

2016/17 RECEIVAL SERVICE & WAREHOUSING TERMS & CONDITIONS



1. APPLICATION OF TERMS AND CONDITIONS

- 1.1 These terms and conditions (as amended from time to time) apply to the provision by Viterra Operations Pty Ltd (ABN 88 007 556 256) (**Viterra**) to a Customer of Services during a Season (**Terms**).
- 1.2 Unless otherwise expressly stated, if any inconsistency arises between these Terms and any other of Viterra's terms and conditions, these Terms prevail to the extent of that inconsistency.
- 1.3 The Customer is deemed to have unconditionally accepted and agreed to be bound by these Terms as soon as the Customer, or its Agent, obtains Services from Viterra in a Season in respect of a Load.
- 1.4 These Terms do not apply to traders and marketers (including Grain Marketing Companies) who have signed or are otherwise deemed to be bound by Viterra's Storage and Handling, Port Terminal Services Agreement and/or any other agreement allowing access to Viterra's Sites for the Season.

2. SERVICES AND CHARGES

- 2.1 Viterra agrees to perform the Services, and the Customer agrees to accept the Services and pay the Charges, on these Terms.
- 2.2 Viterra does not represent, warrant or guarantee (expressly or impliedly) that:
 - A it will provide any minimum or maximum quantity or quality of Services to the Customer during the Season; and
 - B all or any portion of the Services will be offered at each Site,but Viterra agrees to take all reasonable steps to keep the Customer informed of all Services offered at a Site during a Season.

3. LOAD QUALITY OBLIGATIONS AND WARRANTIES

- 3.1 The Customer must ensure and warrants that none of the Grain in a Load:
 - A has been treated with any:
 - (i) insecticide, pesticide or other chemical or seed treatment contrary to any label requirements or instructions or otherwise that result or could result in the Grain exceeding any applicable Maximum Residue Limit (unless declared otherwise in writing to, and approved in writing by, Viterra before the Load enters the Site); or
 - (ii) pickling compound;
 - B is a genetically modified variety (unless declared otherwise in writing to, and approved in writing by, Viterra before the Load enters the Site);
 - C has any other inherent vice or feature that would affect the ability of Viterra to outturn the Grain at the Grade in respect of which the Grain is received by Viterra;
 - D has been manipulated or loaded in any way to prevent the making of an accurate assessment by Viterra of the Grade, quality of the Grain and/or weight of a Load using Viterra's standard operating procedures;
 - E contains any foreign materials (including any physical, chemical contaminants, insect or vermin); and

F will be the subject of any security interest (as that term is used in the PPSA).

4. GENERAL WARRANTIES

4.1 The Customer warrants that:

- A the Customer owns or has the express authority to deal with any and all Grain tendered as part of a Load at a Site by or on behalf of the Customer;
- B all Grain tendered as part of a Load at a Site by or on behalf of the Customer was grown between May and September immediately prior to the Season in which the Services are acquired;
- C any declarations made by or on behalf of the Customer in respect of a Load or information provided by or on behalf of the Customer in respect of the Services are true and correct in all respects and not misleading or deceptive or likely to mislead or deceive;
- D the Customer is not acquiring the Services for personal, domestic or household use;
- E it will (or procure its Agent to) review all information provided by Viterra at a Site in respect of a Load and confirm its accuracy prior to tipping the Load and ensure that such information is consistent with the information provided on the Customer's Delivery Card and Customer details on the Customer Portal; and
- F it has ensured that its Agent is fully aware of these Terms and any other information required by the Customer (or the Agent on the Customer's behalf) in order to receive the Services (including any Site restrictions, or the Viterra Policies).

4.2 The assurances and warranties given by the Customer under these Terms are deemed to be made by the Customer on the date of delivery of a Load and each subsequent request by the Customer for a particular Service.

4.3 Without limiting the Customer's liability under these Terms (including for any breach of warranty in section 3), the Customer must immediately notify Viterra upon becoming aware of any fact or circumstance, or likely fact or circumstance, that does, may, or could potentially be expected to, give rise to a breach of the warranties made under these Terms.

5. VITERRA'S RIGHTS

5.1 Viterra may in good faith refuse to provide, or impose additional conditions on the provision of, Services in respect of any Load of any Customer on any reasonable grounds, including such grounds relating to:

- A contamination, quality, hygiene or safety (whether in respect of the relevant Load or any previous Load delivered by the Customer or an Agent and regardless of whether the Load is or was delivered by the Agent as agent for that particular Customer or otherwise);
- B Viterra's Road Vehicle Hygiene Requirements;
- C the capacity allocated by Viterra to a particular type of Grain at the Site being full;
- D the efficiency or capacity of the Site or any of Viterra's plant and equipment or systems and procedures or otherwise general restrictions placed on a Site by Viterra from time to time (including general operating hours);
- E the failure of the Customer or the Agent to produce a Delivery Card;
- F the failure of the Customer to comply with these Terms or any Viterra Policy at any time and in any material respect;
- G failure of the Customer to pay any Charges relating to or in connection with the Services;

- H a Force Majeure Event; or
- I the credit risk of the Customer.

6. LATE GROWER RECEIVAL

- 6.1 The Customer acknowledges that any request for Receival Services in respect of current Season Grain from 1 February in that Season (or such other date notified by Viterra from time to time for all or any particular Sites) (**Late Season Delivery**) will be received by Viterra in accordance with the Late Season Delivery Procedure.
- 6.2 The Customer is required to sign the Late Season Declaration Form available on the Viterra Website or upon request. The Customer acknowledges that if the Late Season Declaration Form is not signed, Viterra may refuse to accept any request for a Late Season Delivery.
- 6.3 Without limiting the terms of the Late Season Delivery Procedure, the Customer acknowledges that:
 - A it has read and understood the Late Season Delivery Procedure; and
 - B Viterra may amend, vary or substitute the Late Season Delivery Procedure at any time in its sole discretion (including changing the relevant dates when the Late Season Delivery Procedure may commence in a Season for all Sites or any Site) but such change will not apply retrospectively.

7. CONTAMINATION

- 7.1 The Customer must not deliver or attempt to deliver a Load that contains any contaminant (chemical, physical or otherwise) including any Load (whether delivered by the Customer, its Agent or any other person including previous owner) that has previously been rejected by Viterra at a Site.
- 7.2 Without limiting section 27, if any contaminant is discovered by Viterra in a Customer's Load (whether on receipt, during sampling or unloading or in storage), the Customer must compensate Viterra for any Loss suffered or incurred by Viterra (or any third party users of the applicable Site) arising from or in connection with the contaminated Load. The Customer acknowledges that this could include Loss relating to: cleaning or vacuuming costs, segregation costs, stock loss, outturn costs, tramming, labour, dumping, administration expenses and any other associated costs and expenses.

8. POSSESSION, RISK AND TITLE

- 8.1 Subject to sections 8.2 and 8.3, Viterra will be deemed to take legal possession as bailee of a Load from the Customer as bailor subject to these Terms at that point in time at which the Load is tipped into Viterra's receival grid.
- 8.2 Subject to section 8.3, a Load will be at the risk of the Customer in all respects until the Customer or the Agent has been presented with, and has signed, a completed Weighnote in respect of that Load directing whether the Load is sold to a nominated Grain Marketing Company or is being warehoused under these Terms.
- 8.3 If the Customer warehouses the whole or part of a Load:
 - A the risk of loss occasioned by theft, fire, flood and contamination not caused or contributed by an act or omission of the Customer, will be assumed by Viterra; and
 - B the risk of loss occasioned by spontaneous combustion, water damage caused by the action of the sea, contamination caused by or attributable to the Customer or the Agent, and all other risks, will be assumed by the Customer, and should be insured against by the Customer.
- 8.4 Viterra does not acquire title to the whole or any part of a Load by virtue of receipt of a Load subject to these Terms.
- 8.5 The Customer represents that prior to tipping a Load it has reviewed and considered (or procured its Agent to review and consider) all information on a Weighnote (including classification, quality, weight and Recorded

Price) and agrees that, in the absence of any proven error, the Weighnote is accurate and will be deemed to have been accepted by the Customer (including on receipt and/or acceptance by a Customer's Agent).

- 8.6 Viterra may post Purchase Options at Sites or on the Customer Portal in its sole discretion. The Customer acknowledges that, in respect of any Purchase Option, Viterra makes no representations with respect to the operations of a Grain Marketing Company including its financial viability, the accuracy of prices posted or the terms and conditions under which it operates. The Customer accepts all risk associated with dealing with a Grain Marketing Company and agrees that Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss incurred by the Customer as a result of, or in connection with, the Customer's dealings with a Grain Marketing Company.
- 8.7 Without limiting section 8.5, the Customer agrees that the Purchase Option price recorded on a Weighnote (the **Recorded Price**) will be final regardless of whether it corresponds exactly with the latest applicable price for that Purchase Option advised to Viterra by the applicable purchaser (including a Grain Marketing Company) or the latest applicable price published on the Customer Portal (the **Customer Portal Price**). In the event that the Recorded Price differs from the Customer Portal Price (**Price Difference**), the Customer acknowledges that:
- A the Price Difference does not constitute a "proven error" for the purposes of section 8.5;
 - B the Weighnote will not be amended to take into account the Price Difference (either by an increase or decrease in the Recorded Price); and
 - C Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss incurred by the Customer as a result of, or in connection with, the Price Difference.

9. COMMON STOCKING

- 9.1 Viterra may Common Stock Grain of a Customer.
- 9.2 Title to Common Stocked Grain is held jointly by the relevant owners in the proportions that each owner's quantity of the Grain bears to the total Common Stocked Grain.
- 9.3 While Viterra has possession of the Customer's Grain:
- A the relationship between Viterra and the Customer in respect of the possession of the Grain is one of bailment subject to these Terms; and
 - B that relationship will continue to exist despite the Grain losing its identity by being Common Stocked, or the inability of Viterra to redeliver to the Customer the particular Grain the subject of the bailment; and
 - C Viterra may at its reasonable discretion manage, use, move, transfer, borrow, deal and/or control the Grain including deal in any such manner that Viterra reasonably considers necessary for the efficient operation of the relevant Site and the balancing of the interests of all users of that Site and the Grain industry generally.

10. SITE POLICIES & PROCEDURES

- 10.1 The Customer must comply (and must ensure that its Agent complies with) all safety, health and environmental, access and security policies and procedures, including safety card inductions and procedures and the Viterra Road Vehicle Hygiene Requirements and otherwise any operating conditions or restrictions applicable to a Site as published at the Site or as otherwise notified by Viterra from time to time including through publication on the Viterra Website or through Viterra's SMS Subscription Service (**Viterra Policies**).
- 10.2 Without limiting section 10.1, the Customer must (and ensure that its Agent):
- A comply with any reasonable directions of Viterra or its personnel; and

- B avoid or minimise unreasonable interference with the passage of people and vehicles and the operations or activities carried out at the Site.

10.3 The Customer acknowledges that:

- A it, or its Agent, may be prevented from entering all or any specific Site if Viterra has reason to believe that a Customer (or its Agent) has breached, or its likely to breach any Viterra Policy or any Laws;
- B it, or its Agent, agrees to comply with all reasonable directions of Viterra in respect of the breach or likely breach; and
- C Viterra may provide the details of the Customer, the Agent, the breach, or likely breach, to any Government authority responsible for the enforcement of the relevant Laws.

11. VITERRA'S RECORDS

In the absence of any proven error, Viterra's records (including any Weighnote) concerning the quantity or quality of Grain that is, or has been, the subject of Services and the receipt of that Grain will be deemed to be accurate and conclusive.

12. OUTTURN RIGHT AND SHRINKAGE

12.1 Subject to section 12.2 and 12.3 and the Customer making all payments required under section 23, the Customer is entitled to outturn Grain up to and including the amount of Grain delivered for and on behalf of the Customer to Sites.

12.2 The Outturn Right is subject to a weight deduction for:

- A shrinkage in accordance with the allowance set out in Schedule 1 (Note that the Charges charged for Services are calculated on delivered weight, and carry charges are calculated on shrunk weight);
- B any loss, damage or destruction of Grain the risk of which is assumed by the Customer under these Terms;
- C the weight of any Grain previously outturned or otherwise the subject of a Transfer In-store; and
- D the weight of any Grain transferred, written-off or otherwise dealt with by Viterra in accordance with these Terms (including sections 16, 18, 24 and 31).

12.3 Viterra may refuse or delay acting pursuant to an outturn request where, Viterra considers, acting reasonably:

- A the request does not provide sufficient notification and / or details of the relevant outturn (including quality or quantity); or
- B the following circumstances arise or may arise:
 - (i) unavailability of Grain due to routine fumigation;
 - (ii) breakdown or unavailability of machinery;
 - (iii) unavailability of resources as a result of other Site related operations;
 - (iv) the unsuitability of the storage unit;
 - (v) the Customer owes monies to Viterra on any account whatsoever or otherwise there exists a lien or temporary hold over the Grain the subject of the outturn request;

- (vi) it is contrary to any Viterra Policies (including the conditions of an Export Select Only Site or Restrictive Site);
 - (vii) failure of the Customer to pay any Charges relating to or in connection with the Services; or
 - (viii) if the outturn is prevented or delayed because of circumstances outside Viterra's control and without substantial fault or negligence of Viterra (including by reason of a Force Majeure Event); or
- C if Viterra has received notice from a person claiming to hold an interest in, to or over the Customer's Grain; or
- D the request is, in Viterra's reasonable opinion, contrary to any Laws, aimed at circumventing any Laws or otherwise will be detrimental to the Grain industry in general,

and Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss suffered or incurred by the Customer arising from or in connection with the refusal or delay by Viterra of the outturn request.

12.4 Without limiting section 12.3, in making any decision whether to accept an outturn request,

- A Viterra will have regard to the efficient running operation of the relevant Site and the balancing of the interests of all users of that Site and the Grain industry generally; and
- B where the Customer has not caused or contributed to the circumstances giving rise to the refusal or delay, Viterra will use reasonable endeavours to mitigate any Loss suffered by the Customer.

12.5 Having regard to the quality characteristics of any malting Grade barley remaining in storage for an extended period of time, the Customer acknowledges that Viterra may regrade the Grain in accordance with Schedule 3 and Viterra will not be liable for, and the Customer must not make any claim in respect of, any Loss suffered or incurred by the Customer arising from or in connection with Viterra acting under this section 12.5.

13. **OUTTURN**

13.1 Subject to anything to the contrary in these Terms, Viterra is entitled to:

- A outturn to the Customer (or any person nominated by the Customer) Grain of the same quality and quantity as warehoused by the Customer or acquired by the Customer by Transfer In-store;
- B outturn at any Viterra Site within reason as determined by Viterra and not necessarily the Site of Origin at which the Customer elected to warehouse the Grain or acquired the Grain by Transfer In-store. Note costs as per section 15.1 may apply.

13.2 At a Restrictive Site, Viterra may disallow domestic outturns or if the Grain remains at the site from 1 August immediately following a particular Season, Viterra may declare the Grain as Export Select only and subject to Export Select conditions.

13.3 At an Export Select Only site no domestic outturning is permissible and the Customer must familiarise themselves with important conditions relating to Movements, obligations of the Customer and Viterra's rights in respect of warehoused grain (refer section 15 **Movements** in these Terms).

13.4 In the absence of any proven error, outturn weights determined by Viterra using Viterra's weighing systems are final and binding and Viterra will have no liability whatsoever if the receival weight at the Customer's delivery or receival location is less than the outturn weight from the Site.

14. OUTTURN STANDARDS

Viterra's obligation to outturn is subject to such outturn standards set out in Schedule 2 and as otherwise published by Viterra from time to time on the Viterra Website (**Outturn Standards**).

15. MOVEMENTS

15.1 Viterra has the right to move the Grain from a Site including the Site of Origin if, in Viterra's reasonable opinion:

- A the Site fills (or is expected to fill) during the Season;
- B consolidation of small quantities of Grain is required for the efficient operation of Viterra's Site (including where the volume of Grain stored in a cell is less than a level that requires sweeping);
- C the quality of the Grain that has been received threatens to contaminate other customers' Grain;
- D it is operationally efficient to move the Grain; or
- E the Customer delivers to a Viterra defined Export Select Only site (refer section 13.3).

15.2 Subject to section 15.3, if Grain is moved in accordance with section 15.1:

- A the Customer will bear or be compensated for any additional costs or charges that may arise out of the relocation relative to the Site of Origin as determined by Viterra acting reasonably and on a case-by-case basis; and
- B additional charges incurred including accumulated monthly carry, outturn and port in-loading may also be applicable,

but Viterra agrees to take reasonable steps to consult with the Customer if, as a result of Grain being moved, the Customer will be required to bear additional costs.

15.3 The Customer will not be entitled to any compensation for a movement of Grain under section 15.1B if the contamination or threatened contamination was caused or contributed to by an act or omission of the Customer or its Agent.

16. SEASON CLEARANCE

16.1 After 1 September following the end of a Season, Viterra may provide written notice to the Customer requesting the Customer to either outturn or transfer any Grain remaining at a Viterra Site (**Season Clearance Notice**).

16.2 Any Season Clearance Notice must identify the relevant Season Grain still in Customer ownership and specify a date (no less than 15 days after a notice is issued) by which the Customer must comply with the Season Clearance Notice.

16.3 If the Grain remains in warehouse following expiration of the period specified in the Season Clearance Notice, Viterra may:

- A facilitate the acquisition of the Grain the subject of the Season Clearance Notice at Fair Market Value by a Grain Marketing Company as determined by Viterra; or
- B continue to store the Grain the subject of the Season Clearance Notice, charge the Customer in accordance with these Terms and reserve the right to issue another Season Clearance Notice under section 16.1 at any time in the future.

- 16.4 If Viterra exercises its rights under section 16.3A, it is entitled to retain out of any sale proceeds all outstanding Charges owed by the Customer to Viterra on any account, the reasonable costs of arranging the sale and outturn of the Grain to the Grain Marketing Company.
- 16.5 Without limiting any rights under section 16.1, to enable the efficient management of Grain at the Site, any Season Grain still in Customer ownership as at 1 July immediately following the end of the Season and less than 0.5 tonne may be written off by Viterra.
- 16.6 No delay in Viterra 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. The Customer releases Viterra, and must not make any claim, in respect of any Loss suffered by the Customer as a result of or in connection with Viterra exercising its rights under this section (including in respect of any delay in exercising its rights resulting in a change in Fair Market Value).
- 16.7 At any time on the written request of a Customer, Viterra may agree to facilitate the sale of Grain on behalf of the Customer in accordance with sections 16.3 and 16.4.

17. ENTITLEMENT SHORTFALL ADJUSTMENT

If Viterra's system does not hold sufficient Grain of the type and specification of the Customer's Grain at the time the Customer exercises its Outturn Right, upon good faith consultation with the Customer, Viterra will be entitled to satisfy any such physical shortfall by payment of compensation at Fair Market Value which shall discharge all and any claims the Customer may have in connection with the physical shortfall.

18. ENTITLEMENT SURPLUS ADJUSTMENT

18.1 Where the Customer has exercised an Outturn Right and has benefited from an outturn quantity or quality in excess of that to which it was entitled, Viterra may issue written notice to the Customer requesting that the Customer (at Viterra's reasonable discretion):

- A compensate Viterra by payment for that excess calculated at Fair Market Value; or
- B re-deliver an equivalent value of Grain based on classification at the time of delivery; or
- C transfer other Grain of equal value (value determined by Viterra acting reasonably having regard to the quality and quantity),

and specifying the time period by which the Customer must comply with the request (**Excess Outturn Notice**).

18.2 If the Customer fails to comply with the Excess Outturn Notice in all respects within the time periods set out in the Excess Outturn Notice, the value of the excess quantity or quality of Grain that the Customer has benefited from calculated at Fair Market Value immediately becomes a debt due and payable by the Customer to Viterra.

19. TRANSFERS IN-STORE

19.1 Transfers In-store may be initiated by the Customer providing verbal or written instructions to Viterra. Upon receiving instructions under this section 19.1, Viterra is authorised to sign the transfer for and on behalf of the Customer and for this purpose the Customer irrevocably appoints Viterra as its agent and attorney. Viterra will then seek the purchaser's acceptance of the transfer and confirm completion to the Customer. For Transfers In-store via the Customer Portal Viterra is entitled to assume that the instructions to transfer have been issued by or on behalf of the Customer if the Customer's Customer Portal security PIN is quoted to execute the transaction. Viterra is not obliged to recognise any Transfer In-store if the Customer has not complied with its obligation under section 24 and unless and until the purchaser of the Outturn Right agrees or has already agreed to be bound:

- A if the purchaser is a marketer or trader of Grain (including a Grain Marketing Company), by the terms and conditions contained in, where applicable, Viterra's Storage & Handling Agreement, Port Terminal

Services Agreement or any other agreement allowing access to Viterra's Port Terminals for the Season;
or

B otherwise if the purchaser is another Customer, by the terms and conditions of a Title Transfer Warehouse to Warehouse form, which will include an acceptance of being bound by these Terms.

19.2 Constraints on Transfers In-store are explained in Schedule 4.

19.3 The Customer acknowledges that it is in its best interest to ensure that, if possible, Transfers In-store are negotiated on the basis of delivered weight, not shrunk weight.

20. EFFECTIVE DATE OF TRANSFERS

The effective date, for charging purposes, of a Transfer In-store will be the date that Viterra receives instructions from the Customer to effect the transfer. Viterra will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

21. CARRIER/AGENT ACTING ON CUSTOMER'S BEHALF

21.1 Where:

A a carrier or other person (**Agent**) seeks Services (whether in respect of a Load or otherwise) on behalf of the Customer; and

B the Agent:

(i) is in possession of the Customer's Delivery Card; or

(ii) the Customer has previously advised or represented to Viterra that the person has the authority to seek and obtain Services on behalf of the Customer,

that person will be treated as the agent of the Customer and the Customer will be bound by the actions of that person.

21.2 Where the Customer engages an Agent to make a Transfer In-Store (other than through the Customer Portal), the Customer will be required to provide Viterra with written confirmation that the Agent is acting on behalf of the Customer.

21.3 As between Viterra and the Customer, the Customer is at all times responsible for the acts and omissions of its Agent under or in respect of these Terms (including failure to comply with any portion or all of these Terms).

21.4 Viterra may but is not bound to take any notice of or act on any absence, countermand, revocation or withdrawal of authority that is not in writing and given by all interested parties.

22. PROVISION OF INFORMATION AND ASSISTANCE

22.1 The Customer must promptly provide to Viterra all information and assistance requested from time to time relating to or in connection with the Services, a Load, the Customer or its Agent, Viterra reasonably requires (such as obtaining consents, and completing and signing documents) to perform its obligations under, or exercise its rights in respect of, these Terms.

22.2 When making any decisions or enforcing its rights under these Terms Viterra will act reasonably and may, but is not obliged to, take into account any information provided by the Customer under section 22.1 or otherwise from time to time.

23. CHARGES

The Charges for the Services can be located on the Viterra Website. The Charges for Transfers In-store include the Receival Service Fee, accumulated monthly carry debt. Administration charges may apply to some Transfers In-store. In the instance of self-outturn a domestic outturn charge applies for outturns from Viterra Sites.

24. PAYMENT, LIEN AND HOLDING OF GRAIN

- 24.1 All accrued charges and any costs payable on any account in respect of Grain that is the subject of the Outturn Right must be paid in accordance with the invoice rendered by Viterra. The full amount of an invoice rendered by Viterra must be paid by the Customer within 15 days from the date of that invoice.
- 24.2 For most Transfers In-store Viterra acknowledges that the purchaser will agree to accept responsibility for payment of Charges (including freight expenses and costs that have accrued prior to the date of outturn), but which have not been paid. In that event Viterra will invoice the applicable purchaser.
- 24.3 Despite section 24.2, each Customer remains jointly and severally liable to Viterra for payment of all Charges.
- 24.4 The Customer acknowledges and agrees that Viterra will have a first and paramount lien on the Customer's Grain to satisfy Customer Obligations. The Customer also gives a security interest to Viterra and Viterra Companies over the Customer's Grain and any proceeds of sale thereof as security for the payment of Customer Obligations. Viterra may nominate any particular quantity of Common Stocked Grain as the Customer's Grain for the purpose of enforcing its lien and/or security interest. The Customer irrevocably appoints Viterra as its agent and attorney to sell a sufficient quantity of the Customer's Grain to satisfy Customer Obligations whether under the lien and/or the security interest or otherwise and to account to the Customer for any balance of sale proceeds. Any such sale of the Customer's Grain reduces the Customer's Outturn Right commensurately.
- 24.5 Either party may in its discretion deduct from, set-off against and/or otherwise reduce or deem satisfied any obligation it may have to the other party (which, for Viterra, will not exceed the Customer Obligations).
- 24.6 Notwithstanding and without limiting anything else in these Terms, Viterra may place a temporary hold on the Customer's Grain at any stage if it believes that due to any liability, breach, indemnity, error, mistake, circumstance, fact or other thing whatsoever there may will or might now or in the future be undischarged Customer Obligations.

25. DEFAULT INTEREST

The Customer shall pay interest on overdue monies calculated at the rate of 3% above the corporate overdraft reference rate offered by the Commonwealth Bank of Australia calculated on a daily basis from the due date for payment to the date on which the charges, plus the accrued interest, on and until all such outstanding monies are paid in full.

26. LIABILITY

- 26.1 Viterra is only liable for the loss, damage, destruction or contamination by Viterra of the Customer's Grain if that loss, damage, destruction or contamination is directly caused by the gross negligence or wilful default of Viterra or any or its employees, contractors or agents.
- 26.2 The liability of Viterra to the Customer for any Loss including, damage, destruction or contamination of Grain (for whatever reason) will not exceed the sum of \$25,000 (twenty five thousand dollars) per event or per series of related events and \$50,000 in the aggregate.
- 26.3 Viterra will not be liable for any Special or Indirect Loss suffered or incurred by the Customer arising out of Viterra's acts or omissions or the acts or omissions of Viterra's employees, agents or contractors.
- 26.4 To the maximum extent permitted by Law, Viterra excludes all conditions or warranties implied by custom, general law or statute. If certain conditions and warranties cannot by Law be excluded, Viterra's liability under any such condition or warranty is limited to the cost of re-supplying the Services.

26.5 To the extent permitted by Law, the operation of the Proportionate Liability Legislation is excluded in relation to any right, obligation or liability of a party in respect of these Terms, whether those rights, obligations or liabilities are sought to be enforced in contract, in tort or pursuant to any statute, and any claim.

27. INDEMNITY

27.1 The Customer will indemnify and hold Viterra harmless against all Loss arising out of or in connection with these Terms or receipt of the Services including:

- A any acts by, or omissions of, the Customer (or any person acting on behalf of the Customer or the Customer's Agent) at the Site (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 to a lien, charge or other security interest in the Grain or the Outturn Right;
- D any claim by a third party relating to the acts or omissions of the Customer in respect of the Grain or any Transfer In-store;
- E any breach of these Terms including any warranty or representation given by or on behalf of the Customer in respect of the Grain that is brought to, or unloaded at, the Site by the Customer or the Agent;
- F damaged or contaminated Grain (including fertiliser, containing genetically modified variety or varieties, and residue affected grain) at the risk of the Customer; and
- G any claim by a third party in relation to the whole or any part of a Load that is the subject of Services,

except to the extent that such Loss was directly caused by a negligent act or omission of, or default by, Viterra or any of its employees, contractors or agents .

28. COMPLIANCE WITH LAWS

28.1 In receiving the benefit of these Terms, the Customer must at all times comply with (and ensure that its relevant Agent or Agents comply with) all Laws including, where applicable, all Road Safety Legislation.

28.2 Without limiting the Customer's general obligations to comply with all Laws in section 28.1, the Customer warrants that it:

- A has addressed and remedied any non-compliance issues with respect to any Laws;
- B has in place compliance assurance conditions in relevant commercial arrangements with other responsible persons under any Laws;
- C is not relying on any oral or written representations or statements made by Viterra with respect to the transport of Grain other than what is set out in these Terms.

29. DELIVERY CARD AND NGR

29.1 The Customer must not involve Viterra in any dispute between parties to a Delivery Card (or a Co-operative Bulk Handling Limited or other entity's card linked to an NGR registration).

29.2 Unless required by Law, Viterra is not required to provide any documentation or to assist with such a dispute.

29.3 Despite section 29.2, Viterra will act in good faith to assist if the Customer requests information from Viterra provided the Customer agrees to reimburse Viterra's reasonable costs and expenses in complying with any information request (having regard to the employee resources required to be expended, the volume of information required and the transaction date the information request relates to).

30. INFORMATION USE & DISCLOSURE

- 30.1 Viterra may collect personal information from the Customer for the purpose of providing Services. Viterra's ability to provide these Services may be affected or prevented if Viterra is not provided with all personal information that is requested or required.
- 30.2 A copy of Viterra's Privacy Policy can be located on the Viterra Website. The Privacy Policy includes details of:
- A how Viterra collects, holds, stores and shares Personal Information;
 - B the circumstances in which the Customer's Personal Information might be sent overseas;
 - C the Customer's rights of access to, and correction of, its Personal Information; and
 - D the security measures Viterra has in place over the Customer's Personal Information.
- 30.3 The Customer is not obliged to provide Viterra with Personal Information by any Law, however if the Customer fails to do so, it may impact on the ability of Viterra to perform the Services.
- 30.4 The Customer consents (and will obtain the consent of any individual that Viterra may deal with on behalf of the Customer) to the use or disclosure of Personal Information and other information collected by Viterra pursuant to these Terms as follows:
- A to disclose such information (including details of the Customer's Grain) to Grain Marketing Companies registered with the Viterra Service Centre in accordance with the Warehouse Disclosure Authority form if completed by the Customer. Forms are available at www.viterra.com.au or upon request;
 - B to evaluate whether and to what extent products or services of a Viterra Company may (in Viterra's opinion) be of interest to the Customer, and to use and disclose such information for the purposes of promoting (including by electronic communications) such products or services (which may include the Glencore Grain Pty Ltd) to the Customer;
 - C to disclose to a Viterra Company for use by the Viterra Company internally for any other purposes relating to Viterra's or a Viterra Company's business operations and/or its dealings or relationship with the Customer;
 - D to disclose such information to comply with requests from government and regulatory bodies and authorities and end point royalty managers;
 - E to disclose such information to National Grower Register Pty Ltd or its agents for the purposes of the operations of the NGR or for promoting goods or services of other companies of relevance to the Customer;
 - F to disclose such information to any organisation to which the Customer has donated Grain for the purpose of allowing the organisation to identify the donor; and
 - G to use or disclose such information where the Customer consents to Viterra doing so or requests Viterra to do so, or where Viterra is legally entitled to do so.
- 30.5 You may request access to your personal information by contacting us. All privacy related queries, requests to access information or privacy complaints should be made in writing to "**The Privacy Officer**", Viterra Operations, GPO Box 1169 Adelaide SA 5001 or via email to privacy@viterra.com.

31. PERSONAL PROPERTY SECURITIES LAW

- 31.1 Viterra acknowledges and agrees that the Customer has a purchase money security interest (**PMSI**) over the Customer's Commodity and any proceeds of sale thereof for the purposes of the PPSA and that the Customer or the Agent may register the PMSI on the Personal Property Security Register.
- 31.2 On delivery of Grain to Viterra, the Customer acknowledges and agrees that Viterra has control of the Grain for the purposes of the PPSA and for the exercise of Viterra's rights under section 24.4.
- 31.3 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:
- A ensuring that any security interest the other party has under these Terms is enforceable, perfected and otherwise effective;
 - B 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
 - C enabling the other party to exercise rights in connection with its security interest and/or lien under these Terms.
- 31.4 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 Commodity of the Customer.
- 31.5 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.
- 31.6 The parties agree that they must not disclose any information of the kind referred to in section 275(1) of the PPSA.
- 31.7 If there is any inconsistency between the Customer's and Viterra's rights under this section and its rights under Chapter 4 of the PPSA, this section prevails.
- 31.8 The parties acknowledge and agree that unless otherwise defined in these Terms, terms and expressions used in this section 30 have the same meaning as given to them under the PPSA.

32. VARIATIONS

- 32.1 Viterra may vary these Terms applicable to future Loads and Services (including the Charges) at any time and from time to time by publishing the revised terms and conditions on its website at www.viterra.com.au in the 'About' section under Terms and Conditions. The Customer will be deemed to have read, understood and accepted the revised terms and conditions 20 Business Days after they have been published in accordance with this section 32.
- 32.2 If Viterra exercises its rights under section 32.1, it agrees to notify all Customers (either by hand, mail, fax or electronically) registered with NGR including, where applicable, using Viterra's SMS Subscription Service.

33. GOODS AND SERVICES TAX

- 33.1 Any amounts payable under these Terms are calculated or expressed exclusive of GST.
- 33.2 If GST is, or becomes payable, under these Terms, the recipient must pay to the supplier an amount equal to the GST payable on the Supply.
- 33.3 An amount payable under this section must be paid at the same time as the payment of the amount in respect of that Supply is due and must be paid in addition to the amounts otherwise payable under these Terms.

33.4 If the recipient fails to pay any GST when due, the supplier may recover the amount of the GST from the recipient as a debt due under these Terms.

33.5 In these Terms **GST**, **recipient** and **Supply** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or substituted from time to time) and **supplier** means the entity which makes a supply.

34. DISPUTE RESOLUTION

34.1 Neither party may commence court proceedings in respect of a claim or dispute arising under or in connection with these Terms (**Dispute**) unless:

A that party has first issued a dispute notice to the other party (which, for the Customer, is a notice to Viterra's Service Centre) setting out the particulars of the Dispute (**Dispute Notice**); and

B 30 days has elapsed since the provision of the Dispute Notice.

34.2 The parties will use their best endeavours to try and resolve any Dispute as soon as reasonably possible.

35. ASSIGNMENT

35.1 Viterra may assign the benefit of these Terms to any Viterra Company and without limiting section 30, Viterra consents to Viterra disclosing to the Viterra Company any information or documents it considers necessary to exercise these rights. If Viterra exercises its rights under this section, it agrees to notify the Customer of the assignment and the identity of the relevant Viterra Company as soon as reasonably practicable after the assignment.

35.2 The Customer may not assign these Terms at any time unless with the prior written consent of Viterra (not to be unreasonably withheld or delayed).

36. SUBCONTRACTING OF SERVICES

36.1 Without giving notice to the Customer, Viterra 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 Viterra's behalf.

36.2 Subcontracting of all or any portion of the Services does not relieve Viterra from any liability or obligation under these Terms and Viterra remains fully liable for the actions of any subcontractor or third party as if they were the actions of Viterra.

37. NOTICE

A notice, consent or other communication under these Terms is only effective if it is in writing and addressed to the party to whom it is to be given and, for a Customer, can be delivered (either by hand, mail, fax or electronically) to an address of the Customer registered with NGR. This section does not apply to any notice, consent or communication which these Terms expressly authorise to be published at a Site or on the Viterra Website or to be made through Viterra's SMS Subscription Service.

38. NO WAIVER OF RIGHTS

A failure or delay in exercising any right, power or privilege in respect of these Terms will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, or privilege. Any waiver by a party in respect of these Terms will only be effective if in writing.

39. RELATIONSHIP AND GOVERNING LAW

These Terms establish a relationship that subsists in contract only and do not make Viterra the partner, agent, trustee, fiduciary or the like of any other person nor extend to any other person any rights beyond those expressly set out in

the Terms. The Terms will be governed by the laws of South Australia and Viterra and the Customer submit to the non-exclusive jurisdiction of the courts of Adelaide, South Australia.

40. DEFINITIONS AND INTERPRETATION

In these Terms, unless the context otherwise requires:

Agent has the meaning given in section 21.1A.

Charges mean the charges and costs imposed by Viterra for providing the Services as set out on the Viterra Website from time to time.

Common Stocked means the practice of intermixing and storing Grain of the same specification or Grade owned by different persons.

Common Stocked Grain means Grain stored in Viterra's storage system that has been Common Stocked.

Customer means, as the context requires:

A: a person or persons that uses the Services being as the case requires:

- the payee(s) registered with the National Grower Register against the Delivery Card number tendered by the Customer or Agent in the process of obtaining Services;
- where a person obtains Services on the basis of a temporary National Grower Register card number, that person, or where that person is an Agent, the person on whose behalf the Agent is acting, and such other persons that, upon follow-up of completion of registration with National Grower Register, are subsequently registered as payees against that number; or
- the person accessing the Services where that person purports to be an Agent but has failed to obtain the authorisation of the Agent's principal (as contemplated by section 21.1A; and/or

B: a person or persons on whose behalf Grain has been received and warehoused by Viterra and any subsequent non-trade purchaser of the Outturn Right,

and if there is more than one person, **Customer** means each of them separately and every two or more of them jointly and any one of them has irrevocable authority to deal on behalf of all of the parties comprising the Customer.

Customer Obligations means any obligation to Viterra and/or any Viterra Company that the Customer has or is reasonably expected to subsequently have whether present or future, certain or contingent, ascertained or sounding only in damages and including any matured monetary obligations and all monies due and payable on any account whatsoever.

Customer Portal means the ezigrain™ website located at www.ezigrain.com.au or any replacement customer portal implemented by Viterra from time to time.

Customer Portal Price has the meaning given in section 8.7.

Customer's Grain means all and any Grain or other property in the possession of Viterra and/or any Viterra Company from time to time.

Delivery Card means the NGR delivery card or any replacement delivery card nominated by Viterra from time to time.

Dispute has the meaning given in section 34.1.

Dispute Notice has the meaning given in section 34.1.

Excess Outturn Notice has the meaning given in section 18.1.

Export Select Only Sites means those sites where Domestic Outturn is NOT Permitted as determined by Viterra from time to time prior to the commencement of a Season and published on the Viterra Website and otherwise subject to Export Select Only terms and conditions advised by Viterra from time to time.

Fair Market Value – means the price per tonne calculated to either purchase grain by Viterra or replace shortfall of grain by the Customer and:

- A. in the case where Viterra needs to facilitate the purchase of grain from the Customer the price will be the highest bid price of buyers on the day the calculation is made; and
- B. in the case where the Customer is required to compensate Viterra the price will be the lowest price offered by sellers on the day the calculation is made.

Force Majeure Event means anything outside Viterra's reasonable control including the following events or circumstances:

- A. accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, or like natural disasters, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, or declarations of a state of emergency;
- B. strikes, stopworks, lockouts, boycotts or any other form of industrial dispute or labour shortage;
- C. breakdown, accidental or malicious damage or destruction of any of the facilities at a Site;
- (d) failure, disruption or delay in transportation;
- (e) 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
- (f) acts or omissions of any third party (including without limitation governments, government agencies, subcontractors or customers).

Grade means a grade of Grain of a given Season specified in the Receival (Classification) Standards and Outturn Standards of that same Season.

Grain means the seed of any crop or pasture species of any genus or grade and, for the removal of doubt, includes Pulses.

Grain Marketing Company means a third party grain or commodity marketing company (including any pool operated by such party) and includes Glencore Grain Pty Ltd (or other marketing unit or division of a Viterra Company from time to time).

Late Grain Delivery Declaration Form has the meaning given in the Late Season Delivery Procedure.

Late Season Delivery has the meaning given in section 6.1.

Late Season Delivery Procedure means the procedure published by Viterra relating to Late Season Deliveries (as amended, varied or substituted from time to time).

Laws include:

- A. Acts, Ordinances, regulations, by-laws, orders, awards and proclamations;
- B. certificates, licences, consents, permits, approvals and requirements of organisations;
- C. any direction or requirement imposed by any statutory corporation, statutory authority, tribunal or person exercising statutory power responsible for administering and maintaining standards and requirements in

connection with the performance, or the receipt of the benefit, of the Services provided under or in connection with these Terms

- D. executive or administrative orders or acts of either general or particular application of any Government or any official purporting to act under the authority of that Government including any quarantine or custom restrictions or prohibitions on export,

relating to the jurisdiction(s) where these Terms will be performed or the parties are located, or the origin or ultimate destination of any Grain, and to avoid doubt includes the Road Safety Legislation.

Load means a quantity of Grain in bulk.

Loss means liabilities, expenses, losses, claims, damages, and costs (on a solicitor and own client basis and whether incurred or awarded against that company) direct or indirect, past, present or future, fixed or unascertained, actual or contingent and whether arising under contract, in equity, under statute, in tort or otherwise.

NGR means the register of grower details operated by National Grower Register Pty Ltd.

Outturn Right means the Customer's right to the outturn of Grain in accordance with section 12 of these Terms.

Outturn Services means services relating to the outturn of Grain from a Site by a Customer exercising its Outturn Right.

Outturn Standards has the meaning given in section 14.

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

PMSI has the meaning given in section 31.

Port Terminal means, depending on the context, the Company's seaboard terminal at:

- A. Port Adelaide, Inner Harbour, Berth 27, South Australia;
- B. Port Adelaide, Outer Harbor, Berth 8, South Australia;
- C. Port Giles, South Australia;
- D. Wallaroo, South Australia;
- E. Ardrossan, South Australia;
- F. Port Pirie, South Australia;
- G. Port Lincoln, South Australia;
- H. Thevenard, South Australia; or
- I. any other port terminal operated by the Company for the handling of Grain.

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

Price Difference has the meaning given in section 8.7.

Proportionate Liability Legislation means:

- A. Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA); and
- B. Part IVAA of the *Wrongs Act 1958* (Vic); and

- C. the equivalent legislation in any other State of Australia or other jurisdictions where the Site or the parties (including, where relevant, any Agent) are located or operate from.

Pulses mean chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and all other grain legumes.

Purchase Option means relevant purchase options published by Viterra for and on behalf of a Grain Marketing Company to facilitate the purchase by that Grain Marketing Company of Grain owned by Customers (including those published on the Customer Portal).

Receival (Classification) Standards means standards that accord with the industry benchmarks established for Grain and published by Viterra prior to the receival of that Grain into a Site.

Receival Service means:

- A. all or any part of the process by which a Load is physically received by Viterra from a Customer or the Agent at a Site (including provision of access to the Site, sampling, testing, classification, (where necessary) treatment of the Grain, unloading, inward elevation and weighing).
- B. presentation to the Customer of purchase and warehouse options;
- C. the recording and exchange with relevant purchasers of information in electronic form relating to the receipt of the Load; or
- D. the provision to the Customer of transactional information through the Customer Portal.

Recorded Price has the meaning given in section 8.7.

Restrictive Sites: sites where domestic outturn is unavailable unless alternative arrangements are made with Viterra's relevant Operations Manager (if arrangements are made the domestic outturn charge will still apply). Deliveries to warehouse or a buyer contract will be accepted.

Road Safety Legislation means all legislation regulating the safe loading, storage, packing, unloading, handling and carriage of the Grain including:

- A. the *Road Traffic Act 1961 (SA)*, the *Motor Vehicles Act 1959 (SA)* and the *Summary Offences Act 1953 (SA)*; and
- B. the equivalent legislation in any other State of Australia or other jurisdictions where the Site or the parties are located or operate from; and
- C. any statutory provisions or requirements relating to driver fatigue and mass, speed, drugs and alcohol, maintenance, restraint, dimensions and any other loading requirements, applicable to the performance, or the receival of the benefit, of the Services provided under or in connection with these Terms;

Season means the period in which most Grain is harvested and in respect of which Services are sought, typically commencing in October of one year and going through to February in the following year.

Season Clearance Notice has the meaning given in section 16.1.

Services mean the Receival Services, Warehousing Services, Outturn Services and any other ancillary services (including services relating to the facilitation of transactions) provided by Viterra to the Customer from time to time under these Terms.

Site means the facility or premises at which Services are provided to the Customer by Viterra (including a Port Terminal).

Site of Origin means the Site the Customer or Agent delivered the Grain to.

Special or Indirect Loss means any Loss or damage suffered which is indirect or which results from some special circumstance or supervening event and includes any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of reputation, loss of goodwill, wasted overheads or demurrage.

Terms has the meaning given in section 1.1.

Transfer In-store means the transfer of the ownership of the Grain and Outturn Right to another party in accordance with these Terms.

Viterra has the meaning given in section 1.1.

Viterra Company means Viterra or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

Viterra Policies has the meaning given in section 10.1.

Viterra Road Vehicle Hygiene Requirements means the requirements published by Viterra from time to time on the Viterra Website or otherwise displayed or available at Sites or required by Law (as amended, varied or substituted from time to time).

Viterra Website means www.viterra.com.au.

Warehouse to Warehouse means a transfer of title between the Customer and any subsequent non-trade purchaser of the Outturn Right, as the context requires.

Warehousing Services means services relating to or in connection with the storage of Grain (including, without limitation, standard Grain protection and maintenance services and recording of relevant information).

Weighnote means the token, receipt docket, weighnote, receipt or other document issued by Viterra for signature by the Customer or Agent acknowledging receipt or outturn of Grain and setting out amongst other things the weight, type and variety of the Grain, information regarding quality of the Grain, the payment grade, the selected Purchase Option, and, (where applicable), the Recorded P rice.

In these Terms:

- A: Other grammatical forms of defined words or expressions have corresponding meanings.
- B: Any references to "**includes**" or "**including**" or "**for example**" means without limitation.
- C: Any reference to particular legislation means that legislation as amended, varied or substituted from time to time and all regulations and statutory requirements pursuant to such legislation.
- D: If a provision of these Terms would, but for this section, be unenforceable:
 - (i) the provision must be read down to the extent necessary to avoid that result; and
 - (ii) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of these Terms.
- E: No rule of construction applies to the disadvantage of a party because that party put forward these Terms or any portion of it.

SCHEDULES

SCHEDULE 1 - Shrinkage Allowance

0.6% of delivered weight of the Grain for cereals, canola and other Grains.

0.85% of delivered weight of the Grain for Pulses.

SCHEDULE 2 - Outturn Standards

The Outturn Standards are the applicable Receival (Classification) Standards for Grain unless otherwise specified. Cereals and Pulses have specific exceptions. A copy of which is available to the Customer on the Viterra Website or upon request.

SCHEDULE 3 – Malt Barley downgrades

The Customer agrees that Viterra reserves the right, in its sole and absolute discretion, to regrade to feed Grade any malting Grade barley that remains in a Viterra Site after 31 July following the end of a Season and such right is necessary having regard to the quality characteristics of any malting Grade barley remaining in storage for an extended period of time.

SCHEDULE 4 - Constraints on Transfers In-store

The Customer acknowledges that there may be certain limitations to the marketing options and time available for a transfer in-store of the Outturn Right.

For example, potential purchasers of the Outturn Right may not accept transfers to cash purchase options or transfers of malting / milling quality Grain after a certain date. (Please check these conditions with your potential purchaser).

At Restrictive Sites, Customers' must complete a Transfer In-store within 14 days from the date of delivery.

Transfers In-Store will not be permitted where the Customer has not paid all of the charges in relation to the movement by Viterra of the Outturn Right from one Viterra Site to another.