

Member Update

Title: Review of GTA No. 3 Grower Contract

Update No.: 14 of 12

Date of Issue: 22 June 2012

Distribution

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

1. Issue

The GTA Commerce Committee is seeking a second round of industry submissions regarding the GTA No. 3 Grower Contract for the benefit of trade. **Submissions close Friday 13 July 2012**

2. Background

On the 16 May 2012 the GTA Commerce Committee called for submissions in relation to the review of the GTA No. 3 Grower Contract. **GTA Member Update No.: 10 of 12 Review of GTA No. 3 Grower Contract.**

The Commerce Committee has reviewed the industry submissions and made the appropriate changes to the GTA No. 3 as required.

The revised GTA No. 3 Grower Contract is attached below and GTA recommends Members with an interest in this contract, read and make further submissions as required.

CONTRACT CONFIRMATION

GTA Trade Rules and Dispute Resolution Rules apply to this contract

GTA Contract No.3



DATE: __/__/__

BUYERS CONTRACT NO: _____

This Contract is confirmation between:

BUYER

Name: _____

Company: _____

Address: _____

Buyer ABN: _____

NGR No: _____

SELLER

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

Delivery/Shipment Period: _____

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 _____. 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 Plant Breeders Rights and/or EPR liabilities and/or registered or unregistered Security Interest? **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.

Buyer's Name: _____
Print Name

Buyer's Signature: _____

Date: __/__/__

Seller's Name: _____
Print Name

Seller's Signature: _____

Date: __/__/__

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: 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.

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 as soon as practicable but no later than 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 rescission of the entire Contract or any other Contract between the Buyer and Seller.

DEFAULT: A party in default of any of its obligations under a contract or who anticipates that it will default must serve notice on the other party as soon as practicable.

The notice must state the date of default or anticipated default and the nature of and reasons for the default.

The party in receipt of such notice must immediately, or as soon as is reasonably practical, notify the other party of its election to either;

- 1) affirm the contract; or
- 2) buy in, or sell against the defaulter; or
- 3) cancel all or any part of the defaulted portion at Fair Market Price.

In a case of actual default where no notice has been given, the party not in default must give the defaulting party notice containing the details in (2) above and as soon as is practical thereafter advise the defaulter which of the options in 3 above it elects to pursue.

Default by either party in performance of the contract in accordance with the contract terms shall entitle the other party to damages in respect of and/or reject only the actual defaulted portion.

A party in default is liable to pay damages based on the defaulted quantity multiplied by the difference between the contract price and Fair Market Price as at the date of default, within 7 days of receipt of a demand to pay.

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 Eastern Standard 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.

NOTICE OF FORCE MAJEURE: The party invoking Force Majeure must notify the other party within five [5] Business Days of the commencement of the occurrence, or not later than five [5] Business Days after the beginning of the contract Delivery or Shipment period, whichever is the later. Within five [5] Business Days of receiving the notice the party may request proof of the Force Majeure event and evidence that the invoking party has exerted best efforts to meet the terms of the contract. The invoking party shall have five [5] Business Days to respond. In the case of resale such information shall be passed on without delay.

Neither party shall have claim against the other for days or non-fulfillment under this Rule provided that the party invoking the Rule shall have supplied, if so requested by the other party, satisfactory evidence justifying the delay of non-fulfillment.

Extension of Contract due to Force Majeure: Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of a period equal to that of the delay caused by said act, but not more than thirty [30] consecutive days from the end of the contract period. If delivery under this Rule is still prevented at the end of the first extension period, the party not invoking the Rule shall have the option of canceling the contract as per Rule 17 [Default] or any unfulfilled part of the contract mutually agreeing to one further extension period (the second extension) of not more than thirty [30] consecutive days. If at the conclusion of the second extension period delivery is still prevented, the contract or an unfulfilled part thereof shall be considered in Default as per Rule 17 [Default].

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.

ENCUMBRANCES: The Seller must notify the Buyer if a Crop Lien or other 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 Crop Lien or 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:

Crop Lien – means a security interest registered over the growing Commodity under the Corporations Act 2001 (Cth) or the Personal Properties Securities Act 2009 (Cth).

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.