

# A guide to selling grain using grain contracts

Adapted for South Australian growers









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*Disclaimer: The Guide should not be considered as personal or general financial advice. All parties to a contract should seek their own independent advice in accordance with their own specific circumstances.*

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# Foreword

## Message from the GPSA Chair

Grain Producers SA is proud to present the *A guide to selling grain using grain contracts* booklet adapted specifically for South Australian growers in partnership with Grain Trade Australia.

As a grower, I am well-aware of the risks in contracting and selling grain. This booklet helps to break down some of the complexities in contracting and selling grain so growers can upskill in this important area of their business and sell with confidence.

This booklet has been produced as part of the Grain Marketing Operations and Diversification Project which is proudly supported by the South Australian Government through a grant from the Regional Growth Fund.

The Grain Marketing Operations and Diversification Project aims to help growers better understand grain markets to support diversification. The project captures a key priority of the SA Grain Industry Blueprint, launched in August 2020, which is to increase business resilience and sustainability in the grain production sector.

As part of this project, GPSA launched the *Beyond the Silo* campaign last year. A key element of this campaign is the *Beyond the Silo* podcast which I strongly encourage all growers to listen to if they have not already. Over nine episodes, host Drew Radford and Jonathan Wilson, who has since been appointed CEO of Grains Australia, unpack a variety of topics including pricing, futures, foreign exchange, basis, when to sell, contracts and what to do when a contract goes pear-shaped.

The information presented in this booklet, combined with the information in the *Beyond the Silo* podcast and that presented at GPSA's Trade and Market Access Workshops in February 2021, will arm growers with more knowledge when they market their grain in the future.

I trust you will find the contents of this booklet informative and I wish you well in your future grain marketing endeavours.



**Adrian McCabe**

Chair, Grain Producers SA

## Message from the GTA Chair

Grain Trade Australia is pleased to be partnering with Grain Producers SA to help educate growers in grain marketing. I trust you will find the contents of this booklet informative, having been adapted specifically for South Australian grain growers.

It is fantastic to see organisations like GPSA take a leading role in upskilling growers in the area of marketing grain and the contracting options available to them.

GTA's vision is for an efficient, equitable and open commercial grain industry in Australia. This provides the foundation for the Australian value chain and its members to participate in the growth of the global grain industry. GTA's mission is to facilitate and promote trade by providing products, services and advocacy for the Australian value chain.

GTA is the custodian of the Australian Grain Industry Code of Practice. The Code plays an important role in the facilitation of trade and creates value by ensuring confidence in the Australian value chain. The Code is recognised by the Australian Government and by governments in our destination markets increasing surety and confidence to support trade and market access arrangements for Australian grains, pulses and oilseeds. Increased market confidence helps drive value for participants across the supply chain. Australia remains the only major exporting country with an industry managed and driven Code of Practice.

Adhering to the Code will ultimately result in a more profitable grain industry for all participants who have invested, time, hard work and financial resources.



**Andrew Goyder**

Chair, Grain Trade Australia





# Introduction

The purpose of this guide is to provide South Australian grain producers with a practical checklist for the contractual purchase or sale of grain. It is not a substitute for specific terms and conditions as per a contract, but provides general guidelines, developed to assist in understanding the grain contracting process.

There are a range of marketing options designed to meet a producer's commercial needs. Different producers have different risk/reward and cash flow requirements. It is important to determine the range and combination of marketing products that best meet an individual's business needs.

A contract exists to protect both the buyer and seller. The key to a successful contract is accurate, clear and timely two-way communication between the buyer and seller, especially if a problem arises.

**Keep this guide in an accessible place so you can consult it next time you sell grain on a forward or cash basis.**

**Note: This document is only intended to be a guide. The aim is to suggest procedures that should be followed when entering a contract. It is not a legally binding document and legal advice should be sought for specific situations or clarification. For more information go to [www.graintrade.org.au](http://www.graintrade.org.au)**





# Grain contracts



# 1.0 | Before beginning negotiations

## **Understand the elements of contracting.**

A contract may be defined as an agreement between two or more persons which is legally enforceable. There are four main elements of a contract, including:

- a. Offer and Acceptance - note; conduct can indicate that a contract was accepted
- b. Capacity - you must be legally able to enter the contract
- c. Consideration - in this context, generally money
- d. Intention - an intent to enter a contract (as indicated by Terms and Conditions)

A contract can be made wholly in writing or wholly verbal. It can be a mixture of oral or written terms. The acceptance of a contract must be communicated to be effective. This communication may be expressed verbally. An agreement or contract may be made over the phone, in writing, by email, by SMS or by the conduct of the parties to the contract.

There are different times that a grower can contract and different types of contract. Each has its own advantages and disadvantages. Growers should consider the risks/rewards of different contract types, times, and counterparties before entering any contract.

## **What is a contract's purpose?**

A grain contract is a risk management tool for both the buyer and the seller and describes the reasoning for specific actions. It is an agreement between two parties for the delivery of a certain quality and quantity of grain at a specified time and place for a specified price. Both the buyer and the seller are managing risk through locking in the current market price for a future delivery of grain.

Be confident with the company you intend to have dealings with. You may wish to refer to GTA fact sheet Number 3 – “Managing counterparty risk”.

Ensure that you understand what your obligations are under the contract, what the buyer's obligations are and how issues will be resolved should they arise. If you are unclear on any aspect be prepared to ask.

When committing to sell, grain producers must remember that they are entering into legally binding agreements that buyers will expect to be fulfilled.

If your crop suffers adverse seasonal conditions such as frost or drought, these are considered production risks and are not covered by “Act of God” or “Force Majeure” clauses.

It is important, therefore, that caution be taken when committing to supplying grain as there are likely to be financial consequences in failing to fulfil a contract.

Have a pen and paper ready. Be ready to record the details of the contract, preferably in a daybook or diary.



# 2.0 | Negotiating the contract

Record the date, time and name and title of the person you are speaking to in your diary.

Record the details of the contract so you have a record of what was agreed. The details can generally be divided into 3 categories and should include:

## **a. What needs to be agreed upon by both the buyer and seller**

**What? Details of grain quality (grade) required** - grain type, variety, chemical status, quality parameters e.g., protein, moisture, screenings and any premiums or discounts applicable. Make sure you check the GTA Trading Standards available on the GTA website.

**How much? Tonnage and tolerances** - confirm the tonnage required to fill the contract and any operational weight tolerances that may apply.

**Where? Delivery Point** - confirm the delivery point.

**When? Delivery period** - this is the period in which delivery and/ or the contract must be executed, e.g. delivered/transferred from warehousing or washouts negotiated.

**How much? Price** - confirm the price and whether it is GST inclusive or exclusive.

**Calculated how? Price basis** - confirm if the price is free in store (FIS), delivered port, local depot, silo or ex-farm. This confirms whether the buyer or seller is responsible for the transport, storage and handling charges.

**Other charges?** Fees and/or charges applicable, for example, state and federal research and development levies and End Point Royalties (EPRs). For details of EPR applicable varieties see the GRDC website [www.grdc.com.au](http://www.grdc.com.au).

**Paid when?** Payment Terms - agree and confirm when payment is due and accepted payment methods.

## **b. How issues will be resolved**

**Default procedures** - clarify the default procedures applicable if you are unable to deliver the grain as per the specifications of the contract, for example, any damages such as 'washout' fees.

**Dispute resolution** - you should also clarify dispute resolution mechanisms in place to deal with any contract conflict. This should be stated on your contract confirmation advice.

**Crop Liens** – It is your responsibility to advise the buyer of any registered crop lien(s).

Most, but not all, grain contracts will reference GTA Trade Rules. GTA contracts and Trade Rules contain agreements to refer disputes to the GTA Dispute Resolution process. Parties to contracts that incorporate the GTA Trade Rules are obliged to refer any unresolved contractual disputes to GTA for settlement through the GTA dispute resolution process.

Contracts are open to negotiation. You have the right to negotiate on any point of the contract – including payment terms. Any alteration to the contract must be agreed by both parties. It is good practice to document any alterations. Variations are usually noted in a Special Conditions section.

It is important to keep records of all contracts; it may be useful for producers to assign their own contract number to assist with this. However, quote the buyer's contract number when communicating with the buyer and delivering grain.

Ensure that you have read and understood the terms and conditions. If you do not understand something within the terms and conditions of the contract, do not agree to the contract until the point(s) in question is (are) clarified.



# 3.0 | Contract confirmation

Read and check the contract details against the notes you recorded during your conversation with the buyer. Ensure the contract confirmation and your diary notes align on the following key points:

- Grade
- Tonnage and tolerance
- Delivery point
- Delivery period
- Price
- Price basis
- Fees and /or charges payable
- Payment terms
- Default procedures
- Dispute resolution procedures
- Trade Rules that apply
- Any special conditions negotiated

If you notice any discrepancies, contact the buyer IMMEDIATELY to resolve these. Ensure you also take note of the time and details of the person you speak with.

If you have negotiated any additional or different conditions, ensure they are noted and they match your records.

If you are unsure about any term or condition, contact the buyer and have it explained. Ensure you keep notes. If you are still unsure, seek advice.

If you have further discussions about the contract, ensure you diarise changes and have them confirmed in writing as soon as possible.





# 4.0 | Returning the contract confirmation

Contracts can be made verbally, therefore it is most likely that a contract has been legally formed regardless of whether a contract confirmation is signed or not. Not signing the contract confirmation does not alter its legal status.

Signing a contract confirmation is good practice.

When you are satisfied with the contract confirmation, sign it and return it to the buyer. This should be done within 24 hours of receiving the contract confirmation.

In the absence of a notification from the seller, the buyer is entitled to assume the contract is as written in the contract confirmation.





# Contract Issues – seller (grower) related

## 5.0

As soon as you suspect that you might have issues fulfilling any contract condition it is imperative that you discuss the issue with the buyer as soon as possible. By giving buyers notice of potential issues, buyers may be more willing and able to offer an acceptable outcome. Buyers may have obligations that correspond to your contract. By discussing issues as soon as they arise, buyers may be able to show additional flexibility.

If the delivery issue relates to timing, location or quality of grain the buyer may be in a position to offer flexibility, however, is under no obligation to do so. The greater notice that the buyer has of potential issues may allow greater opportunity for amicable settlement.

### **What is a washout?**

If the grower cannot deliver against the contract, the buyer will have to replace that grain, buying it from the market at the time of notification. This is generally referred to as a washout.

Due to the default from the seller, the buyer may be exposed to a negative financial result due to the difference in the original purchase of grain and current market price. In order to establish this exposure, it may be necessary to calculate a washout price.

### **How is a washout price determined?**

The washout price can be calculated in many different ways including the review of advertised grain bids on an agreed date or potentially the actual cost of replacing the grain.

When the parties to a contract are unable to agree on the values used to determine the washout, then either party can refer the issue to GTA for determination under the Dispute resolution service (fees apply) Refer GTA Trade Rule 17.

Please note: Neither GTA nor GPSA are able to give advice regarding either the application or calculation of a washout.

A washout is a way of settling your obligations under a contract without reference to a court or arbitration and usually before the time for performance of your obligation falls due.

### **Washout payments**

The washout will usually involve a payment from one party to the other. While you cannot be forced to washout a contract you should carefully consider such an offer as it may be in your best interests to accept a washout before the time for performance falls due.

In general, if you do not think that you will be able to perform your obligations under a contract by the due date and you know this ahead of time, it might be worth settling and performing a washout to protect yourself against any further fluctuations in the contract price.

### **Force Majeure is not a “get out” clause**

Force Majeure only extends to the delivery period that a counterparty must meet their contractual obligations, be they a seller or buyer. Crop production failure is specifically excluded. A contract is not able to be cancelled due to invoking force majeure. Refer to GTA Trade Rule 21.



# 6.0 | Contract Issues – buyer related

Confirm payment has been made on previously agreed terms.

If payment has not been made in the first instance you should contact the buyer for resolution.

If there are issues relating to the contract you should check the internal and external dispute resolution terms specified in your contract.

- Seek resolution from the person you originally negotiated with. Failing that;
- Seek a resolution with their superiors. Failing that;
- Use the GTA Dispute Resolution Service and seek resolution.
- You may also wish to seek your own legal advice.



# 7.0 | Dispute Resolution and Arbitration

The vast majority of grain contracts are executed and completed without significant issue, however for some contracts, matters of dispute related to the contract will need to be resolved.

The contract terms and GTA Trade Rules exist to protect both the buyer and seller, including in the manner of resolving disputes.

The majority of contracts written for the purchase and sale of grain in SA reference GTA Trade Rules. If the contract refers to GTA Trade Rules, parties are obliged to refer any unresolved contractual disputes to GTA for settlement through the GTA Dispute Resolution Service.

## **Is GTA Neutral? – Will I get a fair go?**

GTA is a non-political organisation established to ensure the efficient and fair conduct of commercial transactions across the grain supply chain.

## **I have not signed anything; do I still have a contract?**

If you are in doubt you should consult a lawyer. That being said, the fact that you have not signed anything does not necessarily mean that you do not have a binding contract. The word “contract” refers to a legally enforceable agreement between two or more parties, rather than a piece of paper with signatures on it.

A binding contract can, for example, be created over the telephone. In this case it is customary for the buyer to send a “contract confirmation” form, which is intended to confirm the details of the agreement reached over the telephone.

A seller may also confirm a contract with a buyer. The fact that such a document is not signed does not mean that a contract has not come into existence.

## **Where can I get independent advice about GTA Trade Rules?**

Grain contracts are legal agreements, therefore professional legal advice should be sought where clarification on an issue is required. Independent grain marketing advisers may also be of assistance for issues not requiring legal advice. Please note: neither GTA nor GPSA are able to give you advice in relation to disputes or the implementation of the Trade Rules.

## **What is the legal standing of the GTA Dispute Resolution process? Is a GTA Award recognised by the Courts?**

GTA arbitrations are subject to the provisions of the GTA Dispute Resolution Rules and the Commercial Arbitration Act (NSW) 2010. Arbitration Awards are as enforceable as a judgement of the Courts.

## **Do I have to go to arbitration if I have not signed anything?**

Once again, this is really something you should discuss with your solicitor. An agreement to arbitrate disputes is binding and enforceable in a Court. As detailed above, the contract may stand even without the provision of signatures on the Contract Confirmation from one or both of the parties.

If the contract references the GTA Trade Rules, then disputes must be referred to GTA in the first instance. By not participating in arbitration your argument is not able to be heard by the Arbitration Tribunal. It is also possible to go to arbitration without admitting that you have a contract. It is possible to ask the Arbitration Tribunal to dismiss any claim on the basis that you did not enter into a contract in the first place.

## **Is arbitration expensive?**

There are fees associated with GTA Arbitration. GTA tries to ensure overall costs of GTA arbitration is no more expensive than going through the Courts. GTA Arbitrations are reasonably quick, which can be a distinct advantage over the Court process. GTA Arbitration is “peer” arbitration conducted by participants in the grain trade.

## **Can I recover my arbitration costs if I am successful in an arbitration?**

YES - Most parties in their submission to the Arbitration Tribunal claim recovery of legal and arbitration costs incurred.





### **Is GTA arbitration compulsory? Is it binding?**

If you are party to an arbitration agreement referring disputes to GTA Arbitration, then yes, it is binding. This will be the case if your contract incorporates the GTA Trade Rules. If you change your mind and you do not want to arbitrate, you must get the agreement of the other party.

Similarly, even if there is no reference to a dispute resolution process in your contract, you may still decide to ask GTA to conduct the Arbitration, however you will again need the consent of the other party. A GTA Arbitration award is binding and enforceable. It is as enforceable as a judgement by the Court.

GTA Arbitration awards have been upheld and enforced by the courts.

### **Can GTA or GPSA give me advice about my rights and obligations under the GTA Trade Rules and Dispute Resolution Rules?**

GTA can provide information about the dispute resolution process. However, neither GPSA nor GTA can give advice about how the Trade Rules will be applied and what your rights might be under a GTA contract or Arbitration. Because the GTA Trade and Dispute Resolution Rules become part of your contract a solicitor will be able to advise you on specifics.

**Further information is available on the GTA website at [www.graintrade.org.au](http://www.graintrade.org.au)**

# Managing Counterparty Insolvency

## 8.0

### Be prepared for insolvency to occur

Insolvencies occur in all industries including grain and, therefore, it is good business practice to be prepared to deal with an insolvent situation.

The best preparation is to avoid dealing with counterparties that are at risk of becoming insolvent. However, even with the best preparation it is possible that you may have to deal with an insolvent counterparty at some point.

### What is insolvency?

There are two primary definitions of insolvency

1. The inability to meet liabilities as they fall due; and
2. A shortfall of assets to liabilities

While the first definition is more commonly used both are relevant: as without support from another party the second definition will result in an occurrence of the first.

For a company faced with insolvency the inability to meet liabilities as they fall due is not the result of a short-term incident but more an inability to meet obligations over an extended period. Being unable to meet creditor liabilities for one day due to cashflow timing is not an event of insolvency. However, it is cause for concern and risk evaluation and mitigation action may be required.

An event of managed insolvency can also occur if the company is voluntarily wound up or has applied to be wound up. These arrangements usually occur when a business ceases trading or is undergoing a restructure and there has been full provision for liabilities. As a result of the full provision this form of insolvency is not considered a risk.

### What is the result of insolvency?

The following are some of the possible results of insolvency:

- Prior Amendments on 1 July 2018 to the Corporations Act 2001 (Cth), the Administrator can choose (based on value

to the insolvent business) which contracts to execute or conversely to enforce. For more information see the GTA website.

- Directors and officers of the insolvent entity may face civil and criminal action as a result of the insolvency;
- Creditors of the business have different orders of priority regarding subsequent payments from the entity.
- A different party takes control of the business and large costs are incurred;
- Payments to suppliers prior to the insolvency event may be forcibly repaid to the entity; and
- Usually a great length of time passes before the affairs of the entity are resolved.

Insolvencies are unpleasant experiences for all parties and best avoided if possible. It is very rare to be an unsecured creditor to an insolvent business and receive full recovery of your claim.

### What are the primary risks in the grain insolvency?

There are two main risks in a grain insolvency - delivery risk and market exposure risk.

Delivery risk is the failure to receive payment for product that has been delivered to the counterparty. The other, less obvious, risk is the change to market position created by default on contracts. This is the change in the financial position as a result of the market movement in price of the original contract price as compared to the market price on the day you close the position out.

Exposure from the first risk is obvious. However, exposure under the second risk is not as obvious unless you run a counterparty position report. A counterparty position report shows the exposure you have on all counterparty contracts against the current market. It shows the risk you bear if they were to default on their contract obligations at a point in time.



## Understanding Counterparty dependency is important

Your risk with a default is not just with the buyer of your grain. The delivery risk is associated with the buyer, but the market exposure risk may be with sellers, buyers and other counterparties. Your ability to meet trade obligations are not reliant solely on sellers and buyers but on all the counterparties involved in the delivery process.

Some are obvious such as freight companies and/ or storage companies, but others such as financiers require broader thinking. You need to evaluate your risk to all counterparties and include it in your management processes.

Reducing risk - There are many methods of reducing insolvency exposure. Some examples are:

- Elimination - only sell cash before delivery and only contract for immediate delivery. However, this strategy must be considered against the potential limited ability to generate a business return.
- Evaluation - investigate the viability of your counterparties. Look at:
  - the strength of their balance sheet
  - length of time in business
  - management/ ownership professional reputation
  - their record of profitability payment
  - performance - talk to parties that deal with the company
- Risk mitigation - these are many actions available to limit the counter party risk. These include:
  - credit and trading limits
  - credit insurance
  - retention of title clauses
  - personal guarantees
  - payment instruments (such as Letter of Credit, bill for collections, etc)
  - counterparty insurance
  - offsetting positions and
  - the inclusion of the GTA Trade Rules and contract clauses relating to insolvency in your contracts.
- Ongoing measurement. Don't set and forget. Actively monitor your counterparties and watch for signs of concern. Are they:
  - paying late
  - increasing their payment terms
  - increasing restrictive business practices and reducing flexibility
  - are insurers reluctant to provide cover to them
  - do they refuse to release current information on their businesses and
  - are other suppliers refusing to deal with them?

Watch and act; or at least return to your business evaluation process. If you are becoming uncomfortable with a counterparty, start taking some action to mitigate ongoing risk.

## Who can be involved in the insolvency?

When company insolvency occurs, there are three types of parties that may become involved in the management of the business. They have different powers and obligations.

Administrators - are usually appointed by the entity's board of directors to prevent the entity trading while insolvent. The Administrator will assume the running of the business and incur debts and will attempt to maximise the return for all creditors.

Secured / Unsecured Creditors - A secured creditor is someone who has a 'security interest', such as a mortgage, in some or all the company's assets. As a result, the secured creditor has additional rights compared to an unsecured credit. These rights may include liens that guarantee the proceeds from any property serving as collateral for their claim.

Receivers - are appointed by secured creditors and will attempt to maximise returns on their behalf. Secured creditors have priority over unsecured creditors and so the Receiver has priority over Administrators. Often an Administrator and a Receiver are concurrently appointed to an insolvency.

Liquidators - are appointed once the creditors determine that a business is incapable of being sustainable and must be liquidated. The Liquidator has the power to recover preferential payments to creditors and pursue Directors and Officers for losses if the business was trading while insolvent.

The creditor committee - is a small group of creditors that are appointed by the creditors to advise the Administrator /Liquidator during the administration or liquidation.

It is important to promote knowledge of the GTA Trade Rules and business practices to the Administrator, particularly if the Administrator does not have experience in the grain industry.

## What you need to do if a counterparty is insolvent

GTA has a number of contract clauses and Trade Rules that cover insolvency. Make sure you are familiar with the ground rules.

### 1. Find out.

Investigate any rumours of insolvency. The sooner you know the sooner you can begin reducing your exposure. Talk to the company or check with the ASIC website to see if an Administrator has been appointed. If you have received a communication from the company or Administrator, read it carefully. The date you become aware of an insolvency is important!

## 2. Correct your position.

The loss of a contract will create a change in market position for you. Although the Administrator may allow you the right to wash out the contract, the washout settlement may be less than current market value. Sometimes a major player's insolvency may dramatically move the market price and a day's difference could be enormously expensive. If you are running a Mark To Market (MTM) reporting system, perform your washout and remove the old contract from your position reporting to correctly state your exposure.

## 3. Calculate your washout.

This is the difference in the market price to the contract price on the day following either:

- (i) the day of notice from the administrator or the day you first became aware of the insolvency event; or
- (ii) the day of the event of insolvency. The market price used needs to be for the same commodity, delivery period and delivery point. It is recommended that your supporting documentation for the washout has all these characteristics being identical. The washout invoice is not subject to GST as it is a financial instrument, and it can be in your favour or the insolvent party's.

## 4. Submit your claim.

The administrator will provide a form to complete that substantiates your claim as a creditor. Your receivables, including washout invoices, are part of the supporting documentation. You are encouraged to include the invoices, proof of delivery and copies of the signed contracts. Proof of the market prices on the day of washout is also essential. Most people use a broker confirmation of the market prices.

## 5. Attend meetings.

Under section 436E(2) of the Corporations Act, the first creditor meeting must be held within eight business days after the administrator begins and there must be five days' notice. This is the only effective opportunity to replace an administrator with someone more qualified. Creditor meetings are also a valuable source of knowledge and also provides information on other counterparties. This may be important as there can be consequential ripple effects from an insolvency event.

## 6. Try to get an expert on the creditor committee.

The creditor committee is an inexpensive means of helping the administrator understand the grain value chain and methods to improve the chance of recovering funds. It is a complicated process and often administrators generally have little, or no experience in the grain industry. They may not be aware of issues that can dramatically alter the distributions that can be achieved.

## 7. Continue to pursue.

After the administrator has been appointed and meetings held it is important to continue to manage exposure to the insolvent business. As a minimum, continue to regularly liaise with the administrator, implement your mitigation steps and take steps to recover costs from any personal guarantees.

## What are the GTA insolvency Trade Rules?

Rule 17 is the GTA insolvency default clause.

The Definitions section for the GTA Trade Rules defines an insolvency event. It covers the situations previously discussed as well as broader coverage, including an application for court appointment of controller/ administrator, a secured creditor taking possession of the asset and similar items.

Section 2 refers to the notification of default and the trigger of the date for fair value of the washout. Written notice should be given within two days of the event of insolvency. If written notice is received within the 2-day period, then the fair value date is the day after notice. If notice is not received within the period, the non-defaulting party has the option of:

1. the day after notice was received; or
2. the day after the event of insolvency.

Fair value is clarified in GTA Trade Rules.

Refer to these rules any time an insolvency event arises.

## What are other issues in insolvency?

Some companies include a 'right of offset' clause in all their contracts. This permits a right, established in law to offset liabilities and receivables in normal business activity and in case of insolvency. Although untested in law, it is the usual practice for administrators to allow the offset of liabilities and assets, as it is beneficial in speeding up the settlement process.

GTA has introduced retention of title in standard GTA contracts. Retention of title has much legal history but the process for the GTA clause has not been tested yet





## GTA Contract No.6 – Grower Contract CONTRACT CONFIRMATION

GTA Trade Rules and Dispute Resolution Rules apply to this contract

This Contract is confirmation between:

### BUYER

Contract No:

Name:  
Company:  
Address:

Buyer ABN:  
NGR No:

### SELLER

Contract No:

Name:  
Company:  
Address:

Seller ABN:  
NGR No:

The Buyer and Seller agree to transact this Contract subject to the following Terms and Conditions:

Commodity:	GTA Commodity Reference:	
Grade:	Inspection:	(Origin – Destination)
Quantity:	Tolerance:	(Refer over)
Packaging:	Weights:	(Origin – Destination)
Price:	Excl/Inc/Free GST	
Price Basis:		
Delivery/Shipment Period:		
Delivery Point and Conveyance:	(Delivered, Shipped, Free In Store, Free On Board, Ex-Farm, etc.)	
(Road, Rail, Delivered Container Terminal, Freight, Rated Basing Point, Loading Weight requirements if applicable)		
Payment Terms: The buyer agrees to pay the seller within _____. In the absence of a declaration, payment will be 14 days end of week of delivery.		
Levies and Statutory Charges: Any industry, statutory or government levies which are not included in the price shall be deducted as required by law.		
Disclosures: Is any of the crop referred to in this contract subject to a mortgage, Encumbrance or lien and/or Plant Breeders Rights and/or EPR liabilities and/or registered or unregistered Security Interest? <input type="checkbox"/> NO <input type="checkbox"/> YES (Please <input type="checkbox"/> appropriate box) If "yes" please provide details:		
Other Special Terms and Conditions:		

All Contract Terms and Conditions as set out above and on the reverse of this page form part of this Contract. Terms and Conditions written on the face of this Contract Confirmation shall overrule all printed Terms and Conditions on the reverse with which they conflict to the extent of the inconsistency. This Contract comprises the entire agreement between Buyer and Seller with respect to the subject matter of this Contract.

#### Incorporation of GTA Trade & Dispute Resolution Rules:

This contract expressly incorporates the GTA Trade Rules in force at the time of this contract and Dispute Resolution Rules in force at the commencement of the arbitration, under which any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration.

#### Recipient Created Tax Invoice (RCTI).

To assist with the processing of the Goods and Services Tax compliance, the buyer will prepare, for the seller, a Recipient Created Tax Invoice (RCTI). If the seller does not require this service they are required to sign this authorisation.

\* Please DO NOT issue a RCTI.

Buyers Name: PRINT NAME

Buyers Signature:

Date:

Seller's Name: PRINT NAME

Seller's Signature:

Date:

This Contract has been executed and this form serves as confirmation and should be signed and a copy returned to the buyer/seller immediately.

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# Grain Trade Australia Limited (GTA)

## Standard Terms and Conditions - Grower Contract No.6

**TRADE RULES:** This Contract is subject to the Trade Rules of GTA currently in effect, except to the extent the same are in conflict with the Terms and Conditions expressed herein, with such Rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant.

**TIME:** All stipulations set forth in the Terms of Trade as to "TIME" are of the essence.

**QUANTITY:** Unless otherwise stated, all quantities shall be expressed metrically and to the nearest one/one-hundredth [1/100] of a tonne.

**QUANTITY TOLERANCE:** The Seller shall have the option of delivering five percent [5%] or twelve [12.00] tonnes, whichever is the lesser quantity, more or less than the contractual quantity at the Contract price. This variation of five percent [5%] or twelve [12.00] tonnes is hereinafter referred to as the "Tolerance".

**CARRY CHARGES:** The Seller is entitled to seek recompense from the Buyer for carry charges for grain held by the Seller beyond the contracted period subject to GTA Trade Rules 17

**CONVEYANCE AND DELIVERY INSTRUCTIONS:** Unless otherwise agreed, the Seller shall have the right of conveyance.

**INTEREST:** If any payment is not made on or before the due date for payment, interest shall be payable at the rate selected.. Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily.

**OWNERSHIP AND PASSING OF TITLE:** The risk of loss and/or damage shall remain with the Seller until the goods have been conveyed to the Buyer at the designated point of conveyance:

On FOB Origin, Ex-Farm, Ex-Store, or FOB Basing Point contracts; risk passes at the time when the goods are accepted by the carrier via the appropriate shipping document.

On Delivered or Delivered Basing Point contracts; risk passes at the time when goods are constructively placed, or presented for unloading, or otherwise made available at the Buyer's original destination.

On In-Store contracts; risk passes at time of transfer and/or filing of documents (if required), unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

Unless otherwise agreed, title to goods as well as property in the goods remains with the Seller until all amounts payable under this Contract have been received in cleared funds in specified bank account. This clause creates a Purchase Money Security Interest for the purposes of the Personal Property Securities Act 2009 (Cth) ("PPSA"). Where permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times. Neither party may disclose any information pertaining to this contract except as otherwise required by law.

**FAILURE TO PERFORM:** Failure to perform in keeping with the Terms and Conditions of a Contract shall be grounds for the refusal only of such Delivery(ies) or Shipment(s) in default, and not for the rescission of the entire Contract or any other Contract between the Buyer and Seller.

**DISPUTES:** Any party or parties who have entered into Terms of Trade subject to GTA Trade Rules shall be entitled to refer any disputes arising out of such contract, and which cannot be resolved between the parties, to GTA for Arbitration.

**ARBITRATION:** If any dispute arises out of or relates to this Contract or the breach, termination or subject matter thereof, the dispute shall be submitted to and settled by Arbitration in accordance with GTA Dispute Resolution Rules in the edition current at the commencement date of arbitration, such rules forming an integral part of the Contract and of which both parties hereto shall be deemed to be cognisant. Any dispute, controversy or claim arising out of, relating to or in connection with a contract incorporating the GTA Trade Rules, including any question regarding its existence, validity or termination shall be resolved by arbitration in accordance with the Dispute Resolution Rules in force at the commencement of the arbitration.

**RCTI:** Recipient Created Tax Invoice - Reference on the front of this form provides for the seller to authorise the buyer to issue the RCTI on his behalf. This request also requires the seller's signature.

**ENCUMBRANCES:** The Seller must notify the Buyer if an Encumbrance exists over the Commodity. The Seller unconditionally and irrevocably directs the Buyer to deduct from any payments due to the Seller:

the amount secured by any Encumbrance over a Commodity and pay the amount deducted to the holder of the Encumbrance before paying any amount to the Seller; and

all reasonable costs and expenses incurred by the Buyer in dealing with any Encumbrances.

At the direction of the Buyer, the Seller will procure the release of any Encumbrance over the Commodity and will do all things requested by the Buyer to evidence and record such release in any relevant security register (including procuring the execution of any documentation requested by the Buyer for such purpose) by no later than the time of payment to that Encumbrance holder of the secured amount as contemplated under this Encumbrances clause.

The Seller will notify the Buyer in writing immediately of any change to the amount secured under any Encumbrance over a Commodity. The Seller agrees to the Buyer charging an encumbrance processing fee of \$200 per Encumbrance, which to the extent not paid by Encumbrance holder, will be a debt.

The Seller indemnifies the Buyer and its related entities against any claim or demand by any person claiming any interest in the Commodity, regardless of whether the Seller has notified the Buyer of that interest.

### DEFINITIONS:

Encumbrance - means any security for the payment of money or the performance of obligations including a Crop Lien, mortgage, charge, lien, pledge or trust, or any other security interest as defined in the Personal Properties Securities Act 2009 (Cth).

**NOTE:** The GTA Trade Rules are available on the GTA website, [www.graintrade.org.au](http://www.graintrade.org.au)



# About Grain Trade Australia Ltd (GTA)

GTA is the Australian grain industry body representing and servicing the commercial interests of the Australian grains industry.

## Background

Grain Trade Australia was formed in 1991 to standardise Grain Standards, Trade Rules and grain contracts to enable the efficient facilitation of trade across the grain supply chain.

It has more than 280-member organisations ranging from regional family businesses to large national and international trading/storage and handling companies.

Members were and continue to be extensively involved in the storage and freight movements of all grain produced in Australia each year. More than 90% of all grain contracts executed annually within the country refer to GTA's Grain Standards and/or Trade Rules.

## GTA Core Functions

GTA's role is to ensure the efficient facilitation of commercial activities across the grain supply chain. To achieve this, GTA develops and provides industry with some key tools:

## GTA Trading Standards

GTA develops the wheat and coarse grain Trading Standards and also distributes the standards for oilseeds (developed by Australian Oilseeds Federation) and pulses (developed by Pulse Australia) across the Australian grain industry. Development of the GTA Trading Standards is transparent and receptive to the needs of the Australian grain industry in order that GTA fulfils its charter to "facilitate trade".

These Trading Standards are the basis of trade for domestic and export contracts.

## GTA Contracts

GTA has developed nine contracts for use within the Australian grain trade.

**Contract No. 1** - For Grain and Oilseeds in Bulk FOB Terms - contract for export shipments in bulk.

**Contract No. 2** - For Grain and Oilseeds in Bulk Delivered Price Basing Point or Port Terminal (Basis Track) - this contract enables export traders and large domestic traders to trade and title transfer at a Track level.

**Contract No. 3** - For Grain/Oilseeds/Birdseeds/Pulses etc. - this contract can be used for trade between producers and grain merchants and between grain merchants, such as on a Delivered basis.

**Contract No. 4** - For Grain/Oilseeds/Birdseeds and Pulses in containers Delivered Container Terminal (DCT) - contract for export shipments in containers.

**Contract No. 5** - For Grain/Oilseeds/Birdseeds and pulses in containers Delivered to the Buyer on a Cost and Freight (CFR) or Cost, Insurance and Freight (CIF) basis.

**Contract No. 6** - Grower Contract - this contract was specifically developed for trade between merchants and between grain producers and merchants.

**Contract No. 7** - Free on Rail Contract- this contract is for trade of grain where title transfer occurs on loaded rail cars.

**GTA Storage & Handling Agreement** - This Agreement is for the storage and/or warehousing and/or on-farm storage of commodities.

**GTA Bulk Freight Contract** - Developed for a party entering into an agreement for the bulk freight of Goods. This contract details the agreement between the consignor and the carrier.

## **GTA Trade Rules**

GTA Trade Rules underpin contracts agreed by counterparties. Parties to a contract are free to agree upon any contractual provisions that they deem appropriate. The GTA Trade Rules apply only to the extent that the parties to a contract have not altered the terms of these Rules or the contract is silent as to a matter dealt with by the pertinent Rule.

GTA Trade Rules are fundamental to the facilitation of trade in grain. Producers that utilise grain contracts to buy and sell grain should be familiar and have access to the GTA Trade Rules.

The GTA Trade Rules also provide instructive information for anyone considering or involved in the purchase or sale of grain. In particular, the Definitions section provides a glossary of common contract terms and conditions that should be understood by counterparties to a contract.

## **GTA Dispute Resolution Service**

GTA assists parties to grain contracts to resolve commercial disputes by peer review through its Dispute Resolution Service. The process is designed to save time and expense while providing an efficient, fair and equitable means to settle disputes related to commercial transactions. The three methods offered to resolve a dispute are expert determination, fast track arbitration and full arbitration.

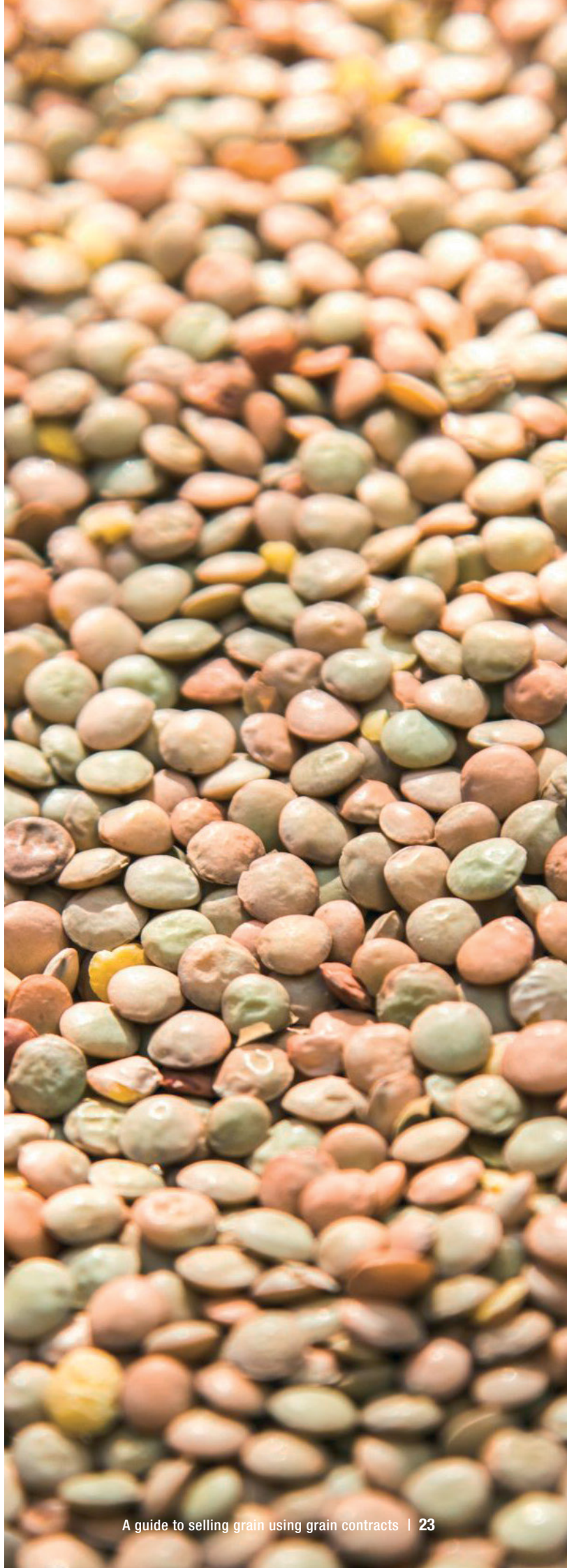
## **Advocacy**

GTA is non-political, however, issues arise from time to time where there is common agreement amongst members and GTA represents their interests.

## **Professional Development**

GTA conducts a professional development program across Australia. Workshops are conducted on a range of topics including Contract Terms & Conditions, Trade Rules, Australian Financial Services License and Commodity Pricing.

GTA develops the training courses to support industry, ensuring content provides knowledge, is current, reliable and relevant. The training schedule for these courses is available on the GTA website.







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