

STORAGE AND HANDLING 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, purchase, storage or handling of any cereal grain (“Grain”) or planting seed (“Seed”) between Barkley Seed, Inc. (“BSI”) and the grower set forth therein (“Grower”).

2. **Storage and Handling Fees.** Grower agrees to pay BSI the following storage and handling fees in accordance with the terms set forth on BSI’s invoice, but in any event no later than the termination of storage and handling pursuant to Section 4. Any amount not timely paid in accordance with the immediately preceding sentence shall accrue interest at the lesser of (a) 18% per annum and (b) the highest rate permissible by law.

Description	Fees	
Grain Storage (see harvest year breakdown)	Harvest years 2015, 2016, 2017	\$0.50 per short ton/month beginning February 1, 2019 \$0.80 per short ton/month beginning July 1, 2019
	Harvest year 2018	\$0.80 per short ton/month beginning July 1, 2019
	Harvest year 2019 and thereafter	\$0.80 per short ton/month No charge first 6 months
Handling Grain “In” Charge (all harvest years)	\$6.00/short ton	
Handling Grain “Out” Charge (all harvest years)	\$6.00/short ton	
Seed Storage (all harvest years)	\$0.0025 per pound/month No charge first 12 months	

3. **Method of Storage and Handling.** All Grain and Seed stored and handled by BSI may be adjusted for “shrink” at a rate of 1% annually, prorated for any partial year of storage and handling. Grain and Seed stored and handled by BSI may be co-mingled with Grain or Seed of similar quality. Upon termination of storage and handling, BSI will use commercially reasonable efforts to make available Grain and/or Seed of a similar quality as the Grain and/or Seed received from Grower. Notwithstanding anything to the contrary in the Contract, with respect to durum Grain, upon termination of storage and handling BSI will make available durum Grain of the same FGIS grade and Comparable Protein Percentage (as defined below) as the durum Grain received from Grower. For the purposes of this Section 3, the term “Comparable Protein Percentage” shall mean, as applicable, (a) at least 13% protein percentage for durum Grain received from Grower with a 13% or greater protein percentage, or (b) 12% or less protein percentage for durum Grain received from Grower with a protein percentage less than 13%.

4. **Termination of Storage and Handling.** Grower may terminate storage and handling upon 48 hours’ notice to BSI and payment in full of all accrued but unpaid storage and handling fees. BSI may terminate storage and handling upon 30 days’ notice to Grower. Upon termination of storage and handling, BSI will make available Grain and/or Seed in accordance with Section 3 at the applicable storage and handling location for Grower’s receipt. In the event Grower fails to timely receive Grain and/or Seed, BSI may, at its option, (a) continue to store and handle Grain and/or Seed and charge Grower applicable storage and handling fees, or (b) deliver Grain and/or Seed to Grower (less Grain and/or Seed sufficient to cover delivery costs and any accrued but unpaid storage and handling fees in accordance with Section 5).

5. **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 8) 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 5 by retaining Grain and/or Seed at a price equal to BSI’s current bid for such Grain and/or Seed at the time BSI exercises its set off right.

6. **Encumbrances.** Absent BSI’s prior written approval, Grower shall deliver all Grain and Seed 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 or Seed become subject to any Encumbrance not approved by BSI in writing, Grower acknowledges that BSI may at its option (a) pursue indemnification pursuant to Section 8, (b) cancel all or part of the Contract without liability to Grower, and/or (c) deliver Grain and/or Seed to Grower or the holder of any Encumbrance (less Grain and/or Seed sufficient to cover delivery costs and any accrued but unpaid storage and handling fees in accordance with Section 5). Grower agrees to notify BSI in writing within five days of all or any part of the Grain or Seed becoming subject to any Encumbrance.

7. **Transfers.** Absent BSI’s prior written approval, Grower shall not transfer title to any stored Grain or Seed.

8. **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 made by Grower in the Contract (including these terms and conditions). 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 8, shall survive any termination or expiration of the Contract.

9. 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.

10. 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.