



Version 1.3

Bunge Grain Services Bunbury Pty Ltd

ABN: 91 148 115 511

**STANDARD STORAGE AND HANDLING AGREEMENT
[2015/2016 SEASON]**

With

The Company Pty Ltd

ABN: xx xxx xxx xxx

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STORAGE AND HANDLING AGREEMENT

THIS AGREEMENT is dated _____

BETWEEN: Bunge Grain Services Bunbury Pty Ltd
("Bunge")

[INSERT]

("Company")

Collectively "**the Parties**" and each a "**Party**".

RECITALS

- A. Bunge owns grain storage and handling facilities in Kukerin, Arthur River and Bunbury Western Australia.
- B. The Company wishes to store its grain at Bunge's storage and handling facilities.
- C. Bunge agrees to store the Company's grain at its storage and handling facilities pursuant to the terms and conditions of this Agreement.
- D. The Company agrees to the terms and conditions of this Agreement and will remunerate Bunge in accordance with the terms of this Agreement.

THE PARTIES AGREE:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires:

Accounting Stock Tonnage means the quantity of each type and grade of Stored Grain shown in Bunge's accounting records, being determined by the Reveal Tonnage less the Shrinkage Allowance.

Booking Fee means the booking fee payable under the terms of this Agreement.

Bunge Facility means any facility owned or operated by Bunge for the receipt, storage and/or Outturning of Grain under the terms of this Agreement.

Business Day means each day excluding Saturdays, Sundays and public holidays in Western Australia.

Business Hours means 07.00am to 4.00pm on each Business Day (Western Australian time).

Carryover Date means the date from which the Carryover Fees will apply for a specific Bunge Facility as set out in this Agreement.

Carryover Fees means those carryover fees as are payable under the terms of this Agreement.

Commencement Date means either the date on which this Agreement is executed by both Parties or Bunge provides Services to the Customer, whichever is the earlier.

Commingled Grain has the meaning given to it in Clause 8.

Corporations Act means the *Corporations Act 2001* (Cth).

Fair Market Price means a price for a specific location, quality and quantity of Grain not less than Bunge's bid price to growers for specific location, quality and quantity of Grain.

Force Majeure Event has the meaning given to it in Clause 31.

Grain means wheat, barley, oats, triticale, legumes, sorghum, maize and cotton seed and any other type of grain which is received, stored and/or handled by Bunge under this Agreement and, after receipt of a quantity of such grain means the same quantity of grain of the same type and grade.

GIWA means Grain Industry Association of Western Australia.

GST has the meaning given to it in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, any Act imposing or relating to the imposition or administration of a goods and services tax in Australia, and any regulation made under that Act.

GTA means Grain Trade Australia Ltd.

Insolvency Event means the occurrence of any one or more of the following events:

- a) a resolution is passed for the winding up of a Party (other than for the purposes of reconstruction or amalgamation on terms which have been previously approved in writing by the other Party);
- b) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all or any part of the property of a Party;
- c) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all or any part of the business or assets of a Party;
- d) a Party makes any composition or arrangement or assignment with or for the benefit of its creditors;
- e) a Party or any creditor appoints a voluntary administrator or a resolution is passed for that Party to execute a deed of company arrangement;
- f) a Party ceases, or threatens to cease to carry on its business; or
- g) a Party becomes insolvent within the meaning of section 95A of the Corporations Act.

Invoice means an invoice issued by Bunge to the Company in respect of Storage and Handling Fees, and any other amount payable, for the relevant invoice period.

Law means any statute, ordinance, code, clause, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order and includes the terms and conditions of any licence, permit, consent, certificate, authority or approval or any assurance or bond or similar requirements including all applicable standards and obligations under the common law.

NGR means National Grower Register, who operate a register of growers, their contact information and payment details.

Nomination Fees means those nomination fees as are payable under the terms of this Agreement.

Outturn or Outturning or Outturned means the removal of Stored Grain from Bunge's Facility.

Outturning Tonnage means the tonnage of the Company's Grain removed from Bunge's Facility.

Payment Due Date means, for a given Invoice, 30 days from the end of the month during which the Invoice was issued.

Port Terminal means Berth 3 at the Port of Bunbury, Western Australia.

Port Loading Protocols means the document describing the requirements of the Company and any other third parties wishing to load Grain onboard shipping vessels at the Port Terminal.

Receival Tonnage means the tonnage of Grain delivered by the Company to Bunge at Bunge's Facility.

Season means the period between 1st October of one year and the following 30th September.

Services has the meaning given to it in Clause 3.

Shrinkage Allowance means the allowance for loss in weight of Stored Grain that occurs during the storage and handling and transport process.

Storage and Handling Fees means those storage and handling fees as are set out in the terms of this Agreement.

Stored Grain means Grain that is received from, on behalf of, or for the account of the Company under the terms of this Agreement and is within Bunge's power, possession, custody or control.

1.2 In this Agreement, unless the context otherwise requires:

- (a) a reference to an agreement (including, without limitation, this Agreement) is a reference to that agreement as amended, varied, novated, supplemented or replaced from time to time;
- (b) words or expressions:
 - (i) importing the singular include the plural and vice versa;
 - (ii) importing a gender include the other gender; and
 - (iii) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;
- (c) a reference to a Party to this Agreement or any other instrument includes that Party's executors, administrators, successors and permitted assigns;
- (d) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;

- (e) a reference to a clause number, appendix, annexure or exhibit is a reference to a clause, Schedule, Annexure or Exhibit of this Agreement;
- (f) headings are for convenience only and do not affect interpretation;
- (g) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (h) a reference to any legislation or statutory instrument or regulation is construed in accordance with Western Australian Law;
- (i) a rule of construction does not apply to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it;
- (j) a "**day**" means a calendar day;
- (k) a "**month**" means a calendar month;
- (l) a "**quarter**" means a period of three (3) calendar months commencing on 1 April, 1 July, 1 October or 1 January;
- (m) a "**year**" means a calendar year;
- (n) all monetary amounts are expressed in the currency of Australia; and
- (o) in the event of a conflict between any provision of this Agreement (excluding the Schedules) and the Schedules, the provision of this Agreement shall prevail to the extent of the conflict

2. **Term**

- 2.1 Subject to earlier termination, this Agreement commences on the Commencement Date and ends on **[insert]** ("**the Term**").
- 2.2 On and from the Commencement Date, this Agreement supersedes any prior agreement between the Parties in respect of the Services.
- 2.3 If Bunge continues to provide the Services to the Company after the end of the Term then the terms and conditions of this Agreement will continue to apply until a new agreement is executed or this Agreement is terminated in accordance with Clause 16.

3. **Bunge's Services**

- 3.1 Subject to the terms of this Agreement, Bunge shall:
 - (a) at its sole discretion, receive the Company's Grain into the Bunge Facility in accordance with the Company's request;
 - (b) sample, provide quality testing services for, classify into available grades and weigh the Company's Grain in accordance with GIWA / GTA approved methods and standards;
 - (c) furnish to the Company or their nominated representative a statement that specifies the relevant details of the Company's Grain;

- (d) store the Company's Grain in clean, dry, ventilated and in all circumstances appropriate storage facilities including, without limitation, storage bins and/or covered bunkers;
- (e) Outturn the Company's Grain to the Company or the Company's nominated representative;
- (f) keep at Bunge's principal place of business proper, complete and up-to-date records, books of account and documents relating to transactions in the Company's Stored Grain and such books of account, records and documents will be available for inspection by the Company at any reasonable time upon request; and
- (g) within 7 Business Days after the end of each month, provide the Company with a written monthly reconciliation of the Company's Grain movements and closing Grain balances for the month; (together, the "**Services**").

4. **Company's obligations and warranties**

4.1 The Company shall:

- (a) pay to Bunge the Storage and Handling Fees, and any other amounts payable under this Agreement, by the Payment Due Date;
- (b) provide Bunge with all written information Bunge reasonably requires for Bunge to properly record the receipt of Grain from, or to the account of, the Company, including information relating to:
 - (i) origin, quality, quantity, weight, type and variety; and
 - (ii) anticipated time of delivery; and
- (c) ensure that where Grain is tendered for delivery by a grower or agent on behalf of the Company:
 - (i) the grower or agent will clearly state in writing the Company's name at the time of delivery ("**Nomination**");
 - (ii) all Nominations contain a statement to the effect that the grower or agent transfers all of the right, title and interest to and in the Grain to the Company; and
 - (iii) all Nominations are final and irrevocable.

4.2 The Company warrants that:

- (a) it owns any Grain tendered for delivery by or on behalf of it;
- (b) it has not manipulated or loaded any delivery in any way to preventing the making of an accurate assessment by Bunge of the quality of the Grain using Bunge's standard sampling procedures;
- (c) Grain being tendered for delivery by or on behalf of it will not:
 - (i) contain any chemical contaminant or residues;

- (ii) be in breach of any relevant Laws;
- (d) all Grain tendered for delivery by or on behalf of it was grown between May and September immediately prior to the current Season;
- (e) any vehicle used to deliver the Grain is clean, dry and free of any remaining materials and odours from previous loads;
- (f) if any of the Grain has been treated with substances for the control of insects, details of the substances and the application of those substances has been provided in writing to Bunge before the Grain is delivered to the Bunge Facility and the use of any other chemical in the process of planting, growing and storage of Grain has been in accordance with the levels prescribed in any relevant Law, industry standard and usage instructions; and
- (g) any information it provides to Bunge in relation to this Agreement is complete, true and correct and not misleading or deceptive or likely to mislead or deceive.

5. Bunge's Discretion to Receive Grain

Notwithstanding any other terms in this Agreement, Bunge may, at its discretion, accept or refuse to receive the Grain for storage and/or warehousing for reasons that include but are not limited to quality, hygiene, safety and its capacity and efficiency.

6. Pest control

- 6.1 Bunge shall regularly inspect the Stored Grain for the presence of insects and will notify the Company if any infestation of the Stored Grain is identified.
- 6.2 Bunge may at its expense and sole discretion treat the Grain with chemicals or fumigants in accordance with industry practice and at all times within applicable safe levels as determined by industry maximum residue limits unless otherwise specified, in order to prevent or cure infestation, disease and/or contamination.
- 6.3 Bunge will endeavour to provide the Company with a schedule specifying planned treatment periods within one month of receiving the Stored Grain.
- 6.4 Where Bunge applies chemicals or fumigants to the Stored Grain, that Grain will not be accessible for a period of about 4 weeks from the date of fumigation. Bunge will notify the Company in writing prior to any Outturning if it is still within the "withholding period" as specified by the chemical or fumigant manufacturer. Bunge will maintain a diarised log of inspection dates at which treatments occur.

7. Documentation and weights

- 7.1 Bunge shall weigh all of the Company's Grain delivered to and Outturned from Bunge's Facility, using Bunge's weighbridge at the Bunge Facility, to determine the Receival Tonnage and Outturning Tonnage.
- 7.2 The Company is bound by Bunge's determinations of Receival Tonnage and Outturning Tonnage as per Clause 7.1.

8. **Commingled Grain**

- 8.1 Unless specifically agreed otherwise, Bunge may commingle Stored Grain with grain of a like type and specification stored on behalf of other third parties or other users in Bunge's Facility ("**Commingled Grain**"), in which case all Commingled Grain shall be jointly owned by all parties whose grain has been so commingled to the exclusion of all other persons, including but not limited to Bunge.
- 8.2 Subject to the Parties agreeing otherwise in writing, where the Stored Grain has been commingled in accordance with Clause 8.1, Bunge may nominate and identify any particular quantity of Grain within the Bunge Facility from the Commingled Grain as being the Stored Grain for the purposes of this Agreement, including, for the purposes of Outturning at the direction of the Company and sale by Bunge in exercise of its lien over the Grain in accordance with Clause 19.

9. **Title to Grain**

- 9.1 Subject to the terms of this Agreement, while Bunge has possession of the Stored Grain, Bunge is a bailee for reward of the Stored Grain, and will continue to be so despite any commingling of the Stored Grain, or despite any inability of Bunge to redeliver to the Company Stored Grain the subject of the bailment.
- 9.2 Except as provided in Clauses 9 and 19, Bunge has no legal or equitable title to the Stored Grain unless it is an owner of the Stored Grain.
- 9.3 Subject to Clauses 9.1 and 19, where the Stored Grain is commingled at a Bunge Facility, title to the Commingled Grain is held jointly by the Company and other parties whose Grain forms part of the Commingled Grain at the Bunge Facility.
- 9.4 For the purposes of Clause 9.3, the Company's interest in Commingled Grain will be equal to that proportion of which the quantity of the Stored Grain at the time bears to the quantity of the Commingled Grain at that time.

10. **Outturn**

- 10.1 The Company shall give Bunge seven (7) Business Days' written notice of a requested Outturn of Stored Grain from a Bunge Facility.
- 10.2 Subject to the notification requirement in Clause 10.1 and this Agreement generally, Bunge will take all reasonable steps to comply or procure the compliance with the Company's Outturn request.
- 10.3 The Company shall comply with Bunge's Outturn requirements and procedures when the Company a) engages Bunge as the freight provider or b) contracts directly with its own freight provider.
- 10.4 Subject to the terms of this Agreement, Bunge shall Outturn at least the Accounting Stock Tonnage of each type of Stored Grain delivered to the Bunge Facility.
- 10.5 If the tonnage of the Stored Grain Outturned is less than the Accounting Stock Tonnage, Bunge must do one of the following, as elected by Bunge in its sole discretion:

- (a) provide sufficient additional Grain of the same type, and grade to ensure that the net Outturning of Grain is equivalent to the Accounting Stock Tonnage; or
 - (b) provide financial compensation to the Company for the shortfall in the net Outturning, based on the Fair Market Price for Grain of the relevant type, variety and grade for the applicable Season and as at the date Bunge exercises its discretion as per this Clause.
- 10.6 If the tonnage of a particular type and grade of Stored Grain Outturned is more than the Accounting Stock Tonnage, the Company shall provide financial compensation to Bunge for the excess in the net Outturning, based on the Fair Market Price for Grain of the relevant type and grade for the applicable Season, as at the date of Outturn.
- 10.7 Bunge's obligations in respect of Stored Grain cease immediately upon Outturning of the Grain from the Bunge Facility.
- 10.8 Where Bunge determines that the Company's nominated mode of transportation is not clean or fit for loading or carriage of Grain, Bunge may, in its sole and absolute discretion, cancel, suspend or refuse to Outturn the Stored Grain. In such circumstances, Bunge shall not be liable for any delay, claim or loss by the Company or any third party and the Company shall indemnify Bunge in respect of any such claims or loss.
- 10.9 The Company will immediately remove the Stored Grain from storage at the Bunge Facility upon receipt of a notice from Bunge requiring it do so.
11. **Movements**
- 11.1 Bunge has the right to Outturn the Grain to another Bunge Facility or relocate the Grain within the Facility if:
- (a) the Bunge Facility, or storage bunker or stack, reaches capacity (or is expected to reach capacity) during the Season harvest;
 - (b) this Agreement expires or is terminated;
 - (c) consolidation of small quantities of Grain is required (in Bunge's reasonable opinion) for the efficiency of the Bunge Facility;
 - (d) the volume in the cell/bunker/stack in which the Grain is stored is down to sweeping stage and/or less than 10% capacity;
 - (e) the quality of the Grain that has been received has potential to contaminate other third parties' grain or the Company's Grain; or
 - (f) Bunge determines that it is operationally efficient to move the Grain.
- 11.2 And in each case the Company will bear any additional costs or charges that may arise out of the outturn or relocation relative to the site of origin, including, but not limited to, freight differentials.

12. **Port Loading Protocols**

Where the Grain is to be loaded onboard a shipping vessel, the Company agrees to comply with the **Port Loading Protocols** and to pay the respective fees and charges.

13. **Carryover of Grain**

If, with the written permission from Bunge, any Stored Grain remains in a Bunge Facility after the Term of this Agreement, the Company shall pay Bunge, in addition to the applicable Storage and Handling Fees up to the Carryover Date, the Carryover Fees on the Carryover Date.

14. **Nomination**

14.1 The Company shall ensure that, whenever Grain is delivered by a third party on behalf of the Company, the third party nominates the Company as the owner of the Grain and acknowledges, in writing at the time of delivery, that the third party's right, title and interest to and in the Grain is transferred to the Company.

14.2 The Company agrees to include in its grower purchase contract terms and conditions that the growers must be registered with NGR and the grower must quote or provide their NGR number to Bunge when making delivery to a Bunge Facility. Without a valid NGR number, Bunge is not bound to accept a grower delivery.

15. **Notices**

Unless otherwise stated in this Agreement, notices given by either Party or their agents to the other Party or their agents in accordance with this Agreement, shall be in writing and in the English language. For the purposes of this Agreement, "in writing" means personal service, registered or recorded mail or email to the following nominated representatives:

The General Manager

Bunge Agribusiness Australia

1/99 Coventry St, South Melbourne, Vic, 3205]

Email: bgm.trade.aus@bunge.com

[insert - Customer]

15.1 A notice is regarded as given and received:

- (a) If it is sent by mail, on the third Business Day after posting;
- (b) If its delivered or sent by fax:
 - (i) by 5.00pm (local time in the place of receipt) on a Business Day, on that day; or
 - (ii) after 5.00pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day, on the next Business Day; and

- (c) if it is sent by e-mail, on the day of receipt by the recipient and, if the recipient is absent from his or her usual place of work for more than one day after the date of transmission, the day that the recipient returns to work.

16. Termination

16.1 Either Party may terminate this Agreement immediately by written notice to the other Party if:

- (a) the other Party commits an act of bankruptcy; or
- (b) an Insolvency Event occurs in respect of the other Party.

16.2 Where Bunge suffers an Insolvency Event, the Company will be entitled, upon reasonable notice and subject to the provisions of this Agreement relating to Commingled Grain, to re-take possession of the Stored Grain from the Bunge Facility at which it is located.

16.3 Notwithstanding Clause 16.1, Bunge may terminate this Agreement by notice in writing to the Company (such termination to take effect at any time nominated within the Term of this Agreement) if:

- (a) the Company is in breach of this Agreement, unless upon becoming aware of such breach, Bunge, at its sole discretion, gives written notice to the Company that it has 10 Business Days to remedy the breach and the Company does remedy that breach to the sole satisfaction of Bunge;
- (b) the Company commits any act or does anything that in Bunge's sole opinion could bring the reputation of the Company into disrepute and as a consequence, Bunge, acting reasonably, believes that its continued association with the Company could be prejudicial or detrimental to the reputation of Bunge's business;
- (c) the Company advises Bunge or it becomes apparent to Bunge (acting reasonably) that the Company will be unable to complete its obligations under this Agreement.

16.4 On termination or expiry of this Agreement Bunge shall be entitled to receive all amounts due to it in respect of the Services that have been provided but not billed as at the date of termination or expiry (provided that such Services have been provided in accordance with the terms of this Agreement).

17. Interest on Late Payments

17.1 Without limiting any other rights that Bunge may have under this Agreement, the Company shall pay interest on all amounts owing to Bunge on any Invoice that remains outstanding after the Payment Due Date at a rate of 3% above the 90 day Bank bill rate offered by the Commonwealth Bank of Australia as at 31 October each year or as otherwise amended and notified to the Company if there is a significant rise in this rate.

17.2 For the purposes of Clause 17.1, late payment interest shall be calculated from the Payment Due Date for an Invoice until all amounts owing on the Invoice, including interest, have been paid.

18. GST

18.1 Unless the contrary intention appears, words and expressions used in this Clause 18 which are defined in the GST Act have the same meaning herein.

18.2 All fees and charges in this Agreement unless stated are expressed exclusive of GST.

18.3 If Bunge is liable to remit GST in respect of any taxable supply made to the Company under this Agreement, Bunge may, subject to the issue of a valid tax invoice, recover from the Company any such GST in addition to any other amounts payable, or any other consideration to be provided, under or in connection with this Agreement at the same as the consideration, or the first part of the consideration, as the case may be, for the taxable supply to be provided.

19. Lien and Right to Withhold Stored Grain

19.1 Bunge has:

- (a) possession of the Stored Grain; and
- (b) a first and paramount lien over the Stored Grain in respect of all moneys payable (on any account whatsoever) by the Company to Bunge under this Agreement or otherwise.

19.2 For the purposes of enforcing its lien under Sub-clause 19.119.1(b), in the case of Commingled Grain, Bunge may nominate and identify any particular quantity of Grain comprising the Commingled Grain as being the Stored Grain.

19.3 Notwithstanding any other term of this Agreement, Bunge may, at its sole discretion, refuse to Outturn the Stored Grain if the Company has not paid any amounts owing to Bunge pursuant to Clauses 4.14.1(a), 17 or 18.3.

20. Hours of operation

Bunge shall only be required to receive and Outturn Grain during the Business Hours, unless otherwise agreed by the Parties.

21. Shrinkage allowance

21.1 Bunge will deduct a Shrinkage Allowance from each load of Grain delivered into the Bunge Facility.

21.2 Bunge shall levy receipt fees against the Receipt Tonnage prior to the deduction of the Shrinkage Allowance. All other charges shall be levied against the Outturn Tonnage.

22. Exclusion/Limitation of Liability

22.1 Except as otherwise provided in this Agreement, Bunge shall be in no way liable for damage, destruction, contamination and/or loss (including indirect and/or consequential loss) of Grain unless caused by the negligence of Bunge.

22.2 Where the grain of any person other than the Company is affected by a chemical contaminant or residue but is nevertheless delivered to the Bunge Facility, Bunge will not be liable to the

Company or to any other person for any loss (including indirect and/or consequential loss), cost, damage or expense suffered or incurred as a direct or indirect result of that delivery.

- 22.3 The Company acknowledges that Bunge is unable to test on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified grain or other contamination.
- 22.4 The Company acknowledges that any transportation of the Grain is at the Company's risk, including, without limitation, transportation of the Grain arranged by or on behalf of or at the request of either the Company or Bunge.
- 22.5 Notwithstanding anything term in this Agreement, Bunge shall not be liable to the Company for any indirect or consequential loss arising out of or in relation to the Agreement.
- 22.6 Other than its obligations in Clause 10.4, notwithstanding anything to the contrary in this Agreement, and where permissible by Law, Bunge's total liability to the Company, howsoever arising (including from a breach of this Agreement and/or any negligent act(s) and/or omission(s) of Bunge) is capped at a total all inclusive amount of \$100,000 for the Term of this Agreement.

23. **Insurance**

Bunge is under no obligation to insure the Stored Grain against loss, damage, destruction or at all. The Company will at all times during this agreement keep the Stored Grain insured against all risks while it is held at the Bunge Facility. The Company will ensure that Bunge is named in all relevant insurance policies as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against Bunge is to be included in all policies. The Company shall provide Bunge with evidence of such policies upon request.

24. **Indemnity**

The Company will indemnify Bunge and keep Bunge indemnified from and against all losses (including consequential and indirect losses), costs, damages, expenses, charges and surcharges suffered or incurred by Bunge arising directly or indirectly out of or in relation to:

- (a) any breach, non-observance or non-performance by the Company of any of its obligations and/or warranties under this Agreement; or
- (b) any claim by a third party relating to the Stored Grain,

except to the extent that the negligence of Bunge contributed to the losses, costs, damages, expenses, charges or surcharges.

25. **Set-Off**

- 25.1 The Company is not entitled to withhold payment of any disputed amount the subject of an Invoice or to set-off against the amount of an Invoice any other claim that it has against Bunge.
- 25.2 Bunge may in its absolute discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation Bunge may have to the Company to the extent of any obligation that the Company may have to Bunge (whether present or future, certain or contingent, ascertained or sounding only in damages) on any account whatsoever.

26. **Assignment**

Bunge may assign this Agreement or parts thereof, or otherwise delegate any of its rights and obligations under this agreement upon written notice to the Company.

The Company may assign, transfer or otherwise dispose of all or any part of its rights or obligations under this Agreement only with the prior written consent of Bunge.

27. **No Partnership**

This Agreement does not create a partnership, agency, fiduciary or any other relationship, except the relationship of contracting parties, between the Parties.

28. **Waiver**

28.1 The failure by any Party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect the Party's rights to enforce those powers, remedies or rights at any time.

28.2 The single or partial exercise of any power, remedy or right does not preclude any other or further exercise or partial exercise of any other power, remedy or right under this Agreement.

29. **Governing law**

This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Western Australia, Australia.

30. **Dispute Resolution**

30.1 Any dispute arising out of or relating to this Agreement or the existence, breach, termination or subject matter thereof, shall be submitted to and settled by arbitration in accordance with the GTA Dispute Resolution Rules in force at the Commencement Date, such rules forming an integral part of this Agreement and of which both parties hereto shall be deemed to be cognisant.

30.2 Neither Party to a dispute shall bring any action or other legal proceedings against the other in respect to any such dispute until such dispute has first been heard and determined by the arbitration tribunal in accordance the GTA Dispute Resolution Rules referred to at Clause 30.1.

31. **Force Majeure**

31.1 For the purposes of this Agreement, a "**Force Majeure Event**" affecting a Party means anything outside that Party's reasonable control, including but not limited to the following events or circumstances (provided they are beyond the Party's reasonable control):

- (a) accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages or ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic or declarations of a state of emergency;
- (b) strikes, stopworks, lockouts, boycotts or any other form or industrial dispute or labour shortage;
- (c) breakdown, accidental or malicious damage or destruction of any Bunge's Facility;

- (d) failure, disruption or delay in transportation;
 - (e) executive or administrative order or act of either general or particular application of any Government or any official purporting to act under the authority of that Government, prohibitions or restrictions by domestic or foreign Laws, regulations or policies, quarantine or custom restrictions or prohibitions on export; and
 - (f) acts or omissions of any third party (including without limitation, Governments, Government agencies, subcontractors or customers).
- 31.2 Subject to Clause 31.4, if a Party (in this Clause, the "**Affected Party**") is wholly or partially precluded from complying with its obligations under this Agreement by a Force Majeure Event, then the Affected Party's obligations to perform in accordance with the terms of this Agreement shall be suspended for the duration of the of the Force Majeure Event.
- 31.3 As soon as reasonably possible after the Force Majeure Event arises, the Affected Party must notify the other Party of:
- (a) the nature of the Force Majeure Event;
 - (b) the cause of the Force Majeure Event;
 - (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event (the "**Affected Obligations**");
 - (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
 - (e) the expected duration of the delay arising as a result of the Force Majeure Event; and
 - (f) the steps that are being taken by the Affected Party to minimize the Force Majeure Event.
- 31.4 Despite any other provision of this Agreement, the occurrence of a Force Majeure Event will not relieve the Company of the obligation to pay any amounts owing under this Agreement prior to notice being given in accordance with Clause 31.2 including but not limited to the payment of the Storage and Handling Fees or any other amounts owing under this Agreement.
- 31.5 If the Affected Party is relieved from performing the Agreement under Clause 31 due to Force Majeure for a period exceeding 60 Business Days, either Party may terminate this Agreement with immediate effect by written notice to the other Party.

32. **Confidential**

The Parties agree not to disclose the contents of this Agreement to any other party except for the purposes of professional or financial advice or as required by law.

33. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the supply of the Products and supersedes and extinguishes all earlier negotiations, understandings and agreements (whether oral or written) between the Parties relating to the subject matter of this

Agreement.

34. **Survival of Terms**

Clauses 4.1(a), 17, 18, 19, 21, 22, 23, 24, 28, 29, 30 and 31 shall survive the termination of this Agreement.

35. **Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

Each individual signing this Agreement on behalf of a Party warrants that they are authorised to execute this Agreement and to bind that Party on whose behalf the individual is signing.

SIGNED on behalf of COMPANY in the presence of:

Signature

Witness

Name of signatory (block letters)

Name of witness (block letters)

Date

SIGNED on behalf of Bunge Grain Services Bunbury Pty Ltd in the presence of:

Signature

Witness

Name of signatory (block letters)

Name of witness (block letters)

Date

SCHEDULE 1– REFERENCE FEES AND CHARGES

For price information please contact Bunge