

# Contract washouts (defaults)

We encourage growers to contact Glencore Agriculture as early as possible if they have committed to a forward contract and then anticipate they will not be able to deliver the volume or quality required under the contract by the delivery end date. We will work with growers to determine their options for replacing any shortfalls.

Glencore Agriculture incorporates Grain Trade Australia's (GTA) Trade Rules into our contracts, and Trade Rule 17 specifically covers anticipated or actual contract default and prescribes the process in rules 17 (1) to 17 (7) (as detailed below).

Any defaulting party to a contract could be liable to damages from such defaults.

Trade Rule 17 (6) calculates damages based on the defaulted quantity multiplied by the difference between the contracted price and the Fair Market Price as at the date of default. The defaulted tonnage is replaced using Fair Market Price as defined by GTA's Trade Rules: 'in the case of seller default, the price being offered by other sellers'.

## Trade Rule 17 DEFAULT

- 1) A party in default of any of its obligations under a contract or who anticipates that it will default must serve notice on the other party as soon as practicable.
- 2) The notice must state the date of default or anticipated default and the nature of and reasons for the default.
- 3) The party in receipt of such notice must immediately, or as soon as is reasonably practical, notify the other party of its election to either;
  - a. affirm the contract; or
  - b. buy in, or sell against the defaulter; or
  - c. cancel all or any part of the defaulted portion at Fair Market Price.
- 4) In a case of actual default where no notice has been given, the liability will remain in force until the non defaulting party, by the exercise of due diligence, can determine the default. The party not in default must then give the defaulting party notice containing the details in 17 (2) above and as soon as is practical thereafter advise the defaulter which of the options in 17 (3) above it elects to pursue.
- 5) Default by either party in performance of the contract in accordance with the contract terms shall entitle the other party to damages in respect of and/or reject only the actual defaulted portion.
- 6) A party in default is liable to pay damages based on the defaulted quantity multiplied by the difference between the contract price and Fair Market Price as at the date of default, within 7 days of receipt of a demand to pay.
- 7) Where either party is dissatisfied with the ascertained Fair Market Price and damages cannot be mutually agreed, then the determination of Fair Market Price may be referred by either party for Expert Determination according to the Dispute Resolution Rules, and which shall, for the purpose of this sub-rule only, be final and binding on both parties.

More information on GTA's Trade Rules can be found at [graintrade.org.au/contracts](http://graintrade.org.au/contracts)

## Fair Market Price (as defined in GTA's Trade Rules) means:

- a) the price per tonne ascertained by Repurchase or Resale for a commodity which is actively trading, or
- b) in the case of default, the market price on the Business Day following the receipt of the notice under Rule 17 (1) or 17 (4) being:
  - i) In the case of Seller default, the price being offered by other sellers;
  - ii) In the case of Buyer default, the price being offered by other buyers.

Disclaimer, the information in this document has been prepared without taking account of a grower's specific objectives, financial situation or needs and does not constitute advice in respect of this product's availability for you. For specific marketing advice contact your licensed marketing or financial advisor.

Glencore Agriculture Pty Ltd ABN 29 106 378 885  
Current as at January 2020 and subject to change without notice.

For more information visit  
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