

## GRAIN TERMS AND CONDITIONS

1. **General.** These terms and conditions are expressly incorporated into any contract, invoice, bill of lading, purchase order, receipt, confirmation, or similar document (each, a "Contract") applicable to the production or purchase of any cereal grain ("Grain") between Barkley Seed, Inc. ("BSI") and the grower set forth therein ("Grower").
2. **Set Off Right.** Notwithstanding anything to the contrary in the Contract and without prejudice to any other right or remedy, BSI shall have the absolute right to set off any amounts now or hereafter owed to BSI or any of its affiliates by Grower or any of its affiliates (including, without limitation, pursuant to Section 10) against any amounts now or hereafter owed to Grower or any of its affiliates by BSI or any of its affiliates. BSI may exercise its set off right pursuant to this Section 2 by retaining Grain at the Contract price or, in the case any "unpriced" Contract, at a price per short ton equal to BSI's current bid for such Grain at the time BSI exercises its set off right.
3. **Encumbrances.** Absent BSI's prior written approval, Grower shall deliver all Grain free of any mortgage, pledge, lien, charge, hypothecation, security interest, encumbrance, adverse right, interest or claim, option, right of first refusal or any other restriction or limitation of any nature whatsoever (each, an "Encumbrance"). In the event that all or any part of the Grain becomes subject to any Encumbrance not approved by BSI in writing, Grower acknowledges that BSI may at its option (a) pursue indemnification pursuant to Section 10, and/or (b) cancel all or part of the Contract without liability to Grower. In the event any person or entity (other than Grower) asserts any claim to any payment due to Grower pursuant to the Contract, BSI may hold such payment in escrow (without interest or liability to Grower) until a final determination as to the correct payee is made by a court of competent jurisdiction. Grower agrees to notify BSI in writing within five days of all or any part of the Grain becoming subject to any Encumbrance. Grower agrees that BSI may issue a joint check to Grower and the holder of any Encumbrance in full satisfaction of BSI's obligations under the Contract.
4. **Field Maps; Origin; Weights and Quality.** Grower shall provide accurate field maps (or canal and gate numbers, as applicable) depicting specific locations where Grain is grown within 15 days of final planting. Grower shall not grow any Grain outside of the continental United States. All weights and quality determinations (including grades, dockage and protein percentages) shall be determined by BSI or its designee. BSI's calculations of quantities, times, dates and each other numerical amount under the Contract shall be deemed accurate for all purposes absent arithmetical error.
5. **"Total Production" Contracts.** Grower unconditionally agrees to deliver all Grain produced under any "total production" Contract to BSI immediately at harvest without substitution of any kind. In the event such "total production" Contract is also an "unpriced" Contract, upon delivery of all Grain to BSI, at Grower's request BSI will make available for pickup common grain of the same quantity and similar quality as the Grain delivered to BSI under the "total production" Contract.
6. **Limited Use.** Except for transfers to BSI, under no circumstances shall Grower use, retain, or transfer any Grain (or plant part derived therefrom) for planting seed, crossing of any kind, conducting selection, employing transformation techniques, conducting mutagenesis, tissue culture, or molecular or cellular techniques, or research of any kind.
7. **Specific Performance.** Grower acknowledges that any breach Section 5 or Section 6 may result in irreparable harm to BSI for which there may be no adequate remedy at law. Grower therefore agrees that in the event of any threatened or actual breach of this Section 5 or Section 6, BSI shall be entitled to injunctive relief and that BSI will not be required to provide a bond or other security as a condition to or in connection therewith. This remedy will be in addition to any other remedy available at law or in equity.
8. **Risk of Loss.** Grower acknowledges that title to the Grain and risk of loss pass from Grower to BSI upon acceptance by BSI at its designated facility; *provided, however*, at BSI's option, Grower shall retain title and risk of loss in the event (a) the Grain is tagged, seized, condemned or declared unfit by any governmental agency, or (b) BSI delivers to Grower a notice of rejection within 24 hours of receipt of the Grain.
9. **Compliance with Law.** Grower guarantees that the Grain (a) meets all minimum standards prescribed by local, state, or federal governmental agencies including the United States Food and Drug Administration, (b) complies with the pure food or drug laws or ordinances of any country, state or city in which the Grain is grown in or shipped from, including the Federal Food Drug and Cosmetic Act of 1938, as amended, (c) is free from all pesticide or herbicide residue which is illegal or in excess of generally acceptable tolerance levels, and (d) is not grown in or shipped from any area quarantined by the United States Department of Agriculture.
10. **Indemnification.** To the fullest extent permitted by law, Grower shall defend, indemnify and hold harmless BSI, its former and present affiliates, and each of their respective former and present partners, owners, employees, agents, representatives, officers, directors, managers, lenders, successors and assigns (each, an "Indemnitee" and collectively, the "Indemnitees") for, from and against any and all liabilities, obligations, losses, interest, amounts paid in settlement of claims, deficiencies or damages, including any out-of-pocket expenses and reasonable attorneys' fees (collectively, "Losses"), whether or not involving a third party claim against any Indemnitee and regardless of whether or not such Loss is caused in part by any Indemnitee, resulting from or arising out of any breach, threatened breach, or inaccuracy with respect to any representation, warranty, covenant, obligation or agreement set forth in the Contract (including these terms and conditions) by Grower or any person or entity receiving Grain from Grower or any of Grower's transferees. Grower acknowledges that (a) each Indemnitee is an intended beneficiary of the Contract, and (b) all representations, warranties, covenants and obligations of Grower contained in the Contract, including (without limitation) Grower's indemnification obligations pursuant to this Section 10, shall survive any termination or expiration of the Contract.
11. **Severability.** Any provision of the Contract (including these terms and conditions) which is determined by a court of competent jurisdiction to be invalid or unenforceable in any jurisdiction shall, as to that provision only, be ineffective to the extent of such invalidity or unenforceability, without affecting in any way the remaining provisions of the Contract (including these terms and conditions) in such jurisdiction or rendering that or any other provision of the Contract (including these terms and conditions) invalid or unenforceable in any other jurisdiction.
12. **Miscellaneous.** Grower represents and warrants that Grower's legal name is exactly as listed on the Contract and the person executing the Contract on behalf of Grower is fully authorized to do so. Grower shall not assign the Contract, including (without limitation) an assignment by operation of law or by way of change of control of Grower, without the prior written consent of BSI, which may be withheld in its sole discretion. The Contract

shall be binding upon and shall inure to the benefit of the parties to the Contract and their permitted successors and assigns. The rights and remedies of the parties under the Contract are cumulative and not alternative. The failure of any party at any time to require performance by any other party of any provision of the Contract shall not affect the rights of such party to require future performance of that provision or constitute a waiver of any other right under the Contract. Time is of the essence. The Contract shall be considered for all purposes as having been prepared through the joint efforts of the parties. The Contract (including these terms and conditions), constitutes the entire agreement and supersedes any previous agreement, whether written or oral, between the parties relating to the subject matter of the Contract. The Contract may only be modified, amended, or waived by a written agreement (expressly stating that it is an amendment to the Contract) signed by each of the parties. In the event of any action or proceeding at law or in equity between the parties to enforce any of the provisions the Contract, the unsuccessful party to such action or proceeding shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred by such successful party. The Contract shall be governed in all respects, including as to validity, interpretation and effect, by the internal laws of the state of Arizona without regard to conflicts-of-laws principles that would require the application of any other law. Each party hereby agrees to the non-exclusive personal jurisdiction of the state or federal courts located within Yuma County, Arizona with respect to any claim or cause of action arising under or relating to the Contract, and waives personal service of any and all process upon it. Each party hereby waives any objection based on inconvenient forum and waives any objection to venue of any action instituted under the Contract. In the event of any conflict between these terms and conditions and the body of the Contract, the terms of the body of the Contract shall govern. The Contract may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The exchange of copies of the Contract by electronic transmission (including electronic signatures) shall constitute effective execution and delivery of the Contract as to the parties and may be used in lieu of the original Contract for all purposes.