

Grower Warehousing Terms & Conditions 2022/2023 Season

1. Application of Terms

- 1.1 These are the Grower Warehousing standard terms and conditions that apply to the supply by T-Ports Pty Limited ABN 60 620 129 544 ('T-Ports,' 'we,' 'us' or 'our') of receipt, warehousing and related Services to the Grower ('you' or 'your') ('Terms').
- 1.2 The Customer is deemed to have unconditionally accepted and agreed to be bound by these Terms as soon as the you, or your Agent, obtains the Services from T-Ports.

2. Our Services

Subject to these Terms, we will:

- 2.1 warehouse the commodity delivered by you (or by your Agent) and to which title has not transferred to any other person in accordance with these Terms ('Your Grain');
- 2.2 accumulate all fees applicable until transfer of title; and
- 2.3 provide you with an administrative service that effects the transfer by you of:
 - 2.3.1 the title in Your Grain Entitlement; and
 - 2.3.2 accumulated fees payable by you to us to a Participating Grain Marketer. (collectively, the 'Services').

Alternately, Clause 7 describes the Outturn of Grain to yourself.

3. Your obligations

- 3.1 You must comply with all procedural requirements that we notify you of from time to time in relation to the supply by us of the Services.
- 3.2 You declare, represent and warrant that any commodity delivered by you (or on your behalf):
 - 3.2.1 is owned by you and is free of any security interest as that term is defined in the PPS Act;
 - 3.2.2 was grown by you during the nominated growing season and is of the variety and has the particulars disclosed by or on behalf of you on the Delivery Ticket (which is based on, amongst other things, information provided by you at the time of delivery) or at the time of delivery by you (or on your behalf);
 - 3.2.3 is not manipulated in any way to prevent the making of an accurate assessment by us of the quality of the grain using our standard assessment procedures;
 - 3.2.4 has not been treated at any time with any commodity treatment or chemical, including without limiting the generality of the foregoing any insecticide, pesticide or other substances for the control of insects or pests, other than with either gaseous phosphine or gaseous methyl bromide;
 - 3.2.5 does not contain any detectable gaseous phosphine or gaseous methyl bromide residue or any other form of gaseous residue;
 - 3.2.6 has not been treated with any artificial colouring, pickling compound or marker dye that is likely to or may sustain, stain or have stained the grain;
 - 3.2.7 will not have any other feature that would affect our ability to Outturn/transfer the commodity at the grade in respect of which we receive the commodity;
- 3.3 You represent and warrant that any person delivering any commodity to us on your behalf is deemed to be your duly authorised agent and its actions shall bind you as if you had personally undertaken the action/accepted these Terms.
- 3.4 You declare that the representations set out in this Agreement (including any other declarations signed by you at the time of delivery and forming part of these this Agreement) are true and correct and are not misleading or deceptive by omission or otherwise. Without limiting anything else in this **clause 3**, each time we receive commodity delivered (whether by you or on your behalf) for the supply of services under the Agreement, you will be deemed to have made the representations and

warranties set out in this Agreement in relation to the relevant grain.

- 3.5 You agree to pay, reimburse and indemnify us, our servants, agents, Related Bodies Corporate and counterparties on demand for and against all costs, losses and liabilities (including loss of profit) which are suffered or incurred by T-Ports its servants, agents, Related Bodies Corporate and counterparties directly or indirectly in connection with or arising from any inaccuracy, error, falsity or omission with respect to the declarations, representations and warranties made by you or on your behalf now or in the future.
 - 3.6 You acknowledge that:
 - 3.6.1 the costs, losses and liabilities referred to in **clause 3.5** may include, but are not limited to, replacement cost of third party commodities (including that of T-Ports or its Related Bodies Corporate) that are contaminated and any costs of cleaning up the Storage Facility; and
 - 3.6.2 T-Ports will rely on the accuracy and completeness of your declarations in its storage and handling of the commodity and in its dealings with third parties including making declarations and statements to third parties. You should therefore not deliver any commodity to us which could result in your declaration amounting to a false, misleading, incomplete or inaccurate declaration.
 - 3.7 You agree that T-Ports, its servants and agents will not be responsible for or liable in damages to you for any loss, damage, cost or expense, you may suffer or incur arising from any false, misleading or incomplete declarations, representations or warranties of any other user of the Services.
 - 3.8 You represent and warrant that you acquire the Services and the Services are provided by T-Ports for the purpose of a business carried on or engaged in by you.
 - 3.9 Unless T-Ports agrees otherwise, you must ensure that all of Your Grain Entitlement stored at any Storage Facility must be sold to a Participating Grain Marketer (which includes transfer of ownership) no later than 21 days before the end of the Season. If you fail to sell and transfer all of Your Grain Entitlement warehoused with T-Ports on or prior to the dates specified in this **clause 3.9**, you authorise T-Ports (acting as your attorney) to sell Your Grain Entitlement to a third party at a price which may be less than the market value of those commodities and remit the proceeds of sale to you less any unpaid fees or other monies due from you to us.
 - 3.10 You represent and guarantee that:
 - 3.10.1 you (and any person transporting Your Grain on your behalf) will comply with all safety, health and environmental policies and procedures applicable to the Storage Facility as published at the Storage Facility or as otherwise on Our Website; and
 - 3.10.2 you will, and you will ensure that any person attending the Storage Facility on your behalf shall, comply with all reasonable directions of T-Ports and its employees and representatives and avoid or minimise unreasonable interference with the passage of people, vehicles and the operations and activities carried out at the Storage Facility.
- ### 4. Compliance with Receival Standards and entitlement to reject
- 4.1 You acknowledge and agree that we may in our absolute discretion refuse to accept delivery of Your Grain under this Agreement on any reasonable ground, including without limitation where:
 - 4.1.1 that grain does not meet (as determined by us at our sole discretion) our Receival Standards;
 - 4.1.2 that grain is not delivered with the receival information (including but not limited to any required

declarations and delivery information to be made or provided by you or any person delivering any commodity to us on your behalf) that we may require as amended from time to time;

- 4.1.3 we determine (in our sole discretion) that we have insufficient capacity at the Storage Facility, or the Storage Facility and any relevant equipment is or is likely to be undergoing routine or emergency maintenance and/or repair work;
- 4.1.4 you fail or have failed to comply with these Terms;
- 4.1.5 we determine that risks to health and safety exist or may exist;
- 4.1.6 we determine that the commodities are or are likely to be contaminated;
- 4.1.7 you fail to comply with all safety, health and environmental policies and procedures applicable to deliveries to the Storage Facility, as amended from time to time by T-Ports.

4.2 For the avoidance of doubt, we retain, at all times, the sole, absolute and final discretion as to what specifications and quantities of commodities or grades we will receive at our Storage Facilities.

5. Weights and grade

You acknowledge and agree that in the absence of manifest error the weight, quality and grade of Your Grain delivered under this Agreement will be that recorded in the applicable Delivery Ticket.

6. Your Grain Entitlement

- 6.1 We will commingle Your Grain with grain which is of the same grade that is delivered by third parties to the Storage Facility.
- 6.2 Commingled commodities will be deemed to be common commodity of specified quality stored in bulk and title to the common commodities will be held jointly by you, the other clients and Participating Grain Marketers whose commodities form part of the common commodities stored in bulk at the Storage Facility.
- 6.3 Your entitlement to the common commodity of a particular grade and Season at any time is your interest in the common commodities at that time which shall be equal to that proportion which the quantity of the Your Grain at the time bears to the quantity of the common commodities at that time, less:
 - 6.3.1 the Shrinkage Adjustment Factor where your commodity is physically removed in accordance with **clause 7.1.2**;
 - 6.3.2 the weight of any commodities that are damaged or destroyed as a result of any cause beyond the reasonable control of T-Ports and not attributable to negligence of T-Ports;
 - 6.3.3 the weight of any commodities that are damaged and in respect of which an amount (whether by way of insurance, compensation or otherwise) has been paid to you; and
 - 6.3.4 the weight of any Outturned commodity.
- 6.4 The relationship between T-Ports and you in respect of possession of Your Grain Entitlement is one of bailment only, notwithstanding comingling of Your Grain with other grain.
- 6.5 You will hold your interest as tenant in common with the other clients (which includes Participating Grain Marketers) and you will not have the right to nominate any particular parcel of common commodity as Your Grain.
- 6.6 For the avoidance of doubt, subject to the provisions of these Terms, your interest represents an ownership right to commodities of the same type and grade that was determined by us and delivered by you or another person on your behalf (and not the same physical commodity that was delivered by you or on your behalf.)

7. Outturn - General

- 7.1 Subject always to you having a Your Grain Entitlement and these Terms, you are entitled to outturn Your Grain Entitlement by:
 - 7.1.1 selling Your Grain Entitlement to a Participating Grain Marketer at the Storage Facility (**'Warehouse Transfer'**); or
 - 7.1.2 physically removing Your Grain Entitlement from the Storage Facility, provided that the outturning of your

Grain Entitlement coincides with the Outturning of that grade of grain from the Storage Facility by others or as nominated by T-Ports, in accordance with the following provisions of this clause.

- 7.2 Unless otherwise agreed with T-Ports:
 - 7.2.1 Your Grain Entitlement shall be Outturned from the Storage Facility that you delivered Your Grain;
 - 7.2.2 Outturning of Your Grain Entitlement, which is less than 200 tonnes, shall be removed in a single lot within a single day;
 - 7.2.3 Outturning of Your Grain Entitlement, which is greater than 200 tonnes, shall be Outturned at a minimum of 200 tonnes lots until the last lot.
- 7.3 Unless otherwise agreed with T-Ports, freight and transport relating to the Outturning of Your Grain Entitlement is your responsibility. T-Ports is not responsible for the cleanliness, fitness for loading or carriage of Your Grain Entitlement. However, T-Ports, may in its absolute discretion suspend, cancel, or refuse to provide the Outturning services if T-Ports considers that the transportation vehicle or wagon is not clean or fit for loading or carriage. T-Ports shall not be liable to you for the cost, liabilities or expenses incurred as a result of T-Ports' actions under this **clause 7.3**.

8. T-Ports Grower Outturn Warehouse Form and Time for Outturn

- 8.1 On each occasion that you require T-Ports to physically remove your Grain Entitlement from the Storage Facility, you must provide T-Ports with a completed T-Ports **'Grower Outturn Warehouse Form'** (available on our Website or on request from T-Ports). T-Ports will not allocate commodity for outturn until it has received a T-Ports Grower Outturn Warehouse Form properly completed in accordance with this **clause 8**. You must comply with all of T-Ports' ordering procedures from time to time, including in respect of any implementation by T-Ports of an online ordering system during the term of this Agreement.
- 8.2 Subject to **clause 8.3**, T-Ports will use all reasonable efforts to complete outturn of the commodities specified in each T-Ports Grower Outturn Warehouse Form at the time requested by the Grower, provided that the relevant T-Ports Grower Outturn Warehouse Form must be given to T-Ports on 5 business days' prior notice.
- 8.3 T-Ports will have no liability to you or any third party whatsoever and howsoever arising in connection with any failure to outturn any of the commodities by the time periods specified in **clause 8.2**.
- 8.4 Despite anything to the contrary stated in these Terms, you agree that T-Ports shall not be obliged under these Terms to outturn commodities during any period(s) in which:
 - 8.4.1 commodities are or are likely to be undergoing programmed fumigation;
 - 8.4.2 commodities are or are likely to be subject to insect infestation;
 - 8.4.3 the Storage Facility and any relevant equipment is or is likely to be undergoing routine or emergency maintenance and/or repair work;
 - 8.4.4 T-Ports determines that events beyond the reasonable control of T-Ports, including without limitation adverse weather conditions (including but not limited to rain, flood, fire, storm and winds) or force majeure events affecting T-Ports' service providers, prevent or are likely to affect the outturn of the commodities at that Storage Facility or may or are likely to give rise to a risk that such commodities may be damaged, delayed or contaminated during outturn;
 - 8.4.5 T-Ports determines that any plant and equipment necessary for, or used in connection with, the outturn of commodities is or is likely to be malfunctioning, broken down or otherwise unavailable for any reason;
 - 8.4.6 unacceptable risks to health and safety exist or may exist;
 - 8.4.7 any outstanding fees or charges are owed to T-Ports;

- 8.4.8 the fee for Outturning of the Grain Entitlement has not been paid.
- 8.5 You agree that any determination made by T-Ports under **clause 8.4** will be final and binding on the parties.
- 9. T-Ports Outturn Obligations**
- 9.1 Subject to the following provisions of this **clause 9** and without limiting any other provision of these Terms, T-Ports will Outturn commodities which, as a minimum, meet the Receival Standards that apply in relation to Your Grain Entitlement (**'Outturn Standard'**).
- 9.2 You must notify T-Ports in writing (using T-Ports' standard form Outturn Defect Report of any alleged failure to comply with the applicable Outturn Standards (**'Outturn Defect'**) (together with your test results which demonstrate the Outturn Defect):
- 9.2.1 immediately upon becoming aware of an Outturn Defect; and
- 9.2.2 in any case, within 2 days after completion of the outturn.
- 9.3 Where you allege an Outturn Defect, T-Ports may agree to you returning (at your own expense) the relevant commodities to a Storage Facility to determine whether the relevant commodities have any Outturn Defect. T-Ports will conduct its own tests using Approved Equipment to determine whether the relevant commodities have any Outturn Defect. If testing conducted by T-Ports does not reveal the presence of any Outturn Defect, T-Ports may charge a re-receival fee for return of the relevant commodities and you agree to pay any such fees levied and all other standard Fees will continue to apply.
- 9.4 T-Ports will have no liability to you or any third party whatsoever and howsoever arising in relation to Outturn Defects where written notification is not received by T-Ports from you in accordance with the requirements of **clause 9.2**. Without limitation, you agree to provide all reasonable cooperation to T-Ports to mitigate any loss arising from an Outturn Defect. Nothing in this clause limits the succeeding provisions of these Terms.
- 9.5 The parties agree that despite anything to the contrary contained or implied in these Terms:
- 9.5.1 the following circumstances shall not constitute an Outturn Defect for the purposes of these Terms and T-Ports shall have no liability to you for these circumstances:
- (a) the protein and moisture parameters of the relevant commodities as tested by you, on your behalf, in each case using Approved Equipment, are within 0.3% of the parameters specified by the Receival Standards;
- (b) the screening parameters are within 1.0% parameters specified by the Receival Standards;
- (c) where, T-Ports has tested the relevant truck load on outturn and the test results do not evidence an Outturn Defect for which T-Ports is otherwise responsible pursuant to these Terms and those test results are displayed on the form produced by T-Ports at the time of outturn which details the weight of so much of Your Grain Entitlement that is outturned (**'Outloading Weight Ticket'**).
- 9.5.2 you acknowledge and agree that each Permitted Tolerance allows for testing discrepancies which may arise due to, among other things, you or a third party on your behalf using different Approved Equipment or using a different composite sample of the truck.
- 9.5.3 Within 24 hours of request by T-Ports you must provide T-Ports with written details and/or evidence (in a form reasonably satisfactory to T-Ports) of:
- (a) the equipment used in performing the tests which you allege evidences an Outturn Defect (including details of the NMI class, type, make and model (**'Client Equipment'**), which equipment must be Approved Equipment;
- (b) the methodology followed in performing the tests, which must be consistent with Approved Testing Methodology.
- 9.6 Within 72 hours of T-Ports receiving your written notice of an Outturn Defect, T-Ports may (but is not obliged to) by notice in writing to you, require testing of samples of the commodities in accordance with the Approved Testing Methodology (**'Independent Testing'**). If the results of the Independent Testing establish an Outturn Defect in the relevant Commodities for which T-Ports is liable under these Terms, the costs of the Independent Testing shall be paid by T-Ports. Otherwise, the costs of the Independent Testing shall be paid by you.
- 10. Weights**
- 10.1 Where T-Ports determines and records the weight of the Outturned commodities (whether by use of a weighbridge located at a Storage Facility or otherwise) then the weight recorded over the weighbridge (in a Outloading Weight Ticket) shall be conclusive evidence of the weight of the Outturned commodities and shall be final and binding on the parties.
- 10.2 Notwithstanding any other provision in this Agreement, T-Ports shall have no liability to you or any third party arising in relation to any discrepancy between the weight of the Outturned commodities determined by T-Ports in accordance with **clause 10.1** and the weight of the Outturned commodity recorded at the destination for the Outturned commodities.
- 11. Warehouse Transfer**
- 11.1 You may provide verbal or written instructions to T-Ports or preferably use the Web Portal to give effect to a Warehouse Transfer of all or part of Your Grain Entitlement, whereby our record of such verbal communication, including any written confirmation, shall be conclusive and binding on you. You agree and authorise T-Ports to transfer for and on behalf of you as your attorney under this Agreement Your Grain Entitlement to the nominated Participating Grain Marketer. Subject to the Participating Grain Marketer's acceptance of the transfer, T-Ports shall complete the transfer.
- 11.2 The effective date, for the purposes of this Agreement, of a Warehouse Transfer will be the date that T-Ports receives instructions from you.
- 12. Outturn Adjustment**
- 12.1 After completion of the Outturn of each grade for a given Season across the T-Ports storage network, if the tonnage of the Stored Grain Outturned is less than the Accounting Stock Tonnage, T-Ports must do one of the following as elected by T-Ports in its sole discretion:
- 12.1.1 provide sufficient additional Grain of the same type, and grade to ensure that the net Outturning of Grain is equivalent to the Accounting Stock Tonnage; or
- 12.1.2 provide financial compensation to the Customer of the shortfall in the net Outturning, based on the Fair Market Price for Grain of the relevant type and grade for the applicable season and as at the date T-Ports exercises its discretion as per this clause.
- 12.2 After completion of the Outturn of each grade for a given Season across the T-Ports storage network, if the tonnage of the Stored Grain Outturned is more than the Accounting Stock Tonnage, You must provide financial compensation to T-Ports for the excess in the net Outturning based on Fair Market Price for Grain of the relevant type and grade for the applicable Season as at the date of the Outturn.
- 13. Movements for Operational Efficiency**
- 13.1 T-Ports has the right to advise the customer in advance and Outturn the Grain to another T-Ports facility or relocate the Grain within the current facility if:
- 13.1.1 the T-Ports facility, or storage bunker or stack, reaches capacity (or is expected to reach capacity) during the Season harvest;
- 13.1.2 The Grain has been stored in a scrape bunker pad (dirt pad);

- 13.1.3 consolidation of small quantities of Grain is required (in T-Ports' reasonable opinion) for the efficiency of the T-Ports facility;
 - 13.1.4 the volume in the cell/bunker/stack in which the Grain is stored is down to sweeping stage and/or less than 10% capacity;
 - 13.1.5 the quality of the Grain that has been received has potential to contaminate other third parties' Grain or Your Grain; or
 - 13.1.6 T-Ports determines that it is operationally efficient to move the Grain;
 - 13.1.7 This Agreement expires or is terminated.
- 13.2 In the event that T-Ports has the right to Outturn the Grain pursuant to **clause 13.1**, you will bear any reasonable additional costs or charges that may arise out of the Outturn or relocation relative to the site of origin, including, but not limited to, freight differentials.

14. Indemnity – over Outturn due to inaccurate records

You must, if you know or if you ought reasonably to know, that T-Ports' records or documents are incorrect, inaccurate or out of date, promptly inform T-Ports of the matter and, if possible, promptly provide T-Ports with correct, accurate and up to date records and information. You agree to reimburse and indemnify T-Ports against all claims, damages, losses, costs, expenses and liabilities suffered, sustained or incurred by T-Ports howsoever as a result of, or in connection with, a failure by you to comply with this clause.

15. Pest Control

15.1 You acknowledge and agree that we may treat Your Grain and Your Grain Entitlement with fumigant in accordance with applicable laws, codes and regulations. A list of treatments will be provided to you on written request. Where fumigation or other certificates are required or requested by you, we may charge a fee for the administration of these certificates.

15.2 You must provide information on chemical treatments applied as well as furnish a clearance certificate stating the treatment used, the application rate and confirmation that the relevant parcel is fumigant and / or chemical residue free

16. Site Access

You must, and must ensure that your employees, officers, agents, contractors and invitees comply with all procedures, policies and instructions of T-Ports representatives at the Storage Facility.

17. Fees

- 17.1 The fees ('Storage Fees') for the Services under this Agreement are in the Grower Warehouse Price Book (refer to Schedule 1).
- 17.2 Storage Fees are payable by you for the Services supplied by us under these Terms in respect of each delivery of your Grain and Your Grain Entitlement until payment is received by us from you or any Participating Grain Marketer you transfer Your Grain Entitlement to.
- 17.3 The Storage Fees must be paid by you or the Participating Grain Marketer (as appropriate) within 7 days from the date of invoice from us. Invoices will be raised upon transfer of Your Grain Entitlement to a Participating Grain Marketer, or in the case of physical outturn, upon our acceptance of the T-Ports Grower Outturn Warehouse Form.
- 17.4 All overdue payments under these Terms will bear simple interest at ten percent (10%) per annum, calculated from the due date to the date of actual payment in full.
- 17.5 We may set off against any amounts that we or any of our Related Bodies Corporate owe to you any amounts that you owe to us or our Related Bodies Corporate in connection with this Agreement.
- 17.6 You are not entitled to withhold payment of any disputed amount the subject of an invoice issued by us or to set off against the amount of an invoice any other claim that you have against us.

18. Title, lien and Power of Attorney

- 18.1 You warrant and represent that you are the sole legal and beneficial owner of Your Grain with full right, title and interest,

free from any security interest, mortgage, charge, lien, option, encumbrance or other adverse claim or interest.

- 18.2 Without limiting any right conferred upon us by law in relation to all moneys payable by you to us or any of our Related Bodies Corporate on any account whatsoever other than amounts in respect of which we have a lien pursuant to a law of the Commonwealth, a State or Territory ('Other Moneys'), we shall have a lien over Your Grain Entitlement as from the time that Your Grain is delivered for such Other Moneys.
- 18.3 In consideration of T-Ports agreeing to provide the Services to you, you unconditionally and irrevocably appoint T-Ports and each officer of T-Ports to be your attorney in the name of, and on behalf of you, to execute, perform and complete each of T-Ports' powers capable of being exercised in your name in enforcing any lien to sell Your Grain Entitlement and otherwise performing your obligations under this Agreement. You acknowledge and agree that we may sell Your Grain Entitlement in such manner as we think fit and use the proceeds of such sale in or towards satisfaction of the relevant money due, together with our costs of effecting the sale. Subject to these Terms, the balance of the proceeds of such sale will be paid to you.
- 18.4 You indemnify us and each of our officers against all claims arising under, or in connection with, the exercise of any rights conferred by this **clause 18**.
- 18.5 Where Your Grain forms part of the common commodities stored in bulk at the Storage Facilities, we may nominate and identify any particular quantity of the commodity as being Your Grain for the purposes of the Agreement, including for the purposes of enforcing our lien over Your Grain Entitlement and for the allocation of loss or damage between you and other clients.

19. Personal Property Securities Act 2009 Cth

- 19.1 You agree and acknowledge that:
 - 19.1.1 we have a Security Interest for the purposes of the PPS Act in Your Grain and Your Grain Entitlement including the proceeds from the sale of Your Grain Entitlement (collectively, goods) in respect of unpaid fees;
 - 19.1.2 we have given value for the Security Interest, including by our promises under this Agreement;
 - 19.1.3 our Security Interest in the goods is effective and attaches to the goods immediately upon us taking delivery of the goods;
 - 19.1.4 we may, at your expense, take all reasonable steps as we consider advisable (in our reasonable opinion) to perfect, protect, record, register, or amend, remove or end the registration of, our Security Interest in the goods; or better secure our position in respect of this Agreement under the PPS Act.
- 19.2 You must procure the removal or cessation of any registration in relation to any Security Interest that affects the priority of our interest in the goods.
- 19.3 You must immediately notify us if you become aware of any person taking steps to register, or registering, a financing statement in relation to the goods.
- 19.4 If we request, you must, at your own cost, immediately do anything (including providing information, obtaining consents or waivers, or executing new documents, amendments to this Agreement or consents) which we consider necessary (in our reasonable opinion) to:
 - 19.4.1 ensure that our Security Interest provided for by this Agreement attaches to the goods, is enforceable, perfected and otherwise effective and has the priority required by us;
 - 19.4.2 enables us to prepare and register (including renewal of registration) a financing statement or financing change statement, this Agreement or any notice of this Agreement, on any register of securities or any other register relevant to the goods;
 - 19.4.3 enable us to exercise any of our rights or powers in connection with our Security Interest in the goods, and the proceeds of the goods, or to perform any of our obligations under the PPS Act;

- 19.4.4 ensure that this Agreement is not void, voidable or otherwise unenforceable;
 - 19.4.5 protect, perfect, record or better secure our position under this Agreement and our interest in the goods and proceeds of the goods in any relevant jurisdiction; or
 - 19.4.6 overcome any defect or adverse effect arising from the PPS Act.
- 19.5 Words and expressions used in this clause which are not otherwise defined in this Agreement but are defined in the PPS Act have that same meaning.
- 19.6 You waive your right to receive any notice under the PPS Act (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPS Act.

20. Risk

Subject to **clause 21**, to the extent permitted by law and despite anything to the contrary contained or implied in these terms and conditions, you bear all risk of loss or damage to Your Grain and Your Grain Entitlement howsoever arising, other than to the extent caused by our negligence.

21. Liability

- 21.1 You agree to pay, reimburse and indemnify us, our servants, agents, Related Bodies Corporate and counterparties on demand for and against all costs, losses and liabilities claims, damages and expenses, indirect and special loss and damage, and loss of profits, suffered or incurred by T-Ports its servants, agents, Related Bodies Corporate and counterparties arising directly or indirectly in connection with:
- 21.1.1 any commodities delivered to us by you (or on your behalf), including (without limitation) for breach of **clause 3** of these Terms;
 - 21.1.2 any acts or omissions attributable to you including, (without limitation), acts or omissions causing or contributing to any loss or damage to, any property of any person and any injury to or death of any person;
 - 21.1.3 any overloading of a vehicle containing Your Grain;
 - 21.1.4 any failure to comply with the Chain of Responsibility Laws;
 - 21.1.5 any claim by a third party to a lien, charge or other security interest in the commodity;
 - 21.1.6 any claim by a third party relating to your acts or omissions in respect of the commodity or your Outturned commodity;
 - 21.1.7 damaged or contaminated commodities which were at your risk, except to the extent of any loss caused directly and solely by our negligence;
 - 21.1.8 your failure to comply with any relevant laws or regulations.
- 21.2 We exclude all implied conditions and warranties except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of these Terms to be void ('**Non-Excludable Condition**').
- 21.3 To the extent permitted by law, our liability to you for breach of any Non-Excludable Condition is limited, at our option, to refunding the price of the Services in respect of which the breach occurred or to supplying those Services again or to paying the cost of having those Services supplied again.
- 21.4 Except for liability for breach of any Non-Excludable Condition and to the extent permitted by law, in respect of any breach of any contract between us or any negligent act or omission by us (whether in relation to any contract between us or otherwise):
- 21.4.1 we exclude liability for loss of profits, special loss, consequential loss and indirect loss or damage; and
 - 21.4.2 without limiting **clause 21.4.1** our total liability to you for any single occurrence or event or series of related events shall not exceed \$50,000.00.
- 21.5 T-Ports' employees, agents and contractors have the benefit of this indemnity and release and to that extent T-Ports enters into this Agreement as agent and trustee on their behalf.

22. Chain of Responsibility

- 22.1 Each of the Grower, its Agents and T-Ports must co-operate and comply with a reasonable request or direction from the other party in relation to:
- 22.1.1 monitoring compliance with Chain of Responsibility Laws;
 - 22.1.2 responding to an investigation or enquiry from any third party regarding compliance with Chain of Responsibility Laws; and
 - 22.1.3 management of any transport and journey documentation.
- 22.2 Each of you (and you must procure that your Agent will) and T-Ports must, upon request, allow the other party to inspect the transport or journey documentation held by the other party that relates to the provision of the Services.
- 22.3 Each of the you and T-Ports must:
- 22.3.1 notify the other party immediately of any actual or suspected breach of a Chain of Responsibility Law by it or any of its personnel, subcontractors or Agents; and
 - 22.3.2 take immediate steps to remedy the actual or suspected breach (at its own cost).
- 22.4 You must ensure that you comply with the Chain of Responsibility Laws or other similar legislation in force at the relevant time, including ensuring that:
- 22.4.1 All vehicle loads entering a T-Ports site comply with their respective mass, load and dimension management limit obligations; and
 - 22.4.2 the drivers of all vehicle entering a T-Ports site are in compliance with their relevant speed and fatigue obligations.
- 22.5 You agree that any breaches of Chain of Responsibility Laws by you when you present at a T-Ports site may be recorded by T-Ports and may be reported to the relevant state or national regulator at T-Port's sole discretion without notice to you.

23. Your acknowledgments

You acknowledge and agree that:

- 23.1 The representations and warranties provided by you under these Terms are true and accurate.
- 23.2 You accept all risk associated with dealing with the Participating Grain Marketers and agree that we will not be liable for any loss incurred by you as a result of, or in connection with, your dealings with Participating Grain Marketers.
- 23.3 Subject to the provisions of these Terms, the relationship between us in respect of the possession of Your Grain is one of bailment and that relationship will continue to exist despite Your Grain losing its identity by becoming part of the common commodities or despite the inability of T-Ports to redeliver to you the same physical commodity the subject of the bailment.
- 23.4 You will pay, reimburse and indemnify us from and against all claims, damages, losses, costs, expenses or liabilities suffered, sustained or incurred by us in connection with the provision of the Services.

24. Privacy

- 24.1 Subject to any law to the contrary, provided you have not indicated otherwise, you authorise us to collect and use any information related to you, Your Grain, Your Grain Entitlement and the performance of this Agreement (which includes but is not limited to your personal information and details of your warehoused stock) in the following way:
- 24.1.1 to maintain your relationship with T-Ports including in order to maintain stock records and administer payments;
 - 24.1.2 to collect outstanding monies;
 - 24.1.3 to comply with requests from regulatory authorities or with court issued documents;
 - 24.1.4 in connection with a proposed sale or acquisition of an interest in a business;
 - 24.1.5 for any purpose required or permitted by law, any arbitration proceeding, to comply with requests from government and regulatory bodies and authorities and end point royalty managers;

- 24.1.6 for any purposes, specifically set out in the Agreement and these Terms.
- 24.2 We will continue to collect and deal with information related to you or the performance of this Agreement on an ongoing basis until you inform us that you no longer wish us to do so. You can withdraw your consent at any time by calling the T-Ports Service Centre on 1800 876 787.
- 24.3 Our Privacy Policy located on Our Website contains information about how personal information held by us may be accessed and corrected and how complaints can be made and are managed.
- 25. Use of our Grower Portal and Data Sharing**
- 25.1 T-Ports may grant you, in your own right or in conjunction with other growers as part of a share farming arrangement, use of and access to a Grower Portal.
- 25.2 You must not disclose its login information to any person or otherwise allow any person to access the Grower Portal using its Login Information.
- 25.3 When providing instructions to T-Ports and when using the Grower Portal as part of a share farming arrangement:
- 25.3.1 all growers party to the share farming arrangement (**'Share Growers'**) may have access to the Grower Portal and access information relating to the entirety of the grain entitlement subject to the share farming arrangement (**'Share Farming Grain Entitlement'**);
- 25.3.2 T-Ports will accept instructions relating to the Share Farming Grain Entitlement from any person through correspondence via telephone, email or the Grower Portal;
- 25.3.3 T-Ports is not liable for any loss or damage suffered by any Share Grower in connection with any action taken by T-Ports pursuant to instructions received via telephone, email or through the Grower Portal relating to the Share Farming Grain Entitlement;
- 25.3.4 You warrant and represent to T-Ports that the person who provided instructions to T-Ports in relation to the Share Farming Grain Entitlement (including for the transfer and outturning of the Share Farming Grain Entitlement) or entered into this Agreement was authorised to do so on behalf of the Share Growers and to bind the Share Growers; and
- 25.3.5 You acknowledge and agree that each Share Farmer is jointly and severally liable for Your obligations under this Agreement, including the obligation to pay any amount under this Agreement.
- 25.4 You must take your own precautions to ensure that the process which you employ for accessing the Grower Portal does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your own computer system.
- 25.5 T-Ports will use reasonable endeavours to ensure that Data is made available to you through the Grower Portal.
- 25.6 Title to and ownership of all Data will remain with the Company.
- 25.7 T-Ports grants the Customer use of and access to the Data in the form provided on the Grower Portal.
- 25.8 You acknowledge and agree that, unless given prior notice of opting out, T-Ports will make the Data available to third parties (including without limitation buyers/traders of the commodities) to assist you in facilitating the sale of the commodities.
- 25.9 The information contained on the Grower Portal (including the Aggregate Data) is provided by T-Ports in good faith on an "as is" basis and all users must verify the information before using the information. The Company does not make any representation or warranty that the information contained on the Grower Portal (including the Aggregate Data) is reliable, accurate or complete or that your own access to that information will be uninterrupted, timely or secure. T-Ports does not accept responsibility for loss suffered as a result of reliance by you upon the accuracy or currency of information contained on the Grower Portal.
- 25.10 Any failure by us to insist on strict compliance with any of these Terms or any delay by us in exercising our rights under these Terms will not constitute a variation or waiver of any of these Terms or any other right that is available to us.
- 25.11 If part or all of any provision of these Terms or its application to any person or circumstance is illegal or unenforceable, the provision will be interpreted so as to ensure it is not illegal or unenforceable. If any provision or any part of it cannot be so interpreted, the provision or part of it will be severed from these Terms and the remaining provisions of these Terms remain in force.
- 25.12 Where you comprise two or more persons, an agreement or obligation to be performed or observed by you binds those persons jointly and each of them severally.
- 25.13 This agreement is governed by the law in force in the State of South Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.
- 25.14 You must not assign or transfer any of your rights or novate any of your obligations under this agreement without our prior written consent and no assignment of any obligation will be effective until the incoming party has covenanted in favour of, and in form satisfactory to us, to assume and to be bound by the obligations assigned.
- 25.15 We may assign or transfer any of our rights or novate any of our obligations under this agreement to any person without your consent and without providing you notice.
- 25.16 Termination of this Agreement is without prejudice to the rights of either party that have accrued prior to the date of termination.
- 25.17 If you are a trustee, you agree that this agreement is binding upon the trustee personally and in its capacity as trustee of the trust and nothing contained or implied in this agreement or in any notification given or deemed to be given to us will prejudice, affect or in any way limit the personal liability of the trustee on its own account as a party under this agreement.
- 25.18 Nothing in these Terms is to be construed as constituting an agency, partnership, trust or joint venture between T-Ports and you.
- 25.19 No party to this Agreement is liable for an act or omission of another party to this agreement except to the extent set out in this Agreement.
- 25.20 We may in our sole and absolute discretion subcontract the provision of the whole or any part of the Services or otherwise engage any person to undertake the provision of any part of the Services on behalf of T-Ports without notice to you.
- 25.21 We do not represent, warrant or guarantee, neither expressly or impliedly, that the information provided by third parties under or on connection with the Agreement is complete, sufficient or accurate. To the fullest extent permitted by law, we accept no responsibilities for any inaccuracies, errors, false or misleading context in or omissions contained in any such information, or any other information or matter arising or coming to its notice which may affect this information or any other party's reliance on it.
- 25.22 Notwithstanding anything to the contrary in this Agreement, if, in our opinion, it would contravene any law or regulation, including any condition or accreditation, then we are not required to perform any obligation under this Agreement.
- 25.23 This Agreement constitutes the entire agreement between the parties in relation to its subject matter. No understanding, arrangement or provision not expressly set out in this Agreement in relation to the subject matter of the Agreement binds the parties. Accordingly, all correspondence, negotiations and other communications between the parties in relation to the subject matter of the Agreement which preceded the Agreement are superseded by it.
- 26. Definitions**
- In these Terms, unless the context otherwise requires:
- 26.1 **Accounting Stock Tonnage** means the quantity of each type and grade of Grain shown in T-Ports' accounting records, being determined by the Receival Tonnage less the Shrinkage Adjustment Factor.
- 26.2 **Agent** means a carrier or other person that seeks Services on your behalf.
- 26.3 **Agreement** means these Terms and a Delivery Ticket.
- 26.4 **Approved Equipment** means equipment certified in accordance with GTA Trading Standards, NMI certification standards and any relevant State and Federal regulatory standards.

- 26.5 **Approved Testing Methodology** means a methodology which in all respects is consistent with the sampling and testing methodology set out in the GTA Trading Standards for each relevant commodity together with all additional or supplementary requirements set out in the T-Ports Sample Manual as published from time to time.
- 26.6 **Chain of Responsibility Laws** means all applicable laws and standards relating directly or indirectly to the licensing and operation of heavy vehicles, mass, dimension and load restraint limits and requirements for heavy vehicles and driving rules (including laws and rules relating to fatigue management, driving under the influence of drugs or alcohol and speeding) for heavy vehicles, including but not limited to the Heavy Vehicle National Law (SA) Act 2013) in force as at the date of this Contract and as amended from time to time.
- 26.7 **delivered by you** means, in relation to your commodities, the time at which the Delivery Ticket issued for those commodities has been signed by you and the T-Ports representative.
- 26.8 **Delivery Ticket** means T-Ports' warehousing weighbridge ticket.
- 26.9 **Electronic Communications** means message transmitted and/or received by any electronic notice board on your account, email, short message service (SMS), multimedia message service (MMS) or instant messaging or WAP.
- 26.10 **Fair Market Price** means a price for a specific location, grade and quantity of Grain equal to an average bid price to growers for the season produced by an independent and reputable grain broker nominated by T-Ports.
- 26.11 **Fees** means the amounts payable by you calculated in accordance with the Warehousing Agreement.
- 26.12 **Grain** means wheat, barley, oats, triticale, canola and legumes and any other type of grain which is received, stored and/or handled by T-Ports and, after receipt of a quantity of such grain means the same quantity of grain of the same type and grade.
- 26.13 **Grower** means, as the context requires:
- 26.13.1 a person or Agent that uses the Services, including:
 - (a) the payee or payees registered with the National Grower Register against the Delivery Card number tendered by the Grower or Agent in the process of obtaining Services;
 - (b) where a person receives the Services on the basis of a temporary National Grower Register card number, that person that is subsequently registered as payees against that number;
 - 26.13.2 a person or persons on whose behalf commodities have been received and warehoused by T-Ports and any subsequent non-trade purchaser of the Outturn Right, and if there is more than one person, and 'Grower' includes each of them separately and jointly and any one of them has irrevocable authority to deal on behalf of all of the parties comprising the Grower.
- 26.14 **Grower Portal** means T-Ports' online access portal provided as part of the Services under this Agreement.
- 26.15 **Grower Warehouse Price Book** means the attached Schedule 1.
- 26.16 **GTA** means Grain Trade Australia Ltd.
- 26.17 **GTA Trading Standards** means the standards published by GTA.
- 26.18 **NMI** means the National Measurement Institute being part of the Australian Government Department of Innovation, Industry, Science and Research.
- 26.19 **Outturn, Outturned or Outturning** means to remove Your Grain Entitlement from our Storage Facility pursuant to **clause 6 to 9** of these Terms.
- 26.20 **Outturn Standard** has the meaning given in **clause 9.1** and as published by T-Ports from time to time.
- 26.21 **Our Website** means <https://tports.com/> or any replacement website.
- 26.22 **Participating Grain Marketer** means a person who has entered into our standard storage and handling agreement with T-Ports and who is offering to purchase commodity at the relevant time.
- 26.23 **Permitted Tolerance** means, in relation to the measurement of protein or moisture, +/- 0.3 of the percentage result for protein and/or moisture and +/- 1.0 of the percentage result for screenings (e.g. if the percentage measurement specified by the
- Receival Standards for moisture is 12.5%, the Permitted Tolerance under this definition is 12.2% - 12.8%).
- 26.24 **PPS Act** means the Personal Properties Securities Act 2009 (Cth).
- 26.25 **Receival Standards** means T-Ports' standards for the receival and classification of commodities delivered to the Storage Facility as notified by T-Ports to you from time to time.
- 26.26 **Receival Tonnage** means the tonnage of Grain delivered by customers to T-Ports at a T-Ports facility.
- 26.27 **Related Bodies Corporate** has the meaning given to that expression as defined in section 50 of the *Corporations Act 2001*;
- 26.28 **Season** means 12 consecutive calendar months commencing 1 October each year and ending 30 September the following year.
- 26.29 **Services** has the meaning given in **clause 2** of these Terms.
- 26.30 **Shrinkage Adjustment Factor** mean the shrink percentage rates included in the Grower Warehouse Price Book or as published on the Website.
- 26.31 **Storage Facility** means the T-Ports facility or premises at which the Services under this Agreement are provided to you specifically, Lucky Bay, Lock, Kimba and or Wallaroo.
- 26.32 **Your Grain Entitlement** means your entitlement to the common commodity as determined in accordance with **clause 6.3**.
- 27. Interpretation**
- 27.1 the singular includes the plural and vice versa;
- 27.2 words importing a gender include the other genders;
- 27.3 other grammatical forms of defined words or phrases have corresponding meanings;
- 27.4 a reference to "dollar", "\$" or "\$A" is a reference to Australian currency;
- 27.5 a reference to writing includes any mode of representing or reproducing words, figures or symbols in a lasting and visible form;
- 27.6 headings are for convenience of reference only and do not affect interpretation;
- 27.7 unless specified otherwise, "day" means a calendar day and "business day" means a day which is not a Saturday, Sunday or public or bank holiday in the place where an act is to be performed or payment is to be made;
- 27.8 including must not be treated as a word of limitation;
- 27.9 a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity; and
- 27.10 nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it.

Schedule 1 – Grower Warehouse Price Book

| Service Item: | \$ per Tonne – GST Exc | |
|---|--|---------------------------|
| Port Receival - Lucky Bay and Wallaroo | Wheat \$17.50 (all grades), Barley \$18.50 (all grades) | |
| Country Receival – Lock and Kimba* | Wheat \$13.50 (all grades) Barley \$14.50 (all grades) | |
| Domestic Outturn | \$5.50 | |
| Storage Fee | 1 Jan, 1 Feb, 1 Mar, 1 Apr1 May, 1 Jun, 1 Jul, 1 Aug \$1.50/mt/month | 1 Sept \$4.00/mt/month |
| Shrinkage (including dust) | 0.75% | |

*Kimba – TPorts to move stocks by 31 March of the Season. Domestic Outturn by agreement only