

DailyGrain® OptimiserPLUS Terms and Conditions

To be able to use the DailyGrain OptimiserPLUS online system you must first register for use and pay the applicable service fee in accordance with the terms and conditions below. Registration can be done by emailing DailyGrain at info@dailygrain.com.au or calling the DailyGrain office on (08) 94166244.

1. Introduction

- (a) These Terms apply to the use of the DailyGrain OptimiserPLUS online system. By using OptimiserPLUS, You agree to be bound by these Terms. These Terms constitute a binding agreement between You and DailyGrain. If You do not accept these Terms, You must refrain from using OptimiserPLUS. If You remain as a user of OptimiserPLUS, or return at a later date, You agree to be bound by these Terms.
- (b) These Terms are supplementary to and must be read in conjunction with the DailyGrain® Membership Terms, as amended from time to time. If there is any inconsistency between these Terms and the DailyGrain® Membership Terms, You agree that the DailyGrain® Membership Terms shall prevail.

2. Definitions

“Business Day” means a day on which banks are open for regular business in Western Australia, but does not include Saturday, Sunday or any public holiday;

“CBH” means Co-operative Bulk Handling Ltd (ABN 29 256 604 947).

“CBH Delivery and Warehousing Terms” means the CBH Delivery and Warehousing Terms available on the CBH website at www.cbh.com.au.

“DailyGrain” means CBH trading as DailyGrain, and any or all of its Related Bodies Corporate (as applicable).

“DailyGrain Confidential Information” means information relating to the current or future business interests, methodology or affairs of DailyGrain and any Related Body Corporate or any person or entity with which it deals or is concerned with and excludes Excluded Information.

“DailyGrain® Membership Terms” means the terms and conditions for DailyGrain® Membership available at www.dailygrain.com.au.

“Excluded Information” means:

- (a) information which at the time it was disclosed was in the public domain; and
- (b) any information which becomes part of the public domain by the act of a person owing no obligation of confidence to either of the parties and which was not obtained in consequence of any breach of confidence.

“Normal Business Hours” means between the hours of 8:30 am and 5:30 pm on any Business Day.

“Optimise” or **“Optimisation”** means the blending of loads of wheat of various varietal segregations in accordance with instructions received by CBH from You.

“OptimiserPlus” means DailyGrain’s online system that evaluates a mix of load quality, existing contracts, cash and pool prices and calculates the optimal way to blend and allocate loads of grain.

“Optimisation Rules” means the guidelines, rules or terms of Optimisation made available to You via Loadnet which may be amended by CBH at its discretion.

“Quality Optimisation Services” means the services provided by CBH to You as governed by the CBH Delivery and Warehousing Terms and Optimisation Rules available to You at www.cbh.com.au.

“Loadnet” means CBH’s online grain management interface available to registered users at www.cbh.com.au.

“Related Body Corporate” has the meaning given to it in the Corporations Act 2001 (Cth).

“Season” means the period between 1 October one year and the next 30 September.

“Service” means the following services provided to You by DailyGrain during a Season:

- (a) use of OptimiserPlus at any time;
- (c) during Normal Business hours, Technical Support to assist You in using OptimiserPlus; and
- (d) access to and use of the Quality Optimisation Services via OptimiserPlus.

“Service Fee” means a fee of \$650 plus GST per Season, payable in accordance with clause 7.

“Technical Support” means assistance and advice with regard to the operation of OptimiserPlus, including initial training, ongoing support and on-site visits if deemed necessary by DailyGrain.

“**Terms**” means the terms and conditions set out in this document as amended from time to time.

“**You**” means you as a grower in the business of producing and selling grain who has registered and paid the applicable membership fee to be a “Premium” member of DailyGrain.

“**Your Information**” means information relating to Your grain sale contracts, grain purchase contracts, grain production history and forecasts, grain marketing plans and reports, where such information could reasonably be regarded as confidential, but excludes Your name and contact details and Excluded Information.

3. Application of these Terms

- (a) Subject to clause 3(b), these Terms apply where You are provided with the Service during a Season.
- (b) If the Terms are amended by DailyGrain during a Season, the amended Terms shall apply and be binding on and from Your first use of the Service following the amendment.
- (c) If DailyGrain amends these Terms, DailyGrain will be deemed to notify You of the relevant amendment by:
 - (i) indicating the amendment that has been made or providing the amended Terms (at DailyGrain's discretion) on www.dailygrain.com.au; or
 - (ii) notifying You of the amendment or providing You with the amended Terms by facsimile, email or post (at DailyGrain's discretion).
- (d) For the avoidance of doubt, DailyGrain may, but it is not obliged to, resend the entirety of the Terms to You following any amendment, and You may at any time request a copy of these Terms from DailyGrain by facsimile, email or post and a copy of the current Terms will be available for viewing at each Site.
- (e) If there is any inconsistency between these Terms and any other terms and conditions, then You agree that these Terms shall prevail.

4. Registration

- (a) It is a condition precedent to the performance of any Service by DailyGrain that:
 - (i) You have registered and paid the applicable membership fee to be a “Premium” member of DailyGrain;
 - (ii) Your LoadNet account is linked to OptimiserPlus; and
 - (iii) You have paid the Service Fee in accordance with clause 7.
- (b) You agree that:
 - (i) You will keep any details provided to DailyGrain current and correct;
 - (ii) DailyGrain may share information provided by You with its Related Bodies Corporate in order to better provide services to You; and
 - (iii) DailyGrain will not provide Your banking, ABN or GST details to third parties without Your express written consent.

5. What DailyGrain specifically does not do

The Service is not a fully managed grain marketing advisory service for You. That means that DailyGrain does not do any of the following:

- (a) DailyGrain does **not** provide price guarantees;
- (b) DailyGrain does **not** analyse Your production history and production estimates for the coming year;
- (c) DailyGrain does **not** assess Your current price risk management needs;
- (d) DailyGrain does **not** provide You with information to help You ascertain grain marketing objectives;
- (e) DailyGrain does **not** provide You with position reporting to assist in keeping track of grain contract obligations;
- (f) DailyGrain does **not** provide grain broker services, nor does it act as Your agent in any context;
- (g) DailyGrain does **not** provide any advice or recommendation as to the suitability or profitability of any optimisation and to the extent permitted by law, nor does it make any representations or warranties that the information is accurate, current or complete or guarantee any financial outcome; and
- (h) DailyGrain does **not** provide legal advice, nor act as agents, in relation to grain contracts or negotiations.

6. DailyGrain right to use agents or other third parties

You agree and acknowledge that DailyGrain may, without notice to You and in its sole and absolute discretion:

- (a) sub-contract the whole or any part of the Service, or otherwise use any agent or other third party which DailyGrain thinks is necessary or convenient to discharge its responsibilities under these Terms, including its Related Bodies Corporate; and
- (b) delegate any of its powers and authorities under these Terms.

7. Payment and Services

- (a) In consideration for the Services provided, You agree to pay DailyGrain the Service Fee.
- (b) The Service Fee will be payable each Season upon confirmation by You to Daily Grain (either verbally or in writing) that You wish to use the Service for that Season and the subsequent provision by DailyGrain to You of an invoice for the Service Fee.
- (c) The Service will be made available to You for the relevant Season (or any remaining part of the Season) upon payment of the Service Fee having been received and processed by DailyGrain.

8. Your obligations

- (a) You must only use OptimiserPlus for its authorised purposes as instructed by DailyGrain. Any unauthorised use of OptimiserPlus may cause Your access to be immediately terminated.
- (b) You must provide, at Your own cost, any necessary computer hardware and operating systems to enable OptimiserPlus to function.
- (c) You must not use the DailyGrain logo or any other intellectual property without prior written approval from DailyGrain.
- (d) You must not act or purport to act as a principal, contractor or employee of DailyGrain or represent to any person at any time that You are authorised to conduct any activity on behalf of DailyGrain.
- (e) You agree to comply with and be bound by:
 - (i) clauses 7.1 to 7.5 (inclusive) of the CBH Delivery and Warehousing Terms as if those terms were set out herein and with the necessary changes; and
 - (ii) the Optimisation Rules.

9. Nature of relationship

- (a) Nothing contained in these Terms will be deemed or construed by You or DailyGrain or by any third party as creating the relationship of partnership, principal and agent, or joint venture.
- (b) DailyGrain retains all ownership of and intellectual property in OptimiserPlus.

10. Failures or delays

DailyGrain will not be liable for any failure or delay in performing the Service if the failure or delay is a consequence of anything beyond DailyGrain's control, including but not limited to delays by You, Your representatives or Your advisers in performing Your obligations.

11. Confidential Information

- (a) You agree to keep the terms of any DailyGrain Confidential Information confidential except where disclosure is required:
 - (i) for the purposes of the parties carrying out their obligations under these Terms; or
 - (ii) by law or as a result of any judicial, regulatory or other proceeding,or where disclosure is permitted with the prior written consent of DailyGrain.
- (b) DailyGrain agrees to keep Your Information confidential except where disclosure is required:
 - (i) for the purposes of the parties carrying out their obligations under these Terms; or
 - (ii) by law or as a result of any judicial, regulatory or other proceeding,or where disclosure is permitted with Your prior written consent.
- (c) The provisions of this clause 11 will remain in force notwithstanding termination of provision of the Service for any reason or cause whatsoever, whether by effluxion of time or otherwise, so long as is reasonably necessary to protect the interests of each of the parties.
- (d) If provision of the Service is terminated, You may make a written request to DailyGrain to return to You and/or

destroy (at Your election) all of Your Information in DailyGrain's possession that was provided by You to DailyGrain for the purposes of carrying out DailyGrain's obligations under these Terms.

- (e) Nothing in these Terms requires DailyGrain to return or destroy any of Your Information contained in board committee or other papers which are required by law or applicable professional or regulatory requirements to be retained rather than destroyed, provided DailyGrain adopts reasonable security arrangements to minimize the risk of disclosure and loss of the confidential nature of the Client Information.
- (f) DailyGrain acknowledges and hereby agrees that the ownership of Your Information made available to DailyGrain as part of the Service will remain Your property at all times.
- (g) DailyGrain hereby agrees not to sell, transfer or provide Your Information to any other party, for any reason whatsoever, unless it is allowable under these Terms or required by law.

12. Privacy issues and the taping of conversations

- (a) DailyGrain complies with the provisions of the Commonwealth Privacy Act 1988 and protects Your private and confidential information accordingly. You agree and acknowledge that DailyGrain may be required to disclose Your information to DailyGrain's contractors and agents to assist in providing You the Service, or DailyGrain may be required to disclose information under Commonwealth or State legislation or regulations, and You consent to such disclosures.
- (b) During commercial dealings, DailyGrain may make telephone recordings of telephone conversations, with or without automatic tone warning devices. DailyGrain may use such recordings, or transcripts from such recordings, for DailyGrain's commercial records, for internal compliance or training related purposes and for other purposes permitted by law that DailyGrain (in its sole discretion) determine to be appropriate, including as evidence in any dispute between You and DailyGrain. DailyGrain agrees to make available to You, upon written request, a written transcript copy of any existing recording pertaining to Your dealings with DailyGrain, within 90 days of the making of the recording. In such circumstances, You agree to pay the reasonable costs of DailyGrain providing a copy of any relevant recording prior to Your receipt of the transcript.
- (c) DailyGrain has a company Privacy Policy which DailyGrain is happy to provide You at Your request at no cost, or which can be found at www.dailygrain.com.au.

13. Extent of DailyGrain's Liability and Exclusions

- (a) The Service provided to You under this contract is provided solely for Your use and DailyGrain does not accept any liability whatsoever in relation to third parties. Any information, calculations or results provided to You or obtained by You through this Service are purely estimates, and may vary significantly without notice. You acknowledge that DailyGrain does not warrant or guarantee any financial outcome, nor that You will achieve a specific outcome.
- (b) DailyGrain believes that the information and advice that it provides You will be accurate as at the time and date of its provision. However, neither DailyGrain nor any director, officer, agent, associate or employee of DailyGrain provides any warranty of accuracy or reliability in relation to any advice or information and to the extent permitted by law accepts no responsibility for any loss or damage whatsoever arising in any way for any representation, act or omission, whether express or implied.
- (c) You authorise and consent to DailyGrain recording (in electronic form or otherwise) and disclosing information submitted by You via OptimiserPlus for the purpose of ascertaining, measuring, evaluating and reporting on the effectiveness, usefulness and efficiency of the OptimiserPlus system.
- (d) You authorise DailyGrain to maintain a transaction log consisting of a copy of all instructions received from You via OptimiserPlus. Except in the case of manifest error, the log will be conclusive evidence of the details of Your instructions.
- (e) DailyGrain is not liable for:
 - (i) any loss, damage, cost or expense arising from or in relation to performing any Service or any delay in performing or inability to perform any Optimisation requested, nor for any loss, damage, cost or expense suffered by You as a result of the Your inability to carry out an Optimisation at a particular point in time;
 - (ii) any loss, damage, cost or expense arising from or connected with the way You store, process or deal with the information derived from OptimiserPlus; and
 - (iii) any indirect or consequential loss arising out of or in relation to the provision of the Service by DailyGrain pursuant to these Terms.
- (f) Nothing in these terms and conditions or OptimiserPlus should be interpreted as advice by or a representation by DailyGrain as to the accuracy, currency, suitability or correctness of the prices used by You in Optimising Your grain.

14. Risk Acknowledgment

You acknowledge that financial and grain markets are subject to a range of risks, and as a result, prices can drop in value as well as rise. This market volatility may cause sharp and unpredictable fluctuations in grain prices which may result in significant changes to the information and calculations being provided by DailyGrain. In this context You acknowledge that calculations provided by DailyGrain are time sensitive, and that You will consult with DailyGrain immediately before seeking to rely on DailyGrain's information.

15. Terminating these Terms

- (a) These Terms will continue until the earlier of:
- (i) DailyGrain terminating the Service by giving five (5) Business Days prior written notice of termination to You;
 - (ii) DailyGrain becoming unable to perform the agreed Service because of limitations imposed by You or by other contractual arrangements You have entered into; or
 - (iii) the end of the relevant Season for which the Service has been purchased.
- (b) The termination of these Terms does not affect:
- (i) the entitlement for payment for work completed, or in progress, entered into before termination;
 - (ii) DailyGrain's entitlement to accrued fees and expenses incurred in respect of provision of the Service for the period up to the date of termination; or
 - (iii) other claims which either party may have against the other.

16. GST

- (a) Definitions and interpretation
- (i) In this clause 16:
 - Adjustment Note includes any document or record treated by the Commissioner of Taxation as an adjustment note or as enabling the claiming of an input tax credit for which an entitlement otherwise arises;
 - Tax Invoice or Recipient Created Tax Invoice includes any document or record treated by the Commissioner of Taxation as a tax invoice or as enabling the claiming of an input tax credit for which an entitlement otherwise arises.
 - (ii) Terms defined in the GST Legislation have the same meaning in this clause 16 unless provided otherwise.
- (b) GST pass on
- If GST is or will be imposed on a supply made under or in connection with these Terms, the supplier may, to the extent that the consideration otherwise provided for that supply under these Terms is not stated to include an amount in respect of GST on the supply:
- (i) increase the consideration otherwise provided for that supply under these Terms by the amount of that GST; or
 - (ii) otherwise recover from the recipient the amount of that GST.
- (c) Tax Invoices/Adjustment Notes
- The right of the supplier to recover any amount in respect of GST under these Terms on a supply is subject to the issuing of the relevant Tax Invoice or Adjustment Note to the recipient. Subject to any other provision of this these Terms, the recipient must pay any amount in respect of GST within 14 days of the issuing of the relevant Tax Invoice or Adjustment Note to the recipient.
- (d) Recipient Created Tax Invoice
- Subject to a Recipient Created Tax Invoice (RCTI) Agreement being in place between DailyGrain and You, DailyGrain will issue:
- (i) if You have provided a valid ABN and are registered for GST: a valid RCTI that states the amount of GST You are liable to pay, at the same time that DailyGrain is obliged to pay You;
 - (ii) if You have provided a valid ABN but are not registered for GST: a payment advice setting out the amount paid to You excluding GST; or
 - (iii) if You have not provided a valid ABN: a payment advice setting out the amount paid to You excluding GST and subject to any withholding tax in accordance with clause 16(g).

(e) Later adjustment to price or GST

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST recovered by the supplier, as appropriate, the supplier:

- (i) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount recovered; or
- (ii) must refund to the recipient the amount by which the amount recovered exceeds the amount of GST on the supply.

(f) Reimbursements

Costs required to be reimbursed or indemnified under these Terms must exclude any amount in respect of GST included in the costs for which an entitlement arises to claim an input tax credit.

(g) Withholding Tax

If You:

- (i) do not have an ABN or do not provide a valid ABN to DailyGrain; and
- (ii) do not provide an executed Statement by a supplier form to DailyGrain,

DailyGrain may be required to withhold 46.5% (or such rate as is prevailing at the time) of the gross supply value by the Australian Taxation Office.

17. Procedure for handling errors and disputes

(a) You should notify DailyGrain immediately if You become aware that You may have made an error in any information that You send to DailyGrain or if You did not authorise a change to Your records and such a change has taken place. You may notify DailyGrain by:

- (i) telephoning us on (08) 9416 6244;
- (ii) writing to DailyGrain, GPO Box L886, Perth WA 6842;
- (iii) faxing (08) 9422 9255; or
- (iv) emailing info@dailygrain.com.au

(b) If You think there is an error in any information provided on OptimiserPLUS You must notify DailyGrain immediately by:

- (i) telephoning us on (08) 9416 6244;
- (ii) writing to DailyGrain, GPO Box L886, Perth WA 6842;
- (iii) faxing (08) 9422 9255; or
- (iv) emailing info@dailygrain.com.au

(c) DailyGrain will advise You of the steps You must take so that an investigation can commence. You must give us full details of the information You are querying.

(d) If DailyGrain is unable to resolve the matter immediately You may lodge a complaint in writing and DailyGrain will advise You in writing of the steps we will take to investigate the matter further.

(e) Within 21 days of receiving from You the full details of Your complaint, DailyGrain will advise You in writing of either:

- (i) the outcome of our investigation; or
- (ii) the need for more time to complete our investigation.

(f) On completion of our investigation DailyGrain will advise You in writing of the outcome and our reasons, with reference to the relevant provisions of these Terms.

18. General

(a) Assignment

- (i) You cannot assign Your rights under these Terms without DailyGrain's prior written consent. DailyGrain is permitted to assign these Terms, or any rights under it, at any time.
- (ii) Any approved assignee must enter into a deed of covenant with the party whose consent is sought, acknowledging that party's rights under these Terms and undertaking by way of novation to observe and perform all of the assignor's obligations under these Terms. Such deed of covenant shall be prepared by DailyGrain in such reasonable form as DailyGrain requires, but at Your expense. The deed shall be

stamped by and at the expense of the assignor.

(b) Governing law

These Terms shall be governed by, and interpreted in accordance with, the law in the State of Western Australia and each of the parties submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

(c) Severance

If any of the provisions of these Terms are held to be illegal or invalid, the legality or validity of any of the other provisions is not affected and the illegal or invalid provision is deemed deleted.

(d) Waiver and exercise of rights

(i) A single or partial exercise or waiver of a right relating to these Terms does not prevent any other exercise of that right or the exercise of any other right.

(ii) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

19. Interpretation

(a) Words and Phrases

(i) Headings, sub-headings, captions and service descriptions do not affect the construction or interpretation of these Terms.

(ii) A word in the singular includes the plural of that word and vice versa.

(iii) A word of any gender includes the corresponding words of each other gender and a reference to one sex includes a reference to all sexes.

(iv) "Including" means "including, but not limited to".

(v) Where any word or phrase is given a defined meaning in these Terms, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.

(vi) A reference in these Terms to a thing (including an amount) is a reference to the whole and each part of it (but nothing in this clause 19(a)(vi) implies that performance of part of an obligation is the performance of the whole) and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

(vii) Words implying natural persons include partnerships, bodies corporate, associations and public authorities.

(b) Documents and Parts of Documents

(i) A reference to any law, document, instrument or agreement, including these Terms, includes a reference to that law, document, instrument or agreement as amended, novated, supplemented, varied or replaced from time to time.

(ii) A reference to a clause or annexure or attachment is (unless the context requires otherwise) a reference to a clause or annexure or attachment to these Terms.

(c) Persons and Corporations

(i) A reference to a person includes a body politic, corporation, partnership, limited partnership, association or joint venture (whether incorporated or not) whatsoever and wheresoever formed and howsoever described and also a government, governmental or semi-governmental agency or local authority.

(ii) A reference to a person includes that person's successors and permitted assigns and, in the case of a natural person, that person's legal personal representatives.

(iii) A reference to "You" includes a reference to any one or more of the parties named in the delivery title and "Your" shall have a corresponding meaning.

(iv) Where 2 or more parties to these Terms make a joint covenant, undertaking, representation or warranty, the same shall be construed to refer to and bind each of such parties jointly and severally.

(d) Time, Money and Measurement

(i) A reference to an amount of money is a reference to the amount in the lawful currency of Australia.

(ii) A reference to time is a reference to the local time in Perth, Western Australia (unless otherwise stated).

(iii) A "Business Day" is a day which is not a Saturday, Sunday or gazetted public Holiday in Western Australia.

(iv) Where any matter or thing is required to be attended to or done on a day which is not a Business Day, and

that thing cannot reasonably be done without access to services which are only available on Business Days (including banking, legal and accounting services and the services of government departments and agencies), it will be attended to or done on the first day thereafter which is a Business Day.

(v) Measurements of physical quantities are in Australian legal units of measurement within the meaning of the National Measurement Act 1960 (Cth).

(e) Discretions and Approvals

Whenever You are required to form an opinion, give approval, exercise a discretion or perform any act under these Terms, it must be done reasonably in the circumstances, and based on reasonable grounds, and not capriciously, or arbitrarily refused or unduly delayed.