

BULK HANDLING

26° GEO. V., No. XL.

No. 40 of 1935.**AN ACT relating to the Bulk Handling of Wheat by
Co-operative Bulk Handling, Limited.***[Assented to 7th January, 1936.]*

WHEREAS Co-operative Bulk Handling, Limited, a co-operative company incorporated under the provisions of the Companies Act, 1893, as amended by the Companies Act Amendment Act, 1929, has for some years been carrying on the business of bulk handlers of wheat, and has installed certain plant and equipment at various country railway stations and sidings in Western Australia in connection with its business and proposes further to carry out other installations from time to time: **AND** WHEREAS in order to acquire plant and equipment to carry on its undertaking and extend its operations the company relies principally on the levy of a toll contributed by the growers of wheat in respect of each bushel of wheat delivered to the company: **AND** WHEREAS by deed bearing date the 24th day of October, 1933, between the company of the one part and a trustee on behalf of the growers of wheat of the other part, the company covenanted to hand over the management and control of its business to the growers as soon as possible after the thirtieth day of September next

following the date on which the company having completed its programme of capital expenditure should have paid off all its liabilities, but in any case not later than the thirty-first day of October, one thousand nine hundred and forty-eight: And whereas it is desirable to regulate properly the conduct of such business in order to insure that proper service is given to the growers of wheat and to merchants and millers and all other persons concerned in its marketing and disposal: NOW THEREFORE it is enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

- Short title.** 1. This Act may be cited as the *Bulk Handling Act, 1935*, and shall come into operation on a date to be fixed by proclamation.*
- Definitions.** 2. In this Act subject to the context—
- Board.** “Board” means the Shippers’ Delivery Board constituted under this Act.
- Company.** “Company” means Co-operative Bulk Handling, Limited, a company incorporated under the provisions of the Companies Act, 1893, as amended by the Companies Act Amendment Act, 1929, and at present having its registered office at Wellington street, Perth.
- Commissioner.** “Commissioner” means the Commissioner of Railways for Western Australia.
- Country bin.** “Country bin” means any building, shed, silo, bin or receptacle at any country railway station or siding for the reception and storage of wheat in bulk pending transport or delivery and any plant or equipment used in connection therewith.
- Deed of trust.** “Deed of trust” means the deed of trust bearing date the twenty-fourth day of October, one thousand nine hundred and thirty-three, made between the company on the one part and a trustee for the growers on the other part.

* Proclaimed to commence 1st February, 1936. (See *Gazette*, 31st January, 1936.)

“Grade” as applied to wheat means wheat of the standard or standards from time to time prescribed under this Act, and until a standard or standards are prescribed means—

Grade.

(a) the fair average quality of wheat as determined for the season in question, in the customary manner; or

(b) if the fair average quality of wheat has not yet been so determined at any particular time, the standard shall be the standard known as “Western Australian Standard White.”

“Grower” includes the legal personal representative of a deceased person; a trustee; the liquidator of a company; and a person entitled to a share of a wheat crop under a share farming agreement.

Grower.

“Miller” means any person whose business is to mill or otherwise process wheat.

Miller.

“Terminal elevator” means a silo or container established at a port for the reception and delivery of wheat into ships.

Terminal elevator.

“Warrant” means a warrant issued by the company under this Act authorising the holder to receive a specified quantity and grade of wheat from the company.

Warrant.

The Company granted sole right of handling and arranging transport of wheat in bulk subject to this Act.

3. (1.) Subject to this Act the company is hereby granted the sole right until the thirty-first day of December, one thousand nine hundred and fifty-five, of receiving wheat in bulk at railway stations and sidings where the company has installed country bins under this Act and the sole right to contract or arrange for the handling, transport by rail and delivery of such wheat in bulk in the State subject, however, to the following exception—

Concession granted to company.

Provided that the grower of any wheat crop may transport by rail in bulk not more than ten per cent. of the marketable portion of such crop.

(2.) Nothing in this Act shall be deemed—

(a) to prevent any miller from establishing on his own premises any silo, bin or bulk handling apparatus for the reception of wheat having

any special milling qualities, whether by reason of its having been grown in any specified part of the State or otherwise; or

- (b) to affect the right of any person to receive, handle, transport, and deliver wheat in bags; or
- (c) to impose any liability on the Commissioner of Railways or the Midland Railway Company of Western Australia or the officers or servants of either of them by reason of the receiving, handling, or carrying in bulk of any wheat which may be delivered to the Commissioner or the said company by any person in contravention of the provisions of this section.

(3.) Any person who after the commencement of this Act receives, handles, or transports wheat in bulk contrary to the provisions of this section commits an offence and shall be liable to a penalty not exceeding one hundred pounds.

In addition to any penalty to which any such person may be liable under this section he shall be liable to pay to the company a sum equal to the toll which would otherwise be payable to the company in respect of the wheat received, handled, transported, or delivered in contravention of this section.

Obligations imposed on the Company by this Act.

Further installations to be approved by Minister.

4. After the commencement of this Act no country bin or bulk handling equipment shall be installed by the company at any country railway station or siding without the consent of the Minister.

Minister may require company to instal bins at sidings having annual receipt over 20,000 bushels

5. Whenever required by the Minister the company shall be obliged to instal, maintain, and operate a country bin or other facilities for the reception and handling of wheat in bulk at any railway station or siding which the Minister is satisfied has an average annual receipt of wheat exceeding twenty thousand bushels over a period of five years preceding such request.

Company to submit plans and specifications of all installations.

6. (1.) Before proceeding to instal any country bin the company shall first prepare and submit plans and specifications of the bin to the Minister for his approval.

(2.) If the Minister is satisfied with such plans and specifications he may approve same accordingly. If the Minister is not so satisfied he may alter the plans and specifications and approve the same as altered.

(3.) The bin shall be installed in accordance with the plans and specifications as approved by the Minister.

7. Whenever in the opinion of the Minister any country bin or equipment provided by the company in connection therewith is inadequate for the needs of the district which it serves or is intended to serve, the Minister may by notice in writing require the company to make such alterations or additions to or provide such further equipment for the operation of the bin as the Minister deems necessary, and the company shall obey such requisition.

Where bin is inadequate the Minister may require the company to alter.

8. The company shall at all times to the satisfaction of the Minister—

Company to keep bins and equipment in good condition.

- (a) keep all country bins and bulk handling equipment used by it or under its control in good repair and condition and in safe working order; and
- (b) take proper precautions in the operation thereof to protect all wheat received and handled from weather, vermin and fungus.

9. Neither the company nor its directors, officers, servants or agents shall be directly or indirectly concerned in the carrying on of any business relating to buying or selling of wheat or broking in wheat, but the company may buy wheat to make up losses or shortages in out-turn and sell wheat which has become damaged or wheat representing any excess of out-turn resulting from time to time in its operations under this Act:

Company not to trade in wheat.

Penalty: Five hundred pounds:

Provided that nothing herein contained shall apply—

- (a) to any such person who at the first day of November, one thousand nine hundred and thirty-five, was and still continues to be—
 - (i) a director of Westralian Farmers, Limited, or Westralian Wheat Farmers, Limited; or
 - (ii) a trustee of the body corporate known as the Trustees of the Wheat Pool of Western Australia; or
 - (iii) the general manager or the manager of the wheat department of Westralian Farmers, Limited,

in so far as any such person *bona fide* acts in the ordinary course of the business of the company or body which he represents under paragraphs (i), (ii), or (iii) of this proviso;

- (b) to the Westralian Farmers, Limited, while it acts as handling agent under the agreement made the seventh day of June, one thousand nine hundred and thirty-three, between the company and the Westralian Farmers, Limited.

Application of moneys received from excess of out-turn.

10. All moneys arising from any excess of out-turn in respect of the wheat received by the company in any particular season shall be paid to and retained by the company in a special reserve account, as a fund to meet from time to time any shortages resulting in the company's operations or in the out-turn of wheat of any particular season or seasons: Provided that any excess of the reserve from time to time over the sum of twenty thousand pounds may be transferred to and applied as part of the general funds of the company.

Company not to give preference or show favouritism.

11. (1.) Neither the company nor any servant, officer, or agent of the company shall—

- (a) show any discrimination or give any preference to persons desiring to avail themselves of the services of the company;
- (b) tout or canvass on behalf of any wheat buyer doing business with the company;
- (c) disclose anything relating to the business or transactions of any person doing business with the company to any other person which might tend to place such last-mentioned person at an advantage.

Penalty: Five hundred pounds.

Provided that nothing herein contained shall apply—

- (a) to any person who at the first day of November, one thousand nine hundred and thirty-five, was and so long as he still continues to be—
- (i) a director of Westralian Farmers, Limited, or Westralian Wheat Farmers, Limited; or
- (ii) a trustee of the body corporate known as the Trustees of the Wheat Pool of Western Australia; or

(iii) the general manager or the manager of the wheat department of Westralian Farmers, Limited,

in so far as any such person *bona fide* acts in the ordinary course of the business of the company or body which he represents under paragraphs (i), (ii), or (iii) of this proviso;

(b) to the Westralian Farmers, Limited, while it acts as handling agent under the agreement made the seventh day of June, one thousand nine hundred and thirty-three between the company and Westralian Farmers, Limited.

(2.) The company shall on becoming aware that any officer, servant, or agent of the company has committed a breach of this section forthwith terminate his service or contract.

(3.) The company is authorised to terminate the services or contract of any such person notwithstanding the terms of any agreement of service or contract to the contrary.

12. No alteration shall be made—

(a) in the memorandum or articles of association of the company; or

(b) to the terms of the deed of trust,

except with the express approval of the Governor.

Company not to alter its constitution or deed of trust without Governor's consent.

13. (1.) The company shall procure within the period of three months from the commencement of this Act and at all times keep on foot a bond in favour of the Crown in the form in the First Schedule from some reputable public insurance company, underwriters, or bank to be approved by the Minister.

Company to furnish a bond for £20,000.

(2.) The bond shall be in the penal sum of twenty thousand pounds, and shall be conditioned for the performance of all its obligations and duties under this Act.

(3.) If the company shall fail to comply with the provisions of this section the concession granted to the company under this Act shall cease, and the company shall not instal or equip any further country railway stations or sidings with bulk handling facilities.

Liability of
company for
conversion.

14. (1.) Nothing herein contained shall relieve the company from liability for conversion or other action in respect to any wheat delivered to the company in the course of its operations, but the company may create an assurance or indemnity fund to protect the company against liability in that respect.

(2.) Where the company has innocently received wheat from any person who had wrongfully converted the wheat to his own use or in derogation of the right, title, claim, or interest therein of any other person, the company shall be entitled to recover from such first-mentioned person any sum or sums and costs for which it may be liable in consequence of such receipt.

Company not
liable for act
of God or un-
foreseen dam-
age.

15. (1.) The company shall not be liable in respect of any failure or delay in delivery of wheat received by it in the course of its operations which arises out of a riot, industrial dispute, civil commotion or war or act of God, or from any unforeseen cause not attributable to the negligence of the company.

In such event the company shall not be liable in any way to the holder of a warrant for any consequential loss, damage, or expense which he may sustain.

(2.) In the event of any loss or damage arising to wheat for which the company is not responsible under this section, the company shall apportion the loss or damage rateably as near as practicable amongst those holders of warrants entitled to obtain delivery of wheat at the time such loss or damage occurs, and to that extent the company shall be discharged from its obligation to deliver wheat to the individual holders.

Company's
liability if
unable to de-
liver on ac-
count of short-
ages of stocks.

16. (1.) If the company is unable to give delivery of wheat to any holder of a warrant on account of loss or shortages in stocks of wheat (other than losses or shortages arising from any cause for which the company is not responsible under section fifteen), the company shall pay the holders of all warrants who are unable to obtain delivery of wheat the market price for the wheat the company is unable to deliver at the time when the holder makes a request for delivery, or if no request is made prior to the thirtieth day of September next following the date of receipt of the wheat in respect of which the warrant was issued, then the company shall pay

the holder the market price of the wheat on such thirtieth day of September. For the purposes of this section the market price means the wheat merchants' buying price or average buying price of wheat at the material time or on the thirtieth day of September, as the case may be, as published in the *West Australian* newspaper.

Provided that nothing herein contained shall preclude a holder of a warrant from recovering any further damages to which he may be legally entitled by reason of the company's not delivering the wheat.

(2.) Notwithstanding the loss of or damage to the wheat the holder shall be nevertheless obliged to pay the company any toll or other charges which would properly have been payable under this Act if the wheat lost or damaged had been delivered to the holder on the date when the loss or damage occurs.

17. (1.) The company shall at its own expense insure all wheat from time to time in its custody or under its control in its full insurable value with some reputable public insurance company or underwriters, which or who have complied with the provisions of the Insurance Act, one thousand nine hundred and thirty-two (Commonwealth), against loss or damage by fire or flood (including risk by wetting from above as well as flooding from below) or explosion, and against such other insurable risks as may from time to time be prescribed.

Company to insure wheat.

(2.) The company shall have authority to receive and give a good discharge for all moneys payable under and in respect of such insurance and to settle, adjust, and compromise all claims thereunder.

(3.) If any loss or damage shall occur to any quantity of wheat in the custody or under the control of the company which is covered by insurance, the company shall apply the insurance moneys in or towards the purchase of wheat to replace that destroyed or damaged, or at its discretion may pay such moneys to a reserve fund to meet liability for shortages under the provisions of section sixteen.

18. (1.) The company shall in every year not later than the thirty-first day of October take out a balance sheet showing all of its assets and liabilities, making due allowance for depreciation and such other reserves as

Company to forward balance sheet and revenue account to Minister and to furnish prescribed returns.

are usual in respect of undertakings similar to that carried on by the company, together also with a revenue account for the preceding twelve months, and shall within two months after the thirty-first day of October as aforesaid, forward the balance sheet and revenue account to the Minister for presentation to Parliament.

The Minister shall cause a copy of the same to be laid on the tables of both Houses of Parliament on the first sitting day after receipt thereof.

(2.) Any officer of the Auditor General nominated by him shall at all times have free access to the books and records of the company and be at liberty to make such copies of or extracts therefrom as he may think fit.

(3.) The company shall keep all such other records of its transactions as the Governor may from time to time prescribe by regulation, and such records shall at all times be open for inspection by an officer to be appointed by the Auditor General.

Special provisions relating to the receipt of wheat by the Company.

Company to exhibit handling conditions at sidings.

19. The company shall exhibit in a conspicuous position at every country railway station or siding at which the company is operating a country bin—

- (a) the prescribed terms and conditions from time to time operating under which wheat is received by the company;
- (b) the prescribed charges authorised to be made by the company from time to time under this Act.

Conditions of handling not to be altered except with Governor's approval.

20. (1.) The terms and conditions on which all wheat shall be delivered to and handled by the company shall be in accordance with the Second Schedule to this Act.

Provided however that the Governor may by Order in Council published in the *Gazette* vary from time to time all or any of such terms and conditions.

(2.) Notwithstanding any contract or agreement to the contrary such terms and conditions shall apply to every receipt and handling of wheat by the company.

21. It is hereby declared—

- (a) that the receipt of wheat by the company in its bulk handling system shall not be deemed to confer on the company any proprietary right or interest in the wheat or to render the wheat liable to seizure or attachment for the company's debts and obligations;
- (b) that the company's position in law shall be that of a custodian for reward;
- (c) that the proprietary right in such wheat shall be considered as being vested in all persons who for the time being are entitled to obtain wheat from bulk stocks held by the company or under its control.

Declaration of the law regarding title to wheat in bulk.

22. (1.) On receipt of any wheat for delivery into any country bin, the company shall cause the same to be weighed; the standard to be determined, and a warrant to be issued for the wheat.

On receipt of wheat, warrant to be issued.

(2.) Every such warrant shall—

- (a) clearly state the name of the grower of the wheat;
- (b) be in the prescribed form; and
- (c) be issued in the name of the grower or some person nominated by the grower at the time of the delivery of the wheat.

(3.) All such warrants shall be consecutively numbered and two warrants bearing the same number shall not be issued during the period in which the harvest of the wheat concerned of any season is being delivered.

23. (1.) For the purpose of determining the civil liability for conversion or other actionable wrong of any person who becomes the holder of a warrant it is hereby declared that—

Liability of holders for conversion—negotiability of warrants.

- (a) the person delivering the wheat mentioned in the warrant to the company;
- (b) the person in whose name the warrant in respect of such wheat is issued by the company; and
- (c) every person to whom the warrant is negotiated,

shall be liable to the true owner of such wheat or to the person in derogation of whose right title claim or in-

terest it was delivered to the company in the same manner and to the same extent as if such person had received the actual wheat.

(2.) Subject to the provisions of the foregoing subsection every warrant shall be a negotiable instrument transferable by indorsement: provided always that every person to whom a warrant is negotiated or transferred shall accept and hold the same subject to the interests of all lienholders and other persons claiming title to or security over the wheat in respect of which the warrant was issued.

(3.) An indorsement of a warrant may be general or special.

Company must receive wheat in bulk when required but not inferior wheat.

24. (1.) The company shall receive all wheat which is offered to it at any country bin for handling in bulk, but shall not receive any wheat which is unsound or which is inferior to the lowest grade then in force and over the limit of variation allowed for that grade.

(2.) In the event of the company refusing to accept wheat on the grounds of inferior quality, the grower may request an officer of the Department of Agriculture, who shall be nominated by the Minister, to determine whether the wheat shall be accepted or rejected by the company.

Weighing, grading, and fixing the dockage.

25. (1.) When wheat is received in any country bin an officer of the company duly appointed for that purpose shall determine whether or not any dockage is to be imposed in respect of such wheat. The items for which and the extent to which dockages may be made shall *mutatis mutandis* be the same as those applying from time to time under the Second Schedule in the case of allowances made by the company for variations in quality on delivery of wheat.

(2.) Such officer shall assess the amount of the dockage in the prescribed manner and particulars of the dockage shall be stated on the warrant.

(3.) If the grower of wheat delivered to a country bin disputes the assessment he may by giving notice forthwith in the prescribed form to such officer require that the amount (if any) of the dockage shall be determined by an officer of the Department of Agriculture nominated

by the Minister, in which case samples shall be taken as prescribed.

(4.) Upon payment by such grower or his agent of the prescribed fee within the prescribed time, the samples so taken shall be forwarded as prescribed and the amount (if any) of the dockage shall be determined by the said officer of the Department of Agriculture.

(5.) If the said officer of the Department of Agriculture determines—

(a) that an amount of dockage which is the same as or more than that assessed by the said officer of the company should be imposed, the fee paid by such grower or his agent shall be paid to the Department of Agriculture; or

(b) that no dockage should be imposed or that an amount of dockage less than that assessed by the said officer of the company should be imposed, the fee paid by such grower or his agent shall be refunded to him, and the company shall pay to the Department of Agriculture an amount equal to the fee so paid,

and the amount of dockage (if any) as so determined shall be imposed accordingly.

26. (1.) Every holder of a warrant on surrendering the same to the company shall pay to the company a toll of five-eighths of a penny per bushel or such lesser toll as the Governor may from time to time fix by Order in Council. The amount of the toll shall be considered as an advance and shall be repayable by the company at the time and in the manner provided in the deed of trust.

Tolls and charges to be subject to Governor's approval.

(2.) In return for all services performed by the company in the receipt, handling, storage, and delivery of any wheat the company shall be authorised to make a handling charge, to be fixed by the Governor from time to time, but not to exceed one and one-eighth of a penny per bushel, and such other charges as are from time to time approved by the Governor.

(3.) It shall not be lawful for the company to make any other levies or charges for or in respect of the bulk handling of wheat, except such as are fixed or prescribed pursuant to this section or are by this Act expressly authorised to be made.

(4.) No alterations which may be made from time to time in the levy or charges authorised to be made under this section shall affect the holder of a warrant issued prior to such alteration.

Company to
have lien for
charges.

27. (1.) The company shall have a lien in priority to all other claims against all wheat delivered into its care in respect of the toll and any other charges payable in respect thereof under the authority of this Act.

(2.) Any person obtaining delivery from the company of any such wheat is hereby authorised to pay the said toll and charges and to claim the same as a set-off or deduction against any moneys payable by such person in respect of the wheat or equivalent quantity of wheat of which he obtains delivery.

Shippers' Delivery Board.

Delivery
Board.

28. (1.) A board is hereby created, to be styled "The Shippers' Delivery Board," which shall be constituted as follows:—

The Commissioner of Railways or a deputy appointed by him, who shall be the chief traffic manager of the Western Australian Government Railways;

One member to be nominated by the Fremantle Harbour Trust Commissioners;

One member to be nominated in the prescribed manner by the merchants operating in the State who are shippers of wheat;

One member to be nominated by the company.

The members shall appoint a chairman from their number.

(2.) The chairman shall have a deliberative as well as a casting vote.

(3.) If a nominee is not appointed within the prescribed time by the person or party entitled to make the appointment, the Governor may make the appointment on behalf of such person or party.

Meetings of
Board.

29. (1.) The Board shall meet together from time to time as may be necessary for the transaction of business.

(2.) A special meeting of the Board may at any time be called in the prescribed manner by two members of the Board.

(3.) The Board may appoint a secretary.

Secretary.

30. Three members of the Board shall form a quorum.

Quorum.

31. The members of the Board shall not be entitled to receive any fees for their services from the Government or the company.

No fees payable to members.

32. It shall be the duty of the Board as far as practicable—

Duties of Board.

- (a) to prevent any disorganisation or congestion in the railway transport of wheat;
- (b) to see that adequate supplies of wheat are kept transported to the ports to meet the demands of shippers and charterers of vessels in accordance with the provisions of sections thirty-three, thirty-four, and thirty-five.

33. (1.) Every holder of a warrant desiring to obtain wheat from the company for shipment shall notify the Board and the company as soon as possible after arranging a charter for a ship to carry bulk wheat to be loaded at any port at which the company is loading bulk wheat and specify—

Shippers to give notice of charters.

- (a) the quantity of wheat required for shipment;
- (b) the name of the ship by which it is intended to ship the wheat;
- (c) the approximate date of arrival;
- (d) the commencement of the lay days; and
- (e) such other particulars as are prescribed.

(2.) Should the holder receive any notification in regard to any alteration of the estimated date of arrival of the ship, he shall immediately notify the board and the company.

34. (1.) The Board shall from time to time, on the information furnished to it and paying due regard to the facilities available for the handling, transport, storage and delivery of the wheat—

Board to draw up shipping rosters.

- (a) draw up shipping rosters; and

(b) specify the quantities of wheat which the company shall from time to time transport to any port to meet shippers' requirements.

(2.) It shall be the duty of the company to see that wheat is transported to the ports and that ships arriving to load bulk wheat are kept supplied in accordance therewith.

Company to have minimum quantities on hand at ports.

35. Until terminal elevator facilities are provided at the ports of Fremantle, Geraldton, Bunbury, and Albany for the storage of wheat the company shall have available at those ports, and at such times as the board may think necessary to fulfil shippers' requirements, such minimum quantities of wheat in bulk as the Board may decide.

Delivery of Wheat.

Guarantee of quantity and quality.

36. The holder of a warrant shall, subject to any variations allowed by this Act, be entitled to receive an equivalent quantity of sound wheat of a grade at least equal to that in respect of which the warrant was issued, but not the identical wheat.

Holder's right to sample.

37. (1.) The holder shall be entitled to sample wheat—

- (a) in any truck from which it is proposed to deliver wheat on his account into a ship; or
- (b) in any bin, truck, or container from which wheat is being elevated on his account for delivery into a ship; or
- (c) in any truck in which wheat may be delivered to the holder elsewhere than at a port.

(2.) In cases (a) and (c) the running bulk sample of the truck shall be taken as the test for the quality.

In case (b) the running bulk sample of the working shift shall be taken as the test.

Disputes as regards quality of wheat for shipment.

38. (1.) In the event of any dispute as to the quality or condition of wheat tendered by the company to the holder of a warrant for shipment, the holder may require delivery operations to cease; but in the case of wheat tendered in trucks the holder shall be restricted either—

- (a) to rejecting the truck before it is brought alongside the ship; in which case he shall give notice to the company; or

(b) to making a claim for allowances after the truck is brought alongside the ship, in which case he shall give notice to the company of a claim for allowances.

(2.) Each party shall without delay appoint an arbitrator to determine any dispute under the previous subsection.

(3.) A sealed sample taken jointly by the parties to the dispute shall be supplied to the arbitrators, together with a standard sample, so that the identity of the samples shall not be known to the arbitrators.

(4.) The arbitrators shall make their award with the least possible delay, and in any case not later than twenty-four hours after the reference, and the arbitration shall, subject to the express provisions of this Act, be conducted as and have all the incidents of a reference under the Arbitration Act, 1895.

39. (1.) In the event of any dispute as to the quality or condition of wheat tendered other than at a port by the company to the holder of a warrant for delivery, the holder may require the matter to be submitted to arbitration.

Arbitration in other cases.

(2.) Sealed samples shall be taken in the manner prescribed.

(3.) Upon payment by the holder or his agent of the prescribed fee within the prescribed time, the samples shall be forwarded to the Department of Agriculture and inspected in accordance with the regulations by an officer of that department nominated by the Minister, and such officer shall give his decision on the matter in dispute.

40. The cost of arbitration, together with any costs reasonably and directly incurred for demurrage, hauling, handling or otherwise arising out of the dispute shall be borne by the party against whom the award is given under the arbitration.

Costs of arbitration.

Regulations.

41. (1.) The Governor may make regulations for the purpose of this Act, but not inconsistent therewith, and may prescribe all such matters and things as are by this Act required or permitted to be prescribed or as it may

Regulations.

be necessary or convenient to prescribe for the purpose thereof, or in order to carry out the provisions of this Act.

(2.) The matters regarding which regulations may be made under this Act shall include—

- (i) the conduct of bulk handling by the company;
- (ii) the method and procedure to be followed and observed by the company in the exercise of its powers and in the conduct of its business under this Act, the records to be kept by the company, and the audit of its books and accounts;
- (iii) the fixing of grades and standards of grades of wheat;
- (iv) the delivery of wheat to the company, the precautions to be taken in regard to the checking of the quality and quantity thereof, ensuring that the quality of grades of wheat received by the company should not be below the limit of variation from the prescribed standard;
- (v) the protection of charges, liens, or securities over wheat offered or delivered to the company;
- (vi) the delivery of wheat by the company and ensuring that proper precautions shall be taken to check the quantity and quality of the wheat delivered by the company;
- (vii) the issue of warrants in place of warrants lost or destroyed, and the conditions under which two or more warrants may be issued in exchange for one warrant, or under which one warrant may be issued in exchange for more than one warrant;
- (viii) subject to any specific provisions of this Act the settlement by arbitration of questions and disputes arising between the company and the holders of warrants;
- (ix) the imposition of penalties not exceeding in any case ten pounds for any breach of such regulations.

FIRST SCHEDULE.

BOND.

By these presents binds itself (themselves)
to the Crown and covenants to pay to the Crown the penal
sum of £20,000.

Dated this day of , 19 .

The condition of the above-mentioned bond or obligation is that if Co-operative Bulk Handling Limited (a company incorporated under the Companies Act 1893 as amended by the Companies Act Amendment Act 1929) shall duly and punctually perform and observe all obligations and duties imposed on the company under and by virtue of the Bulk Handling Act 1935 then this bond shall be of no effect otherwise it shall remain in full force.

Provided that the liability of the obligor under this bond shall be limited—

- (a) to making good any damages expenses and costs suffered by any person or persons by reason of the breach or non-performance by the company of all such duties and obligations;
- (b) to the amount required to make good any default by the company in its duties and obligations; and
- (c) the making good of any penalty and costs which may be imposed under the provisions of section eleven of the Act.

SECOND SCHEDULE.

Conditions relating to the receiving, handling, transporting and delivery of wheat delivered to the Company.

Quantity and Quality.

(1) The variations in weight and quality allowed in delivery of wheat are as follows:—

- (a) Where the company in the case of wheat delivered at a port for shipment elevates the wheat from trucks or hoppers and in the case of wheat delivered other than at a port for shipment delivers the wheat in trucks or hoppers, the holders shall accept the weight to the nearest truck or hopper load above or below the quantity stated in the warrant. The company may make such deduction for shrinkage as may from time to time be prescribed.
- (b) The company has the right to deliver wheat of a standard inferior to that represented by the warrant, but the following shall be the limit of variations allowed:—
 - (i) not more than 2 lbs. below the natural bushel weight of the standard;
 - (ii) not more than 2 lbs. in the aggregate of barley, oats, drake and other foreign grain per bushel;

- (iii) not more than two per cent. of hardball smut;
- (iv) not more than one-tenth of one per cent of heat or weather-damaged grain.

(2) (a) Subject to the preceding condition No. 1, on delivery of the wheat, the company shall pay the holder for any additional inferiority below the standard of the wheat as stated on the warrant.

Provided that the wheat shall be deemed equal to standard if in the case of wheat delivered for shipment, the running bulk sample of the working shift is equal to standard, or, if in the case of wheat delivered other than for shipment, the running bulk sample of each truck or container in which the wheat is delivered is equal to standard.

(b) For the purpose of this condition an assessment shall be made at the time of delivery by a representative of the company and the holder or his agent.

(c) The following is the scale referred to:—

For every pound below the bushel weight of the wheat as shown by the warrant, a payment of one half-penny per bushel.

Bleached wheat shall be dealt with on the same basis.

For every pound of barley oats drake and any other foreign grain above that shown on the warrant, a payment of one half-penny per bushel.

For every one per centum of hard ball smut above that stated on the warrant, a payment of one penny per bushel.

For the purpose of this paragraph the market price of the standard shall be taken as at the time of delivery of the wheat to the holder of the warrant.

Holder to surrender warrant prior to delivery.

(3) No wheat shall be delivered to the holder of a warrant—

- (a) until the holder has signed a request, in the prescribed form and delivered up the warrant to the company;
- (b) until the toll authorised to be collected by the company under the Act has been paid, together with all other charges from time to time prescribed and payable in the particular case.

Such of the charges as have not been definitely ascertained on the date of the surrender of the warrant shall be estimated by the company which may calculate the same up to the date on which it is then expected that the quantity of wheat will be actually delivered to the holder pursuant to the warrant.

Destination of Wheat.

(4) The company shall deliver the wheat at any railway station or siding or port in the State as required by the holder.

Where the holder of a warrant in respect of wheat received by the company in any country bin before the fifteenth day of March in any wheat season notifies the company within seven days after the issue of the warrant that the holder desires the company to deliver to the holder wheat from the siding of receipt, the company shall deliver to the holder wheat from that particular siding or from any other siding

which may be mutually agreed between the holder and the company: provided that the company shall not be obliged to hold wheat under the provisions of this subsection after the thirtieth day of April following the issue of the warrant:

Provided further that the Minister may, subject as hereinafter provided, relieve the company of its obligation to deliver wheat from a particular siding under the preceding provisions under the following conditions:—

- (i) The Minister may require the company to satisfy him that the company has made adequate provision at some other convenient siding to deliver to the holders of the warrants wheat from the same district as the wheat received at the siding of receipt.
- (ii) The Minister may relieve the company entirely if in the opinion of the Minister the holder of the warrant does not *bona fide* require the wheat for milling requirements in his own business.

Subject to the preceding paragraph, the company does not undertake to deliver wheat from the particular railway station or siding of receipt of the wheat in respect of which the warrant was issued, but if wheat is delivered from any other siding the holder and the company shall adjust any difference in the freight charges, the holder paying the company the difference if the charges are less and the company paying the holder the difference if the charges are greater.

Storage Charges after 15th March.

(5) If delivery of the wheat under the warrant has not been taken prior to the 15th day of March following the date of the receipt of the wheat in respect of which the warrant was issued, storage charges in accordance with the prescribed scale shall accrue and be paid to the company by the holder up to the date of delivery of the wheat.

Company may sell if delivery not taken before the thirtieth September.

(6) (1) (a) Delivery of the wheat under any warrant must be taken by the holder on or before the thirtieth day of the month of September next following the receipt of the wheat in respect of which the warrant was issued.

(b) In the event of delivery not being so taken the company shall be relieved of its obligation to deliver the wheat under the warrant and may on that date or at any time thereafter sell the wheat by public tender advertised in the public press either separately or together with any other wheat, or at market price as defined in section sixteen of the Act.

(c) The company may then or at any time thereafter deduct from the proceeds the levy or toll mentioned in these conditions and all other charges and levies which would have been payable by the holder of the warrant on surrender thereof, together with a storage charge of one tenth of a penny per bushel per month or part of a month from such date until the company shall have removed the wheat from its storage bins onto railway trucks.

(d) The company shall hold the balance of the proceeds on account of the holder of the warrant against surrender thereof to the company, subject however to the rights and claims of encumbrancers and of the holders of any other claims or interest in the wheat and of persons entitled to the proceeds of the sale of the wheat.

(e) The Board may require either party to work overtime in the delivery and loading of the wheat and if the parties cannot agree as to the liability for payment of the overtime the Board shall decide the question.

(2) Notwithstanding anything herein contained the Governor may if he is of opinion that a state of emergency exists by order in council extend the abovementioned date (the thirtieth day of September) to such subsequent date as he considers necessary.

Delivery of shippers' wheat.

(7) Where wheat is delivered at a port the following conditions shall apply—

- (a) the holder of the warrant shall be obliged to berth vessels with all reasonable despatch at a bulk loading berth nominated by the company;
- (b) the company shall load the wheat with all reasonable despatch and in any case (but subject to section fifteen of the Act) at a rate not less than one thousand tons per ordinary weather working day of eight hours;
- (c) the company and the holder shall observe the provisions of any roster drawn up by the board;
- (d) the company's obligation to deliver the wheat shall be deemed to be performed when the wheat passes out of the spout of the elevator above the ship's hold;
- (e) where, in the course of delivery, overtime is worked by the company at the request of the holder, such overtime shall be paid for by the holder, but where in the course of delivery overtime is worked other than at the request of the holder, such overtime shall be paid for by the company;
- (f) in the delivery of the wheat the time for loading as fixed by the Board shall be observed by the company and the holder of the warrant. If any delay shall take place by reason of the company not being in a position to deliver the wheat in accordance with such directions, or by reason of the holder of the warrant not being in a position to receive the wheat in accordance with such directions, the party at fault shall be obliged to pay the other any extra charges reasonably incurred by any delay arising therefrom;
- (g) the holder shall provide all bagged wheat required for stiffening cargoes or for other purposes usual in connection with the bulk loading of wheat and shall place such wheat on board ship without unduly interfering with the continuity of bulk loading;
- (h) if the holder shall unduly interfere with the continuity of bulk loading all extra expenses thereby occasioned by the company shall be paid by the holder to the company;

- (i) on completion of the bulk loading, the holder undertakes that the holder will forthwith on being requested to do so move the vessel in order to enable holders of other warrants to bring vessels alongside the berth for loading or for other purposes.

Delivery of millers' wheat or wheat other than for Shipment.

(8) Where the holder of a warrant desires the wheat to be delivered other than into a ship the following provisions shall apply—

- (a) delivery shall be made in railway trucks with all reasonable despatch by the company at such place and in such daily quantities as the holder may require in writing according to the prescribed form; provided that for the purpose of this paragraph delivery shall be deemed to have been made at the place of loading provided the company prove that it promptly loaded and arranged for the despatch of the trucks.
- (b) if the holder shall fail to take delivery of the wheat within the time prescribed by the railway regulations, the holder shall pay to the company all demurrage or other charges for damages which the company may incur by reason of such default, provided that the holder shall not be required to take delivery of a greater quantity of wheat at any one time than the holder has requested under paragraph (a) of this condition;
- (c) the record of the weight of the wheat at the point nearest delivery shall, in the absence of any other evidence, be evidence of the weight delivered;
- (d) after delivery the holder agrees to bundle truck extensions, liners and canes and consign them to the order of the company in accordance with its instructions.

Arbitration.

(9) Subject to the express provisions of this Act, if any dispute shall arise between the company and the holder of a warrant concerning the performance or observance by either parties of the provisions of this Schedule, the matters and all questions incidental thereto shall be referred to arbitration under the provisions of the Arbitration Act, 1895.