

# Southern Quality Produce

2011/12 CASH CONTRACT GENERAL TERMS AND CONDITIONS

Current as at August 2011



**Southern Quality Produce (SQP)** acts on behalf of Emerald Grain Australia Pty Ltd as trustee of the Emerald Grain Trust ABN 46 861 707 683 (“the Purchaser”)

## TERMS OF TRADE

The terms of trade for the cash purchase of Commodity by the Purchaser are comprised of the following documents and in the event of inconsistency must be interpreted in the following descending order of priority:

- 1) The terms of the SQP Contract Confirmation, if the Seller has committed to future delivery of Commodity;
- 2) These General Terms and Conditions; and
- 3) The Trade Rules of Grain Trade Australia Limited, (GTA) in force at the date of the Contract and GTA’s Dispute Resolution Rules (for a copy see [www.graintrade.org.au](http://www.graintrade.org.au)).

Together the documents form the contract between us (the “Contract”).

## 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 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 excepted.

## QUALITY GRADES

Unless specifically agreed otherwise, Quality Grades 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.

## STANDARDS

In respect to Canola, standards applicable to the contract are in accordance with AOF technical and trading standards & terms which shall apply at the time of title transfer(s) and the Seller declares 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 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 by the Purchaser of the Seller’s information to owners and managers of the variety, or their agents.

## DELIVERY

Subject to meeting minimum requirements of the Contract, 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 warehoused on the Seller’s behalf by a bulk handler, when the bulk handler signs or otherwise authorises on the Sellers behalf a title transfer to the Purchaser. It is the responsibility of the Seller to arrange Delivery, including initiating in-store (warehouse) transfers if required.

## LIENS

The Seller agrees to sell the Commodity free of all liens and encumbrances, or must notify the Purchaser of any liens or encumbrances prior to contracting or delivery, as the case may be.

## CHEMICAL AND PESTICIDES RESIDUES

The Seller warrants 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 is responsible for any loss caused

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as a result of pesticide levels exceeding maximum residue levels and indemnifies the Purchaser for loss it suffers due to maximum residue levels being exceeded.

### **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.

If the Seller suspend payment of debts, or convenes or holds a meeting of creditors, or commits an act of bankruptcy, or being a company shall 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 the Contract 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. 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 the 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. The failure of the Seller to deliver commodity, due to the unavailability of nearby bulk storage or the relevant segregation at a nearby bulk store, is not a condition of Force Majeure. The obligation of the Purchaser to pay money is never excused by Force Majeure events.

### **DISPUTE RESOLUTION**

If any dispute arises out of or relates to this Contract or the breach, termination or subject matter thereof, the dispute shall be submitted to and settled in accordance with GTA Dispute Resolution Rules in the edition current at the date of the notification of dispute. 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 dealt with in accordance with GTA Dispute Resolution Rules.

### **APPLICABLE LAW**

This Contract and the GTA Trade 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 declare that this agreement applies to supplies under the contract: the Purchaser can issue Recipient Created Tax Invoices (RCTI) in respect of the supplies. The Seller will not issue tax invoices in respect of the 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 this contract constitutes acceptance of the terms of this RCTI agreement. The Seller agrees to notify the Purchaser if it does not wish to accept the proposed RCTI agreement within 21 days of receiving this document.

### **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 and may deduct amounts required to satisfy liens and encumbrances granted by the Seller over the Commodity it has delivered under the Contract.

### **INDEMNITY**

The Seller indemnifies 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 this Contract.

“**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.

### **WAIVER**

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