



Ballarat West **Warehousing Terms &** **Conditions** **("Agreement")**

1. Background:

- 1.1 Under this Agreement, 'Storer' means CHS Broadbent Pty Ltd (ACN 160 423 021) registered office 300B Gillies Street North, Wendouree VIC 3355 (ABN 94 160 423 021).
- 1.2 Under this Agreement, 'Warehouser' means any person who engages the Storer to provide warehousing services, and a request for the provision of warehousing services shall constitute deemed acceptance of the terms of this Agreement in full.
- 1.3 These terms and conditions apply to the storage and handling of any commodity stored under warehouse in the Storer's system ('Commodity') and any subsequent transfer and outturn of the commodity.
- 1.4 The Warehouser must be registered with the National Grower Register (Australia) ('NGR') before any services relating to this Agreement will be provided by the Storer.

2. Agreement:

- 2.1 The Warehouser agrees to warehouse the Commodity at the Storer's warehousing facility for the fees specified in Schedule 1.
- 2.2 The Storer agrees to store the Commodity subject to the terms and conditions of this Agreement in a clean, dry and in all circumstances appropriate storage facilities including without limitations silos, storage bins and/or covered bunkers.
- 2.3 Under this Agreement, the Storer's weighbridge docket and quality test results shall be conclusive evidence of the quantity and specification of the commodity being stored.

3. Common Stocking:

- 3.1 The Storer may commingle the commodity of the Warehouser with commodity of the same type that has been received from other warehousemen or clients. In this case all commingled commodity shall be owned by all parties whose commodity has been so commingled to the exclusion of all other persons including, but not limited to, the Storer, as tenants in common.

4. Receipt:

- 4.1 The Storer will receive the commodity in accordance with Grain Trade Australia ('GTA') standards unless otherwise agreed.
- 4.2 The Storer will sample, provide quality testing results, classify into available grades, weigh, store and load road transport or transfer the commodity to another party under this Agreement.
- 4.3 The Storer may, in its absolute discretion, accept or refuse to accept the commodity for warehouse and/or storage based on quality, hygiene, safety or its capacity or efficiency.


BROADBENT


5. Shrinkage:

- 5.1 The Storer will deduct a shrinkage allowance, as specified in Schedule 1, from each load of commodity received in the Warehouse's name.
- 5.2 Receival fees will be levied against the delivered tonnage, but all other charges will be levied against the shrunk tonnage.

6. Transfers:

- 6.1 **The Warehouse may only transfer SFWR/SFW1 Wheat in the Ballarat Bunker sites to the nominated single buyer CHS Broadbent Pty Ltd by completing and executing the title transfer section in the form set out at Schedule 2 ('Transfer Form').**
- 6.2 Title in the grain is not transferred until the Transfer Form is executed by the Warehouse, the Purchaser and the Storer.
- 6.3 The Warehouse warrants that the Purchaser is on notice of these terms and conditions and has agreed to be bound by them, except in the case where the purchaser is a client who is then bound by the Terms & Conditions contained in the Storer's Storage and Handling Agreement.
- 6.4 The Storer may refuse to sign a Transfer Form until any overdue amounts owing to the Storer by either the Warehouse or the Purchaser have been paid in full.

7. Outturn:

- 7.1 **No Outturns will be available for commodities warehoused in Ballarat West bunker site.**

8. Ownership & Lien:

- 8.1 the Storer has possession of the stored commodity and a lien in respect of any unpaid storage charges but otherwise has no legal or equitable title to the commodity, unless it is an owner of the commodity. This Agreement does not create a relationship of trust, agency, joint venture, partnership or create a right of lease, licence or tenancy.
- 8.2 To the extent permitted by law or for the purposes of enforcing such lien, the Storer shall be entitled to retain possession of the whole or any part of the Commodity until all amounts due and payable are paid by the Warehouse, or to sell any or all of the Commodity in such manner as it sees fit and proceeds of sale shall be applied to the satisfaction of all amounts due to the Storer and the costs of effecting such sale and the balance shall be paid to the Warehouse. The Warehouse irrevocably appoints the Storer as its agent and attorney for the purposes of enforcing its lien.

9. Security Interests

- 9.1 Unless expressly communicated otherwise, the Warehouse warrants that the Commodity is free from any security interests and that neither the Warehouse nor any third party will seek to enforce a security interest in the Commodity.
- 9.2 The parties acknowledge that the Personal Property Securities Act 2009 (Cth) (PPSA) applies to this Agreement and terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA.
- 9.3 This Agreement is a security agreement between the Storer and the Warehouse and the Warehouse grants to the Storer a security interest in the Commodity and the proceeds of the Commodity as collateral to secure the Warehouse's obligations under this Agreement, which the Storer may (but is not obliged to) register on the PPSR at any time.
- 9.4 Any failure by the Storer to register its security interest in the Warehouse's Commodity does not


BROADBENT


affect or impair the Storer's security in the Commodity provided the Storer has possession of the Commodity.

10. Fees and Payment:

- 10.1 The Warehouser must pay the Storer all fees and charges specified in Schedule 1.
- 10.2 Receival fees will be not be invoiced unless the Warehouser intends to outturn the grain in their own right, at which time the receival fee will be payable in full.
- 10.3 Storage will be due and invoiced monthly.
- 10.4 The full amount of each invoice rendered by the Storer must be paid by the Warehouser within 30 days of the date of that invoice, or prior to outturn, whichever is earlier. By telegraphic or bank transfer to the Storer's nominated bank account, free of expense to the Storer.
- 10.5 The storage fees set out in Schedule 1 shall apply only from the date of this Agreement to 31 October 2023, and may be varied by the Storer annually on that date.
- 10.6 The Storer may withdraw, suspend or vary its conditions of credit at any time.
- 10.7 The Storer may, at any time and in its absolute discretion do any one or more of the following:
 - a. vary the Warehouser's approved credit limit;
 - b. reduce the time for payment;
 - c. terminate any credit accommodation granted to the Warehouser;
 - d. demand immediate repayment from the Warehouser of all amounts owing (whether or not a due date for payment has arrived or passed);
 - e. request security for credit provided to the Warehouser;
 - f. impose interest and other charges in accordance with clause 14;
 - g. continue to the Warehouser on a cash on delivery basis; and/or
 - h. following one month's written notice, terminate this Agreement.

11. Interest:

- 11.1 If any payment is not made on or before the due date for payment, the Warehouser must pay interest on any overdue amount a rate of 1.5% per calendar month, calculated daily. The Warehouser shall also be liable for any legal costs incurred by the Storer in enforcing or attempting to enforce any of its rights against the Warehouser under this Agreement on an indemnity basis.

12. Weight & Measures:

- 12.1 The Storer and the Warehouser agree that all receival weights shall be determined by the Storer's weighbridge.
- 12.2 Any grain testing and quality testing equipment the Storer uses will be provided at its expense and in line with industry practice.

13. Record Keeping:

- 13.1 The Storer will maintain and keep complete and accurate electronic records of all commodities stored by it (including the commodity) and of all actions taken by it in relation to the stored commodity in an approved weighbridge management software program.
- 13.2 Such records will be sufficient, as a minimum, to identify the amount, location and ownership of any stored commodity, including the joint ownership of any commingled commodity.
- 13.3 The Storer will provide the Warehouser with details of its stored commodity on a daily basis during receival periods.

14. Termination

- 14.1 This Agreement may be terminated by agreement of the parties.



- 14.2 This Agreement may be terminated by the Storer with immediate effect if:
- a. the Warehouser suffers an insolvency event, being the commencement of liquidation, insolvency or winding up of the Warehouse (except for the purposes of solvent amalgamation or reconstruction) or upon the appointment of an administrator, receiver, liquidator, statutory manager or trustee of property over all or any substantial portion of the Warehouser's assets or undertakings, or upon assignment, arrangement or composition for the benefit of the Warehouser's creditors, or upon the convening of a meeting of the Warehouser's creditors, or upon the Warehouse being unable to pay its debts in the ordinary course of business, or upon any other bankruptcy; or
 - b. the Warehouser commits a breach of any term of this Agreement which is not capable of being remedied or if capable of being remedied has not been remedied within a period of 14 days from the date the Storer gives the Warehouse a notice to remedy the breach.
- 14.3 Within 28 days of termination of this Agreement, the Warehouser must remove any of its Commodity from the Storer's facility. The Storer may dispose of any of the Warehouser's Commodity still remaining after that time, retaining any proceeds of sale necessary to cover outstanding amounts owed to the Storer as well as any costs of sale, disposal or storage with the balance to be remitted to the Warehouse. The parties acknowledge that this clause 14.3 is an agreement about the disposal of uncollected goods for the purposes of section 56(6) of the Australian Consumer Law and Fair Trading Act 2012 (Vic) and to the extent permitted by law will operate in relation to the Warehouser's Commodity in place of any legislation that might otherwise apply to goods held by the Storer.

14.4

15. Insolvency:

- 15.1 In the event of the Storer's insolvency, the Warehouser or any Purchaser remains the owner of the commodity.
- 15.2 The Warehouser will be entitled to immediate discharge of its commodity, on demand, subject to any lien under clause 8 of this Agreement.

16. Exclusion of Liability:

- 16.1 Except as expressly stated herein, the Storer is not liable for damage, destruction, contamination or loss of commodity unless caused by the negligence of the Storer.
- 16.2 The Warehouser shall indemnify the Storer against and release the Storer from any and all losses (including consequential and indirect losses), costs, damages and expenses suffered or incurred by the Storer arising directly or indirectly out of or in relation to any breach or non-performance by the Warehouser of its obligations under this Agreement, any claim by a third party relating to the Warehouser's Commodity; or any claim by a third party regarding a transfer of the Commodity, except to the extent such loss, costs, damages or expenses were caused by the gross negligence of the Storer.
- 16.3 The Warehouser acknowledges that the Storer is unable to test on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified seed or other contamination. the Storer is not liable for any direct or consequential damage caused by or otherwise relating to the storage or handling of contaminated commodity.
- 16.4 The Storer is not liable for and the Warehouser releases the Storer from any direct, indirect or consequential loss, damage or costs including any remote loss or any loss in the nature of compensation for loss of production, loss of profit, loss of opportunity, loss of markets, loss of use of money, goods or other property, any shipping/demurrage costs or fees, loss of goodwill or business reputation, damages or penalties payable under the Warehouser's customer or charter party's contract (whether direct or indirect) including any losses that the Warehouser may suffer in the event that the ability to resell Commodity is adversely affected or delayed.
- 16.5 The Warehouser acknowledges and agrees that the only warranties provided by the Storer pursuant to this Agreement are those expressly set out in this Agreement and to the maximum extent permitted by law, the Storer excludes all conditions implied by law including those contained in the Competition and Consumer Act 2010 (Cth). In the event the Storer cannot lawfully exclude such implied warranties and conditions, the Storer's liability shall be limited to the cost of re-supply of the relevant Services or payment to the Warehouser of the cost of such


BROADBENT


services.

17. Insurance:

- 17.1 The Storer is under no obligation to insure any commodity against loss, damage, destruction.
- 17.2 The Warehouser must at all times whilst commodities are stored by it at the Storer's facility, keep the commodity insured.
- 17.3 The Warehouser must ensure that the Storer is named in all relevant insurance policies as a joint insured in its capacity as custodian, or alternatively a waiver of subrogation rights against the Storer is to be included in all policies.

18. Governing Law:

- 18.1 The laws of the State of Victoria apply to this Agreement.

19. Chain of Responsibility

The Warehouser hereby confirms and agrees:

- 19.1 it is aware of and is bound by the Heavy Vehicle National Law (HVNL) including without limitation those parts of the HVNL commonly referred to as the Chain of Responsibility;
- 19.2 it has policies and procedures in place to ensure that it is compliant with the HVNL and will produce evidence of and copies of those policies and procedures on request;
- 19.3 it will indemnify the Storer in respect of any liability incurred by the Storer arising solely from the Warehouser's failure to comply with its obligations under the HVNL; and
- 19.4 to the extent that any obligation of the Storer under this agreement conflicts (in the reasonable opinion of the Storer) with its obligations under the HVNL, the obligations under the HVNL prevail.

20. Rules of Trade:

- 20.1 This Agreement is to be read concurrently with GTA Trade Rules, as amended from time to time.
- 20.2 The terms of this Agreement will prevail to the extent of any inconsistency between these terms and:
 - a. GTA Trade Rules; or
 - b. any conditions sought to be imposed by the Warehouser.

21. Arbitration:

- 21.1 If any dispute arises regarding any matter relating directly or indirectly to this Agreement (other than a dispute relating to non-payment)
 - (i) a party must not commence proceedings (other than for urgent interlocutory relief) in respect of such dispute until the procedures set out in this clause 21 have been exhausted; and
 - (ii) any party may commence the procedure set out in this clause by giving written notice of the dispute the other party, including details of the nature of the dispute ('Dispute Notice').
- 21.2 Within 7 days of the service of the Dispute Notice, the parties authorised representatives must meet in good faith and use their best endeavours to resolve such dispute to their mutual satisfaction.
- 21.3 If any dispute cannot be resolved by good faith negotiations between the parties, such Dispute shall be referred to arbitration in accordance with the Dispute Resolution Rules of GTA



in force at the date of this Agreement, and it is hereby expressly agreed and declared that the obtaining of an award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring an action or other legal proceedings against the other of them in respect of any such dispute.

22. Force Majeure:

- 22.1 The Warehouser releases the Storer from any claim, liability or responsibility concerning late delivery or failure to deliver commodity if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, government law or regulation or requirement or any other cause beyond the control of the Storer and no such failure shall entitle the Warehouser to cancel and order or withhold payment.

23. Confidentiality:

- 23.1 The Warehouser acknowledges the confidential nature of its dealings with the Storer.
- 23.2 The Warehouser shall not, without the Storer's prior consent in writing, copy or disclose or cause to be copied or disclosed any details of its dealings with the Storer, including details of this Agreement, to any third party except with the prior written consent of the Storer.

24. Signatory Warranty:

- 24.1 The signature of the Warehouser on the front of the receival weigh note confirms the Warehouser's acknowledgement and acceptance of the terms and conditions within this Agreement, and that the Warehouser has had opportunity to read the terms and conditions of this Agreement prior to accepting services by the Storer.

25. Amendment

- 25.1 Subject to any other provisions of this Agreement, this Agreement may only be varied by a document signed by both parties.

26. Entire Agreement

- 26.1 This Agreement contains the entire Agreement between the parties. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect. Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the effect of this Agreement.

27. Change in law

- 27.1 In the event of a change in law after the commencement of this Agreement which results in an increase in costs of the Storer in provision of the Services, the Storer may amend this Agreement on provision of three (3) months' notice to the Warehouser.

28. Waiver

- 28.1 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver



Schedule 1

Details:

All fees are exclusive of GST

FEES & CHARGES	Wheat	Durum	Malt Barley	Feed Barley	Canola	Oats	Pulses
Receival Fee	\$10.39	\$12.95	\$12.85	\$10.39	\$15.29	\$15.90	\$15.90
Monthly Storage commences one month after month of delivery to 30 th September 2023	\$1.82	\$1.82	\$1.82	\$1.82	\$1.82	\$1.82	\$1.82
Carryover Fee (1 st October 2023 onwards)	\$3.18	\$3.18	\$3.18	\$3.18	\$3.18	\$3.18	\$3.18
Shrink	0.7%	0.7%	0.7%	0.7%	0.7%	0.7%	1.0%

- Storage based on stock on hand as at the 1st day of the month
- Canola Oil and Admixture Stack Averages are calculated on the date of Title Transfer.


BROADBENT


Schedule 2

Warehouser details

Name:			
NGR:			
Address:			
Telephone:		Fax/Email:	
Email:			

SITE: (Please Circle) **LAKAPUT** / **LAKE BOLAC** / **MOREE** / **JONDARYAN**

Season	Grade to be transferred	Ticket Numbers	Tonnes	Contract Number

Title Transfer Form - Purchaser's details:

Name:			
Address:			
Telephone:		Fax/Email:	
Signed:		Date:	

I..... as the Warehouser of the tonnes listed above, confirm the grain has been sold and I agree to accept any charges applicable under this Agreement.
I authorise the Storer to submit my transfer to the relevant buyer for approval.

Warehouser's signature: **Date:**

email: transfers@chsbroadbent.com

OFFICE USE ONLY	Date Rec'd:
	Date Transferred: