

Agfarm Advantage **Terms and Conditions of Business**

For more information about Agfarm Advantage and our services please call 1300 AGFARM (1300 243 276). Please note that these Terms and Conditions apply whenever you elect to sell your Grain under any of the Sales Programs offered by Agfarm Advantage (Agfarm Advantage, we, us).

1. Agreement

When you (or your agent) deliver wheat, barley or other commodity to Agfarm Advantage to be sold under one of the Advantage Sales Programs, Agfarm Advantage has accepted your offer to sell the Grain and an Agreement on these Terms and Conditions will apply to you and Agfarm Advantage in relation to the Grain.

2. GTA Trade Rules apply

The Grain Trade Australia Trade Rules form part of this Agreement. The Trade Rules in force at the time you deliver the Grain to Agfarm Advantage apply to that transaction, as if set out in full in these Terms and Conditions, except to the extent of any inconsistency, in which case these Terms and Conditions will prevail.

3. Entitlement to grain and proceeds held on bare Trust

- (a) Agfarm Advantage, as your nominee, will hold your entitlement to the Grain on a bare trust. You will remain the beneficial owner entitled to the Grain until it is sold by Agfarm Advantage to third party buyer(s) in accordance with the applicable Sales Schedule.
- (b) Agfarm Advantage will hold the proceeds of sale of the Grain to a third party on a bare trust for you, and will deliver the Net Proceeds to you in accordance with the Distribution Schedule.
- (c) Agfarm Advantage will not have any beneficial interest in the Grain or the proceeds of sale at any time (except to the extent needed to exercise its rights to recover Costs, Fees and Levies).

4. Delivery

- (a) "Deliver" means that you deliver grain (whether physically or by transfer of documents) and make it available to Agfarm Advantage at a BHC destination approved by Agfarm Advantage.
- (b) Title to the Grain and risk remain with you until the Grain is delivered.
- (c) You must ensure that all Grain delivered by you to Agfarm Advantage complies with the Specifications applicable to the relevant Sales Program.
- (d) Deliveries of Grain will be accepted for inclusion in a Sales Program from the commencement of the winter crop harvest until the following 31 December (for New South Wales, Queensland, South Australian and Western Australian tracks) or 15 January (for Victorian tracks). Agfarm Advantage may, in its absolute discretion, agree to accept Grain from you after those dates.
- (e) On delivery of the Grain, Agfarm Advantage will issue a delivery notification to you confirming the sale of the Grain to Agfarm Advantage as nominee and identifying the Sales Program to which it has allocated the Grain. You may change the Sales and Distribution Schedules in which you have chosen to participate (5 months or 10 months) by giving notice to Agfarm Advantage within seven (7) days of receiving the delivery notification.

5. Sales Schedules

- (a) The Grain will be (notionally or physically) grouped with other grain of the same specification in one of the Sales Programs.
- (b) Agfarm Advantage will sell grain from the Sales Programs (including your Grain) to third parties in its own name at a price or prices and on other terms and conditions determined by Agfarm Advantage at its sole discretion.
- (c) Under the 10 month Sales Schedule, approximately 10% of grain in each Sales Program will be sold each month, commencing in the January after the harvest and concluding in the October after the harvest.
- (d) Under the 5 month Sales Schedule, approximately 20% of the grain in each Sales Program will be sold each month, commencing in the January after the harvest and concluding in the May after the harvest.
- (e) If Agfarm Advantage considers that there would be a benefit to participants in the Sales Programs by commencing the first month's sales in December instead of January, or extending the last month's sales into June or November, as the case may be it may vary the Sale and Distribution Schedules accordingly, but only after obtaining permission to do so from the Board of Directors of Agfarm Pty Ltd.

6. Deduction of Costs, Indemnity for Costs and Right of Set off

- (a) Agfarm Advantage will deduct the Costs from the Gross Takings from the sale of grain from the relevant Sales Program each month, to determine the Net Takings. Net Takings divided by total tonnage sold from the Sales Program in that month determines the Sales Price (per tonne) for each Sales Program each month (expressed on a track basis).
- (b) You agree to indemnify and keep indemnified Agfarm Advantage 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 in relation to the Grain, including the Costs, Fees and Levies.
- (c) If any Costs, Fees, or Levies are incurred by Agfarm Advantage on your behalf or in relation to the Grain, then you agree that you owe those Costs, Fees or Levies to Agfarm Advantage. You also agree that Agfarm Advantage may, at its discretion, set off any amount that is or may become payable or owing by Agfarm Advantage to you against any amount that you owe to Agfarm Advantage.

7. Fee, Levies and GTA Location Differentials

- (a) You agree to pay Agfarm Advantage a fee of 2% of the Sale Price for the Grain sold each month (the 'Fee').
- (b) Each month Agfarm Advantage will deduct the Fee, all applicable Levies and the relevant GTA Location Differential from the Sales Price, and will then pay you the Net Proceeds.
- (c) If you are a Victorian grain grower and you deliver a Grain to a Sales Program, the VFF grain Levy will be deducted from your Sales Proceeds. The current VFF grain levy is set at the rate of 0.15%

8. Distribution

- (a) 'Sales Price' means the monthly Gross Takings, less Costs, divided by the tonnage of grain sold in that month from the Sales Program, expressed on a track price basis.
$$\text{Sales Price} = (\text{Gross Takings} - \text{Costs}) \div \text{total tonnage sold}$$
- (b) You will be entitled to receive the Net Proceeds each month. 'Net Proceeds' means the Sales Price, less the Fees and Levies and adjustment for GTA Location Differentials, multiplied by the Program Sales Percentage times the number of tonnes of the Grain you delivered.
$$\text{Net Proceeds} = \text{Sales Price} - (\text{Fee} + \text{Levies} + \text{Location Differentials}) \times \text{Program Sales Percent} \times \text{Grain tonnage}$$
- (c) For each month of the Sales Schedule, Agfarm Advantage will pay the month's Net Proceeds to your account recorded by NGR, on or before the seventh day of the subsequent month. The first distribution will be made on or before 7 February and the last distribution will be made on or before the Completion Date.
- (d) If the Agfarm Board approves a variation to the Sales and Distribution Schedules in relation to sales in the last month of a Sales Program under clause 5(e), the Net Proceeds will be distributed on or before 30 June or 30 November, as applicable.

9. Withdrawal

Subject to prior payment of all applicable Costs and Fees, you may remove the Grain from a Sales Program at any time prior to any sales or commitments being made from the applicable Sales Program. Agfarm reserves the right to charge you a removal fee, being 2% of the Sales Price achieved in the first month of the Sales Program multiplied by the tonnage of the removed Grain.

10. No Guarantee of Returns

- (a) Agfarm Advantage will use its best endeavours to maximise the Sales Price for the grain in each Sales Program. However grain markets are volatile and Agfarm Advantage cannot guarantee achieving any particular price for the Grain
- (b) Where you elect to participate in the 10 month Sales Program, we will aim to sell 10% of the Grain each month, and for the 5 month Sales Program, we will aim to sell 20% of the Grain each month. However due to the uncertainty of grain markets, Agfarm Advantage cannot guarantee that exactly these percentages of grain will be sold from each Sales Program each month. Net Proceeds will be calculated each month on the basis of the actual percentage of the total grain sold in that month (the Program Sales Percentage).

11. Confidentiality

Agfarm will not disclose any of your information to any other person except as is necessary to conduct the transactions contemplated by these Terms and Conditions.

12. Indemnities and warranties

12.1 Indemnities

You agree to indemnify and keep indemnified Agfarm Advantage 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) any breach by you of your obligations under these Terms and Conditions;
- (b) a failure of the Grain to comply with the Specifications for the nominated Sales Program;
- (c) excessive pesticide levels in the Grain.
- (d) any wrongful, wilful or negligent act or omission by you or your employees, agents or contractors; or
- (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.

12.2 Representations and Warranties

- (a) You represent and warrant now and at the time of each delivery of Grain to Agfarm Advantage that:
 - (i) you have the legal and beneficial ownership in the Grain,
 - (ii) your ownership is unencumbered,
 - (iii) the Grain meets the Specifications for the nominated Sales Program,
 - (iv) you have full legal capacity and power to undertake to comply with the Agreement and to carry out the transactions contemplated by the Agreement,
 - (v) you are not the subject of an Insolvency Event (as defined in the Trade Rules); and if you do become insolvent you will notify us immediately; and
 - (vi) any information that you have provided to us is not false or likely to be misleading.
- (b) Agfarm Advantage and you represent and warrant that the warranties and representations which we each make pursuant to this Agreement are true and correct.

13. General

13.1 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.

13.2 Time of the essence

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

13.3 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.

13.4 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.

13.5 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.

13.6 Variation & Assignment

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

13.7 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.

13.8 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.

13.9 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 Advantage'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.

13.10 Prices exclusive of GST

Unless otherwise expressly stated, all prices or other sums payable under these Terms and Conditions are exclusive of GST including prices and costs of fees expressed as a percentage (%).

14. Definitions and interpretation

14.1 Definitions

In this Agreement:

'Agfarm Advantage', 'we' or 'us' means the Agfarm Advantage Business Unit of Agfarm Pty Ltd (ACN 106 819 167) as trustee for the Agfarm Unit Trust.

'Agreement' means the contract entered into on these Terms and Conditions for the delivery of Grain to Agfarm Advantage by you.

'BHC' means a bulk handling company which receives, stores and handles grain on behalf of grain industry participants and with whom Agfarm Advantage is registered as a buyer.

'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.

'Completion Date' means 7 June for the 5 month Sales Program and 7 November for 10 Month Sales Program, subject to any variation made under clause 5(e).

'Deliver' has the meaning set out in Clause 4 and 'delivery' and 'delivered' have related meanings (whether capitalised or not).

'Distribution Schedule' means the schedule to these Terms and Conditions setting out the dates for payment of the Net Proceeds.

'Costs' means any and all costs and expenses incurred by Agfarm Advantage in connection with the Grain and includes the direct costs, expenses, overheads, liabilities, outgoings any any legal or related costs such as costs of contractual default incurred by Agfarm Advantage in connection with the purchase, receipt, storage, handling, sale, risk management, transfer, transport and disposal of the Grain, or the funding of payments to sellers in the relevant Sales Program.

'Fee' means the fee payable to Agfarm Advantage under clause 7, for management of the Sales Program.

'Grain' means the wheat, barley or other commodity delivered by you to Agfarm Advantage for sale under one of the Sales Programs.

'Gross Takings' in relation to a Sales Program means the total money Agfarm Advantage contracts to receive for grain sold to buyers from that Program in a given period.

"GTA Location Differentials" means the differential rate published by GTA and applicable at the time of delivery;

'Levies' includes all Federal and State government and instrumentality taxes, fees, duties, levies and charges (including GST) applicable to a transaction contemplated by these Terms and Conditions and any other industry levies, tolls, fees, charges, duties or amounts collectible by Agfarm Advantage in connection with the transaction.

'Net Proceeds' means the amount to be paid to you by Agfarm Advantage under Clause 8 of this Agreement,

'Net Takings' means the Gross Takings less the Costs.

'Program Sales Percentage' in relation to a Sales Program means the actual tonnage of grain sold from a Sales Program in a given month, expressed as a percentage of the total tonnage of grain in the Sales Program.

'Sales Price' means the price per tonne achieved for the grain in the Sales Program, determined in accordance with Clause 8, and expressed as the applicable track price per tonne.

'Sales Program' means a grouping or pooling of wheat, barley or other commodity according to type, bin grade, track and any other Specifications as determined by Agfarm Advantage. Nothing in these Terms and Conditions requires that grain forming part of the same Sales Program be physically merged, pooled or stored, handled or transported together.

'Sales Schedule' means the schedule to these Terms and Conditions setting out the approximate proportion of the grain in each Sales Program that will be sold during each month of the Program.

'Specifications' means the standard or quality of grain required by Agfarm Advantage for the grain to be accepted into a particular Sales Program, which will be specified in relation to the grain by type, protein content, bin grade, moisture content and/or similar attributes. In the absence of other specification, these will be the GTA receival standards for the bin grade specified for the Sales Program.

'Terms and Conditions' means these terms and conditions.

'Trade Rules' means the Grain Trade Australia Trade Rules as amended from time to time.

'VFF' means the Victorian Farmers Federation.

'You' or **'you'** means the trading entity which agrees to deliver grain to Agfarm Advantage on these terms and conditions and includes the authorised contact or representative of that trading entity, "your" has a related meaning.

14.2 Interpretation

In this Agreement, unless the context requires otherwise:

- the singular includes the plural and vice versa;
- the headings are used for convenience only and do not affect the interpretation of this Agreement;
- a reference to a document includes the document as modified from time to time and any document replacing it;
- "month" means calendar month.
- "in writing" includes any communication sent by letter, facsimile transmission or email;
- "person" includes a natural person and any body or entity whether incorporated or not;
- 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
- money amounts are stated in Australian currency unless otherwise specified.

Schedules

Sales and Distribution Schedules

No payment on delivery. If a grower elects to receive a monetary advance from a lending institution then the grower can direct Advantage to pay the monthly distributions to the lender in repayment of the advance until such time as the advance has been fully repaid.

Payments will be made in the first week of each month for five or 10 months, starting in the first week of February after the winter crop harvest.

Advantage 10 month Sales Program

	Dec/Jan	Feb	Mar	Apr	May	June	July	Aug	Sep	Oct	Nov
Sales: Approx. Proportion of Sales Program to be sold each Month	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	
Distribution Date for Net Proceeds	on or before	7 Feb	7 Mar	7 Apr	7 May	7 Jun	7 Jul	7 Aug	7 Sep	7 Oct	7 Nov

Advantage 5 month Sales Program

	Dec/Jan	Feb	Mar	Apr	May	June
Sales: Approx. Proportion of Sales Program to be sold each Month	20%	20%	20%	20%	20%	
Distribution Date for Net Proceeds	on or before	7 Feb	7 Mar	7 Apr	7 May	7 Jun