

# Cargill Grower Purchase Contract Terms and Conditions 2002

What you need to know;

1. **General Conditions:** The conditions of this contract (inc NACMA Trade and Arbitration Rules) will form the entire agreement between the parties will supersede and prevail over any other conditions sought to be imposed by either party.
2. **Time:** You MUST strictly comply with any time limits set out in this contract.
3. **Origin:** The Commodity must have been produced in Australia.
4. **Quantity Tolerance:**
  - (a) **We have the right to reject tonnages that exceed the contracted quantity by either the greater of 5 tonnes or 2.5 percent of the contracted quantity.**
  - (b) We can recover any reasonable loss resulting from any shortfall in the quantity delivered.
  - (c) Deliveries that exceed the contracted quantity plus the allowable tolerance will, at the Buyer's discretion, be priced at Cargill's published daily delivery price.
  - (d) Where you have entered into multiple contracts with Cargill for the same season product, deliveries will be applied against contracts in the sequence in which the contracts were entered into.
  - (e) The quantity tolerance for multiple contracts with Cargill for same season product will apply to deliveries under the final contract only, but will be calculated on the aggregate tonnage delivered against same season product contracts with a common delivery period.
5. **Sampling and Analysis:**
  - (a) The Commodity delivered against this contract will be sampled and analysed according to the stated quality standards, by qualified personnel.
  - (b) Unless we otherwise agree in writing, analysis of the consignment as conducted by Cargill or our representative shall be final and binding.
6. **Delivery:**
  - (a) You must ensure that the Commodity is delivered during the stated delivery period of the contract and to have all weight certificates and/or certified delivery receipts issued against the contract number and the trading name as identified on the contract.
  - (b) You will be responsible for all delivery costs unless this contract specifies delivery "ex-farm".
  - (c) If you deliver under a name other than written on this contract the deliveries shall be accepted independent of this contract and priced at the published daily delivery price. You will remain responsible for delivery of the contracted quantity.
  - (d) All deliveries made to the Buyer will be first applied against any open contract(s) existing between the Buyer and Seller before being priced at Cargill's published daily delivery price.
7. **Weights:**
  - (a) If weight cannot be measured at destination, weights measured at loading point, Government or registered weighbridge shall be accepted unless there are obvious errors in weighbridge tickets.
  - (b) If you ask us to, we will give you proof of weight received.
8. **Transfer of Ownership:**

You remain the owner of the Commodity until you deliver it to us at the delivery location. If you can not deliver the goods to us through some fault of ours, risk in the Commodity will pass to us either;

  - (a) On the delivery date if one has been agreed between us;
  - (b) If we have agreed to a delivery period, on the last day of that period, the last day of any month in which you were required to deliver goods to us;
  - (c) In any other case, one calendar month from the date of this contract provided you have notified us that the Commodity is ready to be delivered.
9. **Goods and Services Tax:**
  - (a) The price per tonne payable for the product purchased pursuant to this Contract is quoted as a GST exclusive amount.
  - (b) Words in this clause 9 have the same meaning as in the GST Law unless the context indicates otherwise.
  - (c) **"GST Law"** means the same as in the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
  - (d) Subject to this clause 9, if the Seller is required to charge GST on the supply of the Commodity to the Buyer, the Buyer must pay, in addition to and at the same time as the total Price is payable an additional amount calculated by multiplying the total Price by the prevailing GST rate.
  - (e) The Buyer is not required to pay any amount of GST to the Seller unless the Seller has provided the Buyer with a tax invoice. This Clause does not apply if the Buyer issues a recipient created tax invoice ("RCTI") in accordance with clause 9(f).
  - (f) The parties agree that:
    - (i) the Buyer can issue an RCTI in respect of the supply of any commodity by the Seller to the Buyer under this contract;
    - (ii) the Seller must not issue a tax invoice in respect of any supply by the Seller to the Buyer under this Contract unless the Buyer notifies the Seller that the Buyer will not be issuing an RCTI for that supply;
    - (iii) the Seller is registered for GST purposes as at the date of entry into this Contract and undertakes to notify the Buyer if it ceases to be registered or ceases to satisfy the requirements for issuing an RCTI as set out in the GST Law or as determined by the Commissioner of Taxation from time to time;
    - (iv) the Buyer is registered for GST purposes as at the date of entry into this Contract and undertakes to notify the Seller if it ceases to be registered or ceases to satisfy the requirements for issuing an RCTI as set out in the GST Law or as determined by the Commissioner of Taxation from time to time; and
    - (v) the Buyer indemnifies the Seller for any liability for GST and penalties that may arise from an understatement of the GST payable on any supply to which an RCTI relates.
  - (g) If the amount of GST recovered by the Seller from the Buyer differs from the amount of GST payable at all by the Seller in respect of any supply under this Contract, the amount payable by the Buyer to the Seller will be adjusted accordingly and an appropriate Adjustment Note issued.
- (h) If a payment to satisfy a claim or right to claim under or in connection with this Contract (for example for misrepresentation or for breach of warranty or for indemnity or for reimbursement of any expense) gives rise to a liability to pay GST, the payer must pay and indemnify the payee on demand against that amount of GST.
- (i) If any party has a claim under or in connection with this Contract for a cost on which that party must pay GST, the claim is for the cost plus all GST, except for any GST for which that party is entitled to an input tax credit.
- (j) If a party has a claim under or in connection with this contract, the amount of which depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).
10. **Crop Liens:**
  - (a) You must advise Cargill in writing, prior to delivery, if a crop lien or any other authority to pay to third parties applies to the commodity sold under this contract.
  - (b) An administration fee of \$500 per contract will in all cases apply to crop liens and authorities to pay third parties.
11. **Force Majeure:**

Neither party will be liable for delay or non-performance of this contract which is caused by the following "Force Majeure Events". Namely labour or industrial disputes, the action of any State or Commonwealth Government, fire or flood PROVIDED THAT: where you seek to rely on this clause you can only do so where the Force Majeure Event prevents you from meeting your obligations outlined in this contract and providing that you immediately (being within 2 business days of the force majeure event) notify us in writing of the circumstances of the claimed force majeure event and provide details to our satisfaction as to the existence and impact of such Force Majeure Event. This clause applies to the benefit of a party only for so long as the relevant Force Majeure Event continues. For the avoidance of doubt, production risk affecting your crop such as drought, frost, hail, pests and disease do not constitute force majeure.
12. **Rejection:**

We have the right to reject seed that does not comply to the quality standards specified in the contract.
13. **Default:**
  - (a) A failure by you to deliver, or us to take delivery of the Commodity within 7 days of the end of the delivery period, including each month individually for spread delivery period(s), will be a default for that proportion which is not delivered or accepted, unless an extension has been agreed by both of us.
  - (b) If that default is not rectified within 7 days of the notice having been given to the party in default, the other party has the right to repurchase or resell, as the case may be and the defaulter shall on demand make good the loss (if any) arising on any such repurchase or sale and all incidental expenses.
  - (c) You will be deemed to be in default under sub-clause (b) if you convene or hold a meeting of creditors or commit an act of bankruptcy or being a company shall have a receiver appointed or convene a meeting for the purpose of considering a resolution that the company be wound up or go into liquidation.
  - (d) Refusal by us to perform any of our obligations under this contract shall entitle you upon notice to us to suspend deliveries or rescind the contract or any unexecuted portion without prejudice to any claim for damage that you may have.
14. **Chemical and Pesticide Residue:**
  - (a) Seed delivered against the contract must comply with all Commonwealth and State Laws and requirements relating to chemical and pesticide residue and specified government maximum residue levels.
  - (b) We have the right to recover any loss whether direct or indirect which result from receiving seed that exceeds these laws and residue levels.
15. **Arbitration:**
  - (a) Any dispute arising out of or relating to this contract or the breach, termination or subject matter thereof shall be submitted to and settled by arbitration in accordance with the NACMA Trade and Arbitration rules current at the date of the contract.
  - (b) Neither party to the dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect to any such dispute until arbitrated in accordance with NACMA Arbitration Rules.
16. **NACMA:**

This contract is subject to the standard terms and conditions of the National Agricultural Commodities Marketing Association Ltd (NACMA) Trade Rules. In the event there is an inconsistency between this contract and standard terms and conditions of the NACMA Trade Rules, the terms and conditions of this contract shall apply.
17. **Privacy:**
  - (a) If you are an individual, you agree that we may use any information we collect about you (including the information contained in this contract) for the purpose of managing our commercial relationships with you, including in relation to this contract. We may transfer information overseas and disclose it to others (including, without limitation, contractors and buyers) for that purpose and for related purposes. If you wish to seek access to information we hold about you, please contact our AGA Liaison Officer.
  - (b) If you wish to give us any information about an individual other than yourself, then you agree to ensure the individual to whom that information relates agrees that we may use and disclose information about him or her in accordance with clause 17 (a).