

## GRAIN POOL MASTER AGREEMENT

SEPTEMBER 2016

### 1. Introduction

- You (you/your) are in the business of producing grain; and
- AgRisk Management Pty Ltd t/a Market Check ABN 33067313722 (we/us/our) is a business based in Australia and is in the business of providing financial product advice, brokerage/agency services and consulting assistance to grain producers in connection with the marketing and risk management of grain and other agricultural commodities, including the management of grain pools; and
- You wish to utilise our services.

The parties agree as follows:

### 2. Application of these Terms

- 2.1.1. These terms apply when they are incorporated by reference into your contract with us.
- 2.1.2. They will also apply when you commit grain to a pool operated by us.
- 2.1.3. These terms also include the Grain Trade Australia (**GTA**) *Operating Standards for Pool Providers (GTA Standards)* in the version current as at the date you transfer grain into a pool operated by us. If there is any inconsistency between these terms and the GTA Standards, these terms prevail.

### 3. Market Check Grain Pool

- 3.1.1. You will notify us that you have grain in a Permitted Storage Facility which you wish to transfer into a Market Check Pool and will provide us with such details as we may reasonably require. You will specify which Pool Marketing Program you wish to use.
- 3.1.2. If the grain is in a BHC you authorise us to title-transfer the grain into our account.
- 3.1.3. If the grain is in Private Storage or Approved Storage you will provide us with a Notice of Title Transfer.
- 3.1.4. We have no obligation to accept your grain, but if we accept your transfer into a Market Check Pool, we will issue a Contract Confirmation confirming the quality; variety; tonnage and location of the grain we have accepted, as well as the Pool Marketing Program and any other specification, terms and conditions upon which we accept title transfer.
- 3.1.5. The Permitted Storage Facility records in respect of weight, grade, qualities, variety and location are final and binding. If you consider that there is an error in any data, it is your sole responsibility to have those records corrected.
- 3.1.6. We are entitled to rely on your records set out in the National Grower Register (**NGR**). We have no liability for any error contained in the NGR and it remains your sole responsibility to make sure those details are correct.
- 3.1.7. When we issue that Contract Confirmation, title and risk in the grain will pass to us.
- 3.1.8. The grain will be marketed and managed, and future payments made to you, in accordance with your chosen Pool Marketing Program as defined in the Pool Schedules, and these terms.

### 4. Responsible Officer:

- 4.1.1. Brett Stevenson is our Responsible Officer (**RO**) in respect of grain marketing, price risk management and derivatives. Mr. Stevenson may report to you in relation to these issues from time to time.

### 5. Market Check Pool Strategy and Marketing Program

- 5.1.1. Market Check will manage and market the pooled grain according to your chosen Pool Marketing Program as detailed in the Schedule. This strategy may be varied at any time, on notice to you.

**6. Payment**

- 6.1.1. You will receive payments from time to time as the grain is marketed and proceeds of sale are received.
- 6.1.2. By transferring grain to us you are authorising us to issue a Recipient Created Tax Invoice.
- 6.1.3. Market Check will charge management and agency fees as set out in the Schedule. Fees will be deducted from payments made during the term as detailed in the Schedule.
- 6.2. Our management and agency fees are deemed to have been earned in full at time of transfer of title.

**7. Standards for Services and Deliverables**

- 7.1.1. All services and deliverables encompassed in this Master Agreement shall be provided in a timely manner and to standards which equate to best practice in the industry, both in Australia and internationally.
- 7.1.2. While we will endeavour to secure the best possible returns for the pooled grain, we cannot guarantee achieving any particular return for the grain.

**8. Recourse**

- 8.1.1. We retain a lien on any grain in respect of any amounts owing or which may become owing to us and reserve the right at our sole discretion to sell or otherwise dispose of any grain over which we exercise any lien.
- 8.1.2. We reserve the right to set-off any amounts we owe to you against any amount you owe to us.

**9. Termination**

This Master Agreement may be terminated where both parties agree that such termination should take place - termination in this instance occurs at the time mutually agreed.

**10. Liability and Indemnity**

- 10.1. You agree to indemnify us and keep us indemnified against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against us or incurred by us as a direct or indirect result of any one or more of the following:
  - 10.1.1. Any breach by you of your obligations under this Master Agreement;
  - 10.1.2. A failure of your grain to comply with the specifications for the nominated Pool Marketing Program;
  - 10.1.3. Contamination or infestation in the grain;
  - 10.1.4. Excessive pesticide levels in the grain;
  - 10.1.5. Any wrongful, wilful or negligent act or omission by you or your employees, agents or contractors; or
  - 10.1.6. Any one or more of any representations or warranties made in this Master Agreement by you being untrue or misleading in any material respect (including by omission).
- 10.2. We will not be liable to you in any circumstances whatsoever arising from the loss of or damage to the grain including but not limited to defaults by purchasers of the pooled grain.
- 10.3. The indemnities set out in this Master Agreement survive termination and extend beyond the Completion Date.

**11. Representations and Warranties**

- 11.1. You represent and warrant now and at the time of each transfer of grain to us that:
  - 11.1.1. You have the legal and beneficial ownership in the grain;
  - 11.1.2. Your ownership is unencumbered;
  - 11.1.3. The grain meets the specifications for the nominated Pool Marketing Program;
  - 11.1.4. You have full legal capacity and power to undertake to comply with the terms of the Contract Confirmation and this Master Agreement and to carry out the transactions contemplated by this Master Agreement;
  - 11.1.5. You are not the subject of an Insolvency Event (as defined in the Trade Rules); and if you do become insolvent you will notify us immediately;
  - 11.1.6. Any information that you have provided to us is not false or likely to be misleading; and
  - 11.1.7. The grain is and will remain free of and unencumbered by any security interest registered by you or on your behalf pursuant to the *Personal Property Securities Act 2009* (Cth).

11.2. We each represent and warrant that the warranties and representations which we each make pursuant to this Master Agreement are true and correct.

**12. Waiver**

The failure of either party at any time to insist on performance of any provision of this Master Agreement is not a waiver of its rights at any later time to insist on performance of that or any other provisions of this Master Agreement.

**13. Entire Agreement**

13.1. The terms of our agreement are as set out in the Contract Confirmation and incorporate the terms of this Master Agreement.

13.2. To the extent of any inconsistency between the Contract Confirmation and this Master Agreement, the terms of the Contract Confirmation prevail.

13.3. Each party acknowledges that in entering into a contract incorporating the terms of this Master Agreement reliance has not been placed on any representation or warranties about the subject matter of this Master Agreement except as provided in this Master Agreement.

**14. Rules, Law and Jurisdiction**

14.1. This Master Agreement incorporates the Grain Trade Australia Ltd Trade Rules (Trade Rules) and Dispute Resolution Rules in the form current as at the date of this Master Agreement.

14.2. To the extent of any inconsistency between this Master Agreement and the Trade Rules, this Master Agreement prevails.

14.3. This agreement shall be governed by the laws of the State of New South Wales, Australia.

14.4. Any provision of this Master Agreement which is prohibited or unenforceable either in whole or in part shall be ineffective to the same extent, without effect on the validity on the remaining provisions of this Master Agreement.

**15. Mediation and Arbitration**

If a dispute arises out of or relates to this Master Agreement or the breach, termination, validity or subject matter thereof, the parties agree to first endeavour to settle the dispute by mediation.

In the event that the dispute has not been settled within twenty-eight (28) days (or such other period as agreed to in writing between the parties hereto) after the appointment of a mediator the dispute shall all be submitted to arbitration under the Dispute Resolution Rules of Grain Trade Australia Ltd.

**16. Definitions**

16.1. **Approved Storage** means a Nominated Facility that has been approved for use by Market Check under a valid Application for On-Farm Storage Approval agreement.

16.2. **BHC** means a grain receival site operated by a recognised bulk handling company.

16.3. **Contract** means a contract between Market Check and you for the sale of grain.

16.4. **Contract Confirmation** means any Contract confirmation between Market Check and you.

16.5. **Market Check** means AgRisk Management Pty Ltd trading as Market Check ABN 33067313722.

16.6. **Master Agreement** means this agreement.

16.7. **Nominated Facility** means one or more Storage Facilities nominated to Market Check to be considered as an Approved Storage.

16.8. **Notice of Title Transfer** means a valid notice signed by the transferor/owner to the transferee/buyer of the relevant grain.

16.9. **Permitted Storage Facility** means a Storage Facility approved by Market Check and is either a BHC, a Private Storage or an Approved Storage.

16.10. **Pool Marketing Program** means a grain pool product offered by Market Check.

16.11. **Pool Schedule** means a schedule provided by Market Check setting out the strategy and function relevant to a Pool Marketing Program.

16.12. **Private Storage** means a Storage Facility that is operated by an independent entity.

16.13. **Storage Facility** means an individual storage system, including but not limited to an upright silo, shed or bunker.