

## **UGM General Terms and Conditions**

### **New Pool Contracts**

The following terms and conditions apply to the sale of the Grain by the Grower to UGM's Custodians Pty Limited ABN 29 166 553 359 ('**UGM**'). Words in title case in the UGM General Terms and Conditions have the meaning given in the Schedule.

#### **1. Terms and conditions**

- 1.1 The following UGM General Terms and Conditions are incorporated into the New Pool Contract made between the Grower and UGM and formed upon the Grower (or its representative) Delivering the Grain.
- 1.2 In the event of any inconsistency between the provisions of the documents which constitute the New Pool Contract, the following documents will prevail in the following order:
  - 1.2.1 first, the Delivery Ticket;
  - 1.2.2 second, the New Pool Conditions; then
  - 1.2.3 third, these UGM General Terms and Conditions.

#### **2. Sale and purchase of Grain**

##### **2.1 Sale**

The Grower sells the Grain to UGM and UGM purchases the Grain free of all Encumbrances for the Net Equity on the terms and conditions of the New Pool Contract.

##### **2.2 Calculation of Equity and Net Equity**

The Equity and the Net Equity shall be calculated on a per Tonne basis as follows:

**Equity = FOB Price + New Pool Revenue – Direct New Pool Costs**

**Net Equity = Equity – Direct Grower Costs**

#### **3. Pools for marketing grain**

##### **3.1 Pools**

UGM may establish Pools (known as New Pools) for marketing of Grain. The New Pool Conditions (including such things as grain types, grain quality and Delivery Dates) will be specified on the Web Site or through such other means as UGM may determine (subject to **clause 3.4**).

##### **3.2 Acknowledgements by Grower**

The Grower acknowledges that:

- 3.2.1 UGM will conduct the New Pools through the sale of grain (including the Grain) in its own name at a price or prices and on other terms and conditions determined by UGM at its sole discretion;

- 3.2.2 for the purposes of determining the Net Equity payable to the Grower, all proceeds from the sale of grain from the relevant New Pool will be averaged on a per Tonne basis and the Grower will be entitled to receive that average per Tonne price after deduction of the Direct Costs;
- 3.2.3 UGM may engage third parties (including Related Bodies Corporate) from time to time to discharge its obligations under the New Pool Contract; and
- 3.2.4 UGM intends to engage the Manager (which may be a Related Bodies Corporate) to discharge its obligations under the New Pool Contract and, unless otherwise specified in the New Pool Conditions, the Manager has the full authority of UGM to act on behalf of UGM.

### 3.3 Deliveries into New Pools

Only Growers may Deliver Grain into New Pools. UGM may in its absolute discretion decline to accept deliveries by a Grower until such time UGM is satisfied that the entity seeking to Deliver Grain is a Grower.

### 3.4 Delivery Periods

- 3.4.1 UGM will specify the Delivery Period for each New Pool and may change any Delivery Period in its sole discretion.
- 3.4.2 UGM may close a New Pool to further receipt at any time.

## 4. Delivery

### 4.1 Delivery

- 4.1.1 Prior to taking delivery of the Grain, and whenever the Grower delivers the Grain, UGM's authorised bulk handler may examine the Grain to determine if it satisfies the Receival Standards. The Grower must do all things necessary to facilitate such necessary examination of the Grain.
- 4.1.2 Notwithstanding anything in the New Pool Contract to the contrary, Deliveries which:
  - (a) are outside the Delivery Period;
  - (b) do not comply with the Grain description;
  - (c) do not comply with the Receival Standards;
  - (d) are not within the relevant Nominated Port Zone (if applicable);
  - (e) do not quote the correct New Pool Contract number (if applicable) or Grower number; or
  - (f) are not otherwise accompanied by any documentation or meet any other conditions specified by UGM in the New Pool Conditions, on its Web Site or otherwise,

are deemed not to be delivered for the purposes of the New Pool Contract and no New Pool Contract shall arise between the Grower and UGM in relation to that Grain unless UGM waives that non compliance by written notice given before the Delivery Period ends.

4.1.3 Subject to **clause 4.1.2**, Delivery is deemed to occur at the time recorded by the relevant authorised bulk handler that title to each load of Grain is transferred from the Grower to UGM.

4.1.4 The weighbridge weights, and the unconditional certification of compliance with the Receival Standards by the relevant authorised bulk handler, are final and binding.

**4.2 Receival Capacity**

Except where UGM specifies a Delivery Site, if the Delivery Site chosen by the Grower is unable to receive the Grain, the Grower must deliver the Grain to another Delivery Site as agreed between the parties.

**5. Risk and Title**

5.1 The Grower bears all risk until the Grain is deemed to be delivered in accordance with the terms of the New Pool Contract.

5.2 Title and ownership of the Grain passes to UGM immediately upon deemed delivery in accordance with the terms of the New Pool Contract.

**6. Payment of Net Equity**

**6.1 Net Equity**

In consideration for the sale of the Grain from the Grower to UGM, UGM shall pay the Net Equity to the Grower.

**6.2 Distribution**

UGM shall pay the Net Equity in the following manner:

6.2.1 by each Interim Distribution Date, UGM shall pay an interim Distribution equal to at least the Advance Percentage of the Estimated Net Equity; and

6.2.2 by the Final Distribution Date, UGM shall pay a final Distribution equal to 100% of the Final Net Equity less the payments made to the Grower under **clause 6.2.1**.

**6.3 Excess payments**

The Grower acknowledges that if the aggregate of the payments made under **clause 6.2** exceeds the Net Equity due to the Grower then:

6.3.1 the amount of the excess constitutes a debt due by the Grower to UGM which is payable on 20 Business Days written notice; and

6.3.2 UGM and the Grower will each complete all required invoices and returns to effect any necessary GST adjustments arising from the GST paid or payable with respect to the excess of those payments.

**6.4 Interest on Net Equity**

UGM will use its best endeavours to make each payment of the Net Equity by the due date and in this regard time shall not be of the essence. UGM may at its sole discretion pay interest to the Grower on any overdue payment of the Net Equity.

## 7. **Payments Generally**

### 7.1 **Payments by Grower**

All payments by the Grower to UGM must be made free and clear of any and all taxes and without any set-off or deduction.

### 7.2 **Late Payment to UGM**

If the Grower fails to make a payment due under the New Pool Contract in full on the due date UGM may charge interest calculated daily on the unpaid amount at the Rate. The interest will accrue daily and be payable on demand.

### 7.3 **Right of set off**

7.3.1 Any amounts owing by UGM or any of its Related Bodies Corporate to the Grower whether under the New Pool Contract or otherwise, may at the election of UGM, be set off against any amounts owing by the Grower to UGM or any of its Related Bodies Corporate, whether under the New Pool Contract or otherwise.

7.3.2 UGM holds the benefit of this **clause 7.3** and may exercise the rights under this **clause 7.3** on its own behalf and for and on behalf of its Related Bodies Corporate, but nothing in this **clause 7.3** obliges such Related Bodies Corporate to perform any of the obligations of UGM under the New Pool Contract.

7.3.3 UGM will give notice to the Grower of any set off effected under this **clause 7.3**.

### 7.4 **Withholding Funds**

If the Grower has a potential liability to UGM or any of its Related Bodies Corporate under the New Pool Contract or otherwise, then UGM may in its discretion and notwithstanding any other provision of the New Pool Contract retain an amount equivalent to the Grower's potential liability until such time as the Grower's potential liability has either:

7.4.1 crystallised and been paid; or

7.4.2 ceased to exist.

### 7.5 **Direct Grower's Costs**

7.5.1 UGM may deduct the Direct Grower's Costs (if any) from the Net Equity.

7.5.2 If UGM deducts the Direct Grower's Costs from the Net Equity UGM will remit any changes deducted to the relevant authorities.

### 7.6 **Overpayment**

If, after payment to the Grower of any amount by UGM in relation to a New Pool Contract, UGM decides that for any reason the Grower had no right to some or all of that amount (including, where the Grower is overpaid) then, despite any other provision of that New Pool Contract, UGM may recover from the Grower that amount plus interest on that amount calculated daily at the Rate.

**8. Cash out**

UGM may offer the Grower a 'cash out' option from time to time on terms and conditions which are set by UGM in its discretion.

**9. Encumbrances**

9.1 The Grower must immediately notify UGM if a crop lien or other Encumbrance exists over the Grain.

9.2 Notwithstanding any other provision to the contrary in these General Terms and Conditions, the Grower unconditionally and irrevocably:

9.2.1 directs UGM to deduct from the Net Equity:

- (a) the amount secured by any Encumbrance over any Grain and pay the amount deducted to the holder of the Encumbrance before paying any amount to the Grower; and
- (b) all reasonable costs and expenses (including its internal costs) incurred by UGM in connection with dealing with or otherwise satisfying any Encumbrance;

9.2.2 authorises UGM to rely on any information supplied by the holder of an Encumbrance regarding the amount secured by the Encumbrance over the Grain in making the payments referred on in **clause 9.2.1**; and

9.2.3 releases and discharges UGM from any liability to the Grower relating in any way to any deductions from the Net Equity or payments made by UGM to the holder of any Encumbrance under this **clause 9.2**.

9.3 The Grower indemnifies and holds harmless UGM (and each of its Related Bodies Corporate) against any claim or demand by any person claiming any interest in the Grain, regardless of whether the Grower notified UGM of that interest.

**10. Force Majeure**

10.1 'Event of Force Majeure':

10.1.1 means (subject to **clause 10.1.2**) war, riot or civil commotion, act of God, fire or explosion, flood or storm, landslide, lightning or earthquake, act of governmental or municipal authority, damage to or destruction of plant or equipment, strike or other industrial disturbance or any other cause which, by the exercise of due diligence, a party is unable to prevent or overcome; and

10.1.2 does not include the loss of or failure to produce Grain due to production risks (for example due to weather, frost, hail, flood, fire, drought, disease or pests).

10.2 If UGM is unable by reason of an Event of Force Majeure to perform any obligation under the New Pool Contract, it must give the Grower prompt written notice with full particulars of the Event of Force Majeure and the extent to which it is likely to be unable to perform its obligations.

10.3 The obligation of UGM will be suspended so far and so long as it is affected by the Event of Force Majeure.

- 10.4 UGM must use its reasonable efforts to mitigate the effects of the Event of Force Majeure.
- 10.5 UGM cannot claim an Event of Force Majeure under the New Pool Contract on the basis of anything that could reasonably be known to exist as at the date of the New Pool Contract.

## 11. **Grower's warranties**

### 11.1 **Warranties – Pool Contract**

The Grower warrants and represents to UGM that:

- 11.1.1 the Grower legally and beneficially owns the Grain;
- 11.1.2 the Grain meets the Receival Standards;
- 11.1.3 the Grain does not contain or include any contaminant;
- 11.1.4 none of the Grain is a Genetically Modified Organism (other than as notified to UGM, and agreed in writing by UGM, prior to delivery);
- 11.1.5 the information provided by the Grower on the Delivery Ticket or through the Stock Transfer System is true and correct;
- 11.1.6 the Grain is not subject to any Encumbrance;
- 11.1.7 it is not Insolvent;
- 11.1.8 in entering into the New Pool Contract it has relied on its own skill and judgment; and
- 11.1.9 it has not relied in any way on any representation made by UGM or the Manager that has not been expressly stated in the New Pool Contract or the Web Site.

### 11.2 **Warranties – Corporations Act**

The Grower warrants and represents to UGM that:

- 11.2.1 it satisfies the Corporations Act definition of a 'wholesale investor';
- 11.2.2 the business of the Grower does not regularly involve dealing in securities or other financial products (as those terms are defined under the Corporations Act);
- 11.2.3 the acquisition of securities or other financial products by the Grower is merely incidental to the principal trade, business or calling in which the Grower holds itself out to be engaged; and
- 11.2.4 the Grain that is offered as Net Equity for the interests in the New Pool is part of the Grower's ordinary business.

### 11.3 **Indemnity**

The Grower agrees to indemnify and hold harmless UGM, the Manager (and their Related Bodies Corporate) from and against all actions, claims, causes of action

(whether in contract, tort or statute), proceedings, demands losses, liabilities, damages, costs and expenses they may suffer as a result of:

- 11.3.1 any of the warranties set out in **clauses 11.1** and **11.2** being false, incorrect or misleading (whether by omission or otherwise);
- 11.3.2 a person claiming an interest in the Grain regardless of whether the Grower has notified UGM of that claim;
- 11.3.3 the death or personal injury of any person that is caused or contributed to by the Grower or its officers, employees, contractors or agents; or
- 11.3.4 any breach of the New Pool Contract, including but not limited to a failure to meet the Receival Standards.

## 12. **Authority**

- 12.1 Each party warrants that it has the authority, capacity and power to enter into the New Pool Contract.
- 12.2 The Grower expressly authorises UGM and the Manager and UGM's financiers, to release such information about the Grower as is necessary and convenient to give effect to the New Pool Contract, to:
  - 12.2.1 each other;
  - 12.2.2 their financiers; and
  - 12.2.3 the Grower, its representatives, advisers and financiers.

## 13. **Discretion**

The Grower acknowledges that wherever the New Pool Contract allows UGM to make a decision or exercise its discretion, UGM has a complete, unfettered and absolute right to exercise that discretion however it sees fit.

## 14. **Default**

### 14.1 **Events of Default**

The Grower is in default if:

- 14.1.1 any of the representations and warranties made by it under these UGM General Terms and Conditions are untrue or become untrue;
- 14.1.2 it becomes Insolvent;
- 14.1.3 it fails to pay on time any money payable to UGM under the New Pool Contract; or
- 14.1.4 the Grower is otherwise in breach of any of the provisions of the New Pool Contract.

### 14.2 **Consequences of default**

- 14.2.1 If the Grower is in default, UGM may declare at any time by notice that any amount owing to UGM under the New Pool Contract is immediately due

for payment and (without limitation to UGM's rights at law) UGM may take action to recover any such amount.

14.2.2 The Grower shall pay to UGM on demand all costs (including legal costs on an indemnity basis) incurred by UGM in seeking to enforce payment under **clause 14.2.1**.

**14.3 Further contracts**

The Grower acknowledges that if the Grower defaults under the New Pool Contract UGM may refuse to enter into further contracts or arrangements with the Grower.

**14.4 Other Rights**

UGM's rights under this **clause 14** do not limit UGM's other rights in respect of a default by the Grower.

**15. Limit of Liability**

15.1 Neither UGM nor the Manager (nor their Related Bodies Corporate) will be under any liability for any direct, indirect, consequential or any other loss, expenses or damage resulting from the negligence or alleged negligence of UGM, the Manager (their Related Bodies Corporate) or any of their servants or agents in the performance of their obligations under the New Pool Contract, however it arises.

15.2 So far as the law permits neither UGM nor the Manager (nor their Related Bodies Corporate) will be under any liability for any Indirect or Consequential Loss.

15.3 Except as specified in the New Pool Contract, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, by UGM or the Manager (or their Related Bodies Corporate) are excluded to the fullest extent permitted by law.

**16. Dispute Resolution**

**16.1 Disputes**

16.1.1 All disputes arising out of or in connection with the New Pool Contract shall be dealt with in accordance with the provisions of this **clause 16**.

16.1.2 A dispute shall be referred to UGM's authorised manager for resolution. UGM's authorised manager and the Grower shall meet or confer at least once within one Business Day of the notification of the dispute ('**Dispute Notice Date**') to discuss the dispute and attempt to resolve the dispute.

**16.2 Escalation of Dispute – Executive Resolution**

If no resolution of the dispute can be reached in accordance with **clause 16.1**, within five Business Days of the Dispute Notice Date then UGM's authorised manager shall refer the dispute to UGM's managing director. The Grower and UGM's managing director:

16.2.1 will meet or confer at least once at a time mutually convenient no later than seven Business Days after the Dispute Notice Date; and

16.2.2 may decide on the methods and procedure by which they will resolve the dispute, which may include the obtaining of expert advice.



**16.3 GTA Dispute Resolution Rules**

If, 10 Business Days after the Dispute Notice Date, the dispute has not been resolved:

16.3.1 UGM may elect to submit the dispute to resolution under any of the GTA Dispute Resolution Rules; and

16.3.2 the Grower agrees to submit to the GTA Dispute Resolution Rules.

**16.4 Payment of invoices pending resolution of a dispute**

Notwithstanding anything in the New Pool Contract, the Grower is not entitled to withhold payment of the undisputed amount of any invoice. If the Grower cannot provide a reasonable estimate of the disputed amount the Grower will not be entitled to withhold any payment.

**17. General**

**17.1 Time**

Except as otherwise specified in the New Pool Contract, time is of the essence in every respect.

**17.2 Governing Law**

This New Pool Contract is governed by the laws of the State of South Australia and the parties submit to the non-exclusive jurisdiction of the Courts of South Australia and, as applicable, the Commonwealth of Australia.

**17.3 Supervening legislation**

Any present or future legislation which operates to vary the Grower's obligations in relation to the New Pool Contract with the result that UGM's rights or obligations are adversely affected is excluded except to the extent that its exclusion is prohibited or rendered ineffective at law.

**17.4 Notices**

17.4.1 All notices, requests, demands and other communications under or in connection with the New Pool Contract must be in writing, and must be given to the parties at their address or facsimile number or email address shown on a Register, the Delivery Ticket or provided via the Stock Transfer System, or as otherwise notified.

17.4.2 A notice sent by mail is deemed to have been given 72 hours after being sent in a properly addressed pre-paid envelope. A notice sent by email is deemed to have been given at the time that is 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address.

**17.5 Telephone conversations**

The Grower acknowledges and agrees that any telephone conversation with UGM may be recorded and kept as evidence of the Grower's instructions unless the Grower objects at the beginning of the telephone conversation.

**17.6 Assignment**

The Grower must not assign its rights under, or the benefit of, the New Pool Contract. UGM may assign its rights under, or the benefit of, the New Pool Contract, without the Grower's consent.

**17.7 Variation**

Except as otherwise provided in the New Pool Contract, the New Pool Contract may only be varied by agreement in writing.

**17.8 Costs**

Except as otherwise provided in the New Pool Contract, each party must bear its own legal and other costs and expenses relating to performance of its obligations under the New Pool Contract.

**17.9 Severability**

If any term or part of the New Pool Contract is or becomes invalid or unenforceable at law, then that term or part will be deemed to be severed from the New Pool Contract. Severance will not affect the remainder of the New Pool Contract, and the remainder of the New Pool Contract will continue to be valid and enforceable.

**17.10 Counterparts**

The New Pool Contract may be executed in any number of counterparts, all of which taken together are deemed to constitute one document.

**17.11 Waiver**

Waiver of any power or right arising under the New Pool Contract must be in writing and signed by the party granting the waiver. Any failure or delay by a party to exercise a power or right does not operate as a waiver of that power or right.

**17.12 Entire Agreement**

The New Pool Contract (in aggregate) forms the entire agreement between the parties with respect to the sale and purchase of the Grain from the Grower to UGM.

**17.13 Liability**

In the New Pool Contract:

17.13.1 if the Grower is comprised of more than one person in respect of the delivery title, then the obligations of the Grower will bind all parties listed on the delivery title jointly and severally;

17.13.2 if the Grower enters into the New Pool Contract as a trustee, the Grower shall be liable under the New Pool Contract in its personal capacity and in its capacity as trustee of the trust; and

17.13.3 the Grower and each of the Grower's signatories indemnifies UGM, the Manager (and each of their Relegated Bodies Corporate) and each of their directors against any claim, action, damage, loss, liability, cost or charge they may suffer or incur or be liable for as a result of the disclosure of any

misleading information in the New Pool Contract, including any false declaration that the Grower or its signatories had due authority to sign.

18. **GST**

- 18.1 Unless expressly included, the Net Equity does not include GST.
- 18.2 Words used in this **clause 18** which have a defined meaning in the GST Law (or in ATO determination made in connection with GST Law) have the same meaning as in the GST Law unless the context otherwise indicates.
- 18.3 If GST is or will be imposed on a supply made under or in connection with the New Pool Contract, the Grower may, to the extent that the Net Equity otherwise provided for that supply under the New Pool Contract is not stated to include an amount in respect of GST on the supply:
  - 18.3.1 increase the Net Equity otherwise provided for that supply under the New Pool Contract by the amount of that GST; or
  - 18.3.2 otherwise recover from the recipient the amount of that GST.
- 18.4 The right of the Grower to recover any amount in respect of GST under the New Pool Contract on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of the New Pool Contract, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- 18.5 Subject to a Recipient Created Tax Invoice ('**RCTI**') Agreement being in place between UGM and the Grower, UGM will issue:
  - 18.5.1 If the Grower has provided a valid ABN and is registered for GST: a valid RCTI that states the amount of GST the Grower is liable to pay, at the same time that UGM is obliged to pay the Grower;
  - 18.5.2 If the Grower has provided a valid ABN but is not registered for GST: a payment advice setting out the amount paid to the Grower excluding GST; or
  - 18.5.3 If the Grower has not provided a valid ABN: a payment advice setting out the amount paid to the Grower excluding GST and subject to any withholding tax in accordance with **clause 18.8**.
- 18.6 If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the Grower, as appropriate, the Grower:
  - 18.6.1 may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
  - 18.6.2 must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.
- 18.7 Costs required to be reimbursed or indemnified under the New Pool Contract must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.
- 18.8 If the Grower:

18.8.1 does not have an ABN or do not provide a valid ABN to UGM; and

18.8.2 does not provide an executed statement by a supplier form to UGM,

UGM may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

19. **Exclusion of GTA Trade Rules**

The Grain Trade Australia Trade Rules are expressly excluded from the New Pool Contract.

## SCHEDULE TO UGM NEW POOL GENERAL TERMS AND CONDITIONS

### DEFINITIONS AND INTERPRETATION

#### 1. Definitions

Unless otherwise stated:

- 1.1 **'ABN'** mean Australian business number;
- 1.2 **'Adjustment Note'** includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
- 1.3 **'Advance Percentage'** means the percentage specified as the 'Advance Percentage' in the New Pool Conditions, being the percentage of the Estimated Net Equity payable to the Grower by the relevant Distribution Dates;
- 1.4 **'Applicable New Pool'** means the New Pool to which the Grain is delivered or to which the Grain is allocated by UGM in accordance with the New Pool Contract;
- 1.5 **'Business Day'** means a day that is not a Saturday, Sunday or public holiday in Adelaide, South Australia;
- 1.6 **'Corporations Act'** means the *Corporations Act* 2001 (Cth);
- 1.7 **'Deliver'** or **'Delivery'** or **'Delivering'** of Grain means the deemed delivery of Grain under **clause 4** of the UGM General Terms and Conditions;
- 1.8 **'Delivery Period'** means the period commencing on the day published as the beginning of the delivery period for the Applicable New Pool on the Web Site (or through such other means as UGM may determine) until the day UGM gives notice on the Web Site (or through such other means as UGM may determine) that it no longer offers the Applicable New Pool;
- 1.9 **'Delivery Site'** means the relevant authorised bulk handler's site at which the Grower elects to deliver the entitlement to the Grain to UGM;
- 1.10 **'Delivery Ticket'** means the relevant authorised bulk handler's delivery ticket documentation confirming, amongst other things, the tonnage delivered, quality of the Grain, acquirer of the Grain and payment method selected which is provided to the Grower at the Delivery Site;
- 1.11 **'Direct Costs'** means Direct New Pool Costs and Direct Grower Costs as the context requires;
- 1.12 **'Direct New Pool Costs'** means costs (including the Management Fee) determined by UGM to have been incurred directly in respect of the Applicable New Pool;
- 1.13 **'Direct Grower Costs'** means costs determined by UGM to have been incurred directly in respect of the Grower's supply of the Grain. They include:
  - 1.13.1 all charges, levies, assessments, taxes or fines levied, assessed or charged on the Grain by any statutory authority, organisation, fund or government department under any legislative or regulatory authority, custom or trade practice in the industry, including any end point royalties payable to PBR holders in respect of the Grain; and

- 1.13.2 the GTA Location Differentials;
- 1.14 '**Distribution(s)**' means the amounts paid or payable by UGM as distributions of the Net Equity in accordance with **clause 6.2** of the UGM General Terms and Conditions;
- 1.15 '**Distribution Date**' means the Distribution Dates nominated for each New Pool in the New Pool Conditions;
- 1.16 '**Encumbrance**' means any security for the payment of money or the performance of obligations including (without limitation) a mortgage, charge, lien (including a crop lien), pledge, or trust;
- 1.17 '**Equity**' means the Equity for the Applicable Pool, calculated pursuant to **clause 2.2** of the UGM General Terms and Conditions;
- 1.18 '**Estimate**' or '**Estimated**' means UGM's estimate of the relevant matter which estimate shall be made by UGM in its absolute discretion;
- 1.19 '**Event of Force Majeure**' is as defined under **clause 10.1** of the UGM General Terms and Conditions;
- 1.20 '**Final Distribution Date**' means 15 Business Days after New Pool Finalisation;
- 1.21 '**FOB Price**' means the free on board value at the Natural Terminal Port of grain of the same type and grade as the Grain;
- 1.22 '**Genetically Modified Organism**' has the meaning given to that term in the *Gene Technology Act 2000* (Cth);
- 1.23 '**Grain**' means the grain described on the Delivery Ticket;
- 1.24 '**Grower**' means a person who, in the reasonable opinion of UGM, produces grain grown on a property owned or leased by that person and who:
- 1.24.1 has a National Grower Registry (NGR) or other grower register;
- 1.24.2 is not acting in a capacity as a trader or acquirer of grain that was not produced by that person; and
- 1.24.3 otherwise can truthfully and factually warrant and represent the warranties under **clause 11** of the UGM General Terms and Conditions;
- 1.25 '**GST**' means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply;
- 1.26 '**GST Law**' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 1.27 '**GTA**' means Grain Trade Australia;
- 1.28 '**GTA Location Differentials**' means the differential rate published by GTA as applicable at the time of delivery that theoretically compensates for the difference in value of the Grain between the Delivery Site and the Natural Terminal Port in the Nominated Port Zone;
- 1.29 '**Indirect or Consequential Loss**' means indirect, consequential or remote loss or any loss in the nature of loss of production, loss of profit, loss of opportunity,

loss of markets or access to markets, loss of use of money, goods or other property, or loss of goodwill or business reputation;

- 1.30 **'Insolvent'** has the meaning given by the Corporations Act;
- 1.31 **'Interim Distribution Date'** mean each Distribution Dates nominated for each New Pool in the New Pool Conditions other than the Final Distribution Date;
- 1.32 **'Management Fee'** has the meaning given in the New Pool Conditions;
- 1.33 **'Manager'** means a manager appointed by UGM to exchange any of its obligations under the Pool Contract. The first manager shall be Unique Grain Management Pty Limited ABN 51 164 202 304;
- 1.34 **'Natural Terminal Port'** means the Natural Terminal Port specified by GTA as applicable to a particular Delivery Site;
- 1.35 **'Net Equity'** means the Net Equity payable by UGM to the Grower for the Grain as calculated pursuant to **clause 2.2** of the UGM General Terms and Conditions;
- 1.36 **'New Pool'** means a grouping of grain treated by UGM as a New Pool for the purposes of buying grain, grouped according to time of delivery, location, quality, grade or variety of grain or such other matters as determined by UGM, including any New Pool established in accordance with **clause 3.1** of the UGM General Terms and Conditions;
- 1.37 **'New Pool Conditions'** means the standard terms and conditions for the Applicable New Pool which are current at the date of formation of the New Pool Contract, as published on the Web Site;
- 1.38 **'New Pool Contract'** means the contract constituted by:
- 1.38.1 the Delivery Ticket;
  - 1.38.2 the New Pool Conditions; and
  - 1.38.3 the UGM General Terms and Conditions;
- 1.39 **'New Pool Revenue'** means interest or other revenue earned from Pool assets;
- 1.40 **'New Pool Finalisation'** means when UGM has sold all Grain delivered to the Applicable New Pool, received all funds from those sales and paid all Direct Costs;
- 1.41 **'Nominated Port Zone'** means the Port Zone specified by GTA as applicable to a particular Delivery Site;
- 1.42 **'PBR'** means PBR in a plant variety as those terms are defined in section 3 of the *Plant Breeder's Rights Act 1994* (Cth);
- 1.43 **'Rate'** means five percentage points above the Reserve Bank of Australia cash rate target from time to time;
- 1.44 **'Receival Standards'** means the standards set for the Grain by the relevant authorised bulk handler from time to time;
- 1.45 **'Recipient Created Tax Invoice'** includes any document or record treated by the Commissioner of Taxation as a recipient created tax invoice or as a document entitling a recipient to an input tax credit;

- 1.46 **'Related Bodies Corporate'** has the meaning given to that term in section 50 of the Corporations Act;
- 1.47 **'Season'** means the grain harvesting and delivery season to which a particular delivery or deliveries relate, generally commencing in August of one year and ending in March of the following year;
- 1.48 **'Stock Transfer System'** means either the telephone or online stock transfer system used by the relevant authorised bulk handler;
- 1.49 **'Tax Invoice'** includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
- 1.50 **'Tonne'** means tonne (or metric ton) of Grain; and
- 1.51 **'Web Site'** means the web site [www.uniquegrain.com.au](http://www.uniquegrain.com.au).

## 2. Interpretation

In the UGM General Terms and Conditions unless the contrary intention appears:

- 2.1 a reference to a person includes a reference to a body corporate;
- 2.2 a reference to a paragraph or clause is a reference to a paragraph or clause in the UGM General Terms and Conditions;
- 2.3 a reference to the UGM General Terms and Conditions or any other instrument includes any variation or replacement of them;
- 2.4 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- 2.5 if a word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
  - 2.5.1 'includes' in any form is not a word of limitation; and
  - 2.5.2 the singular includes the plural and vice versa.