

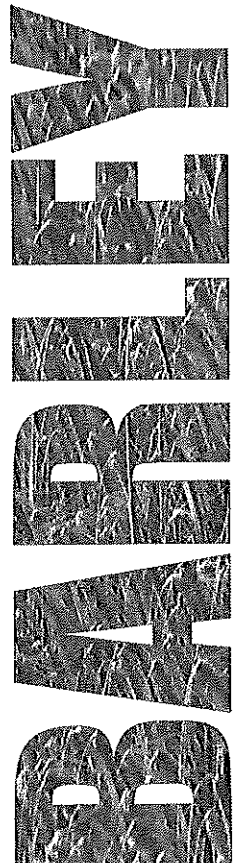


BARLEY EXPORTING LICENCE

**EMERALD GROUP
AUSTRALIA PTY LTD
(ABN 82 109 203 054)**

(As Trustee of Emerald Group Trust (ABN 85 733 108 688))

**Issued by the Essential Services Commission
on 27 February 2008**



1. DEFINITIONS AND INTERPRETATION

- 1.1 Words appearing in italics like *this* are defined in part 1 of the schedule.
- 1.2 This licence must be interpreted in accordance with the rules set out in part 2 of the schedule.

2. GRANT OF LICENCE

- 2.1 The *licensee* is licensed under Part 2 of the *Act* to undertake the *export of barley* from a South Australian port to a destination outside Australia, subject to the terms and conditions set out in this licence.

3. TERM

- 3.1 This licence continues until:
- (a) surrendered by the *licensee* under section 15 of the *Act*; or
 - (b) suspended or cancelled by the *Commission* under section 17 of the *Act*.
 - (c) the expiry of the *Act* under section 23(3) of the *Act*

4. COMPLIANCE WITH LAWS, INDUSTRY CODES AND RULES

- 4.1 The *licensee* must comply with:
- (a) the *Act*;
 - (b) the terms and conditions set out in this licence;
 - (c) applicable *industry codes* and *rules* made by the *Commission* as in force from time to time; and
 - (d) all other *applicable laws*.
- 4.2 The *licensee* must notify the *Commission* if it commits a material breach of the *Act*, this licence, or an applicable *industry code* or *rule* within 3 days of becoming aware of that breach.

5. GENERAL REGULATORY OBLIGATIONS

- 5.1 At all times during the currency of this licence, the *licensee* must use its *best endeavours* to ensure that:
- (a) the *licensee's* Chief Executive Officer or a representative of the Board will meet with the *Commission* upon request;

- (b) the **licensee's** management identifies the risks associated with the export of barley and establishes, utilises and relies upon risk management systems, procedures and processes which are adequate, accurate and current to address those risks;
- (c) the **licensee** has sufficient capital support from an entity supervised by the Australian Prudential Regulation Authority to support the **barley export** operations it undertakes or intends to undertake in the foreseeable future;
- (d) the **licensee** has sufficient liquidity, in the form of bank guarantees, working capital or working capital support to meet the estimated maximum **barley** tonnage that the **licensee** will, or intends to, **export**;
- (e) the **licensee** has treasury and risk management policies and associated trading charter limits, covering foreign exchange risk and commodity price risk, and that those policies and limits are accurate, current and used by the **licensee**;
- (f) the **licensee** has sufficient systems, procedures and processes in place to ensure accurate tracking of transactions and timely payments to growers of barley, and that those systems, procedures and processes are utilised by the **licensee**;
- (g) the **licensee** has sufficient systems, procedures and processes in place to secure the receipt of payments from **export** customers; and
- (h) the **licensee** has sufficient business continuity procedures in place in respect of the operations authorized by this licence.

6. INFORMATION TO THE COMMISSION

- 6.1 The **licensee** must, from time to time as required by the **Commission** and in a manner and form determined by the **Commission**, provide to the **Commission**:
- (a) details of the **licensee's** financial, technical and other capacity to continue its operations authorised by this licence; and
 - (b) such other information as the **Commission** may require.
- 6.2 The **licensee** must notify the **Commission** of any changes to its officers or major shareholders (if applicable) within 20 **business days** of that change.
- 6.3 The **licensee** must promptly notify the **Commission** of any significant reduction in its financial capacity having the potential to impact upon the **licensee's** ability to carry on the operations authorised by this licence.

7. STANDARD CONTRACTUAL TERMS AND CONDITIONS

- 7.1 This clause 7 applies to each contract (whether oral or in writing) entered into by the **licensee** under which **barley** is or is to be made available to the **licensee** for the purposes of **export** (a "**relevant contract**").
- 7.2 The **licensee** must ensure that each **relevant contract** is governed by the Laws of South Australia.
- 7.3 The **licensee** must ensure that provisions dealing with the following matters are included in each **relevant contract**:
- (a) date of the contract;
 - (b) when title to **barley** will pass under the contract and the terms and conditions on which title will pass (including terms and conditions as to time);
 - (c) quantity of **barley**;
 - (d) quality and grade of **barley**;
 - (e) type of weight (at origin or destination);
 - (f) packaging;
 - (g) price;
 - (h) price basing point (delivered, shipped, free in store, free on board, ex-farm, etc);
 - (i) delivery point;
 - (j) delivery period;
 - (k) applicable trade rules;
 - (l) levies and statutory charges;
 - (m) payment terms; and
 - (n) dispute resolution processes.
- 7.4 In addition to the matters specified in clauses 7.2 and 7.3, the **licensee** must also include in a **relevant contract** any other standard terms and conditions specified by the **Commission** in an **industry code** or **rule** from time to time.

8. OPERATIONAL AND COMPLIANCE AUDITS

8.1 The *licensee* must undertake periodic audits of the operations authorised by this licence and its compliance with its obligations under this licence and any applicable *industry codes* or *rules* in accordance with:

- (a) any written direction of the *Commission*; and
- (b) the requirements of any applicable guideline issued by the *Commission* for that purpose.

8.2 The results of each audit conducted under clause 8.1 must be reported to the *Commission* in a manner approved by the *Commission*.

8.3 The *Commission* may require the *licensee* to:

- (a) use an independent expert approved by the *Commission* to conduct audits under this clause; and
- (b) pay (whether entirely or in part) for any audits conducted under this clause.

9. ANNUAL RETURN

9.1 The *licensee* must, by 31 August in each year, submit an annual return to the *Commission*.

9.2 Each annual return must be certified as true and correct by the Chief Executive Officer (or equivalent) and a non-executive officer (as defined in the Corporations Act 2001) of the *licensee*.

9.3 Each annual return must contain at least the following information:

- (a) The names of each of the *licensee's* officers (including directors and senior management).
- (b) Confirmation that the *licensee* is:
 - (i) an Australian resident or is permanently established in Australia;
 - (ii) not under external administration (as defined in the Corporations Act 2001) or under a similar form of administration under any laws applicable to the *licensee* in any jurisdiction;
 - (iii) not immune from suit in respect of the *licensee's* obligations under the *Act*; and
 - (iv) is capable of being sued in its own name in a court of Australia.
- (c) A declaration that:

- (i) the Chief Executive Officer or a representative of the Board will meet with the **Commission** upon request;
- (ii) the **licensee's** management has identified the risks associated with the export of barley and have established, utilise and rely upon risk management systems, procedures and processes which are adequate, accurate and current to address those risks;
- (iii) the **licensee** has sufficient capital support from an entity supervised by the Australian Prudential Regulation Authority to support the **barley export** operations it undertakes or intends to undertake in the foreseeable future;
- (iv) any capital support for the **licensee** provided by an entity supervised by the Australian Prudential Regulation Authority will continue for the next financial year and, if there have been or are reasonably expected to be any material changes to the terms and conditions on which that financial support is provided, detail of those changes
- (v) the **licensee** has sufficient liquidity, in the form of bank guarantees, working capital or working capital support to meet the estimated maximum **barley** tonnage that the **licensee** will, or intends to, **export**;
- (vi) the **licensee** has treasury and risk management policies and associated trading charter limits, covering foreign exchange risk and commodity price risk, and that those policies and limits are accurate, current and used by the **licensee**;
- (vii) no events have occurred during the period covered by the annual return which have adversely affected, or are likely to adversely affect, the **licensee's** credit history such that the **licensee's** ability to trade as a barley exporter has been, or is likely to be, adversely affected;
- (viii) the **licensee** has sufficient systems, procedures and processes in place to ensure accurate tracking of transactions and timely payments to growers of barley, and that those systems, procedures and processes are utilised by the **licensee**;
- (ix) the **licensee** has sufficient systems, procedures and processes in place to secure the receipt of payments from **export** customers;
- (x) the **licensee** has sufficient business continuity procedures in place in respect of the operations authorized by this licence.

- (d) Evidence of the level of professional indemnity insurance and business continuity insurance provided by an entity supervised by the Australian Prudential Regulation Authority which may be relied upon by the *licensee*.
- (e) In respect of the *licensee's* compliance with its regulatory obligations under this licence, a statement describing:
 - (i) any instances of non-compliance with those regulatory obligations; and
 - (ii) measures taken by the *licensee* to rectify reported non-compliance.

9.4 An annual return must, in addition to the matters specified in clause 9.3, contain any information required by the **Commission** as specified in a written notice from time to time.

10. FINANCIAL STATEMENTS

- 10.1 By no later than 3 months after the balance date of the *licensee*, the *licensee* must provide the **Commission** with:
- (a) A copy of the *licensee's* audited financial statements, and the audit opinion on those audited financial statements, for the financial year ending on the balance date;
 - (b) Copies of any of the *licensee's* management letters to the external auditor relating to work undertaken by that external auditor which had a bearing on the external auditor's opinions.

11. CONFIDENTIALITY

- 11.1 The *licensee* must, unless otherwise required by law, this licence, an *industry code* or *rule*, comply with any *rule* made by the **Commission** from time to time relating to the use of information acquired by the *licensee* in the course of conducting the operations authorised by this licence.

12. VARIATION

- 12.1 This licence may be varied in accordance with section 14 of the **Act**.

This licence was issued by the **Commission** on 27 February 2008.

THE COMMON SEAL OF)
THE ESSENTIAL SERVICES)
COMMISSION OF SOUTH)
AUSTRALIA was hereunto affixed)
by authority of the Chairperson)
and in the presence of:)



R.P. Shanahan
.....

Witness

27/2/08
.....

Date

SCHEDULE: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

Act means the *Barley Exporting Act 2007*.

applicable laws means any legislation, rules, regulations, codes or conditions which are binding on the licensee in relation to the **export** of **barley**.

barley means the grain derived from the **barley plant** in unprocessed form but does not include grain excluded from the ambit of this definition by regulations made under the **Act**.

barley plant means the cereal plant of the genus *Hordeum*.

best endeavours means to act in good faith and use all reasonable efforts, skill and resources.

business day means a day on which banks are open for general banking business in Adelaide, other than a Saturday or Sunday.

Commission means the Essential Services Commission established under the *Essential Services Commission Act 2002*.

export of barley means export to which the **Act** applies (refer section 4 of the **Act**).

industry code includes any industry code made by the **Commission** under section 28 of the *Essential Services Commission Act 2002*.

licensee means Emerald Australia Pty Ltd (ABN 82 109 203 054) as Trustee of Emerald Group Trust (ABN 85 733 108 688).

relevant contract means any contract entered into by the **licensee**, whether orally or in writing, under which **barley** is or is to be made available to the **licensee** for the purposes of **export**.

rule means any rule made by the **Commission** under section 28 of the *Essential Services Commission Act 2002*.

2. INTERPRETATION

In this licence, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this licence;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency;
- (e) a reference to any statute, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (f) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document;
- (g) an event which is required under this licence to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**.