



## Cargill Grain Purchase Terms and Conditions

The following terms are understood to be an accurate statement of the terms and conditions of the agreement between the parties hereto. Failure to advise Buyer immediately of any objections to or disagreement with such terms and conditions shall constitute acceptance of these terms and conditions.

- 1. NGFA Grain Trade and Arbitration Rules.** Unless otherwise provided herein, this Contract, and all other grain contracts by and between Buyer and Seller, shall be subject to the Grain Trade Rules of the National Grain and Feed Association (NGFA), which Trade Rules are incorporated herein by reference. The parties agree that the sole forum for resolution of all disagreements or disputes between the parties arising from or relating to any grain contract between Buyer and Seller or relating to the formation of any grain contract between Buyer and Seller (including, but not limited to, any statutory or tort claims arising from or relating to the relationship between the parties) shall be arbitration proceedings before NGFA pursuant to NGFA Arbitration Rules. Any disagreements or disputes must be brought by, and only by, the Buyer or Seller or their legal successor, and not as a claimant with or member of a class or group of allegedly similarly situated claimants in a purported representative proceeding. The decision and award determined by such arbitration shall be final and binding upon both parties and judgment upon the award may be entered in any court having jurisdiction thereof. Copies of the NGFA Grain Trade and Arbitration Rules are available from Buyer upon request and are available at [www.ngfa.org](http://www.ngfa.org). In addition to any damages otherwise provided by law, Buyer shall be entitled to recovery of its attorneys' fees and costs.
- 2. Grade Factors and U.S. Origin.** Unless otherwise specified, official inspection shall include only official grading factors that are included in the United States Grain Standards Act, as amended. Seller represents, warrants and guarantees that all commodities delivered under this Contract have been or will have been grown in the continental United States. The Parties agree that the sale and delivery of the commodity contemplated by this Contract is a commercial merchandising transaction, the primary purpose of which is to transfer ownership of the commodity.
- 3. Buyer's Excuse from Performance.** Buyer shall not be liable for any prevention or delay in performance resulting in whole or in part, directly or indirectly, from fires, floods, pandemics or other acts of God; strikes; lockouts, or labor disputes; wars, riots, acts of terrorism, sabotage, or embargoes, actions by foreign, federal, state or local governments; shortages of transportation equipment, fuel, or labor; or any other circumstance beyond Buyer's control.
- 4. Seller's Warranties.** Seller warrants that commodities sold hereunder will be of merchantable quality upon delivery and that no water has been added to the commodities sold hereunder at any time or for any purpose except when used as a carrier for residual insecticides at manufacturer's recommended levels. In addition, Seller guarantees that no shipping unit of the commodity covered by this Contract shall be (a) adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act or (b) an



article or commodity which may not, under the provisions of Section 404 or 505 of the Act, be introduced into interstate commerce or is in violation of any other provision of said Act. Seller further warrants that neither the commodity nor the shipment of such commodity shall be in violation of any federal, state and local laws, regulations or ordinances. If the commodity is adulterated under any applicable laws, or the commodity or its shipment is in violation of any other clause of this provision, Seller shall be in breach of this Contract, and shall indemnify Buyer from all claims, costs, damages, and losses, and Buyer may take advantage of any and all available remedies, whether under this Contract, at law or in equity.

5. **Title.** Title to, all rights of ownership in and risk of loss of the commodity shall remain in Seller until physical delivery to Buyer's designated Delivery Point, at which time such rights shall pass to Buyer unless delivery is made to Buyer under a storage agreement, in which case such rights shall pass upon application of the commodity to a purchase contract with Buyer.
6. **Liens and Merchant Status.** Seller agrees that when delivered hereunder, said commodity will be free and clear of all liens and encumbrances of every nature or, if any liens exist at time of delivery, Seller authorizes Buyer to make settlement jointly with the Seller and such person or persons in whose favor the lien or encumbrance has attached. Seller represents and warrants to Buyer that Seller is a MERCHANT (as that term is used in the UCC) and a commercial market participant regularly making or taking delivery in the ordinary course of their business with respect to the commodity covered by this Contract.
7. **Buyer Information.** Seller acknowledges that Seller is entering into this Contract with full knowledge and understanding of the risks inherent in Seller's business and decisions. Any statements, information, opinions, or advice provided to Seller by Buyer's employees are provided solely for informational purposes and without guarantee, express or implied, on Buyer's part. Seller understands and agrees that any statements, information, opinions, or advice expressed by Buyer shall in no way operate to create any managerial or fiduciary obligation between Buyer and Seller.
8. **Alternate Delivery.** If Seller requests, Buyer may, but shall have no obligation, to designate any reasonable alternate delivery point to expedite or facilitate Seller's performance of this Contract, and in such instance any increased shipping charges shall be for Seller's account. If, however, a change in the designated delivery points is solely for Buyer's convenience, increased shipping charges shall be for Buyer's account.
9. **Adequate Assurance.** Buyer shall have the right, when it has reasonable grounds for insecurity with respect to the performance of Seller, to demand adequate assurance of Seller's full performance. As adequate assurance, Buyer may demand payment from Seller up to an amount equal to the difference between the Contract price and the then prevailing market price for the commodity hereunder. Seller shall provide such adequate assurance within 48 hours of the receipt of the demand, therefore. Seller's failure to provide adequate assurance as demanded by Buyer shall constitute Seller's repudiation of this Contract, and Buyer shall have the right to pursue all legally available remedies, including but not limited to



recovery of its losses and damages, including, without limiting the foregoing, attorneys' fees and costs incurred in litigation, arbitration, confirmation and execution.

10. **Cancellation.** Buyer expressly reserves the right to cancel this Contract without liability for Buyer because of (a) the insolvency or financial condition of Seller, (b) the commencement of a case under 11 U.S.C. §§101 et seq., (c) the appointment of or taking of possession by a trustee in a case under 11 U.S.C. §§101 et seq., by a custodian before such commencement, or by a receiver in a case commenced under applicable state law, (d) any breach or default by Seller of any term or condition of this Contract or of any other contract or agreement between Buyer and Seller. In addition to any other damages allowed by applicable law, Buyer shall be entitled to a cancellation fee of \$.25 per bushel.
11. **Set Off.** Without limiting Buyer's right to pursue any and all other rights and remedies available to it, it is expressly agreed that, to the fullest extent permissible by law, this Contract is subject to Buyer's right to set off any debts and/or claims against Seller, including, but not limited to those debts and/or claims that are exempt from the automatic stay as provided in 11 U.S.C. §362 (b) (6).
12. **Non-Waiver.** Acceptance of any delivery of commodities by Buyer after breach of the terms and conditions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach.
13. **Cargill's Supplier Code of Conduct.** Seller Agrees to follow Cargill's Supplier Code of Conduct, found at [www.cargill.com/supplier-code](http://www.cargill.com/supplier-code).
14. **Amendment and Assignment.** None of the terms and conditions contained in this Contract may be added to, modified, superseded, or otherwise altered except with the written consent of an authorized representative of Buyer. This Contract may be assigned by Buyer without Seller's consent. This Contract shall not be assigned in whole or in part by Seller without the prior written consent of Buyer, provided that this Contract shall be binding upon the heirs, administrators, executors and successors of Seller. Any purported assignment in violation of the previous sentence shall be null and void.
15. **EEO.** Where applicable, Seller shall comply with the requirements of the Fair Labor Standards Act of 1938, as amended, in producing the goods or performing the services hereunder. To the extent applicable to Seller's work for, or on behalf of Buyer, Seller also agrees to comply fully with all applicable federal, state, and local laws and regulations concerning nondiscrimination and affirmative action, including those enforced by the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and/or the U.S. Equal Employment Opportunity Commission (EEOC). As applicable, Seller agrees to comply with Executive Order 11246, as amended. Buyer is an equal opportunity employer, and the Order is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 CFR Chapters 60 and 61. Unless this Order is exempt, there is incorporated herein by reference 41 CFR 60-1.4 and 60-250.10. Also, 29 CFR Part 471, Appendix A to Subpart A is incorporated herein by reference. This contractor (Buyer) and subcontractor (Seller) shall abide by the requirements of 41 CFR 60-300.5 and 60-



741.S(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.

16. **License.** Seller hereby grants to Buyer a perpetual, non-exclusive, worldwide, irrevocable, royalty-free, fully transferable license to use all Seller data, including without limitation data pursuant to this Contract or any other contract with Seller.
17. **Basis Terms.** If Seller does not set basis at time of original contract, Seller shall set the basis using Buyer's basis quotes at the Delivery Point for the Commodity and Shipment Period, on or before the EARLIEST of (a) the first date of delivery during the Shipment Period, (b) the last business day of the Shipment Period, or (c) two business days prior to the first day of Futures Reference Month. If Seller fails to set the basis as provided herein, Buyer shall have the right but not obligation to set the basis.
18. **Limitations.** Seller agrees to adhere to any limitations that may be in place at the Delivery Point at time of delivery. These include, but are not limited to, Moisture, Aflatoxin, Vomitoxin, Karnal Blunt, and Fumonisin levels. It shall be Seller's responsibility to check with the Delivery Point for any applicable limitations. Seller represents, warrants, and guarantees that no water has been added to the commodities sold hereunder at any time or for any purpose except when used as a carrier for residential insecticides at manufacturer's recommend levels. Buyer may rely upon these representations in the resale of the commodities delivered hereunder.
19. **Genetically Engineered.** If the Contract is for a Non-GMO Commodity, then this section shall not apply. The only genetically engineered commodities that Seller may deliver, and that Buyer will accept for delivery under this Contract, must be fully approved in major export markets. Seller guarantees that any genetically engineered commodities delivered under this Contract have such approval. Additionally, Seller guarantees that it will notify Buyer in writing before it delivers genetically engineered commodities that are not approved in the EU.

**Other applicable Contract Provisions. The following terms apply to the Contract if applicable to such Contract.**

20. **Cash Advances.** Based on market price conditions relative to the advance level, the Buyer reserves the right to require a portion of the advance to be returned.
21. **Credit Sale Terms.** United States Warehousing Act and State Grain Dealer Law require any Contract not being settled and paid within 30 days, or sooner, from time of delivery to have the appropriate Credit Sale Terms on the contract and signed by Seller. Cargill has the right to final price and settle the Contract if Seller's signature is not obtained by such time as defined by the applicable credit sale law.



22. **No Price Established (NPE) Contracts.** If the Contract is a No Price Established (NPE) Contract, this Contract is not a storage contract, but a purchase contract. All rights, title, possession, and risk of loss pass to Buyer at time of delivery. No warehouse receipt will be issued. Seller is hereby notified that Buyer is not required to carry insurance or bond for the benefit of Seller on the commodities covered by this Contract and any claim against Buyer for payment for such commodities is only that of a general creditor. All applicable costs and pricing deadlines to apply as listed on the contract.
23. **Flex Delivery Point & Basis Terms.** Flex Delivery basis terms set forth in this section supersede any basis terms set forth elsewhere in this Flex Delivery contract or related addenda. Directly with Cargill during business hours (8am – 4pm local time, excluding weekends and holidays) and prior to the 1st day of the Shipment Period, the Seller shall choose the Delivery Point from Cargill's current list of approved destinations and set the basis using Cargill's posted quotes for the Commodity and Shipment Period for that Delivery Point. If Cargill receives Seller's basis set requests outside of business hours, those requests will be subject to market movement and receive current market levels the next business day. If Seller delivers load(s) to a Flex location prior to setting basis and/or price, the delivered load(s) will be subject to market movement between the time of delivery and time of Cargill Merchant discovery. Seller agrees that the quality standards, genetically engineered policies, and any other policies, limitations, or requirements of the Delivery Point at time of delivery shall apply.
24. **Price Amendments/Rolling.** The Contract shall be fully priced, with both the Futures Reference Price and the Basis components established, not less than two business days prior to the first calendar day of the Futures Reference Month (the "Pricing Deadline"). Subject to Buyer's agreement, Seller may amend the Contract and roll the applicable Futures Reference Price and/or the Basis at any time prior to the Pricing Deadline. Seller may amend and roll the Futures Reference Month only for the entire quantity under the Contract, and only up to a maximum of three times. Buyer has no obligation to allow or agree to any amendment and roll past June for corn and soybeans or past March for wheat. **Roll Price Adjustment.** A cost shall be deducted, and price adjustment made for each amendment and roll of the Futures Reference Month.