



SOUTHERN AG GRAIN
2011/12 GENERAL TERMS AND CONDITIONS
Current as at July 2011



SOUTHERN AG GRAIN (SAG)/Emerald: SAG acts as agent of Emerald Grain Australia Pty Ltd as trustee of the Emerald Grain Trust (ABN 46 861 707 683) (“Emerald”).

THE CONTRACT: Each contract between You and Emerald “the Contract” consists of the following documents and in the event of inconsistency must be interpreted in following descending order of priority:

1. The contract confirmation
2. These General Terms and Conditions
3. The GTA Trade Rules and Dispute Resolution Rules in force at the time of the Contract which form an integral part of the Contract (for a copy visit www.graintrade.org.au)

TIME: All stipulations set forth in the Contract as to “TIME” are of the essence except for payment of money. Under the GTA Trade Rules a party may be entitled to penalty interest on late payments.

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

QUANTITY TOLERANCE: Unless specifically agreed otherwise and set out in the contract confirmation, the quantity required to be delivered under the contract is the minimum and the maximum; there is zero tolerance.

WEIGHTS: Unless specifically agreed otherwise, bulk store receival weights, which shall be determined by qualified personnel, shall be on the basis of trade. If these are not available, government or Registered Weighbridge weights shall be accepted. Errors in weighbridge tickets in all cases shall be accepted.

QUALITY GRADES: Unless specifically agreed otherwise, Quality Grades shall be assessed on the basis of trade, which shall be determined by qualified personnel according to sampling and analyses procedures established by GTA or the bulk store as applicable during the relevant Delivery Period. Payment will be made based upon binned grade.

MULTI GRADE CONTRACTS: All wheat contracts are for APW with a premium and discount schedule devised to establish the fixed price for grades other than APW. Unless otherwise specified in the contract confirmation, or agreed in writing with Emerald (Delivery 3 Window grade spreads are set 1 November 2012), if You deliver a quality grade other than APW your payment will be adjusted based on Emerald published spreads. Emerald published spreads are set from 1 November each year for the following twelve month delivery period. If delivering in Delivery Period 2 you must notify Emerald of the quality grade by 31 January 2012.

LOCATION DIFFERENTIALS: Unless set out in the contract confirmation, the GTA location differentials will apply for up country deliveries. Location differentials can be located on GTA website.

DELIVERY PERIOD AND PRICING: As set out in the contract confirmation, there are 3 Delivery Periods (windows) under the contract which can be nominated by You. Each window has a port bid price specified that will be multiplied by the quantity as the basis for calculating Your payment, less spreads, location differentials and any levies or charges that are required to be deducted in accordance with the contract. You must elect and notify Emerald by 31 October 2011 if you will be delivering in Delivery Period 2 or 3 as specified in the contract confirmation. If Emerald does not receive a nomination, you will be deemed to have nominated Delivery Period 1.

DELIVERY AND TITLE TRANSFER: Subject to meeting minimum requirements, delivery and therefore transfer of title and risk of physical loss occur, when You or Your’ agent has presented Commodity to a bulk handler and signed a weigh note nominating Emerald as the acquirer; or if delivery is by way of in-store transfer of Commodity stored on Your behalf by a bulk handler, when the bulk handler signs or otherwise authorises on Your behalf a title transfer to Emerald. You agree to sell the Commodity free of all liens and encumbrances, and must notify Emerald of any liens or encumbrances prior to delivery.

STANDARDS: You declare that the Commodity sold is of the declared variety/varieties, and as such, is not know to contain any unapproved genetically modified material nor any approved genetically modified material in excess of the allowed adventitious presence of approved events as per state or federal legislation.

LEVIES AND STATUTORY CHARGES: Any industry, statutory or government levies which are not included in the price shall be deducted as required by law, which may also include liabilities for End Point Royalties (EPRs) and/or Plant Breeders Rights (PBR). You agree to provide to Emerald any varietal information requested and consent to the release of Your information by Emerald to owners and managers of the variety, or their agents.

CHEMICAL AND PESTICIDES RESIDUES: You warrant 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. You are responsible for any loss caused as a result of pesticide levels exceeding maximum residue levels and indemnify Emerald for loss it suffers due to maximum residue levels being exceeded.



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WAIVER: If Emerald elects not to exercise any of its rights arising from a breach of these Terms and Conditions, it shall not constitute a waiver of any rights relating to any other or subsequent breaches that may occur.

DEFAULT: Failure to deliver the Commodity in accordance with the Contract is a default by You. If You are in default, and after Emerald has given written notice to You of such default, Emerald may recover damages from You as a result of failure to deliver in accordance with the Contract at the end of the Delivery Period nominated.

If You suspend payment of debts, or convene or hold a meeting of creditors, or commit an act of bankruptcy, or being a company 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, You shall be deemed to be in Default.

NOTICES: All notices given under these Terms and Conditions shall be given by written letter delivered by hand on the day of writing, or by facsimile, or by email (with read receipt), or by other method of rapid written communication to the last address you have notified to SAG, Emerald and NGR. Any notices received after 1700 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.

FORCE MAJEURE: The loss of a commodity due to production risks or crop failure does not constitute a condition of Force Majeure.

ARBITRATION: Any dispute, controversy or claim arising out of, or relating to, or in connection with the Contract including any question regarding its existence, validity, breach or termination or subject matter thereof, shall be resolved by arbitration in accordance with GTA Dispute Resolution Rules ("GTA Rules") in force at the time of 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 Rules.

APPLICABLE LAW: The Contract the GTA Trade Rules and Dispute Resolution Rules are governed by and shall be construed to be in accordance with the law for the time being enforced in Victoria.

TAX: Emerald and You declare that this agreement applies to supplies under the contract. Emerald can issue Recipient Created Tax Invoices (RCTI) in respect of these supplies. You will not issue tax invoices in respect of these supplies. Both parties acknowledge that they are registered for GST and are parties to an RCTI agreement. They will notify the other party if they cease to be registered. Acceptance of a Contract constitutes acceptance of the terms of this RCTI agreement. You agree to notify Emerald if You do not wish to accept the proposed RCTI within 21 days of receiving this document.

SET-OFF AND ENCUMBRANCES: Emerald may set-off against any payments due to You any amounts owing to Emerald by You on any account whatsoever.

INDEMNITY: You indemnify Emerald against any claim by any person claiming an interest in any Commodity delivered by You or the proceeds of sale of such Commodity, and against all costs or expenses incurred by Emerald in enforcing the Contract. You authorise Emerald to pay out of your proceeds any liens or encumbrances in respect of the Commodity notified to SAG or Emerald.

'YOU' includes your business partners and any company, trust or association on whose behalf you are purporting to act and 'YOUR' shall have a corresponding meaning. You acknowledge that unless you notify Emerald to the contrary your nominated agents for selling and/or delivery shall be assumed to have the authority to bind You.