



Southern Quality Produce

2011/12 GENERAL TERMS AND CONDITIONS

Current as at Jul 2011



Southern Quality Produce Pty Ltd (SQP) acts as agent of Emerald Grain Australia Pty Ltd as trustee of the Emerald Grain Trust (ABN 46 861 707 683) ("the Purchaser").

THE CONTRACT

The Contract between The Seller and The Purchaser consists of these documents and in the event of inconsistency must be interpreted in following descending order of priority:

- 1) The Contract Confirmation
- 2) These Terms and Conditions
- 3) The GTA Trade Rules and Dispute Resolution Rules in force at the time of the Contract which form an integral part of the Contract (for a copy visit www.graintrade.org.au)

TIME

All stipulations set forth in the Contract as to "TIME" are of the essence except for payment of money. Under the GTA Trade Rules a party may be entitled to penalty interest on late payments.

QUANTITY

Unless otherwise stated, all quantities shall be expressed metrically and to the nearest one/one-hundredth [1/100] of a metric tonne.

QUANTITY TOLERANCE

Unless specifically agreed otherwise and set out in the contract confirmation, the quantity required to be delivered under the contract is the minimum and the maximum; there is zero tolerance.

WEIGHTS

Unless specifically agreed otherwise, bulk store receival weights, which shall be determined by qualified personnel, shall be on the basis of trade. If these are not available, government or Registered Weighbridge weights shall be accepted. Errors in weighbridge tickets in all cases shall be accepted.

QUALITY GRADES

Unless specifically agreed otherwise, Quality Grades shall be assessed on the basis of trade, which shall be determined by qualified personnel according to sampling and analyses procedures established by GTA or the bulk store as applicable during the relevant Delivery Period. Payment will be based on binned grade.

MULTI GRADE CONTRACTS

All wheat contracts are for APW with a premium and discount schedule devised to establish the fixed price for grades other than APW. Unless otherwise specified in the contract confirmation, or agreed in writing with the Purchaser, if the Seller delivers a quality grade other than APW the Sellers payment will be adjusted based on the Purchaser published spreads on the day of transfer. If delivering in Delivery Period 2 the Seller must notify the Purchaser of the quality grade by 31 January 2012. If delivery in Delivery Period 3, grade spreads will be established on day of transfer in the 2012/13 contracted period.

LOCATION DIFFERENTIALS

Unless set out in the contract confirmation, the Purchaser will advise of the location differentials to be set each year for a 12 month period on or before 1 November 2011.

DELIVERY PERIOD AND PRICING

As set out in the contract confirmation, there are 3 Delivery Periods (windows) under the contract which can be nominated by the Seller. Each window has a port bid price specified that will be multiplied by the quantity as the basis for calculating the Sellers payment, less spreads, location differentials and any levies or charges that are required to be deducted in accordance with the contract. The Seller must elect and notify the Purchaser by 31 October 2011 if the Seller will be delivering in Delivery Period 2 or 3 as specified in the contract confirmation. If the Purchaser does not receive a nomination, the Seller will be deemed to have nominated Delivery Period 1.

DELIVERY AND TITLE TRANSFER

Subject to meeting minimum requirements, delivery and therefore transfer of title and risk of physical loss occur, when the Seller or the Sellers agent has presented Commodity to a bulk handler and signed a weigh note nominating the Purchaser as the acquirer; or if delivery is by way of in-store transfer of Commodity stored on the Sellers behalf by a bulk handler, when the bulk handler signs or otherwise authorises on the Sellers behalf a title transfer to the Purchaser. The Seller agrees to sell the Commodity free of all liens and encumbrances, and must notify the Purchaser of any liens or encumbrances prior to delivery.



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STANDARDS

The Seller declare that the Commodity sold is of the declared variety/varieties, and as such, is not known to contain any unapproved genetically modified material nor any approved genetically modified material in excess of the allowed adventitious presence of approved events of 0.9% as per state or federal legislation.

LEVIES AND STATUTORY CHARGES

Any industry, statutory or government levies which are not included in the price shall be deducted as required by law, which may also include liabilities for End Point Royalties (EPRs) and/or Plant Breeders Rights (PBR). The Seller agrees to provide to the Purchaser any varietal information requested and consent to the release of the Seller information by the Purchaser to owners and managers of the variety, or their agents.

CHEMICAL AND PESTICIDES RESIDUES

The Seller warrant that the commodity complies with all State and Federal Laws and requirements relating to chemical and pesticide residues and specified government designated maximum residue levels. The Seller are responsible for any loss caused as a result of pesticide levels exceeding maximum residue levels and indemnify the Purchaser for loss it suffers due to maximum residue levels being exceeded.

WAIVER

If the Purchaser elects not to exercise any of its rights arising from a breach of these Terms and Conditions, it shall not constitute a waiver of any rights relating to any other or subsequent breaches that may occur.

DEFAULT

Failure to deliver the Commodity in accordance with the Contract is a default by the Seller. If the Seller is in default, and after the Purchaser has given written notice to the Seller of such default, the Purchaser may recover damages from the Seller as a result of failure to deliver in accordance with the Contract at the end of the Delivery Period nominated.

If the Seller suspend payment of debts, or convene or hold a meeting of creditors, or commit an act of bankruptcy, or being a company have a receiver appointed, or hold a meeting for the purpose of considering a resolution that the company be wound up or go into liquidation, the Seller shall be deemed to be in Default.

NOTICES

All notices given under these Terms and Conditions shall be given by written letter delivered by hand on the day of writing, or by facsimile, or by email (with read receipt), or by other method of rapid written communication to the last address the Seller have notified to The Purchaser and NGR. Any notices received after 1700 hours local time on a business day shall be deemed to have been received on the business day following. A notice to a party's Brokers or Agent shall be deemed a notice under these GTA Trading Rules. In case of resales, all notices shall be passed on without delay.

FORCE MAJEURE

The loss of a commodity due to production risks or crop failure does not constitute a condition of Force Majeure.

ARBITRATION

Any dispute, controversy or claim arising out of, or relating to, or in connection with a Contract including any question regarding its existence, validity, breach or termination or subject matter thereof, shall be resolved by arbitration in accordance with GTA Dispute Resolution Rules ("GTA Rules") in force at the time of the Contract, such rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant.

Neither party to a dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect to any such dispute until arbitrated in accordance with GTA Rules.

APPLICABLE LAW

The Contract the GTA Trade Rules and Dispute Resolution Rules are governed by and shall be construed to be in accordance with the law for the time being enforced in Victoria.

TAX

The Purchaser and the Seller declares that this agreement applies to supplies under the contract. The Purchaser can issue Recipient Created Tax Invoices (RCTI) in respect of these supplies. The Seller will not issue tax invoices in respect of these supplies. Both parties acknowledge that they are registered for GST and are parties to an RCTI agreement. They will notify the other party if they cease to be registered. Acceptance of a Contract constitutes acceptance of the terms of this written agreement. The Seller agrees to notify the Purchaser if it does not wish to accept the proposed agreement within 21 days of receiving this document.



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SET-OFF AND ENCUMBRANCES

The Purchaser may set-off against any payments due to the Seller any amounts owing to the Purchaser by the Seller on any account whatsoever.

INDEMNITY

The Seller indemnify the Purchaser against any claim by any person claiming an interest in any Commodity delivered by the Seller or the proceeds of sale of such Commodity, and against all costs or expenses incurred by the Purchaser in enforcing the Contract. The Seller authorise the Purchaser to pay out of the Seller proceeds any liens or encumbrances notified to the Purchaser.

AGENCY

Where there is more than one principal/payee, the reference to "the Seller" means each of the Sellers separately and jointly and includes any agent acting on behalf of any of the Seller. Any person delivering using the Sellers card is deemed to be the Sellers agent with full authority to transfer the Commodity on the Sellers behalf to the Purchaser based on these Terms and Conditions. The Seller acknowledges that the Purchaser is not acting as agent for the Seller or in any other fiduciary capacity.

"**THE SELLER**" in these General Terms and Conditions includes the Seller's business partners and any company, trust or association on whose behalf the Seller is purporting to act. The Seller acknowledges that unless the Purchaser is notified to the contrary any person nominated by the Seller or armed with the Seller's delivery card or card details shall be assumed to be the agent of the Seller with the authority to bind the Seller to sales and/or deliveries.