

# Member Update

UPDATE 11 of 17 • 24 August 2017

**TOPIC: New GTA Contract No.6 – Grower Contract**

**DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.**

## ***GTA will be releasing a specific Grower Contract***

**Member Submissions close 11 September 2017**

### **1. Purpose**

- a) To advise Members GTA will be releasing GTA Contract No 6 – Grower Contract as part of its portfolio of Standard Form Grain Contracts
- b) Submissions from Members are sought on the proposed terms and conditions of the GTA Contract No 6 – Grower Contract.

### **2. Background**

- The issue of whether a separate GTA Standard Form Contract for Growers has been discussed and analysed over several years. Two Commerce Sub-Committees have considered the issue and called for submissions from Industry (refer Member update 3/16).
- The Member Update raised issues around amendments to the GTA Contract No3, and included issues around creation of a separate grower contract, if it was decided that potential changes to the No3 Contract may impact facilitation of “trade to trade” markets and contracting.
- The key issues raised by the Industry Submissions from production sector and non-production sector and considered by the Sub-Committees were around:
  - 1) Payment terms
  - 2) RCTI (opt in/opt out)
  - 3) Retention of Title and PPSA
  - 4) Interest Charges for execution of grain outside delivery period, and clarity of wording
  - 5) Chain of Responsibility
- Industry submissions and work of the Sub-committees highlighted that the current No3 Contract is effective in facilitating trade between grain trading Members, and that making changes to the No3 Contract could have a detrimental impact on the facilitation of trade within that segment.
- Further to that advice, the GTA Board have resolved that, from a strategic position, GTA should include a specific “Grower Contract” in the portfolio of GTA Standard Form Grain Contracts.
- This is to ensure Industry has available Standard Contracts for that particular link in the value chain. Also recognising that the production sector have made consistent representation on issues specific to production sector contracting with the Trade that do not warrant changes to the No3 Contract, as it exists.
- It should be noted, that GTA Standard Form Contracts are made available for Members to use, and that GTA Members may use them within their own businesses, and as appropriate for their particular circumstances.

### 3. Proposed Contract

- The proposed Grower Contract is based on the current No3 Contract. The draft version relies on the Industry Submissions and the previous work and analysis from the Contract Sub-Committees.
- The Key Issues or changes (from the current No3 Contract) proposed in the Draft Grower Contract are summarised below:

<i>Issue</i>	<i>Key Difference to No.3 Contract</i>	<i>Comment</i>
Payment terms	Change Default to 14 Days End of Week of Delivery (from 30 days EOW).	Noted some Submissions suggested 7 days EOW, many noted could be administratively difficult. Parties still able to negotiate their own terms
RCTI	Seller will have to Opt Out of Buyer providing RCTI (vs current of Opt In).	Broad Support for this, when outside of current No3. Most traders already doing this.
Retention of Title Clause & PPSR	No change to current clause in No.3 Contract.	Advised that current clause provides protection, and preference for clause consistency where possible.
Carry	New clause included, for default to be for Storage to be paid if execution outside of grain delivery period, subject to Trade Rule 17 (Default)	Provided as default, however conjecture given issues around Default issues if grain is being executed outside of Delivery Period.
Interest in Standard T&Cs	Remove sentence around “if no due date” as said to be ambiguous as all contracts should have an end /due date, due to default payment terms.	Submitted by NSWFA, VFF, GPA, GGL
Chain of responsibility	No Change	COR is part of own legislation with requirements on parties, and not included in other GTA contracts. GTA working on issue.

- **Attached is a draft of the proposed GTA Contract No 6 – Grower Contract**

### 4. Process for Industry Feedback

- The Committee is seeking industry comments on the issues outlined in this document and the proposed **GTA Contract No 6 – Grower Contract**.
- Submissions should be received by **COB Monday 11th September 2017**.
- Industry is encouraged to provide supporting evidence in their submission for any change proposed in this Member Update.
- All submissions should be lodged using the [Technical Committee Submission Form](http://www.graintrade.org.au/committees), located on the GTA website at <http://www.graintrade.org.au/committees>.
- Unless marked “**confidential**” and appropriate supporting reasons are provided, all submissions will be placed on the GTA website for industry review.
- Please lodge your submissions by sending to [submissions@graintrade.org.au](mailto:submissions@graintrade.org.au) and title your email – “**GTA Contract No 6 – Grower Contract**”

# GTA Contract No.36 – Grower Contract

## CONTRACT CONFIRMATION



GTA Trade Rules and Dispute Resolution Rules apply to this contract

This Contract is confirmation between:

**BUYER**

Contract No: \_\_\_\_\_

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_

Buyer ABN: \_\_\_\_\_

**SELLER**

Contract No: \_\_\_\_\_

Name: \_\_\_\_\_  
 Company: \_\_\_\_\_  
 Address: \_\_\_\_\_

Seller ABN: \_\_\_\_\_  
 NGR No: \_\_\_\_\_

The Buyer and Seller agree to transact this Contract subject to the following Terms and Conditions:

Commodity: \_\_\_\_\_ GTA Commodity Reference: \_\_\_\_\_

Grade: \_\_\_\_\_ Inspection: \_\_\_\_\_ (Origin – Destination)

Quantity: \_\_\_\_\_ Tolerance: \_\_\_\_\_ (Refer over)

Packaging: \_\_\_\_\_ Weights: \_\_\_\_\_ (Origin – Destination)

Price: \_\_\_\_\_ Excl/Inc/Free GST \_\_\_\_\_

Price Basis: \_\_\_\_\_

Delivery/Shipment Period: \_\_\_\_\_  
(Delivered, Shipped, Free In Store, Free On Board, Ex-Farm, etc.)

Delivery Point and Conveyance: \_\_\_\_\_  
(Road, Rail, Delivered Container Terminal, Freight, Rated Basing Point, Loading Weight requirements if applicable)

Payment Terms: The buyer agrees to pay the seller within \_\_\_\_\_ absence of a declaration, payment will be **30-14** days end of week of delivery.

Levies and Statutory Charges: Any industry, statutory or government levies which are not included in the price shall be deducted as required by law.

Disclosures: Is any of the crop referred to in this contract subject to a mortgage, Encumbrance or lien and/or Plant Breeders Rights and/or EPR liabilities and/or registered or unregistered Security Interest?  NO  YES (Please tick appropriate box) If “yes” please provide details:  
 \_\_\_\_\_

Other Special Terms and Conditions:  
 \_\_\_\_\_

All Contract Terms and Conditions as set out above and on the reverse of this page form part of this Contract. Terms and Conditions written on the face of this Contract Confirmation shall overrule all printed Terms and Conditions on the reverse with which they conflict to the extent of the inconsistency. This Contract comprises the entire agreement between Buyer and Seller with respect to the subject matter of this Contract.

**Incorporation of GTA Trade & Dispute Resolution Rules:**

This contract expressly incorporates the GTA Trade Rules in force at the time of this contract and Dispute Resolution Rules in force at the commencement of the arbitration, under which any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration.

**Recipient Created Tax Invoice (RCTI).**

To assist with the processing of the Goods and Services Tax compliance, the buyer **may will** prepare, for the seller, a Recipient Created Tax Invoice (RCTI). If the seller **does not** requires this service they are required to sign this authorisation.

**Please DO NOT issue a RCTI.**

**Seller Signature:**

Buyer's ~~Sellers~~Buyers \_\_\_\_\_ PRINT NAME

Buyer's ~~Sellers~~Buyers Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Seller's Name: \_\_\_\_\_ PRINT NAME

Seller's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

This Contract has been executed and this form serves as confirmation and should be signed and a copy returned to the buyer/seller immediately.

# Grain Trade Australia Limited (GTA)

## Standard Terms and Conditions – Grower Contract No. 36

**TRADE RULES:** This Contract is subject to the Trade Rules of GTA currently in effect, except to the extent the same are in conflict with the Terms and Conditions expressed herein, with such Rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant.

**TIME:** All stipulations set forth in the Terms of Trade as to "TIME" are of the essence.

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

**QUANTITY TOLERANCE:** The Seller shall have the option of delivering five percent [5%] or twelve [12.00] tonnes, whichever is the lesser quantity, more or less than the contractual quantity at the Contract price. This variation of five percent [5%] or twelve [12.00] tonnes is hereinafter referred to as the "Tolerance".

**CARRY CHARGES:** The Seller is entitled to seek recompense from the Buyer for carry charges for grain held by the Seller beyond the contracted period subject to GTA Trade Rules 17.

**CONVEYANCE AND DELIVERY INSTRUCTIONS:** Unless otherwise agreed, the Seller shall have the right of conveyance.

**INTEREST:** If any payment is not made on or before the due date for payment, interest shall be payable at the rate selected. ~~If there is no due date for payment, interest shall be payable if there has been an unreasonable delay in payment.~~ Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily.

**OWNERSHIP AND PASSING OF TITLE:** The risk of loss and/or damage shall remain with the Seller until the goods have been conveyed to the Buyer at the designated point of conveyance:

- 1) On FOB Origin, Ex-Farm, Ex-Store, or FOB Basing Point contracts; risk passes at the time when the goods are accepted by the carrier via the appropriate shipping document.
- 2) On Delivered or Delivered Basing Point contracts; risk passes at the time when goods are constructively placed, or presented for unloading, or otherwise made available at the Buyer's original destination.
- 3) On In-Store contracts; risk passes at time of transfer and/or filing of documents (if required), unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

Unless otherwise agreed, title to goods as well as property in the goods remains with the Seller until all amounts payable under this Contract have been received in cleared funds in specified bank account. This clause creates a Purchase Money Security Interest for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"). Where permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times. Neither party may disclose any information pertaining to this contract except as otherwise required by law.

**FAILURE TO PERFORM:** Failure to perform in keeping with the Terms and Conditions of a Contract shall be grounds for the refusal only of such Delivery(ies) or Shipment(s) in default, and not for the rescission of the entire Contract or any other Contract between the Buyer and Seller.

**DISPUTES:** Any party or parties who have entered into Terms of Trade subject to GTA Trade Rules shall be entitled to refer any disputes arising out of such contract, and which cannot be resolved between the parties, to GTA for Arbitration.

**ARBITRATION:** 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 by Arbitration in accordance with GTA Dispute Resolution Rules in the edition current at the commencement date of arbitration, such rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant. Any dispute, controversy or claim arising out of, relating to or in connection with a contract incorporating the GTA Trade Rules, including any question regarding its existence, validity or termination shall be resolved by arbitration in accordance with the Dispute Resolution Rules in force at the commencement of the arbitration.

**RCTI:** Recipient Created Tax Invoice - Reference on the front of this form provides for the seller to authorise the buyer to issue the RCTI on his behalf. This request also requires the seller's signature.

**ENCUMBRANCES:** The Seller must notify the Buyer if an Encumbrance exists over the Commodity. The Seller unconditionally and irrevocably directs the Buyer to deduct from any payments due to the Seller:

1. the amount secured by any Encumbrance over a Commodity and pay the amount deducted to the holder of the Encumbrance before paying any amount to the Seller; and
2. all reasonable costs and expenses incurred by the Buyer in dealing with any Encumbrances.

At the direction of the Buyer, the Seller will procure the release of any Encumbrance over the Commodity and will do all things requested by the Buyer to evidence and record such release in any relevant security register (including procuring the execution of any documentation requested by the Buyer for such purpose) by no later than the time of payment to that Encumbrance holder of the secured amount as contemplated under this Encumbrances clause.

The Seller will notify the Buyer in writing immediately of any change to the amount secured under any Encumbrance over a Commodity. The Seller agrees to the Buyer charging an encumbrance processing fee of \$200 per Encumbrance, which to the extent not paid by Encumbrance holder, will be a debt.

The Seller indemnifies the Buyer and its related entities against any claim or demand by any person claiming any interest in the Commodity, regardless of whether the Seller has notified the Buyer of that interest.

### DEFINITIONS:

**Encumbrance** - means any security for the payment of money or the performance of obligations including a Crop Lien, mortgage, charge, lien, pledge or trust, or any other security interest as defined in the Personal Properties Securities Act 2009 (Cth).

NOTE: The GTA Trade Rules are available on the GTA website, [www.graintrade.org.au](http://www.graintrade.org.au)