



FIXED PRICE HARD/GRISTING WHEAT CONTRACT – 2015 HARVEST

DATED:

PARTIES:

Farmers Mill Limited of Timaru, (“the Purchaser”)

_____ of _____, (“the Grower”)

Or where applicable

_____ of _____, (“the Growers Agent”)

BACKGROUND

- A. The Purchaser wishes to buy, and the Grower wishes to supply, wheat (“the Crop”) on the terms and conditions set out in this Agreement.
- B. The parties hereby acknowledge and agree that this Agreement replaces and supersedes the terms of any prior contract or prior arrangement of any kind whatsoever between the Purchaser and the Grower.

1. Definition and Interpretation

1.1. In this Agreement, unless the context otherwise requires:

“Commencement Date”	means January of the year of harvest.
“Contracted Tonnage”	means the total volume of Crop to be supplied under the terms of the contract.
“GST”	means goods and services tax in terms of the Goods and Services Act 1985, at the rate prevailing from time to time, including any tax levied in substitution for that tax.
“Month”	means a calendar month.
“Free Grain”	means Crop that is not subject to the terms of a contract.
“Price”	means the prices for the Crop as set out in Schedule 1
“Term”	means the term of this Agreement as more particularly set out at clause 2.
“Certified Machine Dressed Seed”	means seed that has been accredited by an industry approved certification scheme as being true to variety in the specified cultivar.

- 1.2. In the interpretation of this Agreement, unless the context otherwise requires:
 - 1.2.1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
 - 1.2.2. Words in the singular shall include the plural and vice versa.
 - 1.2.3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the schedules.

2. Term

- 2.1. This Agreement shall commence on the Commencement Date and subject to the provisions of Clause 5, remain in effect for 12 calendar months at which time it shall immediately and automatically terminate.

3. Price

- 3.1. Crop pricing will be as set out in schedule 1.
- 3.2. The Purchaser has the first right of refusal at the contract price of up to 10% of the growers harvest above that of the contracted tonnage.
- 3.3. The Grower will meet the costs of inwards weighs. On receipt of Crop the Purchaser will meet the costs of testing, receiving and delivery.
- 3.4. All normal levies and royalties set by Regulation, Statute or Industry Agreement may be deducted from the amount payable to the Grower and paid accordingly.

4. Quality Specifications

- 4.1. The Crop to be sold and purchased shall meet the Quality Specifications as set out in Schedule 2.
- 4.2. All gradings at the time of receipt by the Purchaser are final.

5. Growers Undertakings

- 5.1. The Grower will obtain at their expense sufficient quantity of certified machine dressed seed, certified as true to variety in the specified cultivar.
- 5.2. The Grower undertakes to sell and deliver to the Purchaser not less than 100% of the contracted tonnage as set out in Schedule 1.
- 5.3. The Grower will not deliver Crop other than that produced from the nominated cultivar and from the nominated area.
- 5.4. If the quantity of Crop delivered is less than 100% of the contracted tonnage the Purchaser may require the Grower to provide other such Crop of like quality to meet the shortfall.
- 5.5. Crop sourced by the grower to meet a shortfall in contracted tonnage may not be subject to clause 5.3 above. Any costs associated with sourcing Crop to meet the contracted tonnage are those of the Grower.

- 5.6. The Grower will pay all the expenses in connection with the production of the Crop including crop establishment, harvesting, storage, delivery and any applicable levies or royalties due.
- 5.7. The Growers production area is to be Quality Assurance Registered with the QAgrainz Scheme. The Crop will be grown in accordance with recognized and accepted farm husbandry principles.
- 5.8. The Grower shall manage the storage of Crop and rectify pest or moisture problems in a timely manner with recognised and accepted farm management principles, unless otherwise approved by the purchaser.
- 5.9. The grower will ensure that the resulting Crop is true to cultivar type and true to harvest sample.
- 5.10. The Grower undertakes to keep a spray paddock history diary for the inspection by the purchaser as and when required. A copy of the said diary must be provided to the Purchaser on delivery of representative harvest samples.
- 5.11. The Grower shall provide evidence by way of a pesticide/herbicide residue test from a recognised laboratory for all wheat supplied that has been treated with any form of chemical defoliant.

6. Delivery

- 6.1. The Grower will deliver the Crop in bulk to the Delivery Point as set out in Schedule 1. The timing of the delivery is at the Purchasers discretion.

7. Storage

- 7.1. The Grower will provide dry and uncontaminated storage of the Crop pending its delivery hereunder and will ensure that the Crop is stored separate and readily distinguishable from other lines of Crop and other produce.
- 7.2. Where the Crop is required to be stored after 30 April, the Grower shall be paid, in addition to the purchase price, a storage fee computed by reference to the storage increment in Schedule 1, which fee shall be payable in a lump sum with that of the purchase price.
- 7.3. Crop sourced to meet the contracted tonnage that has not been grown on the Growers farm, rejected Crop, or Crop purchased by way of negotiation outside of the specification set out in schedule 2 will not attract a storage increment.

8. Risk And Title

- 8.1. Property and risk in the Crop will pass from Grower to Purchaser when the Crop has been delivered, tested and accepted by the Purchaser.
- 8.2. The Purchaser will have the right to inspect the crop throughout the growing season and whilst the product is in storage on the Grower's farm or designated storage facility

9. Sample Testing

- 9.1. On completion of the harvest, and in any event no later than 30th April of the year of harvest, the Grower will supply a harvest sample of each line of Crop to the Purchaser.
- 9.2. Each submitted sample must be a minimum of 2 kg and be fully representative of no more than 200 tonne of grain.
- 9.3. The Purchaser will keep the Sample for three months following delivery of the entire Crop in accordance with this agreement.
- 9.4. Should artificial drying of the Crop be needed, the Sample taken for testing must be representative of the whole crop after drying has been undertaken, and the Sample is to be labelled accordingly.
- 9.5. In the event that the Grower does not submit a Sample in accordance with clause 9.1, or if the Sample submitted does not meet the Quality Specifications set out in Schedule 1, the Purchaser may, in accordance with clause 11, reject the Crop (or any part of it) to which the Sample relates, or would relate had a Sample been provided

10. Method of Payment

- 10.1. All payments for Crop deliveries received will be made by the Purchaser on the 20th of the month following receipt of Crop.
- 10.2. All payments will be made directly to the Grower or where applicable the Growers Agent but in no circumstance should the Purchaser be liable to the Grower in the event that the Growers Agent fails to make payment to the Grower.
- 10.3. Where applicable the Growers Agent must advise the Purchaser whether there are any charges or liens over the crop concerned.
- 10.4. The Purchaser must provide written advice to the Grower or Grower's Agent for any Crop not meeting the specifications set out in schedule 2.

11. Rejection of Crop

- 11.1. Without limiting its right to reject the Crop in accordance with clause 9.5, the Purchaser will be entitled to reject all or any part of the Crop which fails to comply with the Quality Specifications set out in Schedule 2.
- 11.2. The Purchaser will have the first right of refusal to purchase rejected Crop at a price negotiated between the Purchaser and the Grower. Rejected Crop purchased by the Purchaser will not by default satisfy the Growers obligation in terms of the contracted tonnage.
- 11.3. The Purchaser may elect by way of negotiation to offset the quantity of rejected Crop purchased against the Growers obligation in terms of contracted tonnage. The Purchaser will confirm any such agreement in writing.
- 11.4. Any Crop (or any part of it) that is rejected will be re-delivered to the Grower, such costs to be for the Grower's account.

12. Assignment

- 12.1. The Purchaser may, at its discretion, assign or otherwise transfer any of its rights or obligations under this agreement to any of its related companies or to any registered banking institution. "Related company" has the same meaning as set out in Section 2 of the Companies Act 1993 save that the reference to "company" shall mean any company, whether or not incorporated or constituted in New Zealand
- 12.2. The Grower may not transfer, assign, or otherwise transfer any of its rights or obligation under this agreement to any other party without approval in writing from the Purchaser.
- 12.3. In the event of a farm changing hands, after the contract is signed, the contract to supply will remain binding. The Grower may apply to the Purchaser for reassignment of the contract. The Purchaser will consider any such requests but is under no obligation to accept reassignment.

13. Termination

- 13.1. A party shall be entitled to terminate this Agreement with immediate effect by giving notice in writing to the other party if:
 - 13.1.1. the other party commits a material breach of its obligations under this agreement and fails to remedy that breach within a period of 30 days after receipt of notice in writing requiring it to do so; or
 - 13.1.2. the other party commits a series of persistent minor breaches which, when taken together, amount to a material breach; or
 - 13.1.3. if a liquidator is appointed in respect of all or any of the assets or undertaking of the other party; or
 - 13.1.4. if a receiver or statutory agent is appointed in respect of all or any of the assets or undertaking of the other party; or
 - 13.1.5. if the other party makes any composition, arrangement with its creditors, is unable to pay its debts, is wound up or dissolved.

14. Disputes

- 14.1. Where a dispute arises between the parties, the parties agree to make every effort to resolve the dispute by mutual negotiation.
- 14.2. Where within seven days of a dispute arising, a meeting between the parties has not occurred, or the dispute has not been resolved, either party shall be entitled to refer the dispute to a mediator agreed by the parties with such mediation to be conducted in accordance with the rules laid down by LEADR New Zealand Incorporated. Nothing in this clause 14 shall prevent either party from seeking urgent interlocutory relief from the courts.
- 14.3. Obligations continue: Pending resolution of the Dispute, the parties will continue to perform their respective obligations pursuant to this Agreement.

15. General

- 15.1. No variation of this Agreement shall be binding upon the parties unless in writing signed by a duly authorised representative of the parties.
- 15.2. Nothing in this Agreement shall evidence or be deemed to constitute a partnership or agency relationship between all or any of the parties.
- 15.3. This Agreement and any documents annexed thereto or otherwise referred to herein contain the whole agreement between the parties.
- 15.4. The provisions of this Agreement shall not:
 - 15.4.1. confer, purport to confer, or be constructed to confer any benefit on any person who is not a party to this Agreement;
 - 15.4.2. create any obligation enforceable at the suit of any person who is not a party to this Agreement whether under the Contracts Act 1982 or otherwise.
 - 15.4.3. This Agreement is to be governed and construed in accordance with the laws of New Zealand. Each of the parties irrevocably and unconditionally agrees that the courts of New Zealand have jurisdiction to hear and determine each suit, action or proceeding and to settle disputes which may arise out of or in connection with this Agreement and for those purposes irrevocably submits to the exclusive jurisdiction of the New Zealand courts.

Signed by the Grower :

Date

Signed by the Purchaser:

Date

Signed by the Agent (where applicable):

Date

Schedule 1 – Contract Volume and Pricing Terms

Crop Type:	Hard/Gristing Wheat
Approved Cultivars:	Sage, Saracen, Vanquish, Viceroy, Torlesse
Contracted Tonnes:	
Price:	\$430 per tonne (Protein: 10.5% - 11.4%) \$440 per tonne (Protein: 11.5%+)
Quality Incentive:	\$5 per tonne (additional) for test weight < 78kg/Hl
Storage Increment:	From 1st May in the year of harvest a storage increment will be accrued to the value of 8.0 cents per tonne per day calculated to the day of delivery to the mill for contracted Crop, grown on the Growers farm, and within the specification set out in schedule 2.
Delivery Points	Delivery point will be Grainstor/Farmers Mill, and weighing at Seedlands Limited, Elginshire street, Timaru.

Schedule 2 – Crop Specification

Protein:	Minimum Protein 10.50% Method: AAC 46-11a Kleldahi, Leco or Calibrated NIR Analyser	
Moisture:	14.5% Maximum	
Falling Number:	250 seconds minimum – below Purchasers option to purchase Method: AACC 56-81B on un-sieved wholemeal	
Test Weight:	72kgs/HL minimum on unscreened wheat	
Kernel Weight:	38 minimum Grams – per 1000 kernels clean wheat	
Black Point:	10 maximum Method: MAF Index	
Screenings:	0% to 2 %	No deductions
	2% to 5%	Deduction by weight
	Screening should contain no more than 0.2% weed seeds. All weed seeds and foreign matter fully deductible. Method: 100g sample passed over 2mm Rotoscreen	
Appearance:	Wheat must be fit for human consumption, sweet and clean, free from smut, blemish visible sprout and all other Crops, seed, vermin, diseases and insect and Crop storage pests.	
Pesticide Residue:	Maximum 2 ppm organo-phosphates, Nil organo-chlorines, Nil chemical defoliant.	
Samples:	Must be representative and submitted before 30 th April in the year of harvest, anything submitted after this date may not be accepted.	