

## **Member Update**

**Title: Review of GTA No. 3 Grower Contract**

**Update No.: 10 of 12**

**Date of Issue: 16 May 2012**

### **Distribution**

- GTA Members – primary contact list. Please circulate to all appropriate internal parties

#### **1. Issue**

GTA Commerce Committee is seeking industry submissions regarding suggested amendments to the GTA No. 3 Grower Contract for the benefit of trade. **Submissions close Thursday 31 May 2012**

#### **2. Background**

It is a requisite of the GTA Commerce Committee to review the GTA Trade Rules and Contracts to maintain their commercial viability and advise the GTA Board accordingly.

To aid in the review of these commercial instruments GTA calls on industry to provide advice to the Commerce Committee.

The Commerce Committee will then incorporate industry recommendations where appropriate and redistribute to industry for further comment.

On receipt of final comment the Commerce Committee will make appropriate amendments for Board Approval.

The revised Contract will then become available on the GTA website for industry use.

#### **3. Industry Feedback**

All industry participants are encouraged to review the Contract and forward their submission to [admin@graintrade.org.au](mailto:admin@graintrade.org.au)

**Submissions close Thursday 31 May 2012.**

Submission Forms are available on the GTA website: <http://www.graintrade.org.au/committees>



## CONTRACT CONFIRMATION

GTA Trade Rules and Dispute Resolution Rules apply to this contract

GTA Contract No. 3 May 2012 Edition

Date:        /        /

Contract Number: \_\_\_\_\_

This Contract is confirmation between:

**BUYER**

**SELLER**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

(Buyer ABN: \_\_\_\_\_)

(Seller ABN: \_\_\_\_\_)

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: \_\_\_\_\_

(Origin - Destination)

Packaging: \_\_\_\_\_ Weights: \_\_\_\_\_

(Refer over)

Price: \_\_\_\_\_ Inc. GST \_\_\_\_\_

Excl. GST \_\_\_\_\_

No GST \_\_\_\_\_

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

(Delivered, Shipped, Free In Store, Free On Board, Ex-Farm, etc.)

Delivery/Shipment Period: \_\_\_\_\_

(Road, Rail, Delivered Container Terminal, Freight, Rated Basing Point, Loading Weight requirements if applicable)

Delivery Point and Conveyance: \_\_\_\_\_

**Payment Terms:** The buyer agrees to pay the seller within \_\_\_\_\_ days, end of week of delivery. In the absence of a declaration, payment will be 30 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 PBR and/or EPR liabilities?    NO ☐    YES ☐ (Please ✓ 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.

### Recipient Created Tax Invoice (RCTI).

To assist with the processing of the Goods and Services Tax compliance, the buyer may prepare, for the seller, a Recipient Created Tax Invoice (RCTI). If the seller requires this service they are required to sign this authorisation.

☐ Please issue a RCTI (Please ✓ )

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

This contract expressly incorporates the GTA Trade Rules and Dispute Resolution Rules in force at the time of this contract, 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.

Buyers Name: \_\_\_\_\_ Sellers Name: \_\_\_\_\_

Print Name

Print Name

Buyer: \_\_\_\_\_ / / Seller: \_\_\_\_\_ / /

Signature

Date

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

**TRADING 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".

**WEIGHTS:** Unless specifically agreed otherwise, destination weights, which shall be determined by qualified personnel, shall be the basis of trade. If these are not available, loading point, government or Registered Public Weighbridge weights shall be accepted. Errors in weighbridge tickets in all cases shall be excepted.

**QUALITY GRADES:** Unless specifically agreed otherwise, Destination Quality Grades shall be on the basis of trade, which shall be determined by qualified personnel according to sampling and analyses procedures established by GTA. If these are not available, Loading Point Quality Grades shall be accepted.

**CHEMICAL AND PESTICIDE RESIDUES:** The Seller warrants that the commodity complies with all State and Federal Laws and requirements relating to chemical and pesticide residues and specified government designated maximum residue levels.

**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:** Risk in any goods supplied by the Seller to the Buyer shall pass to the Buyer when they leave the possession of the Seller however title shall not pass until payment in full has been received by the Seller. Until full payment is received the Buyer and/or its agents and 3rd parties hold the goods as bailees only. On breach of any payment terms, the Buyer on its own behalf and on behalf of its agents and 3rd parties authorises the Seller to enter any premises and retake possession of the goods without notice to the Buyer, its agents and 3rd parties.

Where the goods have been comingled with other goods, the Buyer becomes an owner in common of the bulk goods and the undivided share of the Seller shall be such share as the quantity of Seller's goods bears to the quantity of the goods in the bulk.

Until such time as the Seller has received payment in full, any on-sale by the Buyer is made as the Seller's agent and the Buyer holds the proceeds of any on-sale of the Goods as trustee for and on behalf of the Seller and must account to the Seller for those proceeds, on demand. Where at the time of default in any payment terms to the Seller the Buyer has not received proceeds of any on-sale the Seller is expressly authorised to receive proceeds of on-sale direct from the Buyer's customer.

**REJECTION:** A Buyer shall not be entitled to reject goods as not being in accordance with description or sample if those goods are of a quality superior or equal to that contracted for, provided that goods are otherwise in accord with the Contract description.

**FINALITY:** All adjustments or compensation claimed based on defect of quality or condition or weights which shall be apparent upon reasonable inspection must be advised within five [5] business days after unloading or presentation of appropriate documents and must be formally confirmed by written notice, letter or facsimile within thirty [30] consecutive days of delivery of the consignment.

**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 recession of the entire Contract or any other Contract between the Buyer and Seller.

**DEFAULT:** In the event of Default in fulfillment of Contract by either party, the other at their discretion shall have the right, after giving written notice by letter, or facsimile, or telex, or by email to sell or purchase, as the case may be, against the Defaulter and the Defaulter shall make good the loss, if any, on such purchase or sale.

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

**NOTICES:** All notices given under these GTA Trading Rules shall be given by written letter delivered by hand on the day of writing, or by facsimile, or by telex, or by email or by other method of rapid written communication. Any notices received after 1600 hours local time on a business day shall be deemed to have been received on the business day following. A notice to a party's Brokers or Agent shall be deemed a notice under these GTA Trading Rules. In case of resales, all notices shall be passed on without delay by Buyers to their respective Sellers or vice versa.

**FORCE MAJEURE:** Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by action by any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/or shipping strike), lock-out, combination of workers, or civil commotion which is not due to said party's own acts or negligence. The loss of a commodity due to production risks or crop failure does not constitute a condition of Force Majeure.

**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 date of the establishment of the Terms of Trade in the Contract, such rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant.

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

**DOMICILE:** This Contract and these GTA Trade Rules are governed by and shall be construed to be in accordance with the law for the time being enforced in Australia and in the State or Territory in which the transaction is executed (i.e. goods conveyed and title passed). Performance of all Contracts under these Trade Rules are subject to orders, rules and regulations of all government agencies, and to all causes, except as limited herein.

**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 sellers signature.

**NOTE: The GTA Trade Rules are available on the GTA website.**