

**Bunge Grower Warehousing Agreement 2017/18**

Version: 1.3

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## 1. Context and Interpretation

These terms and conditions (as amended from time to time) apply to any Grain brought on to a Bunge Facility for the purpose of delivery and, if received, stored and handled under Warehouse.

These terms do not apply to traders and marketers (including other grain marketing companies) who have signed or are otherwise deemed to be bound by Bunge's Storage and Handling Agreement for the season.

## 2. Definitions

**Bunge** means Bunge Grain Services Bunbury Pty Ltd and its related bodies corporate, as that term is defined in the *Corporations Act 2001* (Cth).

**Bunge Facility** means any facility owned or operated by Bunge for the receipt, storage and/or outturning of Grain.

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

**Carryover Charge** means a storage fee charged by Bunge to the Warehouse for the storage of Grain, as set out in **Schedule 1**.

**Client** means an entity that has entered into Bunge's Storage and Handling Agreement.

**Common Stock** has the meaning given at Clause 6.

**Charges** means fees, charges and costs imposed by Bunge under the terms of this Bunge Warehousing Agreement.

**Deliverer** means a person who enters, or authorises the entry by the Deliverer's agent, onto a Bunge Facility for the purpose of Delivery.

**Delivery** means the road entry onto a Bunge Facility of a vehicle and the process of seeking receipt by the site of the Grain.

**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.

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

**Grain Optimisation Product** means the product and service offered per Clause 7.

**Grower** means any person or entity involved in the growing of Grain, the contact details for whom have been registered with Bunge or NGR.

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

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), 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.

**HMMS** means the Bunge Harvest Grain Mass Management Scheme Code of Practice as most recently published on the Website.

**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.

**Losses** means all liabilities, losses, costs or damages (including legal costs) arising in connection with any personal injury, death, damage to property, Grain and/or economic losses whether past, present, future or contingent.

**NGR** means National Grower Register Pty Ltd, who operate a register of Growers, their contact information and payment details.

**Outturn Entitlement** means the like quantity, type and specification of Grain received by Bunge at the Bunge Facility.

**Outturn Guidelines** means a document describing the process and procedure used by Bunge for road outturns save that references in the protocols to “Clients” or “Company” shall be deemed and should be read as references to “Warehousers”.

**Optimise or Optimisation** means the notional blending of the specific Warehouser’s Grower loads of wheat in accordance with the Product Rules and the specific instructions and agreement received from the Warehouser.

**Party** means a party to this Bunge Warehousing Agreement.

**Port Terminal** means Bunge’s Storage facilities adjacent to Berth 3 at the Port of Bunbury, Western Australia.

**Product Rules** means the terms, conditions, guidelines, procedures and business rules that Bunge uses to manage contracts and other products and services that Bunge may offer to Growers from time to time.

**PPSA** means *Personal Property Securities Act 2009* (Cth).

**Personal Information** has the same meaning as in the *Privacy Act 1988* (Cth).

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

**Title Transfer** has the meaning given at Clause 15.

**Truck Overloading Policy** means the Truck Overloading Policy most recently published on the Website.

**Warehouse** means the receipt and storage by Bunge of Grain for a Grower.

**Warehouser** means the Grower on whose behalf the Grain has been received and warehoused by Bunge.

**Warehouse Expiry** means the day, which is not later than the next 30th September following Receipt of the Grain at which Bunge ceases to warehouse the Grain for the Warehouser, or alternatively Bunge is entitled to charge the Warehouser a Carryover Charge.

**Website** means a reference to [www.bunge.com.au](http://www.bunge.com.au).

In this Bunge Warehousing Agreement, unless the context otherwise requires:

- (a) a reference to an agreement (including, without limitation, this Bunge Warehousing 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 Bunge Warehousing 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 Bunge Warehousing 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 Bunge Warehousing 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 Bunge Warehousing Agreement (excluding the Schedules) and the Schedules, the provision of this Bunge Warehousing Agreement shall prevail to the extent of the conflict.

### **3. Delivery**

It is a condition of entry onto a Bunge Facility that the Deliverer agrees to these terms and conditions, even where receipt of a particular parcel of Grain does not occur.

Receipt is offered at Bunge's discretion. Receipt shall be deemed to occur when the Deliverer's nominated vehicle has been weighed, the quantity/quality of Grain delivered is ascertained by Bunge and recorded on a weighbridge ticket.

The Deliverer agrees that, upon receipt, the nomination by the Deliverer or its agent of the acquirer of the Grain is an irrevocable direction to transfer title in the relevant parcel of Grain to the relevant acquirer at the relevant Bunge Facility.

The Deliverer and its agents will not make or attempt to make a Delivery that contains a contaminant likely to adversely affect the quality of Grain held at the relevant Bunge Facility.

The Deliverer and its agents will comply with the work, health and safety rules and directions of the relevant Bunge Facility.

The Warehouse agrees to register with NGR and must quote or provide its NGR number to Bunge when making any delivery to a Bunge Facility. Without a valid NGR number, Bunge will not accept a Grower delivery.

The Warehouse 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 prevent 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 and also in accordance with the usage instructions;
- (g) any information it provides to Bunge in relation to this Bunge Warehousing Agreement is complete, true and correct and not misleading or deceptive or likely to mislead or deceive.

### **4. Mass Management**

The Warehouse and Deliverer will ensure that all vehicle loads entering a Bunge Facility comply with relevant Laws for mass management limits and Bunge's HMMP guidelines and policies including (but not limited to) the HMMS Code of Practice and Truck Overloading Policy.

## 5. Warehousing

Subject to these terms and conditions, the Warehouser has an Outturn Entitlement.

## 6. Common Stock

Bunge may intermix stored Grain of a Warehouser with Grain of the same or similar specification or grade owned by difference entities (**Common Stock**).

Title to Common Stock Grain is held jointly by the relevant Warehouseurs and Clients in the proportions that each Warehouseur's or Client's quantity of the Grain bears to the total Common Stock Grain.

While Bunge has possession of the Grain:

- (a) the relationship between Bunge and the Warehouser in respect of the possession of the Grain is one of bailment only; and
- (b) that relationship will continue to exist despite the Grain losing its identity by being common stocked, or the inability of Bunge to redeliver to the Warehouser the particular Grain the subject of the bailment, and
- (c) Bunge as bailee may at its discretion manage, use, move, transfer, deal with and otherwise control the Grain.

## 7. Optimisation

- (a) Bunge may at its sole discretion choose to offer a Grain Optimisation Product to Growers at any or all Bunge Facilities for specific Grain.
- (b) Any Optimisation Product offered by Bunge will be subject to the Product Rules in place at the time.
- (c) If the Warehouser chooses to Optimise its Grain, the Warehouser acknowledges and agrees that:
  - (i) The Warehouser waives any right to transport, move or outturn it's Grain by any other means than that authorized by Bunge.
  - (ii) The Warehouser will be bound by the Optimisation Product Rules.
  - (iii) The Warehouser has satisfied and complied with Bunge's Optimisation Rules.
  - (iv) Bunge may, at its sole discretion, provide the Warehouser with an Optimisation model; however it makes no representation or warranty as to the accuracy of any data and the model. The Warehouser acknowledges that it is responsible for the accuracy of the data and any model, including any price, receival and Grain contract information.
  - (v) Bunge will accept the Warehouser's request and use its best endeavors' to Optimise its Grain.
  - (vi) The Warehouser is responsible for any and all Optimisation decisions including (but not limited to) the accuracy, suitability and correctness of any Grain and price data.
  - (vii) Bunge (including its officers, employees, contractors and agents) is not, and will not, offer the Warehouser any legal, tax, financial or accounting advice regarding the Optimisation or its suitability in general and /or to the Warehouser's particular circumstances.
  - (viii) Bunge recommends that the Warehouser seek independent advice in making any Optimisation decision. The Warehouser acknowledges that Bunge has made this recommendation to the Warehouser.
  - (ix) The Warehouser will not seek nor solicit any advice or recommendation from Bunge (including its officers, employees, contractors and agents), and acknowledge that Bunge (including its officers, employees, contractors and agents) is not authorized to provide any advice or recommendation.
  - (x) As a result of any Optimisation instructed by the Warehouser, that some or all of the Warehouser's Grain receivals will be adjusted to reflect the change in Grade required to

achieve the Optimisation. This may include some Grain to be regarded to a lower quality grade, and some Grain to a higher quality grade. This will mean quality of Grain that the Warehouse is entitled to receive will change.

- (xi) Bunge is not liable for any Loss, damage, cost or expense arising from or in relation to any Optimisation. Likewise, Bunge is not liable for any Loss, damage or costs or expense suffered by the Warehouse as a result of the Warehouse deciding or choosing not to Optimise any or all of the Warehouse's Grain.

## 8. Shrinkage

The Outturn Entitlement is subject to a weight deduction for Shrinkage. The Shrinkage allowance is set out in **Schedule 1**. The fees charged for Receival is calculated on delivered weight, and Storage Charges are calculated on shrunk weight.

It is in the interest of the Warehouse to ensure that, if possible, Title Transfers are negotiated and paid on the basis of delivered weight not shrunk weight.

## 9. Storage Charges

Storage Charges are as outlined in **Schedule 1**. Storage Charges will accrue and become payable in accordance with these terms and conditions by the Warehouse when the Outturn Entitlement is outturned or is Title Transferred.

## 10. Outturn at Country Facilities

Bunge will outturn the Grain in accordance with its Outturn Guidelines published on its Website.

Bunge will, subject to these terms and conditions and considerations of quality, hygiene, safety, efficiency, practicality and its treatment regime, exercise its best endeavours to outturn in the manner requested by the Warehouse.

The Warehouse must use best endeavours to outturn or Title Transfer the Outturn Entitlement, in full, before the Warehouse Expiry.

Notwithstanding any other provision of these terms and conditions, Bunge has the right to transfer the Outturn Entitlement in respect of the current season Grain to a Bunge Facility other than the Bunge Facility at which Receival was provided and, where appropriate, impose a freight differential charge, provided that (other than for the movements specified under Movements at Clause 11 in Bunge's reasonable opinion the Warehouse is not significantly disadvantaged overall by the change of Bunge Facility.

Special arrangements or restrictions may apply to Outturn from some Bunge Facilities. Details of these arrangements or restrictions are available at each relevant Bunge Facility.

Outturn is not available for Grain warehoused at the Port Terminal unless specifically agreed in writing by Bunge.

A minimum 7 Business Day's notice applies for Outturn and minimum tonnage requirements (or otherwise charges) also apply across all Bunge Facilities. Warehouse may only outturn Grain on the days and times specified by Bunge or as varied by Bunge from time to time.

The Warehouse acknowledges that Bunge must apply treatments to Grain stored under Warehouse in the Bunge system (Bunge does so in accordance with its treatment regime) and that during the course of such treatments, the Grain will not be available for outturn.

It is the responsibility of the Warehouse to ensure Grain is available for outturn by contacting Bunge or by monitoring the site availability status on the Website.

Outturn weights determined by Bunge using Bunge's weighing systems are final and binding.

Outturn charges as outlined in **Schedule 1** will be payable by the Warehouse in accordance with these terms and conditions when the Grain is outturned.

## 11. Movements

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) the Warehouse Expiry is exceeded;
- (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 Warehouse's Grain or Client's Grain; or
- (f) Bunge determines that it is operationally efficient to move the Grain.

And in each case the Warehouse 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. Warehouse Expiry

- (a) If the Outturn Entitlement has not been outturned, in full, before the Warehouse Expiry, Bunge may, after providing at least 5 Business Days' notice and consulting during that period with the Warehouse, Title Transfer on behalf of the Warehouse at the best available price for such location, quality and quantity of Grain and account to the Warehouse for the sale proceeds net of selling costs and expenses.
- (b) For the purposes of Sub-clause 12(a), the Warehouse irrevocably appoints Bunge as its agent and attorney.
- (c) Malting barley grades not outturned by the Warehouse Expiry may be regraded to feed grade at Bunge's discretion.
- (d) No delay in Bunge exercising its rights under this section operates as a waiver nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy.
- (e) The Warehouse releases Bunge, and must not make any claim in respect of, any Loss suffered by the Warehouse as a result of or in connection with Bunge exercising its rights under this section (including in respect of any delay in exercising its rights resulting in a change in Fair Market Price).

## 13. Entitlement Shortfall Adjustment

If the Bunge system does not hold sufficient Grain of the type and specification of the Warehouse's Grain at the time the Warehouse outturns its Outturn Entitlement, Bunge will be entitled to satisfy any such physical shortfall by payment of compensation at the Fair Market Price on the day.

## 14. Entitlement Surplus Adjustment

Where the Warehouse has outturned its Outturn Entitlement and has benefited from an outturn quantity or quality in excess of that to which it was entitled, the Warehouse will, on demand, compensate Bunge by payment for that excess at Fair Market Price on the day.

## 15. Title Transfers

- (a) Title Transfers may be initiated by the Warehouse:
  - (i) Providing written instructions to Bunge that it wishes to undertake a Title Transfer to a buyer or Client. Bunge is thereupon authorised to sign the transfer for and on behalf of the Warehouse and for this purpose the Warehouse irrevocably appoints



Bunge as its agent and attorney. Bunge will then seek the buyer's or Client's acceptance of the transfer and confirm completion to the Warehouse; or

- (ii) Undertaking a Title Transfer via the Website, in which case Bunge shall be entitled to assume that the instructions to transfer have been issued by or on behalf of the Warehouse if the Warehouse has used its user i.d. to execute the transaction.
- (b) Bunge shall not be obliged to recognise any Title Transfer unless and until:
- (i) the buyer of the Outturn Entitlement agrees to be bound by these terms and conditions (as amended from time to time); or
  - (ii) if the buyer is a Client (i.e. marketer or trader of Grain), it agrees to be bound by the terms and conditions contained in Bunge's Storage & Handling Agreement for the season.

## **16. Effective Date of Transfers**

The effective date, for applying the Title Transfer fee will be the date that Bunge receives instructions from the Warehouse to affect the transfer. If it is received after 4 pm or on a non-Business Day, the effective date will be considered the following Business Day. Bunge will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

## **17. Payment**

All accrued charges and any costs payable on any account in respect of the Grain that is the subject of the Outturn Entitlement must be paid in accordance with the invoice rendered by Bunge.

The full amount of an invoice rendered by Bunge must be paid by the buyer of the Outturn Entitlement or the Warehouse (where applicable) within 14 Business Days from the date of that invoice.

For Grain the subject of outturn, the Warehouse will be required to pay all accrued charges and any costs payable on an up-front basis (if no credit facility exists for that Warehouse).

At Bunge's discretion, the buyer of the Outturn Entitlement can be responsible for payment of the Reveal and Title Transfer charges and the Warehouse will be responsible for payment of the Storage charges. In such circumstances, each Warehouse remains fully responsible to Bunge for payment of all charges accrued during that Warehouse's period of ownership of the Outturn Entitlement.

The Warehouse agrees that a buyer of the Outturn Entitlement may elect to offset the Grower storage charges against the purchase price of the Grain and pay such storage charges directly to Bunge.

## **18. Default in Payment**

Where the Warehouse is in default of payment of any amounts due and payable to Bunge on any account for more than 7 Business Days after the due date and has failed to make full payment after 21 Business Days written notice, Bunge is entitled to sell the Grain and/or the Outturn Entitlement (to the extent required to meet the debt) in such manner as it sees fit and shall account to the Warehouse for the sale proceeds net of selling expenses and the amount owing to Bunge. For these purposes the Warehouse irrevocably appoints Bunge as its agent and attorney.

## **19. Default Interest**

The Warehouse shall pay interest on overdue monies at the rate equivalent to 5% per annum above the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time calculated on daily rates from the due date until payment.

## **20. Risk**

Subject to the terms of this Bunge Warehousing Agreement, Bunge bears all risk of loss or damage to the Grain arising from usual insurable events except events occurring from the time when the Grain is in the care

and control of the Warehouse or Deliverer or either of those party's agents.

The Warehouse bears the risk of loss or damage to its Grain arising from:

- (a) the natural deterioration of Grain over time; and
- (b) contamination from Grain of other owners which is not easily detectable though the reasonably diligent application of Bunge's standard receival and sampling methodologies.

## **21. Insurance**

Bunge will hold adequate insurance against loss, damage or destruction for the Warehouse's Grain whilst stored in Bunge Facilities for the duration of this Agreement. .

The Warehouse, acknowledges any insurance required by the Warehouse over and above Bunge's insurance is the Warehouse's sole responsibility.

In the event Bunge makes a claim under the insurance policy then in relation to determining the Fair Market Price for the purposes of any shortfall liability under Clause 13 ("Entitlement Shortfall Adjustment") the Warehouse agrees that:

- (a) Bunge is authorised to:
  - (i) receive and give a good discharge for all monies payable under the insurance policy;
  - (ii) settle, adjust and compromise all claims under the insurance policy; and
  - (iii) determine, by agreement with the insurer, the time of loss; and
- (b) The Warehouse waives and will not make any claim against Bunge, nor contest or dispute any Bunge decision, in relation to any action by Bunge in accordance with this Clause, save where and to the extent that Bunge acts fraudulently.

## **22. Exclusion/Limitation of Liability**

- (a) Except as otherwise provided in this Bunge Warehousing 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.
- (b) Where the Grain of any person other than the Warehouse is affected by a chemical contaminant or residue but is nevertheless delivered to the Bunge Facility, Bunge will not be liable to the Warehouse 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.
- (c) The Warehouse acknowledges that Bunge is unable to test on receival for germinative quality of barley, toxic or other chemical residues, genetically modified Grain or other contamination.
- (d) The Warehouse acknowledges that any transportation of the stored Grain is at the Warehouse's risk, including, without limitation, transportation of the Grain arranged by or on behalf of or at the request of either the Warehouse or Bunge.
- (e) Notwithstanding anything in this Bunge Warehousing Agreement, Bunge shall not be liable to the Warehouse for any indirect or consequential loss arising out of or in relation to the Bunge Warehousing Agreement.
- (f) Other than its obligations in Clause 13, notwithstanding anything to the contrary in this Bunge Warehousing Agreement, and where permissible by Law, Bunge's total liability to the Warehouse, howsoever arising (including from a breach of this Bunge Warehousing 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 duration of this Bunge Warehousing Agreement.

## **23. Grain Buyers at Bunge Facilities**

Bunge may post prices for grain marketing companies at the Bunge Facilities. The Warehouse acknowledges that Bunge makes no representations with respect to those grain marketing companies – in particular with respect to its financial viability or the terms and conditions under which they may operate. The Warehouse

accepts all risks associated with dealing with the grain marketing companies.

#### **24. Indemnity - Warehouseurs**

The Warehouseur will indemnify Bunge and keep Bunge indemnified against all Losses, damages, costs and expenses however caused arising directly or indirectly from or in connection with:

- (a) any acts by, or omissions of, the Warehouseur (or any person acting on behalf of the Warehouseur) at the Bunge Facilities at which its Grain is stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- (b) any overloading of a vehicle containing any Grain;
- (c) any claim by a third party relating to a lien, charge or other security interest in the Grain or the Outturn Entitlement; any claim by a third party relating to the acts or omissions of the Warehouseur in respect of the Grain or any Title Transfer;
- (d) any breach of warranty or representation given by or on behalf of the Warehouseur in respect of the Grain;
- (e) damaged or contaminated Grain at the risk of the Warehouseur, except for, and to the extent of, any Losses caused by the gross negligence or default of Bunge; and
- (f) any claim by a third party in relation to the whole or any part of a Load that is the subject of Services.

#### **25. Indemnity - Deliverers**

The Deliverer will indemnify and keep indemnified Bunge against all Losses arising directly or indirectly from or in connection with:

- (a) any non-compliance with any relevant mass limits prescribed by legislation, or regulation by;
- (b) any acts by, or omissions of, the Deliverer (or any person acting on behalf of the Deliverer) at the Bunge Facilities at which its Grain is stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person); except for, and to the extent of, any Losses caused by the gross negligence or default of Bunge.

#### **26. Release**

Provided Bunge has acted in good faith and in accordance with the Bunge Warehouse Agreement, the Warehouseur releases Bunge from any liability in respect of the sale by Bunge, on behalf of the Warehouseur, of the Grain or the Outturn Entitlement.

#### **27. Lien**

Notwithstanding that the Grain may be mixed with Grain of like type and specification, Bunge shall have a lien on the Grain and each of such other Grain for all monies owing to the Bunge Group (whether contingently or otherwise on any account whatsoever) by the Warehouseur and such other owners. Bunge may enforce the lien by selling the Grain and/or the Outturn Entitlement (refer to Clause 18 "Default in Payment").

Bunge may nominate and identify any particular quantity of common stocked Grain as being the Warehouseur's Grain for the purpose of enforcing Bunge's lien. The Warehouseur irrevocably appoints Bunge as its agent and attorney to sell a sufficient quantity of the Warehouseur's Grain to satisfy the monies owing and to account to the Warehouseur for any balance of sale proceeds. Any such lien sales of the Warehouseur's Grain will reduce the Warehouseur's Outturn Entitlement commensurately.

## 28. Bunge's Records

In the absence of obvious error, Bunge's records concerning the quantity or quality of the Grain that is being, or has been, warehoused shall be deemed to be conclusive.

Bunge at its discretion may, without consultation and without compensation adjust the Outturn Entitlement for any Grain and/or grade to zero where the entitlement is within + or – 2 tonnes of zero.

## 29. Goods and Services Tax ("GST")

Unless otherwise stated the consideration for any services payable under the Bunge Warehouse Agreement is exclusive of GST and such GST is recoverable from the recipient.

## 30. Agents

A person shall be deemed to be an agent of a Deliverer/Warehouser if the person has express, implied or ostensible authority of that party to undertake the services or transactions contemplated by the Bunge Warehouse Agreement and includes, without limitation, carriers and persons lawfully possessing the NGR delivery cards or electronic personal identification number of the party.

## 31. Information Use and Disclosure

Bunge collects Personal Information from the Deliverer and Warehouser for the purpose of providing the services set out in the Bunge Warehouse Agreement. The Warehouser and Deliverer agree that its delivery details may be provided by Bunge at its discretion to:

- (a) marketers /traders for the purpose of promoting their services to the Warehouser and Deliverer;
- (b) the NGR or its agents for the purposes of the NGR or for promoting goods or services of other companies of relevance to the Warehouser; and
- (c) any organisation to which the Warehouser has donated Grain for the purpose of allowing the organization to identify the donor,
- (d) any adviser, auditor or member of the Bunge Group, including companies which may be located in other countries and otherwise may only be provided to other parties with the consent of the Warehouser.

Bunge's privacy policy is set out on the Website. All notices, requests to access or change information or privacy complaints should be made in writing to "The Privacy Officer", Bunge Australia, Level1 99 Coventry St, South Melbourne, VIC, 3205.

## 32. PPS Law

- (a) Bunge acknowledges and agrees that the Warehouser has a purchase money security interest ("**PMSI**") over the Warehouser's Grain and any proceeds of sale thereof for the purposes of the PPSA and that the Warehouser or the Warehouser's agent may register the PMSI on the Personal Property Security Register.
- (b) On delivery of Grain to Bunge, the Warehouser acknowledges and agrees that Bunge has control of the Grain for the purposes of the PPSA and for the exercise of Bunge's rights under Clause 27.
- (c) The Parties agree, at their cost in all things, to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the other Party, acting reasonably, asks and considers is required for the purposes of:
  - (i) ensuring that any security interest the other Party has under the Bunge Warehouse Agreement is enforceable, perfected and otherwise effective;
  - (ii) enabling the other Party to apply for any registration, complete any financing statement or give any notification, in connection with the security interest so that the other Party has the priority it requires; or
  - (iii) enabling the other Party to exercise rights in connection with its security interest and/or lien under

the Bunge Warehouse Agreement.

- (d) The Parties agree to pay or reimburse the reasonable costs of the other Party in connection with anything done in connection with the enforcement of any such security interest or of any lien over Grain of the Warehouse.
- (e) The Parties acknowledge and agree that they are not entitled to receive any notice from the other Party under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.
- (f) The parties agree that they must not disclose any information of the kind referred to in section 275(1) of the PPSA.
- (g) If there is any inconsistency between the Warehouse's and Bunge's rights under this section and its rights under Chapter 4 of the PPSA, this section prevails.
- (h) The parties acknowledge and agree that unless otherwise defined in the Bunge Warehouse Agreement, terms and expressions used in this section 32 have the same meaning as given to them under the PPSA.

### 33. Assignment

Bunge may assign the benefit of the Bunge Warehouse Agreement to any Bunge Company and without limiting Clause 31, Bunge consents to Bunge disclosing to the Bunge Company any information or documents it considers necessary to exercise these rights.

The Grower may not assign the Bunge Warehouse Agreement at any time unless with the prior written consent of Bunge.

### 34. Governing Law and Jurisdiction

The Bunge Warehouse Agreement will be governed by the laws of Western Australia.

### 35. Force Majeure

- (a) 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):
  - (c) 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;
  - (d) strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
  - (e) breakdown, accidental or malicious damage or destruction of any Bunge's Facility;
  - (f) failure, disruption or delay in transportation;
  - (g) 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
  - (h) acts or omissions of any third party (including without limitation, Governments, Government agencies, subcontractors or customers).
- (b) Subject to Clause 35(d), 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.
- (c) As soon as reasonably possible after the Force Majeure Event arises, the Affected Party must notify the other Party of:

- (i) the nature of the Force Majeure Event;
  - (ii) the cause of the Force Majeure Event;
  - (iii) 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**");
  - (iv) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
  - (v) the expected duration of the delay arising as a result of the Force Majeure Event; and
  - (vi) the steps that are being taken by the Affected Party to minimize the Force Majeure Event.
- (d) 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 35(b) including but not limited to the payment of the Storage and Handling Fees or any other amounts owing under this Agreement.
- (e) If the Affected Party is relieved from performing the Agreement under Clause 35 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.

### **36. Subcontracting of Services**

Without giving notice to the Warehouse, Bunge may in its sole and absolute discretion subcontract all or any portion of the Services or otherwise engage a third party to undertake the Services on Bunge's behalf.

### **37. Variations**

Bunge may, within the season, vary these terms and conditions for prospective application at any time and from time to time by notice to the Warehouse.

## Schedule 1 - Country Site Charges

### **Bunge Upcountry Fees & Charges 2017/18 - Growers**

Charge Type	Wheat	Barley	Canola	Oats
Receival Fee (\$A/t)	\$ 10.80	\$ 12.20	\$ 17.70	\$ 12.20
Domestic Outturn (\$A/t) – Standard	POA	POA	POA	POA
Carry Over charge (Oct 1) - Growers	\$ 3.00	\$ 3.00	\$ 3.00	\$ 3.00
Carry over November Onwards (/mth)	\$ 2.50	\$ 2.50	\$ 2.50	\$ 2.50

**Notes:**

Receival fee will be deducted from grower payment by first grain buyer

### **Harvest Grower Freight Deduction - Bunge Sites 2017/18**

Site	\$/t
Kukerin	\$ 20.00
Arthur River	\$ 14.95

**Notes:**

Subject to change and final confirmation

Grower Freight deduction will be deducted by first grain buyer

Grower Freight deduction from FIS Bunbury Price

### **Up Country Domestic Outturn Fee**

POA

*All charges are quoted exclusive of GST.*