



A Guide to Selling Grain Using Grain Contracts



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Disclaimer: *The Guide should not be considered as personal or general financial advice. All parties to a contract should seek their own independent advice in accordance with their own specific circumstances.*



Introduction

The following is a guide to aid grain producers in buying and selling grain using grain contracts.

The purpose of this guide is to provide Australian producers with a practical 'checklist' for the contractual purchase or sale of grain. It is not a substitute for specific terms and conditions as contained in a contract, but provides general guidelines, developed by growers, traders and marketing representatives, to assist in understanding the grain contracting process.

There are a range of marketing options designed to meet producers' commercial needs. Different producers have different risk/reward and cash flow requirements; therefore, it is important to determine the range, and mix of marketing products that best meet your business needs.

Successful contracting of grain requires 'give and take' as it is a balance between a buyer and a seller's objectives. The key to a successful contracting relationship is accurate, timely communication between buyer and seller, especially if a problem arises.

Keep this guide in an accessible place so you can consult it next time you sell grain on a forward or cash basis.

NOTE: This document is only intended to be a guide. The aim of this document is to suggest procedures that should be followed when entering a contract. It is not a legally binding document and legal advice should be sought for specific clarification.

For more information, go to www.graintrade.org.au





Grain Contracts

1.0 Before beginning negotiations

- 1.1** Be confident with the company you intend to have dealings with. You may also wish to refer to [GTA Fact Sheets No. 3,7,8,14 & 15](#) and to the [GTA Trade Rules](#).
- 1.2** Have a pen and paper ready. Record the details of the contract, preferably in daybook or diary.
- 1.3** Understand your obligations. From a commercial perspective, a contract is a productive marketing tool that can be used to minimise price fluctuation risk. From a legal perspective, a contract is a legally binding document that must be fulfilled.

If your crop suffers adverse seasonal conditions such as frost and drought, these are considered production risks and are not covered by “Act of God” or ‘Force Majeure” clauses.

It is important therefore, that caution be taken when committing to supplying grain, because there are likely to be financial consequences of failing to fulfil a contract.

- 1.4** Understand the process of contracting. At this point it is worth looking at a simple legal definition of a contract;

A contract may be defined as an agreement between two or more persons, which is legally enforceable.

Two or more minds will have come together and agreed upon the doing of prescribed acts by each of them. In its unexecuted form, the contract is known as an executory contract.

If partially or wholly performed, it is defined as being partly or wholly prescribed.

A contract can be made wholly in writing or wholly verbally. It can also be a mixture of oral and written terms, or even made as a gesture. The acceptance of a contract must be communicated to be effective. This communication may be expressed verbally. An agreement or contract can be made over the phone, in writing/e-mail, by SMS/text message or by the conduct of the parties to the contract.

2.0 Negotiating the contract

- 2.1** Record the time, name and title of the person you are speaking to in your diary or daybook.
- 2.2** Record the details of the contract so you have a record of what was agreed. The details that should be recorded are;

Price – confirm the price and whether it is GST inclusive or exclusive.

Price basis – confirm if the price is free-on-board (FOB), delivered port, local depot, silo or ex-farm. This confirms whether the buyer or seller is responsible for the transport, storage and handling charges.

Delivery date or period – confirm the delivery date/s and the delivery point.

Details of grain quality (grade) required – grain type, variety, chemical status, quality parameters (e.g., protein, moisture, screenings) and any premiums or discounts applicable. Make sure you check the GTA Trading Standards (see GTA website).

Tonnage and tolerances – confirm the tonnage required to fill the contract, and any operational weight tolerances that may apply.

Fees and/or charges applicable – i.e. State and Federal research and development levies and End Point Royalties (EPRs). For details of EPR applicable varieties see the GRDC website www.grdc.com.au

Payment Terms – agree and confirm when payment is due and accepted payment methods.

Delivery period – this is the period in which delivery and/or the contract must be executed (i.e. delivered/transferred from warehousing or washouts negotiated).

Default procedures – clarify the default procedures applicable if you are unable to deliver the grain as per the specifications of the contract (i.e. any damages such as 'washout' fees).

Dispute resolution – you should also clarify dispute resolution mechanisms in place to deal with any contract conflict. This should be stated on your contract confirmation advice.

- 2.3** Crop Liens. It is your responsibility to advise the buyer of any registered crop lien(s).
- 2.4** Contracts are open to negotiation. You have the right to negotiate on any points of the contract including payment terms.

However, any alterations to the contract must be agreed to by both parties. It is good practice to document any alterations. Variations are usually noted in a 'Special Conditions' section.

- 2.5** Ensure that you have read and understand the terms and conditions. If you do not understand something within the terms and conditions of the contract, do not agree to the contract until the point(s) in question is (are) clarified.

3.0 Receiving & confirming the contract confirmation

- 3.1** Read and check the contract details against the notes you recorded during your conversation with the buyer.
- 3.2** Ensure the contract confirmation and your diary notes align on the following points:
- Price;
 - Price basis;
 - Delivery date or period;
 - Details of grain quality (grade) required;
 - Tonnage and tolerances;
 - Fees and/or charges applicable;
 - Payment terms;
 - Default procedures;
 - Dispute resolution procedure; and the
 - Trade Rules which apply.
- 3.3** If you notice any discrepancies, contact the buyer IMMEDIATELY to resolve these.
- 3.4** If you are unsure about a term or condition, contact the buyer and have it explained.
- 3.5** If you are still unsure, seek advice.
- 3.6** After receiving and confirming the contract confirmation ensure you document/diarise (in daybook or diary) any changes made in subsequent conversations with the buyer. These, too, should be confirmed in writing as soon as possible.

4.0 Returning the contract confirmation

Even though you are bound without signing the contract confirmation, you are more likely to be able to resolve a dispute if it is signed and returned. When you are satisfied with the contract confirmation, sign it and return it to the buyer. This should be done within 24 hours of receiving the contract confirmation.

Remember, **a verbal contract is legally binding**. Not signing the contract confirmation does not alter its legal status. However, it's good practice to sign it.

5.0 Contract Issues

As soon as you suspect that you might have issues fulfilling any contract condition it is imperative that you discuss the issue with the buyer as soon as possible. Buyers may be more amenable if they are warned as soon as you suspect an issue.

6.0 Payment

Confirm payment has been made on previously agreed terms.

7.0 Resolving disputes

You can minimise disputes if care is taken in reading and understanding the contract details.

However, if you have any disputes regarding the contract, it is recommended that you:

- Check internal and external dispute resolution terms specified in your contract.
- Seek resolution from the person you originally negotiated with. Failing that,
 - Seek a resolution with their superiors. Failing that,
 - Use the Dispute Resolution Service of GTA and seek resolution.
 - You may also wish to seek your own legal advice.

It's important you understand what your dispute resolution options are before you sign the contract.

8.0 Grain contracts & dispute resolution

8.1 Introduction

Over 95% of all grain contracts written in Australia rely on the GTA Trade Rules. GTA contracts and Trade Rules contain agreements to refer disputes to the GTA Dispute Resolution Process. Parties to contracts that incorporate the GTA Trade Rules are obliged to refer any unresolved contractual disputes to GTA for settlement through the GTA Dispute Resolution Process.

8.2 The following publications are available from the GTA website:

- GTA Trade Rules
- GTA Grain Contract Fact Sheets
 - ✎ 03 - Managing Counterparty Risk;
 - ✎ 07 - A Guide to Selling Grain using Grain Contracts;
 - ✎ 08 – Dispute Resolution & Arbitration Process;
 - ✎ 14 – A Guide to a Contract Washout; and
 - ✎ 15 – Managing Counterparty Insolvency

- GTA Arbitration Guidelines
- GTA Dispute Resolution Rules
- Request an arbitration with GTA

8.3 Is GTA neutral/independent? Will I get a fair go?

GTA is a non-political organisation established to ensure that commercial transactions across the supply chain (be they a grain producer, merchant, end-user or an exporter) occur in an efficient and fair manner to both parties to the contract.

8.4 I haven't signed anything - can I still have a contract?

If you are in doubt, you should consult a lawyer. That said, the fact that you have not signed anything does not necessarily mean that you do not have a binding contract. The word “contract” refers to a legally enforceable agreement between two or more parties, rather than a piece of paper with signatures on it.

A contract may be wholly in writing, wholly verbal or a combination of oral and written terms.

A binding contract can, for example, be created over the telephone. In this case it is customary for the buyer to send a document called a “Contract Confirmation” to the seller which is intended to confirm the details of the agreement reached over the phone.

A seller can also confirm a contract with a buyer. The fact that such a document is not signed does not mean that a contract has not come into existence.

Any party who received a Contract Confirmation should check the details to ensure that they reflect those agreed during the conversation (including by telephone, e-mail, SMS). If you notice any discrepancies, contact the buyer IMMEDIATELY to resolve the issue.

In the absence of notification from the Seller, the Buyer is entitled to assume the contract is as written in the Contract Confirmation. Reference GTA Trade Rules (See also GTA Fact Sheet 07 – A Guide to Selling Grain using Grain Contracts)

8.5 Where/to or whom do I turn for independent advice about GTA Trade Rules?

Grain contracts are legal agreements therefore professional legal advice should be sought where clarification on an issue is required. Independent grain marketing advisers may also be of assistance for issues not requiring legal advice. Please note GTA is NOT able to give you advice in relation to disputes or the implementation of the Trade Rules.

8.6 What is the legal standing of the GTA Dispute Resolution process? Is a GTA Award recognised by the Courts?

GTA arbitrations are subject to the provisions of the GTA Dispute Resolution Rules and the Commercial Arbitration Act (NSW) 2010. Arbitration Awards are as enforceable as a judgement of the Courts.

8.7 Do I have to go to arbitration if I haven't signed anything?

Once again, this is really something you should discuss with your solicitor. An agreement to arbitrate disputes is binding and enforceable in a Court. As detailed above, the contract may stand even without the provision of signatures on the Contract Confirmation from one or both of the parties.

If the contract references the GTA Trade Rules, then disputes must be referred to GTA in the first instance. By not participating in Arbitration your argument is not able to be heard by the Arbitration Tribunal. It is also possible to go to arbitration without admitting that you have a contract. It is possible to ask the Arbitration Tribunal to dismiss any claim on the basis that you did not enter into a contract in the first place.

8.8 Is arbitration expensive?

There are fees associated with GTA Arbitration. GTA tries to ensure overall costs of GTA arbitration is no more expensive than going through the Courts. GTA Arbitrations are reasonably quick, which can be a distinct advantage over the Court process. GTA Arbitration is “peer” arbitration conducted by participants in the grain trade.

8.9 Can I recover my arbitration costs if I am successful in an arbitration?

YES – Most parties in their submission to the Arbitration Tribunal claim recovery of legal and arbitration costs incurred.

8.10 Is GTA arbitration compulsory? Is it binding?

If you are party to an arbitration agreement referring disputes to GTA Arbitration, then yes, it is binding. This will be the case if your contract incorporates the GTA Trade Rules. If you change your mind and you do not want to arbitrate, you must get the agreement of the other party.

Similarly, even if there is no reference to a dispute resolution process in your contract, you may still decide to ask GTA to conduct the Arbitration, however you will again need the consent of the other party. A GTA Arbitration award is binding and enforceable. It is as enforceable as a judgement by the Court. GTA Arbitration awards have been upheld and enforced by the courts.

8.11 Can GTA give me advice about my rights and obligations under the GTA Trade Rules and Dispute Resolution Rules?

GTA can provide information about the Dispute Resolution Process. However, GTA is not able to give advice about how the Trade Rules will be applied and what your rights might be under a GTA contract or Arbitration. Because the GTA Trade and Dispute Resolution Rules become part of your contract, a solicitor will be able to advise you on specifics.

Please note GTA is NOT able to provide independent advice on whether you should accept an offer to “washout” a contract

9.0 Contract “Washouts”

9.1 What is the Contract’s purpose?

A Grain Contract is a risk management tool for both the buyer and the seller of the grain and describes the reasoning for specific actions. It is an agreement between two parties for the delivery of a certain quality and quantity of grain at a specified time and for a specified price. Both the buyer and the seller are managing risk through locking in the current market price for a future delivery of grain.

9.2 What are Counterparty Obligations?

The seller using a Grain Contract has an obligation to provide a contracted tonnage to the buyer at the nominated time. The value of the contract to the producer is the provision of the ability to sell for future delivery at times that may be price advantageous. The Seller is managing the risk of negative price movements.

The buyer offering to purchase grain for a future delivery will be managing a position and may have exposure to forward sales, for example to a domestic flour mill. A Buyer can manage the exposure to the flour mill forward sale by buying grain in the same market. The buyer is also managing the risk of price movements.

9.3 What to do when Contract issues arise

As soon as you suspect that you might have issues fulfilling any contract condition, including the provision of the quality and quantity of grain at a specified time it is imperative that you discuss the issue with the buyer as soon as possible. The earlier discussion can take place the greater the potential for addressing the issues and finding an amicable settlement.

As soon as the estimated grain production commences to fall to a level that makes delivery of the contracted volumes and quality uncertain discussion should commence between the seller and the buyer.

The Importance of early notification:

Given the buyer may have allocated the contracted grain to a sale (e.g., to a domestic flour mill) the buyer may have an obligation to replace any grain that is in default. If the default is a contract for delivery of 500 metric tonnes the buyer will have to replace that grain by purchasing in the market at the time of notification. The greater the time available to make the arrangements is likely to be advantageous for negotiation and to prevent potential further exposure to a rising grain market.

9.4 Contract Default Options

Once notified of the inability to deliver contracted quality and tonnage the seller and the buyer will be required to discuss the options that will result from the delivery default.

As discussed, the buyer will have planned to allocate the contracted tonnes against an existing sale and will be obligated to replace its defaulted tonnes at the current market price. Because of the producer delivery default the buyer may be exposed to a negative financial result being the difference in the original contract price for the sale into the flour mill and the current market price to purchase replenishment grain.

If for example the Grain Contract priced in February for delivery in November was for 500 tonnes of APH wheat for delivery into the Brisbane market. At the point in time the delivery default is raised and discussed the market is \$45 higher than the February price for grain. This difference in price of \$45 results in a differential of \$22,500 across the entire 500 tonnes.

It is common for this difference to be termed the 'Washout' value. It is important to know the term 'washout' is not defined in the GTA Trade Rules. It is an industry term.

The 'washout' value is the additional cost for the buyer to replace the prepurchased contract grain with current market valued grain.

9.5 How is the Washout Price determined?

The ‘washout’ price can be calculated in many different ways including the review of advertised bids on an agreed date or potentially the actual cost of replacing the grain.

Where the seller and the parties are unable to agree on the values used to determine the ‘washout’ then either party to the contract can refer the issue to GTA for determination under the Dispute Resolution Service (fees apply). Reference GTA Trade Rule 17.

9.6 Do I have to “washout” a contract?

A ‘washout’ is a way settling your obligations under a contract without reference to a Court or arbitration, and usually before the time for performance of your obligation falls due.

The “washout” will usually involve a payment from one party to the other party. While you cannot be forced to ‘washout’ a contract you should carefully consider such an offer as it may be in your interests to accept a ‘washout’ before the time for performance falls due. In general, if you don’t think you will be able to perform your obligations under a contract by the due date and you know this ahead of time, it might be worth settling and performing a ‘washout’ to protect yourself against any further fluctuations in the contract price.

9.7 Is force majeure a “get out” clause?

NO. Force majeure only extends the delivery period that a counterparty has to meet their contractual obligations be they a seller or the buyer. Crop production failure is specifically excluded. A contract is not able to be cancelled due to invoking force majeure. Reference GTA Trade Rule 21.



10.0 Managing Counterparty Insolvency

10.1 Be prepared for insolvency to occur

Insolvencies occur in all industries including grain and, therefore it is good business practice to be prepared to deal with an insolvent situation.

The best preparation is to avoid dealing with counterparties that are at risk of becoming insolvent. However, even with the best preparation it is possible that you may have to deal with an insolvent counterparty at some point.

10.2 What is insolvency?

There are two primary definitions of insolvency:

1. the inability to meet liabilities as they fall due; and
2. a shortfall of assets to liabilities.

Whilst the first definition is more commonly used both are relevant; as without support from another party the second definition will result in an occurrence of the first.

For a company faced with insolvency the inability to meet liabilities as they fall due is not the result of a short-term incident but more an inability to meet obligations over an extended period. Being unable to meet creditor liabilities for one day due to cashflow timing is not an event of insolvency. However, it is cause for concern and risk evaluation and mitigation action may be required.

An event of managed insolvency can also occur if the company is voluntarily wound up or has applied to be wound up. These arrangements usually occur when a business ceases trading or is undergoing a restructure and there has been full provision for liabilities. As a result of the full provision this form of insolvency is not considered a risk.

10.3 What is the result of insolvency?

The following are some of the possible results of insolvency:

- Prior to Amendments on 1 July 2018 to the Corporations Act 2001 (Cth) once an insolvency occurred, contracts enter automatic default. With the amendments the Administrator can choose (based on value to the insolvent business) which contracts to execute or conversely to enforce. For more information please review this [GTA Member Update](#)
- Directors and officers of the insolvent entity may face civil and criminal action as a result of the insolvency;
- Creditors of the business have different orders of priority regarding subsequent payments from the entity;

- A different party takes control of the business and large costs are incurred;
- Payments to suppliers prior to the insolvency event may be forcibly repaid to the entity; and
- Usually a great length of time passes before the affairs of the entity are resolved.

Insolvencies are unpleasant experiences for all parties and best avoided if possible. It is very rare to be an unsecured creditor to an insolvent business and receive full recovery of your claim.

10.4 What are the primary risks in the grain insolvency?

There are two main risks in a grain insolvency – **delivery risk** and **market exposure** risk.

Delivery risk is the failure to receive payment for product that has been delivered to the counterparty. The other, less obvious, risk is the change to market position created by default on contracts. This is the change in the financial position as a result of the market movement in price of the original contract price as compared to the market price on the day you close the position out.

Exposure from the first risk is obvious. However, exposure under the second risk is not as obvious unless you run a counterparty position report. A counterparty position report shows the exposure you have on all counterparty contracts against the current market. It shows the risk you bear if they were to default on their contract obligations at a point in time.

10.5 Understanding Counterparty dependency is important

Your risk with a default is not just with the buyer of your grain. The delivery risk is associated with the buyer, but the market exposure risk may be with sellers, buyers and other counterparties. Your ability to meet trade obligations are not reliant solely on sellers and buyers but on all the counterparties involved in the delivery process.

Some are obvious such as freight companies and / or storage companies, but others such as financiers require broader thinking. You need to evaluate your risk to all counterparties and include it in your management processes.

Reducing risk

There are many methods of reducing insolvency exposure. Some examples are:

- **Elimination** – only sell cash before delivery and only contract for immediate delivery. However, this strategy must be considered against the potential limited ability to generate a business return.

- **Evaluation** - investigate the viability of your counterparties.

Look at:

- the strength of theirs' balance sheet
- length of time in business
- their record of profitability payment performance
- management/ownership professional reputation
- talk to parties that deal with the company

- **Risk mitigation** – these are many actions available to limit the counter party risk.

These include:

- credit and trading limits;
- credit insurance;
- retention of title clauses;
- personal guarantees;
- payment instruments (such as Letter of Credit, bill for collections, etc);
- counterparty insurance;
- offsetting positions; and
- the inclusion of the GTA Trade Rules and contract clauses relating to insolvency in your contracts.

Ongoing measurement

Don't set and forget. Actively monitor your counterparties and watch for signs of concern. Are they:

- paying late;
- increasing their payment terms.
- increasing restrictive business practices and reducing flexibility;
- are insurers reluctant to provide cover to them;
- do they refuse to release current information on their businesses; and
- are other suppliers refusing to deal with them?

Watch and act; or at least return to your business evaluation process. If you are becoming uncomfortable with a counterparty start taking some action to mitigate ongoing risk.

10.6 Who can be involved in the insolvency?

When company insolvency occurs, there are three types of parties that may become involved in the management of the business. They have different powers and obligations.

Administrators – are usually appointed by the entity's board of directors to prevent the entity trading while insolvent. The Administrator will assume the running of the business and incur debts and will attempt to maximise the return for all creditors.

Secured / Unsecured Creditors – A secured creditor is someone who has a 'security interest', such as a mortgage, in some or all the company's assets. As a result, the secured creditor has additional rights compared to an unsecured credit. These rights may include liens that guarantee the proceeds from any property serving as collateral for their claim.

Receivers – are appointed by secured creditors and will attempt to maximise returns on their behalf. Secured creditors have priority over unsecured creditors and so the Receiver has priority over Administrators. Often an Administrator and a Receiver are concurrently appointed to an insolvency.

Liquidators – are appointed once the creditors determine that a business is incapable of being sustainable and must be liquidated. The Liquidator has the power to recover preferential payments to creditors and pursue Directors and Officers for losses if the business was trading while insolvent.

The creditor committee – is a small group of creditors that are appointed by the creditors to advise the Administrator/Liquidator during the administration or liquidation.

It is important to promote knowledge of the GTA Trade Rules and business practices to the Administrator, particularly if the Administrator does not have experience in the grain industry.

10.7 What you need to do if a counterparty is insolvent

GTA has a number of contract clauses and Trade Rules that cover insolvency. Make sure you are familiar with the ground rules.

1. Find out.

Investigate any rumors of insolvency. The sooner you know the sooner you can begin reducing your exposure. Talk to the company or check with the ASIC website to see if an Administrator has been appointed. If you have received a communication from the company or Administrator, read it carefully. The date you become aware of an insolvency is important!

2. Correct your position.

The loss of a contract will create a change in market position for you. Although, the Administrator may allow you the right to wash out the contract, the washout settlement may be less than current market value. Sometimes a major player's insolvency may dramatically move the market price and a day's difference could be enormously expensive. If you are running a Mark To Market (MTM) reporting system, perform your washout and remove the old contract from your position reporting to correctly state your exposure.

3. Calculate your washout.

This is the difference in the market price to the contract price on the day following either:

- (i) the day of notice from the administrator or the day you first became aware of the insolvency event; or
- (ii) the day of the event of insolvency.

The market price used needs to be for the same commodity, delivery period and delivery point. It is recommended that your supporting documentation for the washout has all these characteristics being identical. The washout invoice is not subject to GST as it is a financial instrument and it can be in your favour or the insolvent party's.

4. Submit your claim.

The administrator will provide a form to complete that substantiates your claim as a creditor. Your receivables, including washout invoices, are part of the supporting documentation. You are encouraged to include the invoices, proof of delivery and copies of the signed contracts. Proof of the market prices on the day of washout is also essential. Most people use a broker confirmation of the market prices.

5. Attend meetings.

Under Section 436E(2) of the Corporations Act, the first creditor meeting must be held within five business days after appointment of the administrator and there must be two days' notice. This is the only effective opportunity to replace an administrator with someone more qualified. Creditor meetings are also a valuable source of knowledge and also provides information on other counterparties. This may be important as there can be consequential ripple effects from an insolvency event.

6. Try to get an expert on the creditor committee.

The creditor committee is an inexpensive means of helping the administrator understand the grain value chain and methods to improve the chance of recovering funds. It is a complicated process and often administrators generally have little, or no experience in the grain industry. They may not be aware of issues that can dramatically alter the distributions that can be achieved.

7. Continue to pursue.

After the administrator has been appointed and meetings held it is important to continue to manage exposure to the insolvent business. As a minimum continue to regularly liaise with the administrator, implement your mitigation steps and take steps to recover costs from any personal guarantees.

10.8 What are the GTA insolvency Trade Rules?

Rule 17 is the GTA insolvency default clause.

The Definitions section for the GTA Trade Rules defines an insolvency event.

It covers the situations previously discussed as well as broader coverage, including an application for court appointment of controller/administrator, a secured creditor taking possession of the asset and similar items.

Section 2 refers to the notification of default and the trigger of the date for fair value of the washout. Written notice should be given within two days of the event of insolvency. If written notice is received within the 2-day period, then the fair value date is the day after notice. If notice is not received within the period, the non-defaulting party has the option of:

1. the day after notice was received; or
2. the day after the event of insolvency.

Fair value is clarified in GTA Trade Rules.

Refer to these rules any time an insolvency event arises.

10.9 What are other issues in insolvency?

Some companies include a 'right of offset' clause in all their contracts. This permits a right, established in law to offset liabilities and receivables in normal business activity and in case of insolvency. Although untested in law, it is the usual practice for administrators to allow the offset of liabilities and assets, as it is beneficial in speeding up the settlement process.

GTA has introduced retention of title in standard GTA contracts. Retention of title has much legal history but the process for the GTA clause has not been tested yet.





GTA Contract No.6 – 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:
NGR No:

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:		
Delivery Point and Conveyance:	(Delivered, Shipped, Free In Store, Free On Board, Ex-Farm, etc.)	
(Road, Rail, Delivered Container Terminal, Freight, Rated Basing Point, Loading Weight requirements if applicable)		
Payment Terms: The buyer agrees to pay the seller within _____. In the absence of a declaration, payment will be 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? <input type="checkbox"/> NO <input type="checkbox"/> YES (Please <input type="checkbox"/> 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 will prepare, for the seller, a Recipient Created Tax Invoice (RCTI). If the seller does not require this service they are required to sign this authorisation.

* Please DO NOT issue a RCTI.

Buyers Name: PRINT NAME

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.6

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. 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:

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.

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.

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:

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

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

Best Practice Contract Confirmation

Introduction

As producers, it is common practice to enter into a contract as both buyer and a seller of grain. Many of these negotiations involve large sums of money and it is good business sense to limit your exposure to risk wherever and whenever possible.

GTA Products

GTA has developed several standard industry products to address many of the issues related to the commercial transacting of grain. These products include Grain Trading Standards, contracts, terms & conditions and the GTA Trade Rules.

Grower Contract

GTA has developed a contract specifically designed for the grain production sector. This contract is referred to as the GTA No. 6 Contract, “Grower Contract Confirmation”. The terms and conditions of this contract addresses many of the issues raised by producers, such as:

- how to deal with late payment;
- your options as a seller, if the buyer of your grain goes under administration before you have received payment.

Terms and Conditions and GTA Trade Rules

When a specific issue is not covered in a contract terms and conditions, it will most probably be addressed in the GTA Trade Rules. This is called the Contractual order of Precedence where the contract is the prime document. The terms and conditions of a contract (i.e. what the parties specifically have agreed) will generally take precedence over the Trade Rules. Where there is an issue between the counterparties that is not mentioned or covered in the contract then the GTA Trade Rules apply.

GTA strongly recommends all parties read the terms and conditions of a contract and become familiar with the GTA Trade Rules. These can be found on the GTA website.

Forming a Contract

When negotiating a contract with a buyer or seller, GTA recommends you use the No. 3 Contract Confirmation or No. 6 Grower Contract (example found at the center of this guide) as a check list. Be sure to ask all the relevant questions necessary to fill out the contract, including:

‘Does this contract expressly incorporate the GTA Trade Rules and Dispute Resolution Rules?’

Your Obligation

Remember, a verbal agreement is confirmation of a contract. Never-the-less, as party to a contract, it is your responsibility, and in your best interests, to confirm the details of the contract are correct.

Contract Confirmation

Normally in the case of a contract with a grain trade company, the trader would typically send you written confirmation before the end of that business day. As a seller, you must check all the details of the contract confirmation and reply in writing before the end of the following business day.

You also have the right to be proactive and send the buyer your account of the conversation for confirmation. **Failure to respond to a confirmation does not negate the contract.**

Administration

After the contract confirmation has been checked and amendments have been negotiated and agreed to by both parties in writing, GTA suggests you request a final contract be forwarded to you for your records.

A possible suggested method of record keeping is to create a file for that contract and keep all related material including the contract, contract confirmation and written confirmation of all subsequent communications with the counterparty.

It is important that all verbal communications be recorded in writing; this may consist of a notebook, diary and/or daybook but ideally this would consist of an email confirming the conversation with the counterparty, printed and filed.

Verification of a conversation, if not recorded, is difficult to prove in the event of a contract dispute.



About Grain Trade Australia Ltd (GTA)



GTA is the Australian grain industry body representing and servicing the commercial interests of the Australian grains industry.

- ✎ GTA is non-political
- ✎ GTA is industry driven and managed

Background

Grain Trade Australia was formed in 1991 to standardise Grain Standards, Trade Rules and grain contracts to enable the efficient facilitation of trade across the grain supply chain.

It has more than 280-member organisations ranging from regional family businesses to large national and international trading/storage and handling companies.

Members were and continue to be extensively involved in the storage and freight movements of all grain produced in Australia each year. Over 90% of all grain contracts executed annually within the country refer to GTA's Grain Standards and/or Trade Rules.

GTA Core Functions

GTA's role is to ensure the efficient facilitation of commercial activities across the grain supply chain. To achieve this, GTA develops and provides industry with some key tools.

GTA Trading Standards

GTA develops the wheat and coarse grain Trading Standards and also distributes the standards for oilseeds (developed by Australian Oilseeds Federation) and pulses (developed by Pulse Australia) across the Australian grain industry. Development of the GTA Trading Standards is transparent and receptive to the needs of the Australian grain industry in order that GTA fulfils its charter to "facilitate trade".

These Trading Standards are the basis of trade for domestic and export contracts.

Submissions on the GTA Trading Standards are accepted from all sectors of the industry, GTA members and non-members. The Trading Standards are reviewed annually and are developed by the GTA Trading Standards Committee. The Trading Standards setting process is covered in more detail later in this guide.

The full GTA Trading Standards are available on GTA's website – **www.graintrade.org.au**

GTA Contracts

GTA has developed nine contracts for use within the Australian grain trade.

Contract No. 1 – For Grain and Oilseeds in Bulk FOB Terms – contract for export shipments in bulk.

Contract No. 2 – For Grain and Oilseeds in Bulk Delivered Price Basing Point or Port Terminal (Basis Track) – this contract enables export traders and large domestic traders to trade and title transfer at a Track level.

Contract No. 3 – For Grain/Oilseeds/Birdseeds/Pulses etc. – this contract can be used for trade between producers and grain merchants and between grain merchants, such as on a Delivered basis.

Contract No. 4 – For Grain/Oilseeds/Birdseeds and Pulses in containers Delivered Container Terminal (DCT) – contract for export shipments in containers.

Contract No. 5 – For Grain/Oilseeds/Birdseeds and pulses in containers Delivered to the Buyer on a Cost and Freight (CFR) or Cost, Insurance and Freight (CIF) basis.

Contract No. 6 – Grower Contract – this contract was specifically developed for trade between merchants and between grain producers and merchants.

Contract No. 7 – Free on Rail Contract- this contract is for trade of grain where title transfer occurs on loaded rail cars.

GTA Storage & Handling Agreement – This Agreement is for the storage and/or warehousing and/or on-farm storage of commodities.

GTA Bulk Freight Contract – Developed for a party entering into an agreement for the bulk freight of Goods. This contract details the agreement between the consignor and the carrier.



GTA Trade Rules




GTA Trade Rules underpin contracts agreed by counterparties. Parties to a contract are free to agree upon any contractual provisions that they deem appropriate. The GTA Trade Rules apply only to the extent that the parties to a contract have not altered the terms of these Rules or the contract is silent as to a matter dealt with by the pertinent Rule.

GTA Trade Rules are fundamental to the facilitation of trade in grain. Producers that utilise grain contracts to buy and sell grain should be familiar and have access to the GTA Trade Rules.

The GTA Trade Rules also provide instructive information for anyone considering or involved in the purchase or sale of grain. In particular, the Definitions section provides a glossary of common contract terms and conditions that should be understood by counterparties to a contract.

GTA Dispute Resolution Service

GTA assists parties to grain contracts to resolve commercial disputes by peer review through its Dispute Resolution Service. The process is designed to save time and expense while providing an efficient, fair and equitable means to settle disputes related to commercial transactions. The three methods offered to resolve a dispute are:

-  Expert determination
-  Fast Track Arbitration
-  Full Arbitration

Important Points

- The service is open to all participants of the grain trade, not just GTA members.
- Arbitration awards (outcomes) are legally binding and enforceable therefore, GTA recommends parties consider obtaining legal advice.
- Arbitrators are volunteers drawn from all sectors of the grain industry.
- GTA administers disputes under the GTA Dispute Resolution Rules and provides administrative support to arbitrations.
- GTA cannot provide legal advice but can provide guidance in the administration of the Dispute Resolution Rules, the Trade Rules and the arbitration process.

Advocacy

GTA is nonpolitical, however, issues arise from time to time where there is common agreement amongst members and GTA represents their interests.

Professional Development

GTA conducts a professional development program across Australia.

Workshops are conducted in each State on a range of topics including Contract Terms & Conditions, Trade Rules, Australian Financial Services License and Commodity Pricing.

GTA develop the training courses to support industry, ensuring content provides knowledge, is current, reliable and relevant. The training schedule for these courses are available on the GTA Website.

- ⇒ Trade Rules and Contracts
- ⇒ Grain Trading Standards
- ⇒ Understating Grain Markets
- ⇒ Grain Merchandising
- ⇒ Dispute Resolution Service & Arbitration
- ⇒ Grain Accounting



Location Differentials Explained

How did Grain Trade Australia's (GTA) Location Differentials Evolve?

GTA Location Differentials (LDs) are not freight rates or freight differentials. The LDs evolved in order for “port base” contracts in particular the GTA No. 2 Grain and Oilseeds in Bulk – Basis Track commonly known as the track’ contracts to trade successfully. The ‘track’ contract is a mechanism for (post farm gate) parcels of grain to be bought and sold according to standard terms and conditions, with the key feature being that the title passes ‘free in store’ (FIS) i.e. the grain is not required to be physically moved from the storage.

For a ‘track’ contract to trade successfully there needs to be a standard storage and handling agreement and a standard freight- related matrix/index that is fixed for a period of 12 months (a season) so the grain can be traded across the pre- and post-harvest time duration.

What is a GTA Location Differential?

When grain is sold under a ‘track’ contract the agreed price is a ‘port-based price’. To determine value of the grain in the country storage and to financially settle the sale a GTA LD is used. A GTA LD is the “location value” attributed to a specific up-country grain bulk storage and handling facility linked to an export port terminal facility. GTA LDs are produced by the GTA Commerce Committee for the purpose of valuing upcountry grain on a ‘port basis’. A GTA Location Differential is a set of values (index) that are used to adjust a “port-based price” for delivery of grain to a range of up-country locations, for the primary purpose of the settlement of Track Contracts.

Who uses a Track Contract?

A Track Contract is for sales between commercial trading organisations and is not designed for growers.

It is used to trade grain located at “up-country” bulk handling facilities that is tributary to both domestic and export markets. Track Contracts are used to facilitate the accumulation and transfer of large parcels of grain from one bulk handling facility to another bulk handling facility, by the trade. The terms of a Track Contract were formally standardised to provide an efficient platform to facilitate grain transactions between trading organisations.

Why Doesn't GTA Produce Freight Rates?

The freight market is a free market and acts accordingly. There is nothing constant about the freight market except continually changing rates. The price of freight is market driven and subject to continual change depending on amongst other things:

1. Tonnage to be moved versus the available freight capacity. In big crop years freight capacity could be in deficit, the market driven response – freight prices will be higher. The converse will also apply.
2. How far forward did you book the freight? Generally speaking, the further forward a booking is made the greater the discount to a spot price. Freight providers, like airline companies, like to get forward bookings as an indication of future cash flow. This is not always the case and for various reasons you may see an inverse in the freight market, in the same way that future grain prices could be higher than current values.
3. How much tonnage is being booked? An organisation moving 100,000 tonnes against an agreed, disciplined freight program will get their freight at a better rate than an organisation moving 1,000 tonnes with no freight program.
4. Is the grain being moved on rail or road? If rail, how many stops are required to fill the train, i.e. one stop or multiple stops down the line?
5. Time of year. The freight program is greatest just after harvest as organisations move grain to port.
6. Site efficiency.

Any or all the above can impact on freight rates at any one time.

How are GTA Location Differentials determined?

1. The GTA Commerce Committee is responsible for development and ongoing review of the values used as the GTA LD's.
2. GTA will not change the current methodology (method of calculation) or the value of the GTA Location Differentials (LDs) for a period of no less than three [3] years (from 2013), subject to any significant changes in the market, which will be determined by the GTA Commerce Committee.
3. GTA will provide industry with 18 months lead time from the publication of any significant changes to the methodology used to calculate the GTA LDs.
4. GTA will provide industry with 18-month warning of any changes to the LDs as a result of Point 3 above.

Does a grower sell using a GTA LD for their local site?

No. A buyer may use a variety of calculations and processes to establish a 'delivered local depot price' derived from a 'basis port price'. This may include a number of different variations including their own published rates, GTAs Location Differentials, a derived forecast of average freight cost over a time period, or a commercially available freight rate, either fixed or variable.





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