

**STORAGE & HANDLING AGREEMENT  
2022 / 2023**

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**NANDALY GRAIN CO-OPERATIVE LTD.  
ABN 25 288 115 884**

**1<sup>st</sup> November 2022 – 31<sup>st</sup> October 2023**

[www.nandalyco-op.com.au](http://www.nandalyco-op.com.au)

Effective from 1<sup>st</sup> November 2022

Agreement Date:

This Agreement is for the storage of the commodity specified in Schedule 1 pursuant to the storage and handling terms and conditions as follows:

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The Agreement is between:

**STORER:**        **NANDALY GRAIN COOPERTIVE LTD (ABN 25 288 115 884)**  
**Contact:**       Jon Bucknall  
**Address:**       PO Box 164, Boort VIC 3537  
**Phone:**         0447 652 716  
**Email:**          [jbucknall@brms.net.au](mailto:jbucknall@brms.net.au)

**And CLIENT:**

**Contact:**  
**Address:**  
**ABN:**  
**Phone:**  
**Email:**

The parties have entered into a contract on the following terms and conditions:

## 1. BACKGROUND

These terms and conditions apply to the receipt, storage and handling, transfer and outturn of the commodity specified in Schedule 1, warehoused by the Storer named in this Agreement ("Storer"). These services are provided to the Client named in this Agreement ("Client") and any subsequent transferee of the commodity.

## 2. AGREEMENT

- 2.1 The Client agrees to store the Commodity identified in Schedule 1 to this Agreement with the Storer identified in Schedule 1 for the fees specified in Schedule 1.
- 2.2 The Storer agrees to store that Commodity subject to the terms and conditions of the Agreement in clean, dry, ventilated and in all circumstances reasonably appropriate storage facilities including without limitation silos, storage bins and/or covered bunkers.
- 2.3 Under this Agreement, the Storer's weighbridge docket and quality testing results issued on Receipt shall be conclusive evidence of the quantity, quality, condition, standard and specification of the Commodity being stored.

- 2.4 Each delivery of Commodity by or for the Client and each payment made by the Client to the Storer represents the Client's unequivocal and irrevocable acceptance that this Agreement applies as a legally binding contract between the Storer and the Client regardless of whether it is signed.

### **3. RECEIVAL**

- 3.1 The Storer will sample, provide quality testing services, classify into available grades, weigh, store and load (if applicable) rail or (if available) road transport or transfer the Commodity to another party under this Agreement.
- 3.2 The Storer will receive and load the Commodity in accordance with Grain Trade Australia Ltd (GTA) Trading Standards and any sampling methodology unless otherwise agreed.
- 3.3 The Storer may, at its discretion, accept or refuse to receive the Commodity for storage and/or warehousing, based on quality, hygiene, safety and its capacity and efficiency.
- 3.4 The Client will, at the cost of the Client, remove the Commodity from the storage as soon as is practicable after receipt of a notice from the Storer requiring it to do so.

### **4. TESTING**

- 4.1 The Client acknowledges the testing is conducted on a sample taken in accordance with Grain Trade Australia Ltd (GTA) Trading Standards and any sampling methodology unless otherwise agreed.
- 4.2 The Client acknowledges that there may be a variation in results between Receival Tests and Outturn Tests and that such variation is not a breach of or default under this Agreement. .
- 4.3 The Storer warrants only that it will conduct the testing in accordance with the Receival Standards. The Storer makes no other warranty or guarantee in relation to the received, stored or out-turned grain or testing, including, but not limited to, that malting barley will germinate after Outturn.

### **5. STORAGE**

- 5.1 The Commodity received and stored/warehoused may be commingled with Commodity of the like type and specification in which case all commingled Commodity shall be jointly owned by all parties whose Commodity has been so commingled to the exclusion of all other persons including but not limited to the Storer.
- 5.2 This Agreement shall not be construed as a lease of any storage facilities or land upon which any storage facility is located.
- 5.3 If the Commodity has not been removed before the end of the initial term, the Client automatically accepts the terms and conditions of the new season Agreement.

## 6. OWNERSHIP & LIEN

- 6.1 The Storer has possession of the stored Commodity and a lien in respect of all monies payable by the Client to the Storer, but otherwise has no legal or equitable title to the Commodity, unless it is an owner of the Commodity.
- 6.2 To the extent permitted by law and for the purposes of enforcing such lien, the Storer shall be entitled to retain possession of the whole or any part of the Commodity until all amounts due and payable are paid, or to sell any or all of the Commodity in such a manner as it sees fit and the proceeds of sale shall be applied to the satisfaction of the amounts due to the Storer and the costs of effecting such sale and the balance shall be paid to the Client. The Client irrevocably appoints the Storer as its agent and attorney to enforcing its lien.

## 7. TREATMENT

- 7.1 The Storer may at its expense treat the Commodity with chemicals in accordance with industry practice to prevent infestation, disease and/or contamination at all times within applicable levels as determined by industry maximum residue limits unless otherwise specified. Where fumigants are applied, it is acknowledged by the Client that the Commodity will not be accessible for outturn for a period of approximately four (4) weeks from application. The period will be determined at the reasonable discretion of the Storer.
- 7.2 The Storer is not required to provide notice or obtain the Client's approval to treat the Commodity.
- 7.3 The Storer will not be liable for any delay in outturning the Commodity as a result of the Storer treating the Commodity in accordance with this clause.

## 8. SHRINKAGE

- 8.1 The Storer will deduct a shrinkage allowance as specified in Schedule 1 from the first delivery of each load of Commodity received in the Client's name, excluding internal title transfers.
- 8.2 Receival fees will be levied against the delivered tonnage, but all other charges will be levied against the shrunk tonnage.

## 9. OUTTURN

- 9.1 The Client must give the Storer at least 1-day's written notice of a request to outturn Commodity (**Outturn Request**) advising;
- (a) Quantity;
  - (b) Grade;
  - (c) Name of Transport Provider;
  - (d) Estimated time of arrival of Transport Provider.
- 9.2 As soon as is practicable following receipt of an Outturn Request under clause 9.1 the Storer will confirm particulars of outturn (**Outturn Confirmation**).

- 9.3 The Client acknowledges that the Storer has no obligation to outturn Commodity other than as provided in an Outturn Confirmation.
- 9.4 If the actual tonnage outturned to the Client exceeds the Client's outturn entitlement, the Client must either pay the Storer for the excess at the Washout Price or replace the excess by using other grades as negotiated and agreed with the Storer.
- 9.5 If the actual tonnage outturned to the Client is less than the Client's outturn entitlement, the Storer may, at its discretion, either replace the physical shortfall in the Client's outturn entitlement or pay the Client for the deficiency in the outturn entitlement at the Washout Price.
- 9.6 For the purpose of Clauses 9.4 & 9.5, "**Washout Price**" for the Client's grain, unless otherwise agreed, is the spot market price determined by an average of three independent brokers calculated based on the day that the Client is advised of the variation.
- 9.7 Transport providers may be subject to load-time slotting during peak outturn periods, at the discretion and management of the Storer.

## **10. HOURS OF OPERATION**

- 10.1 The Storer will set hours of operation during the harvest period and advise the Client.
- 10.2 Post-harvest receipt of Commodity is to generally occur between 8.00am and 5.00pm Monday to Friday but may also be extended beyond these hours by agreement between the Storer and the Client.
- 10.3 Outturn of Commodity is to generally occur between 7.30am and 4.00pm Monday to Friday but may also be extended beyond these hours by agreement between the Storer and the Client.
- 10.4 The Storer has discretion in relation to the days and times that the storage facilities will be kept open for business and that the Storer provides no guarantee that the storage facilities will be open on any particular days or any particular times.

## **11. POSTING PRICES**

- 11.1 The Client may post, amend or withdraw prices at the Storer's facility at any time during any day.
- 11.2 The Storer will use its best endeavours, but accepts no liability for, any errors in posting the Client's price, or any delay in posting and/or withdrawing the Client's price.

## 12. DAMAGES

12.1 Commodities will be graded on Receipt to the GTA Trading Standards using an industry compliant testing regime.

12.2 If the outturned Commodity is of lesser quality than the standard on Receipt, then the Client must:

12.2.1 Give the Storer notice of any potential claim which it has against the Storer in respect of the Commodity received by the Client as soon as the issue is known and before unloaded from the transport to which it was outturned from the Storer. The relevant Commodity will be deemed to be the correct quality, grade and standard, free of contamination and other defects if no such notice has been received within 24 hours from outturn;

12.2.2 Provide the Storer with a sample of the outturned grain the subject of the claim; and

12.2.3 Allow the Storer to test the Commodity and compare this sample with a sample of grain retained by the Storer on outturn of grain from the site.

12.3 In the event of a dispute in relation to the quality of the Commodity or the testing procedure used at the Storer's facility or the delivery destination, an independent sample will be taken at the delivery destination and will be sent to Commodity Inspection Services (CIS), or another Client approved testing agency, who will conduct an independent test of the Commodity which will determine whether the Commodity meets GTA Trading Standards or is non-compliant. If CIS, or any other Client approved testing agency, finds that the Commodity is not compliant with the GTA Trading Standard that it was received under, the Storer will be liable for any costs associated with return of non-compliant Commodity and re-delivery of compliant Commodity including, but not limited to freight, dockage and independent testing.

12.4 The Storer may, in its discretion, mitigate or satisfy a claim in respect of downgraded Commodity by:

12.4.1 averaging the quality parameters of the downgraded Commodity with other road trucks outloaded to the Client on the same day;

12.4.2 substituting (at the Storer's expense) other Commodity of the same type of the required grade and quality; and/or

12.4.3 retaining the downgraded Commodity and providing compensation using the following formula;

**Tonnage X fair market value of non-reclassified Commodity.**

12.4.4 Compensate for the downgraded commodity using the following formula;

**Tonnage X (fair market value of non-reclassified Commodity less fair market value of reclassified Commodity)**

### 13. TRANSFER

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- 13.1 The Client may only transfer the Commodity to a third party (**Purchaser**) by completing and executing a Title Transfer in the form set out in Schedule 2 (**Warehouse Transfer Form**).
- 13.2 Title in the Commodity is not transferred until the Transfer Form is executed by the Client, the Purchaser and the Storer and the Storer has notified the Client and the Purchaser that the transfer has been executed.
- 13.3 The Client warrants that the Purchaser is on notice of these terms and conditions and has agreed to be bound by them.
- 13.4 The Storer may refuse to sign a Transfer Form until any overdue amounts owing to the Storer by either the Client or the Purchaser have been paid in full.

### 14. PAYMENT

- 14.1 In accordance with this Agreement the Client must pay the Storer all charges and fees specified in Schedule 1.
- 14.2 All accrued charges and any costs payable on any account in respect of stored Commodity must be paid by the Client in accordance with the invoice rendered by the Storer.
- 14.3 The full amount of each invoice rendered by the Storer must be paid by the Client within thirty (30) days of the date of that invoice, by telegraphic transfer or bank transfer to the Storer's nominated bank account, free of expense to the Storer.
- 14.4 The Client must submit a remittance advice clearly identifying the invoice/s being sent:

**EMAIL:**            [admin@nandalyco-op.com.au](mailto:admin@nandalyco-op.com.au)

- 14.5 The storage fees set out in Schedule 1 shall apply only from the date of this Agreement to 31<sup>st</sup> October of the year following commencement and may be varied by the Storer in its discretion annually on that date.
- 14.6 The Storer and Client acknowledge that all fees and charges payable as stated in this Agreement have been calculated on a GST exclusive basis unless otherwise stated.

## 15. CARRY OVER OF COMMODITY

If any Commodity remains in the Storer's facilities on 1 November (**Carry-Over Date**) the Client must pay the Storer the applicable monthly storage fees, as in Schedule 1, up to the Carry-Over Date, and the Carry-Over Fees as listed in Schedule 1.

## 16. CHAIN OF RESPONSIBILITY

The Client acknowledges and warrants that;

- (a) it is aware of and is bound by the *Heavy Vehicle National Law* (HVNL) including without limitation those parts of the HVNL commonly referred to as the *Chain of Responsibility*;
- (b) it has policies and procedures in place to ensure that it is compliant with the HVNL and will produce evidence of and copies of those policies and procedures on request;
- (c) it will indemnify the Storer in respect of any liability incurred by the Storer arising solely from the Client's failure to comply with its obligations under the HVNL;
- (d) To the extent that any obligation of the Storer under this agreement conflicts (in the reasonable opinion of the Storer) with its obligations under the HVNL, the obligations under the HVNL prevail.

## 17. INTEREST

If any payment is not made on or before the due date for payment the Client must pay interest on any overdue amount at a rate of 1.5% per calendar month, calculated daily, unless otherwise agreed. The Client shall also be liable for any legal costs incurred by the Storer in recovering or seeking to recover overdue amounts on an indemnity basis.

## 18. LEVIES & TAXES

- 18.1 Any industry, statutory or government levies which are not included in the contract prices shall be adjusted for in any related payments.
- 18.2 Where a Goods and Services Tax (GST) is applicable to the storage per these terms and conditions, subject to the issuing of a valid tax invoice, The Storer will recover from the Client an amount on account of GST, such amount to be calculated by multiplying the price for the supply by the prevailing GST rate.

## 19. WEIGHTS & MEASURES

- 19.1 The Storer will ensure that all weights are determined by a registered weighbridge.
- 19.2 Any Commodity testing and quality testing equipment the Storer uses will be provided at its expense and in line with industry practice.



## **20. RECORD KEEPING**

- 20.1 The Storer will maintain and keep complete and accurate electronic records of all commodities stored by it (including the Commodity) and of all actions taken by it in relation to the stored Commodity.
- 20.2 Such records will be sufficient, as a minimum, to identify the amount, location and ownership of any stored Commodity, including joint ownership of any commingled commodity.
- 20.3 The Storer will provide the Client with secure access to its online warehouse portal, from which the client can obtain 'live' details of its stored Commodity including, but not limited to, receipts, stock on hand reports and stock movements.
- 20.4 The Storer agrees that all documentation must be kept in accordance with statutory requirements and available for inspection upon request to authorised persons representing the statutory authority.

## **21. INSOLVENCY**

- 21.1 In the event of the Storer's insolvency, the client or any Purchaser remains the owner of the Commodity.
- 21.2 The Client will be entitled to immediate discharge of its Commodity, on demand, subject to any lien

## **22. TERMINATION**

- 22.1 This Agreement may be terminated by agreement of the parties
- 22.2 This Agreement may be terminated by the Storer with immediate effect if:
  - (a) The Client suffers an insolvency event being the commencement of liquidation, insolvency or winding up of the Client (except for the purpose of solvent amalgamation or restructure) or upon the appointment of an administrator, receiver, liquidator, statutory manager or trustee of property over all or any substantial portion of the Client's assets or undertakings, or upon assignment, arrangement or compensation for the benefit of the Client's creditors, or upon the Client being unable to pay its debts in the ordinary course of business, or upon any act of bankruptcy; or
  - (b) The Client commits a breach of any term of this Agreement which is not capable of being remedied or if capable of being remedied has not been remedied within a period of 14 days from the date the Storer gives the Client a notice to remedy the breach;
- 22.3 Within 28 days of termination of the Agreement, the Client must remove any of its Commodity from the Storer's facility. The Storer may dispose of any of the Client's Commodity remaining after that time, retaining any proceeds of sale necessary to cover

outstanding amounts owed to the Storer as well as any costs of sale or disposal with the balance to be remitted to the Client.

22.4 Termination does not affect any rights or remedies a party may have otherwise.

### **23. EXCLUSION OF LIABILITY**

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23.1 Unless otherwise stated, the Storer is not liable for delay in delivery, misdelivery, damage, destruction, contamination or loss of Commodity unless caused by the gross negligence of the Storer.

23.2 The Client acknowledges that the Storer is unable to test on receipt for germinative quality of barley, toxic or other chemical residues, genetically modified seed or other contamination and is not liable for any claims, damages or loss associated with non-conformance to industry standards where the attribute cannot be reasonably and practically ascertained by the Storer on receipt.

23.3 The Client shall indemnify the Storer against and release the Storer from any and all losses (including consequential and indirect losses), costs, damages and expenses suffered or incurred by the Storer arising directly or indirectly out of or in relation to any breach or non-performance by the Client of its obligations under this Agreement, any claim by a third party relating to the Client's Commodity; or any claim by a third party regarding a transfer of the Commodity, except to the extent such loss, costs, damages or expenses were caused by the gross negligence of the Storer.

23.4 The Client acknowledges that any transportation of the Commodity is at the Client's risk, including without limitation, transportation of Commodity arranged by or on behalf of or at the request of either the Client or the Storer.

23.5 The Storer is not liable for and the Client releases the Storer from any direct, indirect or consequential loss, damages or costs caused by or otherwise relating to the storage or handling of any commodity contaminated as described in clause 23.2.

23.6 The Client acknowledges and agrees that the only warranties provided by the Storer pursuant to this Agreement are those expressly set out in this Agreement and to the maximum extent permitted by law, the Storer excludes all conditions implied by law including those contained in the *Competition and Consumer Act 2010* (Cth.). In the event the Storer cannot lawfully exclude such implied warranties and conditions, the Storer's liability shall be limited to the cost of re-supply of the relevant Services for payment to the Client of the cost of such Services.

## **24. INSURANCE**

- 24.1 The Storer is under no obligation to insure the Commodity against loss, damage or destruction.
- 24.2 The Client will at all times during this Agreement keep the Commodity insured against all risks while it is held at the nominated facility/facilities.
- 24.3 The Client will ensure that the Storer is named in all relevant insurance policies as a joint insured in its capacity as custodian or alternatively a waiver of subrogation rights against the Storer is to be included in all policies.
- 24.4 The Storer reserves the right to request the Client to submit evidence of the above.

## **25. DOMICLE**

- 25.1 This Agreement and the rights and liabilities of the parties under this Agreement will be governed by the law of the Victoria. The courts of Victoria will possess territorial jurisdiction to hear and determine any cause of action arising under this Agreement

## **26. RULES OF TRADE**

These terms are subject to the Trade Rules of Grain Trade Australia Limited (**GTA**) currently in effect, except to the extent the same are in conflict with the terms expressed herein. In the event of any conflict between these terms and the Trade Rules, these terms will prevail.

## **27. ARBITRATION**

- 27.1 Any dispute arising out of this Agreement and these terms and conditions, including the existence of the Agreement and any question of law arising in connection therewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of GTA in force at the commencement of the Arbitration and of which both parties hereto shall be deemed to be cognizant.
- 27.2 Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration in accordance with the Dispute Resolution Rules of GTA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or any person claiming under either of them to bring action or other legal proceedings against the other of them in respect of any such dispute.

## 28. FORCE MAJEURE

28.1 For the purpose of this Agreement a “Force Majeure Event” affecting a Party means anything outside that Party’s reasonable control including without limitation:

- (a) Accident, fire, adverse weather conditions, flood, tidal conditions, earthquake, explosion, blockages of ports, civil commotion, outbreak of hostilities, terrorist act, declaration of war, war, invasion, rebellion, epidemic, pandemic or declarations of a state of emergency.
- (b) Strikes, stop works, lockout, boycotts or any other form of labour disputes or labour shortage.
- (c) Breakdown, damage or destruction of any of the Storer’s storages or facilities.
- (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 prohibition on export; and
- (f) Acts or omissions of any third party (including without limitation Governments, Government agencies, subcontractors or Clients).

28.2 Suspension of obligations – If a party is wholly or partially precluded from complying in the normal manner required by this Agreement with its obligations under this Agreement by a Force Majeure Event, then the affected party’s obligations to perform in accordance with the terms of this Agreement will be suspended for the duration of the Force Majeure event.

28.3 Notice – As soon as possible after Force Majeure Event arises, the Affected Party must notify the other party of:

- (a) the nature of the Force Majeure Event;
- (b) the cause of the Force Majeure Event;
- (c) which obligations the Affected Party believes it is wholly or partially precluded from complying with as a result of the Force Majeure Event;
- (d) the extent to which the Force Majeure Event precludes the Affected Party from performing the Affected Obligations;
- (e) the expected duration of the delay arising as a result of the Force Majeure Event;
- (f) the steps that are being taken to minimise the impact of the Force Majeure Event; and

- (g) the steps which would be taken (subject to the Parties reaching an agreement as to the payment of any additional costs involved) to minimise the impact of the Force Majeure Event.

28.4 Minimisation of impact – upon receiving a notice under clause 28.3 the Parties will meet to discuss and agree:

- (a) what action can be taken to minimise the effect of the Force Majeure Event on the performance by the Affected Party of the Affected Obligation;
- (b) whether the Affected Party is able to work around the Force Majeure Event either to prevent the delay in the performance of the Affected Obligation or to minimise the impact of that delay; and
- (c) what modifications or additions to the terms of this Agreement or any other agreements between the Parties (including without limitation any modifications or additions relating to the appointment of any additional costs) are required to give effect to any proposal to minimise the effect of the Force Majeure Event.

28.5 Obligation to Mitigate – the Affected Party must:

28.5.1 keep the other Party fully informed of its plan to minimise the effect of the Force Majeure Event;

28.5.2 subject to reaching agreement concerning any modifications or addition required to give effect to any proposal to minimise the effect of the Force Majeure Event;

- (a) comply with all reasonable requests made by the other Party relating to the prevention or minimisation of the impact of the Force Majeure Event; and
- (b) use all reasonable endeavours to resolve, and minimise the impact of, the Force Majeure Event.

28.6 Payments – an obligation to pay money is never excused by a Force Majeure Event.

28.7 Labour Disputes – the requirement to use all reasonable endeavours to resolve or minimise the impact of the Force Majeure Event will not require either Party to settle any strike, lockout, boycott or other dispute or claim, or any demand by a third party, on the terms contrary to the wishes of that Party.

## 29. SIGNATORY WARRANTY

The person who signs this Agreement on behalf of the Client warrants that he or she is authorised to enter into legally binding contracts on behalf of the Client.

## 30. AMENDMENT

This Agreement may only be amended in writing signed by both parties and not in any other manner.

**31. WAIVER**

31.1 The failure by any party at any time to enforce any of its powers, remedies or rights under this Agreement will not constitute a waiver of those powers, remedies or rights or affect the party's rights to enforce those powers, remedies or rights at any time.

31.2 Any single or partial exercise of any power, remedy or right does not preclude any other or further exercise of it or the exercise of any other power, remedy or right under this Agreement.

**32. SEVERANCE**

If any provision of the Agreement is prohibited, invalid or unenforceable in any jurisdiction, the provision will, as to that jurisdiction, be ineffective to the extent of the prohibition, invalidity or enforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**33. CHANGE IN LAW**

In the event of a change in law after the commencement of this Agreement which results in an increase in costs the Storer in the provision of Services, the Storer may amend this Agreement on provision of three (3) months' notice to the Client.

**34. ENTIRE AGREEMENT**

This Agreement contains the entire Agreement between the parties. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect. Any provision of the Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the effect of the Agreement.

**35. ASSIGNMENT**

No party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party and no assignment of any obligation will be effective until the assignee has covenanted in favour of, and if form satisfactory to, the non-assigning party, to assume and to be bound by the obligations assigned.

**36. INTERPRETATION**

In this Agreement unless contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of any of them;

- (b) a reference to a statute, ordinance, code or any other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements;
- (c) the singular includes the plural and vice versa;
- (d) the word “person” includes firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (g) a reference to a Clause, schedule, annexure or appendix is a reference to a Clause, schedule, annexure or appendix to this Agreement and references to the Agreement include any recital, schedule, annexure or appendix, unless otherwise indicate.

### 37. DEFINITIONS

The following words have the corresponding following meanings in this Agreement unless a contrary intention appears:

**Addendum** means any addendum modifying this Agreement signed by the Storer and the Client.

**Business Day** means any day on which the principal office of the Storer is open for business and does not include Saturday, Sunday or a day that is a gazetted public holiday.

**Charges** means those charges calculated in accordance with Schedule 1

**Client** means a person that uses the Facilities for storage of Commodity and may, if the context permits, include the Client.

**Commingling** is the situation where different grades of Commodity are stored in the same Cell

**Cell** means a physical unit for storage of a Commodity

**Commodity** means the seed of any crop or pasture species including Pulses and oilseeds.

**Damaged commodity** means Commodity that has been damaged in an unusual incident or event to such an extent that it can no longer be classified by any Receival (Classification) Standards and is only of salvage value or suitable for disposal.

**Delivered** means, in respect of the Commodity, the point and time at which the Commodity first arrives at a Facility.

**Facility** means any Commodity receipt, storage and handling facilities used by the Storer in connection with the provision of Receipt or other services to the Growers and/or the provision of the Services to the Client.

**Grade** means the grade of Commodity of a given Season specified in the Receipt Standards of that same Season, or any other grade agreed by the Parties

**GTA** means Grain Trade Australia Ltd

**Grower** means a person or entity involved in the growing of a Commodity, the contact details for whom have been registered by the Client or the Storer or a national grower register.

**GST** means the tax imposed by the GST Law

**GST Law** has the same meaning as in A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).

**Harvest** means the period of time during which Commodity may be harvested and Delivered.

**Industrial Disputes**” includes a strike, stop-work, boycott or lockout.

**Insolvency Event** means in relation to a Party:

- (a) A receiver, receiver and manager, administrator, trustee or similar official is appointed over the whole or a substantial part of the assets or undertaking of the Party and is not removed within 30 days.
- (b) The Party suspends payment of its debts generally;
- (c) The Party is insolvent within the meaning of the Corporations Act 2001 (Cth);
- (d) The Party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) An application (other than a vexatious application) or order is made for the winding up or dissolution of, or the appointment of a provisional liquidator to, the Party or a resolution is passed or steps are taken to pass a resolution for the winding up or dissolution of the Party otherwise than for the purpose of an amalgamation or reconstruction which has the prior written consent of the other Party and, in case of an application, the application is not withdrawn or dismissed within 60 days: or
- (f) An administrator is appointed under Division 2 of Part 5.3A of the Corporations Act 2001 (Cth) and, except in the case of an appointment by the Party of its directors, is not withdrawn or removed within 14 days.



**Outturn** means:

- (a) The loading of Commodity from Facility for transportation to Non Storer Facility or such other place as directed by the Client;
- (b) The disposal of Damaged Commodity; or
- (c) Any other outturn required and directed by the Client for the purpose of stock accounting.

**Party** means, depending upon the context, either the Storer or the Client.

**Pulses** means chickpeas, lupins, field peas, faba beans, lentils, vetch, broad beans and any other grain legumes.

**Receival** means the process of Testing, weighing, tipping, inwardly elevating and placing of Commodity into the Facilities on behalf of a Grower or Client.

**Receival Standards** means the standards as published on the Storer website in respect of Receival, at the time the Commodity is received, and in respect of Outturn, at the time of Outturn. Receival Standards will be in accordance with GTA Trading Standards.

**Season** means the period in which most of the Growers Commodity is harvested and delivered to the Storers facilities, typically commencing in October in one year and going through to the February of the following year.

**Services** means the services provided by the Storer to the Client under this Agreement in respect of all Commodities at the Facilities and includes:

- (a) Posting prices
- (b) Receival
- (c) Storage
- (d) Commodity handling and Outturn

**Shrinkage** means the quantity of Client Commodity, which is lost in the normal storage and handling process including:

- (a) Loss of mass through changes in moisture content;
- (b) Handling; and
- (c) Waste;

But does not include Commodity lost as Damaged Commodity.

**Storage** means the warehousing, control and movement of Commodity.

**Storer** means Nandaly Grain Co-op Ltd.

**Washout Price** means the price determined in clause 9.

**Waste** means Commodity that, as a result of the normal handling process, has been downgraded to Commodity of no commercial value, for example, mouldy grain, grain mixed with dirt and stones.

**SIGNED** on behalf of the **Storer** : **Nandaly Grain Co-op Ltd.**

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of signatory (block letters)

\_\_\_\_\_  
Name of witness (block letters)

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

**SIGNED** on behalf of **Client** :

in the presence of:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of signatory (block letters)

\_\_\_\_\_  
Name of witness (block letters)

\_\_\_\_\_  
Position

\_\_\_\_\_  
Position

\_\_\_\_\_  
Date

# **SCHEDULE 1.**

## **STORER AND FACILITIES**

- **NANDALY GRAIN CO-OPERATIVE LTD.**

For grain stored at Bishop Street, Nandaly VIC 3533

Site Manager : Terry Elliot

M: 0427 040 814

E: [nandalygraincoop@bigpond.com](mailto:nandalygraincoop@bigpond.com)

Weighbridge : 03 5078 1262

## **NOTICES**

All correspondence and notices to be sent to:

**Nandaly Grain Co-operative Ltd**

**PO Box 164**

**Boort VIC 3537**

## **PAYMENT DETAILS**

**Nandaly Grain Co-Operative Ltd**

**BSB : 633-000**

**Acct Number: 138-336-458**

The Client must submit a remittance advice clearly identifying the invoice/s being sent:

**EMAIL:**            [admin@nandalyco-op.com.au](mailto:admin@nandalyco-op.com.au)

## **SCHEDULE OF FEES AND CHARGES**

<b>FEES &amp; CHARGES PER MT</b>				
<b>NANDALY GRAIN CO-OP - SEASON 2022/23</b>	<b>WHEAT</b>	<b>MALT BARLEY</b>	<b>FEED BARLEY</b>	<b>PULSE</b>
Receival Fee	\$ 8.50	\$ 8.50	\$ 8.50	\$ 8.50
Outturn Fee	\$ 7.00	\$ 7.00	\$ 7.00	\$ 10.00
Monthly Storage 1st March 2023 - 31st Oct 2023	\$ 1.65	\$ 1.65	\$ 1.65	\$ 1.65
Carryover Fee (one off) 1st November 2023 Nil monthly fee until 1st March 2024	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00
Shrink	0.65%	0.65%	0.65%	1.00%

### **Additional Service Fees**

- Top loading containers will incur a \$3.00/mt loading fee

### **Invoicing Schedule**

- All fees are exclusive of GST
- Receival fees will be invoiced monthly during the harvest period
- Storage is invoiced on a monthly basis for stocks held on the first day of the month.
- Interest will be charged on overdue accounts as per Clause 17.

## SCHEDULE 2. - WAREHOUSE TITLE TRANSFER FORM

SELLER (Owner of warehoused tonnes)		
NAME :		
CONTACT PERSON:		
ADDRESS:		
NGR:		
TEL:		
FAX:		
EMAIL:		

BUYER		
NAME:		
CONTACT PERSON:		
ADDRESS:		
NGR:		
TEL:		
FAX:		
EMAIL:		

### STOCK TO BE TRANSFERRED

SEASON	GRADE	SITE	TICKET NUMBERS	CONTRACT / REFERENCE	TONNES
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/					
/					
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**AUTHORISATION**

I, the above Seller of grain, confirm that the tonnage of grain has been sold to the Buyer and agree to accept any charges applicable as per Nandaly Grain Co-operative Warehouse Terms & Condition. I authorise Nandaly Grain Co-operative the Title Transfer for buyer approval.

Seller signature: \_\_\_\_\_

Date: \_\_\_\_\_

**PLEASE EMAIL TO:**     [jbucknall@brms.net.au](mailto:jbucknall@brms.net.au)

<b>OFFICE USE ONLY</b>			
DATE RECEIVED:	<input type="text"/>	RECEIPT NUMBER:	<input type="text"/>
DATE TRANSFERRED:	<input type="text"/>	SIGNED:	<input type="text"/>

## SCHEDULE 3. – COMMODITY OUTTURN ORDER

OWNER NAME :

OWNER REFERENCE:

CONTACT:

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### ORDER DETAILS

SITE:

DESTINATION:

START DATE:

CARRIER NAME:

END DATE:

CARRIER PHONE:

COMMODITY:

ADDITIONAL INFO:

GRADE:

QUANTITY (MT):

### AUTHORISATION

AUTHORISED BY:

PHONE:

EMAIL:

I, the undersigned, verify that the information contained in this form is true and correct to the best of my knowledge

SIGNED:

All fields must be filled in correctly to ensure the form is valid

For full terms & conditions please refer to current storage & handling agreement

Please return by email to [nandalygraincoop@gmail.com](mailto:nandalygraincoop@gmail.com)