE TRANSFERRED

SEASON	GRADE	SITE	TICKET NUMBERS	CONTRACT / REFERENCE	TONNES
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AUTHORISATION

I, the above Seller of grain, confirm that the tonnage of grain has been sold to the Buyer and agree to accept any charges applicable as per Australian Storage Alliance Warehouse Terms & Condition. I authorise Australian Storage Alliance the Title Transfer for buyer approval.

Seller signature: _____

Date: _____

PLEASE FAX TO: (03) 8679 0315

PLEASE EMAIL TO: admin@auststoragealliance.com.au

OFFICE USE ONLY			
DATE RECEIVED:	<input type="text"/>	RECEIPT NUMBER:	<input type="text"/>
DATE TRANSFERRED:	<input type="text"/>	SIGNED:	<input type="text"/>

SCHEDULE 3. – COMMODITY OUTTURN ORDER

OWNER / GROWER DETAILS

OWNER NAME :

OWNER REFERENCE:

CONTACT:

ORDER DETAILS

SITE:

DESTINATION:

START DATE:

CARRIER NAME:

END DATE:

CARRIER PHONE:

COMMODITY:

ADDITIONAL INFO:

GRADE:

QUANTITY (MT):

AUTHORISATION

AUTHORISED BY:

PHONE:

EMAIL:

I, the undersigned, verify that the information contained in this form is true and correct to the best of my knowledge

SIGNED:

All fields must be filled in correctly to ensure the form is valid

For full terms & conditions please refer to current storage & handling agreement

Please return by email to admin@auststoragealliance.com.au