

## **Agfarm Marketing** **Terms and Conditions of Business**

For more information about Agfarm Marketing and our services please call 1300 AGFARM (1300 243 276). Please note that these terms and conditions apply to all business dealings where you instruct Agfarm Marketing (Agfarm Marketing, we, us) to sell commodities directly to a third party buyer on your behalf.

## 1. Appointment of Agfarm Marketing as your Broker

### 1.1 Agreement

Whenever you instruct Agfarm Marketing to sell commodities on your behalf to a third party buyer, you agree to be bound by these terms and conditions and the Agfarm Marketing Broker Authorisation (together, 'the Agreement'). Neither document is required to be signed by the parties in order to be effective and binding on the parties. This Agreement applies in respect of each of your transactions and dealings with Agfarm Marketing.

### 1.2 Broker's Authority

You appoint Agfarm Marketing, as your broker and agent to act on your behalf in commodity marketing negotiations. You authorise Agfarm Marketing to take all necessary actions on your behalf for that purpose, including making, varying or withdrawing an offer for sale, accepting a bid and concluding a Sale Contract.

### 1.3 Your instructions

- (a) Agfarm Marketing must comply with your written or verbal instructions, unless compliance would cause a breach of this Agreement or a Sale Contract or would be inconsistent with any applicable laws.
- (b) You acknowledge that there may be a delay between the issue of your instructions and the action taken by Agfarm Marketing on your behalf.

### 1.4 Seller bound by Offers and Bid Acceptance

You agree to be bound by any acts which Agfarm Marketing performs as your agent or broker, including all offers for sale made to buyers or bids accepted on your behalf and you agree to complete any Sale Contract so created in accordance with the terms of that Sale Contract. This obligation applies regardless of whether Agfarm Marketing acts with or without your actual authority, but does not limit any rights you may have for breach of Clause 1.3.

## 2. Sale Contract

- (a) A Sale Contract is created between the seller and the buyer when your offer for sale is accepted by a buyer or we accept a bid on your behalf. Agfarm Marketing is not a party to the Sale Contract. It is your responsibility to know and comply with the terms and conditions of the Sale Contract, which are specified by the buyer.
- (b) When a Sale Contract is created, Agfarm Marketing issues a broker note to both buyer and seller, setting out the agreed particulars. You must review the broker note immediately, and notify Agfarm of any errors. If you do not contest the broker note within 24 hours of it being sent, the broker note will be deemed to be a correct and final record of the Sale Contract.

## 3. Confidentiality

Agfarm Marketing will not disclose any of your information to any other person except as is necessary to negotiate or finalise the purchase and/or sale of commodities in accordance with your instructions.

## 4. Agfarm Marketing Brokerage

Agfarm Marketing's 2009/10 brokerage rate (exclusive of GST)

- (a) for track and ex-farm contracts, is 1.00% of the contract value (based on the maximum contracted tonnage) subject to a minimum of \$2.00/mt and a maximum of \$5.00/mt;
- (b) for delivered buyer contracts, is 1.00% of the contract value (based on the maximum contracted tonnage) subject to a minimum of \$2.50/mt and a maximum of \$5.00/mt; and
- (c) for track canola, is \$3.00/mt.

The brokerage fee is payable within 30 days of the date of the invoice by Agfarm Marketing to you.

## 5. Termination

Either party can terminate this Agreement by notice in writing and the termination is effective on the payment of any outstanding brokerage fees (and any additional costs incurred by Agfarm Marketing in recovering those fees).

## 6. Indemnities and warranties

### 6.1 Indemnities

You agree to indemnify and keep indemnified Agfarm Marketing against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or incurred by us as a direct or indirect result of any one or more of the following:

- (a) you breaching a Sale Contract;
- (b) you breaching this Agreement;
- (c) your failure to pay any applicable fees to a bulk handling company and/or any government taxes, duties, levies or charges (including GST);
- (d) any wrongful, wilful or negligent act or omission by you or your employees, agents or contractors.
- (e) any one or more of any representations or warranties made in this Agreement by you being untrue or misleading in any material respect (including by omission).

The indemnities set out in this Agreement survive termination.

### 6.2 Delay

- (a) You acknowledge that there may be a delay between the time at which you communicate an instruction to us and the time at which that instruction is communicated to a buyer.
- (b) You agree to continue to be bound by an offer made by us on your behalf until a cancellation has been communicated by us, regardless of whether you have previously instructed us to cancel the Offer.
- (c) You agree not to make any claim or demand or bring any action or proceedings against us in respect of any loss or damage caused by such a delay, unless the delay was caused by our negligence.

### 6.3 Warranties

- (a) By giving instructions to Agfarm Marketing to sell commodities on your behalf to a third party buyer, you represent and warrant that you have the legal and beneficial ownership in any commodity to which the instructions relate and that your ownership is unencumbered.
- (b) Each time you give instructions to Agfarm Marketing, you represent and warrant that:
  - (i) you have full legal capacity and power to undertake to comply with the Agreement and to carry out the transactions contemplated by the Agreement;
  - (ii) you are not the subject of an Insolvency Event (as defined in the Grain Trade Australia Trade Rules); and
  - (iii) you intend to complete and are capable of completing any Sale Contract which will be created if you accept a bid or any of your offers are accepted.
- (b) Agfarm Marketing and you represent and warrant that the warranties and representations which we each make pursuant to this Agreement are true and correct.

## 7. Conflict of Interest

We undertake to disclose to you full details of any conflict of interest we may have in relation to any business we are conducting for you at any time. In particular, we will not buy (or acquire an interest in) any commodity from you (whether on our own behalf or on behalf of any related person or entity) without:

- (a) making full disclosure to you of our true position prior to concluding a sale contract; and
- (b) giving you the opportunity to withdraw your instructions in relation to that sale contract.

## 8. General

### 8.1 Nature of obligations

- (a) Any provision in this Agreement which binds more than one person binds all of those persons jointly and each of them severally.
- (b) Each obligation imposed on a party by this Agreement in favour of another is a separate obligation.

### 8.2 Time of the essence

In this Agreement, time is of the essence unless otherwise stipulated.

### 8.3 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

### 8.4 No waiver

- (a) A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.
- (b) A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under this Agreement.
- (c) A waiver of a breach does not operate as a waiver of any other breach.

### 8.5 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction, be read down to the minimum extent necessary to achieve its validity if applicable and be severed from this Agreement in any other case without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### 8.6 Variation & Assignment

- (a) Agfarm Marketing can vary these terms and conditions at any time and such variation is valid by publishing the new terms and conditions on the Agfarm Marketing website.
- (b) A party cannot assign or otherwise transfer the benefit of this Agreement.

### 8.7 Consents and approvals

Where anything depends on a party's consent or approval and this Agreement does not provide otherwise, then that consent or approval may be given conditionally, unconditionally or withheld at that party's absolute discretion.

### 8.8 Governing law and jurisdiction

This Agreement is governed by and must be construed in accordance with the laws in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

### 8.9 Notices

- (a) Any notice or other communication to you or us may be given by email or fax to the email or fax address you have provided us or to Agfarm Marketing's Head Office in Sydney.
- (b) The notice or communication is deemed to be given by the sender and received by the addressee on the date and at the time:
  - (i) the email was sent; or
  - (ii) the sender's fax machine indicates a successful and complete transmission to the nominated number,

if the communication was made on a Business Day during Business hours, or otherwise at 9am on the next Business Day.

### 8.10 Conflicting provisions

If there is any conflict between these terms and conditions and the Agfarm Marketing Broker Authorisation, then these terms and conditions prevail to the extent of any inconsistency.

### 8.11 Relationship of parties

This Agreement appoints Agfarm Marketing as your agent and broker. Nothing in this Agreement may be construed as creating a relationship of partnership or of trustee and beneficiary. Agfarm Marketing will not act as a principal or party to any contractual negotiations between the seller and buyer unless a disclosure has been made in accordance with clause 7.

## 9. Definitions and interpretation

### 9.1 Definitions

In this Agreement:

**'Agfarm Marketing', 'we' or 'us'** means Agfarm Marketing, a business division of Agfarm Pty Ltd (ACN 106 819 167) as trustee for the Agfarm Unit Trust.

**'Agfarm Broker Authorisation'** means the form authorising Agfarm Marketing to act on your behalf as your agent and broker.

**'Agreement'** means these terms and conditions and the Agfarm Marketing Broker Authorisation as amended from time to time.

**'Business Day'** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne or Sydney.

**'Business Hours'** means between 9am and 5pm on a Business Day.

**'Sale Contract'** means the contract which comes into force between a commodity buyer and a commodity seller (you) as a result of a bid or offer being accepted.

**'You'** or **'you'** means the trading entity which provides instructions to Agfarm Marketing as its broker and includes the authorised contact or representative of that trading entity, **"your"** has a related meaning.

### 9.2 Interpretation

In this Agreement, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) the headings are used for convenience only and do not affect the interpretation of this Agreement;
- (c) a reference to a document includes the document as modified from time to time and any document replacing it;
- (d) "in writing" includes any communication sent by letter, facsimile transmission or email;
- (e) 'person' includes a natural person and any body or entity whether incorporated or not;
- (f) wherever 'include' or any form of that word is used, it must be construed as if it were followed by '(without being limited to)'; and
- (g) money amounts are stated in Australian currency unless otherwise specified.

End.

## Additional Terms and Conditions for CLEAR System users

If you have nominated Agfarm Marketing as your broker in the CLEAR System, the following terms and conditions apply as additional provisions of, and without limiting, the Agreement between you and Agfarm Marketing, appointing Agfarm Marketing as your broker ("the Agreement"). Any term that is not defined in the Agreement but that is defined in the CLEAR Terms and Conditions will have the meaning given to that term in the CLEAR Terms and Conditions.

### 1. CLEAR Terms and Conditions

- (a) Agfarm as your Broker and you as the Grower agree to comply with and be bound by the CLEAR Terms and Conditions in addition to the Agreement.
- (b) If there is any conflict between the Agreement and the CLEAR Terms and Conditions, the CLEAR Terms and Conditions will prevail to the extent of the inconsistency.

### 2. Broker's authority

You appoint Agfarm Marketing to be your attorney to perform any of the acts which a Grower and/or a Grower's Broker can perform under the CLEAR Terms and Conditions, including:

- (a) submitting an Application Form for the Grower to become a Registered User of the CLEAR System;
- (b) confirming or querying a gTicket;
- (c) making, varying or withdrawing an Offer;
- (d) Accepting a Bid;
- (e) requesting the Release of a gTicket;
- (f) electing to terminate a Sale Contract if a Buyer defaults; and
- (g) otherwise dealing with any gTickets held by the Grower in accordance with the CLEAR Terms and Conditions.

### 3. Confidentiality

- (a) You consent to Agfarm Marketing viewing and using for the purposes of this Agreement all of the information which is stored or hosted on the CLEAR System about you.
- (b) Agfarm Marketing will not disclose any of your information to any other person except as is required to complete your registration with CLEAR or as required by the CLEAR Terms and Conditions.

### 4. Brokerage

Agfarm Marketing's brokerage will be deducted by the CLEAR Custodian following settlement of a Sale Contract.

### 5. Indemnities

You agree to indemnify and keep indemnified Agfarm Marketing against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or incurred by us as a direct or indirect result of any one or more of the following:

- (a) your failure to pay any applicable Fees and/or Levies in accordance with the CLEAR Terms and Conditions; and
- (b) any one or more of any representations or warranties made in the CLEAR Terms and Conditions by you being untrue or misleading in any material respect (including by omission).

### 6. Delay

- (a) You acknowledge that there may be a delay between the time at which you communicate an instruction to us and the time at which we enter that instruction into the CLEAR System and a further delay between the time of entry of that instruction into the CLEAR system and the time when the CLEAR system gives effect to that instruction.
- (b) You agree to continue to be bound by an Offer made by us on your behalf until it is cancelled by us in the CLEAR System, regardless of whether you have previously instructed us to cancel the Offer.
- (c) You agree not to make any claim or demand or bring any action or proceedings against us in respect of any loss or damage caused by such a delay, unless the delay was caused by our negligence.

### 7. Warranties

Agfarm Marketing and you represent and warrant that the warranties and representations which we each make pursuant to the CLEAR Terms and Conditions are true and correct.

### 8. Definitions

In these additional Terms and Conditions:

**'CLEAR System'** means the web based system at the Site ([www.cleargrain.com.au](http://www.cleargrain.com.au)) enabling users to deal in grain,

**'CLEAR Terms and Conditions'** means the terms and conditions which govern the use of the CLEAR System and the Site operated by CLEAR Commodities Pty Ltd ACN 126 444 219, including any schedules and annexures and all amendments and changes thereto from time to time.

**'CLEAR Custodian'** means Perpetual Nominees Limited ABN 37 000 733 700.

**'Sale Contract'** includes a sale contract which comes into force between a Buyer and a Seller (being a Grower or a Trader) pursuant to clause 7 of the CLEAR Terms and Conditions as a result of a Bid or Offer being Accepted or a Bid and Offer being automatically Accepted.