

Amended Website Terms of Use – 2020 (effective 15 September 2020)

IGRAIN.COM.AU PTY LTD

1. WEBSITE TERMS OF USE

- 1.1. Welcome to www.igrain.com.au (**Website**), an online marketplace where registered sellers (Sellers) can advertise grain and registered buyers (Buyers) can offer to purchase grain by contacting the Seller via the Website, and the parties can contract using the website and igrain's SMS notification system. We also publish related information and links that may be of interest to you.
- 1.2. The Website is the property of igrain.com.au Pty Ltd ABN 97 139 099 951 (**igrain, us, we**).

2. YOUR ACCEPTANCE OF THESE TERMS

- 2.1. By registering as a user and indicating your acceptance of these Terms of Use, you agree to be bound by these Terms of Use, which form a contract between you and us (as amended from time to time). If you do not accept our Terms of Use, you must not register for or use the Website.
- 2.2. igrain may amend these Terms of Use by giving you notice when you next log in. You will be bound by the amended terms and Conditions if you place a new advertisement or make a new offer to purchase grain on the Website after you have received notification.
- 2.3. These Term and Conditions apply from the later of 10 September 2020 and when you register on the Website.

3. REGISTERING AS A SELLER OR BUYER

- 3.1. To advertise listings as a Seller or make offers to buy grain as a Buyer on the Website you must first register as a user and obtain a username and password.
- 3.2. In entering your details as a user you warrant that:
 - (a) you are over 18 years of age; and
 - (b) have provided us with complete, accurate and current personal information; and
 - (c) where you register on behalf of a body corporate or partnership, you are authorised to register on behalf of that body corporate or partnership, including binding them to these Terms of Use.
- 3.3. You must update your personal information if it changes. You consent to us contacting you from time to time to ensure your personal information is current.
- 3.4. You are entirely responsible for maintaining the confidentiality of your account information, including your password, and for any and all activity that occurs under your account. You agree to notify us immediately of any unauthorised use of your account or password.

4. MEMBERSHIP LEVELS

- 4.1. When you register on the Website, there are a number of different tiers of registration referred to as Membership. Unless you opt for a higher tier, you will automatically be registered for the lowest Casual Brokerage tier. There is no charge for the Casual Brokerage tier other than Introduction Fees under clause 9 for grain that you sell.
- 4.2. You can at any time upgrade to Premium Membership, with bronze, silver, gold and platinum tiers, by:
 - (a) initiating the upgrade process through the Website; and
 - (b) paying the Membership Fee.
- 4.3. You may upgrade to a higher Premium Membership tier by:
 - (a) initiating the upgrade process through the Website; and

- (b) paying the additional Membership Fee.
- 4.4. Membership Fees are:
 - (a) set out in item 1 of Schedule 1;
 - (b) charged for 12 months; and
 - (c) not refundable.
- 4.5. In addition to affecting Introduction Fees under clause 9 and insurance under clause 10, Premium Membership at different tiers may provide additional benefits or rights for you, as announced by us from time to time. We will provide such additional benefits or rights on the basis announced.

5. HOW IGRAIN WORKS

- 5.1. The Website is an online medium that introduces Grain sellers and Grain buyers and allows them to contract for the purchase of Grain.
- 5.2. igrain acts as a broker to facilitate contracts between Buyers and Sellers for the sale of Grain. Igrain does not act as an agent for either Buyers or Sellers, is not a reseller of Grain offered or transacted on the Website and does not come into actual or constructive possession of such Grain.
- 5.3. This is how it works:
 - (a) Seller submits Listing

Sellers advertise grain for sale on the Website, specifying the terms of sale including any contract terms incorporated by reference, the maximum quantity of Grain available and either a Bid Price or a Now Price or both a Bid Price and a Now Price (**Listing**). With respect to a Bid Price a Listing constitutes an invitation to treat directed to the public at large rather than an offer to sell. With respect to a Now Price a Listing constitutes an offer to sell.
 - (b) Now Prices – Buyer accepts

In response to a Now Price, the Buyer may make an Acceptance using the prompts via igrain's SMS notification system (an **Acceptance**).
 - (c) Bid Prices - Buyer makes Offer

In response to a Bid Price, Buyers may submit an offer over the Website to buy the Seller's Grain on the terms specified in the Seller's Listing, except that the Buyer may select the quantity of Grain the Buyer wants to purchase; its desired price per metric tonne, and the pickup/delivery timeframe (**Bid**). The Seller will be notified of the Bid via igrain's SMS notification system to their mobile phone. The Bid constitutes an offer to purchase the Grain on those terms. The Buyer may retract this Bid at any time before it is accepted by following the prompts on the Website or (if and when available) via igrain's SMS notification system.
 - (d) Seller and Buyer negotiate

If the Seller is satisfied with the Bid, the Seller can accept it using the prompts via igrain's SMS notification system or on the Website (an **Acceptance**). An Acceptance is evidence of a binding and enforceable contract which incorporates the GTA Trade Rules.
 - (e) If the Seller is not satisfied with the Bid, the Seller can refuse the Bid or make a counter-offer to the Buyer via the Website or (if and when available) igrain's SMS notification system to sell the grain to the Buyer on the terms specified in the Listing except that the Seller may again change the quantity, price, and/or the pickup/delivery timeframe for the Grain. The counter-offer constitutes an offer to sell the Grain on those terms. The Seller may retract this offer at any time before it is accepted by following the prompts on the Website or (if and when available) via igrain's SMS notification system. The Buyer may make an Acceptance using the prompts via igrain's SMS notification system (an **Acceptance**), refuse the offer or

make a counter-offer of its own.

- (f) There is no limit to the number of counter-offers that can be made between Buyer and Seller.
 - (g) Any Bid or counter-offer may be retracted by the person who placed it at any time by following the prompts via igrain's SMS notification system, however if an offer has been made and it is not retracted at the time that it is accepted by the other party then a binding Acceptance has been made. Offers and counter-offers are automatically retracted if they are not accepted within 24 hours.
 - (h) Once an Acceptance is made pursuant to either paragraph (b) or (e):
 - (i) a binding and enforceable contract is formed for the Seller to sell and the Buyer to buy the Grain on the terms specified in the Listing except that in the case of a Bid the quantity and price will be those most recently agreed in the bidding process;
 - (ii) igrain is not a party to that contract;
 - (iii) save to the extent of any conflict with the express term of the Listing or any accepted counter-offer, the contract incorporates the GTA Contract No. 3 including the GTA Trade and Dispute Resolution Rules;
 - (iv) igrain will notify the Seller and Buyer of the other party's contact details by email; and
 - (v) the Seller must pay igrain's fee for the introduction.
- 5.4. We do not guarantee the success of any Listing, Offer or counter-offer, or the performance of any contract formed under clause 5.3(h).
- 5.5. You agree that negotiations, deals and all other contact between you and other users of the Website are conducted entirely at your own risk.

6. **USE OF THE WEBSITE**

- 6.1. You are entirely responsible for any use of the Website or igrain's SMS notification system using your login, password or mobile phone registered for use with igrain's SMS notification system.
- 6.2. When you interact with igrain or other users through the Website or igrain's SMS notification system, you must:
- (a) communicate in English, clearly and intelligibly;
 - (b) be honest and truthful and not engage in conduct likely to mislead or deceive;
 - (c) not engage in conduct that is unlawful, libellous, defamatory, obscene, pornographic, indecent, lewd, harassing, threatening, invasive of privacy or publicity rights, abusive, inflammatory or otherwise objectionable;
 - (d) not infringe any third party intellectual property rights;
 - (e) not adversely affect the operation of the Website or igrain SMS notification system, whether by way of a denial of service attack, spider, trojan, web crawler, virus or otherwise;
 - (f) not advertise or promote any:
 - (i) goods or services other than Grain, whether provided by you or third parties;
 - (ii) political, religious or social ideologies or agenda;
 - (g) use the Website to:
 - (i) mirror the Website or Website content or results pages on any other website or medium;

- (ii) data mine or send automated queries of any kind to the Website;
 - (iii) harvest or otherwise collect information about other users (including email addresses and phone numbers) without their consent, other than in the ordinary course of using the Website's services to buy or sell Grain;
 - (iv) transmit spam, chain letters, junk mail or any other type of flooding techniques or mass distribution of unsolicited email or other electronic messages to people or entities who have not agreed to be part of such mailings.
- 6.3. When you create a Listing or make a Bid or counter-offer, in addition to the requirements of clause 6.2, you must:
 - (a) not identify yourself or provide information that allows yourself to be readily identified, including without limitation by name, address, ABN or ACN;
 - (b) not post any hyperlinks or embed any content using a hyperlink;
 - (c) not post anything that will cause or trigger a pop-up or redirect a user to another website;
 - (d) not post any contact details;
 - (e) not misrepresent your ability to comply with your obligations as a Seller or Buyer (as the case may be) if there is Acceptance.
- 6.4. Whenever you upload or edit previously uploaded content, you are deemed to warrant at that time that:
 - (a) if you are a Seller:
 - (i) you have the right to sell the grain specified in your Listing on the terms of sale specified in that Listing and those negotiated over the Website and/or using igrain's SMS notification system; and
 - (ii) that the Grain is located in Australia;
 - (iii) that the Grain complies with the specifications set out in the Listing;
 - (iv) that the Grain will be sold free of any undisclosed Encumbrances;
 - (b) all Listings (and goods and services listed) conform to current laws and regulations in Australia;
 - (c) the all content uploaded complies with clauses 6.2 and (if applicable) 6.3.
- 6.5. You grant us a non-exclusive perpetual, worldwide, royalty-free licence to publish, reproduce, display, disseminate and modify the content that you upload by any means (including in both electronic and printed form).
- 6.6. You indemnify us and will keep us indemnified against all claims, costs, expenses, damages, liability or loss arising from any claims made against us arising out of any breach of your warranty under clauses 3.2 or 6.4.
- 6.7. We may remove any content where we have reason to believe that the content that you have uploaded may:
 - (a) constitute a breach of your obligations under clauses 6.2 or (if applicable) 6.3
 - (b) constitute a breach of your warranty under clauses 3.2 or 6.4; or
 - (c) otherwise adversely affect the operation, integrity, security or good standing of igrain, the Website or the igrain SMS system.
- 6.8. Any and all press releases or other public announcements related to your advertisement on the Website, including their method and timing, must first be approved in advance by us in writing. You may not claim any association with igrain.com.au without our written permission.

- 6.9. Without prejudice to other terms, to protect the integrity of the Website we reserve the right (but are not required) to verify the accuracy of any information uploaded by you including the availability of any goods or services offered for sale or accuracy of uploaded material. You agree that we can contact you and you will provide us with accurate information or clarification of matters related to material uploaded by you.

7. OTHER USERS AND USER CONTENT

- 7.1. We make no warranties or representations:

- (a) about the correctness of any content posted on the Website or transmitted via igrain's SMS service by other users;
- (b) that other users have the capacity to perform their obligations under a contract between Buyer and Seller negotiated or entered into via the Website or any facility provided by igrain; or
- (c) that other users have complied with their warranties under clauses 3.2 or 6.4 or other contractual obligations with us;
- (d) that our failure to act on any suspected inaccuracy of User Content or breach by a user of their warranties or contractual obligations to us constitutes any kind of verification, acquiescence or approval of that User Content by us.

- 7.2. If you suffer any loss due to another user's:

- (a) conduct;
- (b) uploaded content; or
- (c) breach of a warranty to us under clauses 3.2 or 6.4,

then, even if we have acted on the other user's instructions to post or edit any content on their behalf:

- (d) you do not have a claim against us and release and forever discharge us from any claim arising therefrom; and
- (e) your sole claim will be against the other user or the person that engaged in such conduct using the other user's account.

- 7.3. If you have any concerns about the accuracy of any User Content, you may report such concerns to us at info@igrain.com.au. We will deal with at our discretion.

8. USE OF OUR WEBSITE

- 8.1. If we provide Grain pricing information on the Website, this is for general information purposes only. We do not assert that such prices:

- (a) are current daily spot prices; and
- (b) represent a minimum or maximum price that you can expect to receive for your grain, or for which you can expect to purchase grain.

- 8.2. While care has been taken when compiling the Website, it uses information from a range of sources, including by third parties who place advertisements (eg banners) or allow us to publish information (eg live news feeds). We cannot and do not screen any third party material on the Website before it is posted.

- 8.3. We cannot and do not warrant or represent that:

- (a) the Website (including where advertisements are displayed) or any servers that store and transmit data to the user is secure and free from errors or omissions, technical inaccuracies, errors, programming bugs, viruses, harmful content or components, interference (including malfunction of equipment or software, Internet access difficulties, or delay or failure of transmission) or duplicate data; or
- (b) your or others access to the Website will be uninterrupted, provided without delay or in a timely fashion.

- 8.4. To the maximum extent permissible at law, you release us, our officers, employees

and agents from any liability arising from your use of the Website and igrain's SMS notification system. Nothing in these Terms of Use seek to exclude statutory guarantees and rights that cannot be excluded under the ACL.

8.5. Where and to the extent that the supply of goods or services or both under these Terms of Use is subject to the consumer guarantees in Part 3-2 of the ACL:

- (a) nothing in these Terms of Use limits your rights under the ACL;
- (b) if the goods are not of a kind ordinarily acquired for personal domestic or household purposes then our liability for failure to comply with the consumer guarantees will be limited to one or more of the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
- (c) if the services are not of a kind ordinarily acquired for personal, domestic or household purposes then our liability for failure to comply with the consumer guarantees will be limited to one or more of the supplying of the services again or the payment of the cost of having the services supplied again,

unless it is not fair and reasonable for the purpose of section 64A(3) of the ACL to limit our liability in such manner.

9. **FEES, PAYMENT AND SECURITY**

- 9.1. We charge Sellers an Introduction Fee per tonne of grain transacted through the Website. We do not charge Introduction Fees to Buyers.
- 9.2. The Introduction Fee is based on your membership type and Premium Membership tier as set out in item 2 of Schedule 1.
- 9.3. Our Introduction Fee will arise upon Acceptance under clause 5.3(b) or 5.3(e), regardless of whether:
 - (a) the sale is concluded; or
 - (b) the Buyer pays the Seller.
- 9.4. Introduction Fees are payable within 14 days of the later of:
 - (a) acceptance under clause 5.3(b) or 5.3(e); or
 - (b) Tax Invoice date.
- 9.5. Fees and the manner of payment we accept may be set and changed by us without notice to you by publishing details on the Website. Payment must be made in Australian dollars.
- 9.6. Unless expressly stated otherwise, our fees and charges are exclusive of GST. If GST applies to a supply that we make to you then we may charge an additional amount being equal to the GST-exclusive price multiplied by the rate of GST, such additional amount to be paid concurrently with the GST-exclusive amount.
- 9.7. We will use all reasonable efforts to keep any payment information we have about you secure and ensure that our employees or agents who have access to this information do not make unauthorised use, modification, reproduction or disclosure of it. We may engage a third party to provide a secure payment transaction facility that allows you to pay online and, in this case, we will not receive your payment information. Your payment will be subject to the third party's terms of use.

10. **INSURANCE**

- 10.1. For the benefit of Sellers, we have sourced a group insurance policy against certain payment defaults by Buyers. The insurance policy is provided by Atradius Credito Y caucion S.A. DE Seguros Y Reaseguros. We are not the insurer.
- 10.2. You agree that we are appointed to act on your behalf in terms of the management and administration of the policy, including signing and submitting the proposal for insurance coverage, agreeing to any variations or amendments to the terms and

conditions of the policy, payment of premiums and fees, applying for credit limits for buyers, receiving credit limit decisions from the insurer, receiving and disbursing claim proceeds and payouts, and receiving invoices, statements and any other notices from the insurer.

- 10.3. Any amendments to the terms and conditions of the insurance policy will be received by us, and published to the Website.
- 10.4. You acknowledge and agree that we do not provide any advice or recommendation about the suitability or availability of the insurance coverage for any specific Seller, and that each Seller should obtain their own advice as to the suitability and sufficiency of the insurance offering sourced and facilitated by us.
- 10.5. Insurance policy terms and wording can be found at: http://www.igrain.com.au/resources/pdf/Insurance_Policy.pdf.

11. **TERMINATION**

- 11.1. We may limit, suspend or terminate your membership and right to access the Website and use the igrain SMS notification system if:
 - (a) if a serious complaint or multiple complaints are received about you; or
 - (b) you materially breach these Terms of Use and do not rectify such breach within 7 days of being given notice to do so;
 - (c) you fail to pay any fees due under these Terms of Use.
- 11.2. If we terminate your membership under clause 11.1 then these Terms of Use are also thereby terminated.
- 11.3. You may terminate these Terms of Use by using the “cancel membership” facility within the Website. You are not entitled to any refund of Membership Fees in this case.
- 11.4. We may terminate these Terms of Use by giving you notice. We will in this case make a pro rata refund of any Membership Fees paid.
- 11.5. Termination of these Terms of Use do not affect:
 - (a) Any obligations to pay that arose before or upon termination;
 - (b) Any clauses that are intended to survive termination, including without limitation clauses 7, 8, 12 and 13.

12. **PRIVACY AND CONFIDENTIALITY**

- 12.1. We may collect Personal Information and financial information about you when you use the Website or otherwise communicate with us.
- 12.2. You acknowledge and agree to our Privacy Policy (as amended from time to time) which is available at <https://www.igrain.com.au/privacy-policy.dt> and consent to the collection, use and disclosure of Personal Information in accordance with that policy.
- 12.3. We will only collect, use and disclose any Personal Information in accordance with our Privacy Policy, to the extent specifically required by law, or where reasonably contemplated by these terms (including disclosing information in connection with any query or claim).
- 12.4. We do not agree to withhold any information about you that is already in the public domain or that you upload onto the Website.

13. **DISPUTE RESOLUTION**

- 13.1. If a dispute arises between us in relation to these Terms of Use or any other matter related to the Website, before commencing legal proceedings (other than in urgent circumstances where an injunction is sought) the aggrieved party must notify the other in writing (which may be by email) and we must both attempt to resolve the dispute promptly and in good faith.
- 13.2. If a dispute arises between you and another user of the Website, that is a matter for you privately. We may in our discretion provide parties to the dispute with any

assistance that we believe is reasonable in the circumstances to help resolve the dispute, however we cannot take sides or bring an action on your behalf.

14. **ENTIRE AGREEMENT**

These terms (together with any policies we publish) constitute the entire agreement between you and us relating to the subject matter of these terms and supersede all prior understandings or agreements, written or oral, on that subject matter.

15. **ASSIGNMENT**

You may not assign your rights or obligations under these terms to third parties.

16. **SEVERABILITY**

If any part of these terms is unenforceable the remainder will not be affected.

17. **WAIVER**

A waiver of any of these terms will only be effective if it is in writing and signed by us.

18. **GOVERNING LAW**

No matter where you are located, these Terms of Use are governed by the laws of New South Wales, Australia, and we each submit to the non-exclusive jurisdiction of those courts of that State and courts able to hear appeals from them.

19. **DICTIONARY**

In these Terms of Use, unless expressly stated to the contrary:

- 19.1. “**ACL**” means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- 19.2. “**Encumbrance**” means any security interest (within the meaning of the *Personal Property Securities Act 2009* (Cth)), lien, mortgage, charge or similar;
- 19.3. “**Grain**” means any almond hulls, barley, barley/vetch, beans, broad beans, buloke malt, canary seeds, canola, chick peas, corn, cotton seed, faba bean, grapemark, hay, lentils, linseeds, lupins, maize, meal, millet, mung beans, oats, peas, pellets, rye, safflower, silage, sorghum, soybeans, straw, sunflower, triticale, vetch, vetch/oaten, vetch/rye, vetch/ryegrass, wharley, wheat;
- 19.4. “**GST**” has the same meaning as under the GST Act;
- 19.5. “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- 19.6. “**Personal Information**” has the same meaning as under the *Privacy Act 1988* (Cth);
- 19.7. “**Tax Invoice**” has the same meaning as under the GST Act;
- 19.8. “**Website**” means the website at <http://www.igrain.com.au> and any software application that facilitates interaction with that website for use on a smartphone or tablet device.

27.1. Any person offering grain for sale under a NGR belonging to a partnership or share farming arrangement warrants that they are authorised by their partners or the share farmers to sell that grain and will execute any form of authority a Buyer may reasonably require. Each participant listed under the NGR is bound by, and jointly and severally liable in respect of, any such contracts that are entered into.

If you have any questions or comments about these terms, please contact:

The Chief Operating Officer
igrain.com.au Pty Ltd
PO Box 9286

Bathurst NSW 2795
Australia
Phone: (02) 6329 4800
Email: info@igrain.com.au

These terms were last updated on 15 September 2020.

© igrain.com.au Pty Ltd. All rights reserved.

SCHEDULE 1

Item 1 – Premium Membership tiers

Tier	Annual Membership Fee
Bronze	\$365.00
Silver	\$1,000.00
Gold	\$2,500.00
Platinum	\$12,000.00

Item 2 – Introduction Fees

Membership tier	Grain sold ex-warehouse	Grain sold ex-farm
Casual Brokerage	\$3.00 per tonne	\$3.00 per tonne
Premium Membership – bronze tier	\$2.00 per tonne	\$3.00 per tonne
Premium Membership – silver tier	\$1.50 per tonne	\$2.50 per tonne
Premium Membership – gold tier	\$1.00 per tonne	\$2.00 per tonne
Premium Membership – platinum tier	None	None