

# LDC Delivery and Warehouse Terms and Conditions –2023/2024

## 1. Context and Interpretation

These terms and conditions (as amended from time to time) apply as and between LDC, the Deliverer and the Warehouse, for any commodity (“Commodity”) brought on to an LDC site for the purposes of delivery and, if received, storage and handling under Warehouse.

In these terms and conditions:

“**Australian Consumer Law**” means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

“**Deliverer**” means a person who enters, or authorises the entry by the Deliverer’s agent, onto an LDC site for the purpose of Delivery.

“**Delivery**” means the road entry onto an LDC site of a vehicle and the process of seeking receipt by the site of the load.

“**Heavy Vehicle National Law**” means as set out in Victoria as the Heavy Vehicle National Law Application Act 2013 and Heavy Vehicle National Law Application (Infringements) Regulations 2013 and in New South Wales the Heavy Vehicle (Adoption of National Law) Act 2013 and Heavy Vehicle (Adoption of National Law) as Regulation 2013 as applicable.

“**LDC**” means Louis Dreyfus Company Grains Logistics Australia Pty Ltd ABN 39 087 280 260 and includes any party operating a grain receipt site under the “LDC” name.

“**LDC Group**” means LDC and its *related bodies corporate*, as that term is defined in the *Corporations Act 2001 (Cth)*.

“**Grower Receipt Regrade Procedure**” means LDC’s receipt procedure that allows a range of receipt limits for protein and screenings depending on the relevant Facility’s stack average for that partition.

“**Outturn Protocol**” means the document of that name for road/rail outturns published on the web site, save that references in the protocols to “clients” shall be deemed and should be read as references to “Warehouses”.

“**Receipt Information**” means the information required by the LDC for the process of receiving and classifying the grain including without limitation Grower NGR details, Purchase Options, truck codes for mass limits, types /or variety of commodity and treatment history.

“**Receipt Standards**” means the standards as published on LDC’s website (Commodity Information) in respect of Receipt, at the time the grain is received, including LDC’s right to regrade grain in accordance with its Grower Receipt Regrade Procedure, and in respect of Outturn, at the time of Outturn.

“**Season Average Price**” in relation to a Commodity in this document means a price calculated on the season average cash prices per grade per Commodity posted by Clients over harvest at LDC Facilities.

“**Warehouse**” means the receipt and storage by LDC of grain for a grower who is not a Client.

“**Warehouse**” means:

- the grower on whose behalf the Commodity has been received and warehoused by LDC; and
- any grower buyer by Title Transfer of warehoused Commodity, as the context requires. Growers are identified by their NGR card number.

These terms and conditions do not apply to traders and marketers who have signed LDC’s storage and handling agreement of the season (“**Clients**”).

A reference to the **website** means a reference to [www.ldc.com/ausgrains](http://www.ldc.com/ausgrains)

## 2. Delivery

It is a condition of entry onto an LDC receipt site that the Deliverer agrees to these terms and conditions, even where receipt of a particular parcel of Commodity does not occur.

Receipt is offered at LDC’s absolute discretion including but not limited to grain that which has characteristics which do not comply with the Receipt Standards.

LDC’S sites will receive grain which;

- meets the applicable Receipt Standards; and
- is delivered with the relevant Receipt Information; and
- in respect of which the person delivering the grain, provide such confirmations and declarations in the respect to Receipt Information as LDC reasonably requires.

The Deliverer agrees all grain received and stored by LDC will comply with the Receipt Standards.

Receipt shall be deemed to occur when the Deliverer’s nominated vehicle has been weighed out, the quantity/quality of grain delivered is ascertained by LDC, recorded on a weighbridge ticket and the transaction completed in the LDC stock system (**Receipt**).

The Deliverer agrees that, upon Receipt, the nomination by the Deliverer or its agent of the acquirer of the grain is an irrevocable direction to transfer title in the relevant parcel of grain to the relevant acquirer at the relevant LDC receipt site.

The Deliverer and its agents will not make or attempt to make a Delivery that contains a contaminant likely to adversely affect the quality of grain held at the relevant receipt site.

The Deliverer and its agents will comply with all work, health and safety laws, rules and directions of the relevant LDC receipt site.

## 3. Transport

The Deliverer will ensure that it complies with the *Heavy Vehicle National Law* or other similar and applicable legislation in force at the relevant time, including ensuring that:

- all vehicle loads entering an LDC site comply with their respective mass, load and dimension management limit obligations; and
- the drivers of all vehicles entering an LDC site are in compliance with their relevant speed and fatigue obligations; and
- all vehicles entering LDC’s site must comply with minimum vehicle standards under the Heavy Vehicle National Law; and
- the driver of vehicles are not under the influence of drugs or alcohol, and as a condition of entry to LDC’s site, the driver voluntarily submits to random drug and alcohol testing at LDC’s discretion.

If the Deliverer fails to comply with any of these obligations, LDC may refuse the Deliverer entry to LDC’S site or direct the Deliverer to leave LDC’s site. LDC is a party to the Victorian Grain Harvest Management Scheme and the NSW Grain Harvest Management Scheme. The Deliverer agrees that any breaches of the *Heavy Vehicle National Law* by the Deliverer when it presents at an LDC site may be recorded by LDC and may be reported to the relevant state or national regulator at LDC’s sole discretion without notice to the Deliverer.

## 4. Warehousing

Subject to these terms and conditions, the Warehouse has the right to the outturn of commodity of like quantity, type and specification as the Commodity received by LDC at the site at which the Commodity was received (the “**Outturn Entitlement**”). The Warehouse may transfer the ownership of the Commodity and the Outturn Entitlement to another party (“**Buyer**”) in accordance with clause 13 of these terms and conditions (a “**Title Transfer**”).

## 5. Common Stocking

LDC may common stock the Commodity of a Warehouse with commodity of the same variety and grade as has been received from other Warehouses or Clients.

Title to common stocked commodity in a storage cell is held jointly by the relevant Warehouses and Clients in the proportions that each Warehouse’s or Client’s quantity of the commodity bears to the total quantity of commodity in that cell.

While LDC has possession of the Commodity:

- the relationship between LDC and the Warehouse in respect of the possession of the Commodity is one of bailment only; and
- that relationship will continue to exist despite the Commodity losing its identity by being common stocked, or the inability of LDC to redeliver to the Warehouse the particular Commodity the subject of the bailment.

## 6. Shrinkage

The Outturn Entitlement is subject to a weight deduction for shrinkage. The shrinkage allowance is set out in **Schedule 1**. Note that the fees charged for receipt is calculated on delivered weight, and Storage Charges are calculated on shrunk weight.

It is in the interest of the Warehouse to ensure that, if possible, Title Transfers are negotiated and paid on the basis of delivered weight not shrunk weight.

## 7. Storage Charges

Storage Charges are as outlined in **Schedule 2**. Storage Charges will accrue and become payable in accordance with these terms and conditions by the Warehouse when the Outturn Entitlement is outturned or is Title Transferred.

## 8. Outturn

LDC will outturn the Commodity in accordance with the Outturn Protocol published on its website.

LDC will, subject to these terms and conditions and considerations of quality, hygiene, safety, efficiency, practicality and its treatment regime, exercise its best endeavours to outturn at the time and in the manner requested by the Warehouse.

The Warehouse must use reasonable endeavours to outturn the Outturn Entitlement, in full, before the “**Outturn Date**”, which is the next 30<sup>th</sup> September following receipt of the Commodity.

Special arrangements or restrictions may apply to outturn from some LDC sites. Details of these arrangements or restrictions are available at each relevant LDC site.

A minimum 2 (two) working days’ notice applies for outturn and minimum tonnage requirements (or otherwise charges) may also apply across all LDC sites. Warehouses may only outturn Commodity on the days and times reasonably specified by LDC or as varied by LDC from time to time. Information relating to outturn times and days is available from the Head Office or the Site Manager at all LDC sites.

The Warehouse acknowledges that LDC must apply treatments to Commodity stored under warehouse in the LDC system (LDC does so in accordance with its treatment regime) and that during the course of such treatments, the Commodity will not be available for outturn.

It is the responsibility of the Warehouse to ensure Commodity is available for outturn by monitoring the site availability status by contacting the Site Manager at the relevant LDC site.

Outturn charges as outlined in **Schedule 2** will be payable by the Warehouse in accordance with these terms and conditions when the Commodity is outturned.

## 9. Outturn Entitlement transfer

Notwithstanding any other provision of these terms and conditions, LDC has the right to transfer the Outturn Entitlement in respect of the current season Commodity to an LDC site other than the LDC site at which receipt was provided (provided that, in LDC’s reasonable opinion, the Warehouse is not significantly disadvantaged overall by the change of LDC site).

A transfer of the Outturn Entitlement may involve a freight differential charge which may be payable by LDC or the Warehouse as appropriate.

The freight differential charge will be calculated based on the current Location Differentials published on the Grain Trade Australia website.

## 10. Movements

Subject to LDC providing at least 10 working days prior notice, LDC has the right to outturn the Commodity to another LDC site or relocate the Commodity within the site. The Warehouse will bear the cost of the relocation where the reason for the relocation is as follows:

- the Outturn Date is exceeded, due to the fault of the Warehouse;
  - the volume in the cell in which the Commodity is stored is down to sweeping stage and/or less than 5% capacity; or
  - the quality of the Commodity that has been received has potential to contaminate other Warehouse’s or Client’s commodities.
- LDC will bear the cost of the relocation where the reason for the relocation is as follows:
- the site fills (or is expected to fill) during the season harvest;
  - consolidation of small quantities of Commodities is required (greater than the quantity specified in sub-paragraph (b) above), in LDC’s reasonable opinion, for the efficiency of the LDC system; or
  - LDC determines (in LDC’s reasonable opinion) that it is operationally efficient to move the Commodity.

Regardless of whether the cost of relocation is borne by the Warehouse or LDC, the movement of the Commodity may involve a freight differential charge which may be payable by LDC or the Warehouse as appropriate. The freight differential charge will be calculated in accordance with clause 9.

## 11. Season Clearance

If the Outturn Entitlement has not been outturned, in full, before the Outturn Date, LDC may, after providing at least 10 days’ notice and consulting during that period with the Warehouse, Title Transfer on behalf of the Warehouse at the best available price for such quality and quantity of Commodity and account to the Warehouse for the sale proceeds net of selling costs and expenses. For this purpose the Warehouse irrevocably appoints LDC as its agent and attorney. Malting barley grades not outturned by the Outturn Date may be regraded to Feed grade at LDC’s discretion, acting reasonably.

## 12. Entitlement Shortfall Adjustment

If the LDC system does not hold sufficient Commodity of the type and specification of the Warehouse’s Commodity at the time the Warehouse outturns its Outturn Entitlement, LDC will be entitled to satisfy any such physical shortfall by payment of compensation at the Season Average Price.

## 13. Entitlement Surplus Adjustment

Where the Warehouse has outturned its Outturn Entitlement and has benefited from an outturn quantity or quality in excess of that to which it was entitled, the Warehouse will, on demand, compensate LDC by payment for that excess calculated at the Season Average Price.

## 14. Title Transfers

A Title Transfer may be initiated by the Warehouse by:

- providing written instructions to LDC that it wishes to undertake a Title Transfer to a Buyer or Client. LDC is thereupon authorised to sign the transfer for and on behalf of the Warehouse and for this purpose the Warehouse irrevocably appoints LDC as its agent and attorney. LDC will then seek the Buyer’s or Client’s acceptance of the transfer and confirm completion to the Warehouse; or
- undertaking a Title Transfer via LDC’s website, in which case LDC shall be entitled to assume that the instructions to transfer have been issued by or on behalf of the Warehouse if the Warehouse has used their user ID to execute the transaction.

LDC shall not be obliged to recognise any Title Transfer unless and until:

- the Buyer of the Outturn Entitlement agrees to be bound by these terms and conditions (as amended from time to time); or
- if the Buyer is a Client (i.e. marketer or trader of commodities), it agrees to be bound by the terms and conditions contained in LDC’s Storage & Handling Agreement for the season.

## 15. Effective Date of Transfers

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The effective date, for charging purposes, of a Title Transfer will be the date that LDC receives instructions from the Warehouse to effect the transfer. If it is received after 4 pm or on a non-working day the effective date will be considered the following working day. LDC will use its reasonable endeavours to process a transfer within 48 hours of receipt of instructions.

## 16. Payment

All accrued charges and any costs payable on any account in respect of the Commodity that is the subject of the Outturn Entitlement, must be paid in accordance with the invoice rendered by LDC.

The full amount of an invoice rendered by LDC must be paid by the Buyer of the Outturn Entitlement or the Warehouse (where applicable) within 14 days from the date of that invoice.

For Commodities the subject of outturn, the Warehouse will be required to pay all accrued charges and any costs payable on an up-front basis (if no credit facility exists for that Warehouse).

For most Title Transfers, LDC acknowledges that the Buyer of the Outturn Entitlement will agree to accept responsibility for payment of the Receival and Title Transfer charges and the Warehouse will be responsible for payment of the Storage charges. Nevertheless, each Warehouse remains responsible to LDC for payment of all charges accrued during that Warehouse's period of ownership of the Outturn Entitlement.

The Warehouse agrees that a Buyer may elect to offset the Grower storage charges against the purchase price of the Commodity and pay such storage charges directly to LDC.

Details of how to make payment are set out in **Schedule 3**.

## 17. Default in Payment

Where the Warehouse is in default of payment of any amounts due and payable to LDC on any account for more than 7 days after the due date and has failed to make full payment after 21 days written notice (and provided that the Warehouse has not provided a Dispute Notice in accordance with clause 19), LDC is entitled to sell the Commodity and/or the Outturn Entitlement (to the extent required to meet the debt) in such manner as it sees fit and acting reasonably, and shall account to the Warehouse for the sale proceeds net of selling expenses and the amount owing to LDC. For these purposes the Warehouse irrevocably appoints LDC as its agent and attorney.

## 18. Default Interest

The Warehouse shall pay interest on overdue monies at the rate equivalent to 5% per annum above the Commonwealth Bank's Corporate Overdraft Reference Rate from time to time calculated on daily rates from the due date until payment.

## 19. Dispute resolution

If any dispute, controversy or claim arises between the parties arising out of, relating to or in connection with this document (**Dispute**):

(a) the disputing party must provide written notice of the Dispute to the other party, setting out all relevant information and any evidence relied upon (**Dispute Notice**);

(b) during the period of 10 working days from the receipt of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), each of the parties must undertake genuine and good faith negotiations with a view to resolving the Dispute;

(c) the parties must agree on a mediator within 10 working days after the end of the Initial Period. If they fail to do so, any party may approach Grain Trade Australia for expert determination and/or arbitration;

(d) where mediation occurs, the mediation must commence within 1 month after the mediator has been appointed and both parties agree to act in good faith to attempt to resolve the Dispute; and

(e) where mediation occurs, if the Dispute remains unresolved after 2 months of the commencement of the mediation, either party may commence judicial proceedings.

## 20. Risk

LDC bears all risk of loss or damage to the Commodity arising from usual insurable events except events occurring when the Commodity is in the care and control of the Warehouse or Deliverer.

Subject to the Australian Consumer Law, the Warehouse bears the risk of loss or damage to its Commodity arising from

- (a) the natural deterioration of grain over time; and
- (b) contamination from Commodity of other owners which is not easily detectable though the reasonably diligent application of LDC's standard receival and sampling methodologies.

## 21. Liability

(a) Other than where clause 21(c) applies, LDC will not in any event be liable for any loss of interest, profit, earnings, reputation, goodwill, contract, opportunity or any other special, indirect or consequential damage or loss suffered by the Warehouse, however caused, arising out of or in connection with LDC's acts or omissions or the acts or omissions of LDC's agents or contractors, except for, and to the extent caused by the gross negligence, fraud, criminal conduct or wilful misconduct of LDC.

(b) LDC excludes to the maximum extent permitted at law, all conditions or warranties implied by custom, the general law or statute. Some conditions and warranties cannot by law be excluded (including under the Australian Consumer Law ("**Non Excludable Warranties**").

(c) To the maximum extent permitted by the Australian Consumer Law, LDC's maximum liability under any Non-Excludable Warranty or in connection with this document is limited to (at LDC's option):

- i. in the case of services, the re-supply of those services or payment of the cost of having the service supplied again;
- ii. in the case of goods, the cost of replacing those goods or payment of the cost of replacing the goods or of acquiring equivalent goods.

## 22. Commodity Buyers at Site

LDC may post prices for grain marketing companies at its sites, the Warehouse acknowledges that LDC makes no representations with respect to those grain marketing companies – in particular with respect to their financial viability or the terms and conditions under which they may operate. The Warehouse accepts all risks associated with dealing with the grain marketing companies.

## 23. Indemnity - Warehouse

The Warehouse will indemnify and keep indemnified LDC against all losses, damages, costs and expenses however caused ("**Losses**") arising directly or indirectly from or in connection with:

- (a) any acts by, or omissions of, the Warehouse (or any person acting on behalf of the Warehouse) at the LDC sites at which its Commodities are stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);
- (b) any overloading of a vehicle containing any Commodity;
- (c) any claim by a third party relating to a lien, charge or other security interest in the Commodity or the Outturn Entitlement;
- (d) any claim by a third party relating to the acts or omissions of the Warehouse in respect of the Commodity or any Title Transfer;
- (e) any breach of warranty or representation given by or on behalf of the Warehouse in respect of the Commodity; and
- (f) damaged or contaminated grain at the risk of the Warehouse,

except for, and to the extent of, any Losses caused by the gross negligence, LDC fraud, criminal conduct or wilful misconduct of LDC.

## 24. Indemnity - Deliverers

The Deliverer will indemnify and keep indemnified LDC, its agents, officers and employees against all **Losses** arising directly or indirectly from or in connection with:

- (a) any non-compliance by the Deliverer or its agents of the *Heavy Vehicle National Law* or other similar and applicable legislation in force at the relevant time;
- (b) any non-compliance by the Delivery or its agents with any relevant mass limits prescribed by legislation, regulation or other appropriate limit applied under a scheme recognised by the relevant State or Commonwealth authority for the management of road vehicle mass;
- (c) any acts by, or omissions of, the Deliverer (or any person acting on behalf of the Deliverer) at the LDC sites at which its Commodities are stored (including acts or omissions causing or contributing to any loss of, or damage to, any property of any person, and any injury to, or death of, any person);

except for, and to the extent of, any Losses caused by the gross negligence, fraud, criminal conduct or wilful misconduct of LDC .

## 25. Lien

Notwithstanding that the Commodity may be mixed with commodities of like type and specification, LDC shall have a first and paramount lien on the Commodity and each of such other commodities for all monies owing to the LDC Group (whether contingently or otherwise on any account whatsoever) by the Warehouse and such other owners. Subject to any requirement of law LDC will be entitled for the purpose of enforcing such a lien to retain possession of the whole or any part of the Warehouse's Commodity until all amounts due and payable are paid. LDC may enforce the lien by selling the Commodity and/or the Outturn Entitlement (refer to clause 16 "**Default in Payment**").

LDC may nominate and identify any particular quantity of common stocked Commodity as being the Warehouse's Commodity for the purpose of enforcing LDC's lien. The Warehouse irrevocably appoints LDC as its agent and attorney to sell a sufficient quantity of the Warehouse's Commodity to satisfy the monies owing and to account to the Warehouse for any balance of sale proceeds. Any such lien sales of the Warehouse's Commodity will reduce the Warehouse's Outturn Entitlement commensurately.

## 26. LDC's Records

In the absence of obvious error, LDC's records concerning the quantity or quality of the Commodity that is being, or has been, warehoused shall be deemed to be conclusive.

LDC at its discretion may, without consultation, adjust the Outturn Entitlement for any Commodity and/or grade to zero where the entitlement is within + or – 1 tonnes of zero (neither LDC or the Warehouse will be entitled to compensation in these circumstances).

## 27. Goods and Services Tax ("**GST**")

Unless otherwise stated the consideration for any services payable under these terms and conditions is exclusive of GST and such GST is recoverable from the recipient.

## 28. Agents

A person shall be deemed to be an agent of a Deliverer/Warehouse if the person has express, implied or ostensible authority of that party to undertake the services or transactions contemplated by these terms and conditions and includes, without limitation, carriers and persons lawfully possessing the NGR delivery cards or electronic personal identification number of the party.

## 29. Privacy Collection Statement - Information Use and Disclosure

LDC collects personal information from the Deliverer and Warehouse for the purpose of providing the services set out in these terms and conditions. The Warehouse and Deliverer agree that:

- (a) their personal information such as delivery details may be disclosed by LDC at its discretion to:
  - i. marketers /traders for the purpose of promoting their services to the Warehouse and Deliverer;
  - ii. the National Grower Register Pty Ltd ("NGR") or its agents for the purposes of the NGR or for promoting goods or services of other companies of relevance to the Warehouse;
  - iii. the relevant regulator of the Heavy Vehicle National Law;
  - iv. any adviser, auditor or member of the LDC Group, including companies which may be located in Singapore and Japan,

and otherwise may only be provided to other parties with the consent of the Warehouse;

- (b) their personal information such as name and mobile phone number will be disclosed by LDC to health authorities if requested for contact tracing purposes.

Further information about how LDC collects the Client's personal information is detailed in its Privacy Collection Statement and Privacy Policy which is available on its website. A copy of LDC's Privacy Collection Statement will also be available at site. All notices, requests to access or change information or privacy complaints should be made in writing to "The Privacy Officer", LDC Level 1, 70 Trenerry Cres, Abbotsford VIC 3067.

## 30. Governing Law and Jurisdiction

These terms and conditions will be governed by the laws of Victoria and LDC and the parties submit to the jurisdiction of the courts of Melbourne.

## 31. Variations

LDC may, within the season, vary these terms and conditions for prospective application at any time and from time to time by notice to the Warehouse, acting reasonably.

**Schedule 1 - Shrinkage Allowance**

Charge Type	Wheat	Barley	Oilseeds	Maize	Pulses	Sorghum
<b>Shrinkage Allowance</b>	0.70%	0.70%	0.75%	0.75%	1.00%	0.70%

**Schedule 2 Country Site Charges**

Charge Type (per tonne)	Wheat	Barley – Feed	Barley - Malt	Oilseeds	Maize <sup>2</sup>	Pulses	Sorghum <sup>3</sup>
<b>Receival</b>	\$10.00	\$10.00	\$11.00	\$14.50	\$14.50	\$14.50	\$10
<b>Outturn</b>	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8.00	\$8
<b>Storage (per month)<sup>1</sup> From 1 March 2024 to 30 Sept 2024</b>	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2.00	\$2
<b>Storage (per month) Prior seasons</b>	\$3.00	\$3.00	\$3.00	\$3.50	\$3.50	\$3.50	\$3

1. Commence 1<sup>st</sup> of the month, From 1<sup>st</sup> March 2024 . [Fee applied to stock on hand 1<sup>st</sup> of each month]
2. Maize storage charges commence 1<sup>st</sup> May 2024
3. Sorghum storage charges commence 1<sup>st</sup> July 2024

Service Charge Type (per tonne)	Charge
<b>Title Transfer (Buyer pays)</b> LDC Service Centre, or call 1300 880 432	\$0.50

All charges are quoted exclusive of GST

Event	Who Pays the Charges		
	<u>Selling Warehouser</u>	<u>Grain Buyer</u>	<u>Buying Warehouser</u>
<b>Warehouser Title Transfers to Buyer</b>	Storage Charges	Receival & Title Transfer Charges <sup>3</sup>	
<b>Warehouser Title Transfers to Warehouser</b>	No Charges		Receival, Storage & Title Transfer Charges
<b>Warehouser Outturns</b>	Receival, Storage & Outturn Charges		

3. Grain buyer may elect to offset the Grower storage charges against a Purchase Contract.

**Schedule 3 – LDC Bank Account Details**

Bank / Branch	Westpac		
BSB	033 039	Account	365462
Bank cheque or money orders to be Mailed to:	LDC Emerald Australia Pty Ltd Attention: Accounts Level 1, 70 Trenerry Cres, Abbotsford, 3067		

