

# Contract No. 95

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR SALES FOR ARRIVAL OF FEEDINGSTUFFS IN BULK TALE QUALE

\* delete/specify as applicable

Date.....

**SELLERS** .....

**INTERVENING AS BROKERS** .....

**BUYERS** .....

have this day entered into a contract on the following terms and conditions.

**1. GOODS** ..... in bulk.

Broken cakes and/or meal in a proportion, having regard to the characteristics of the goods and methods of handling, to be taken and paid for as cakes. Wherever the word "cakes" is used, this is agreed to mean goods on the contractual description.

**2. QUANTITY** ..... 2% more or less.

Sellers shall have the option of shipping a further 3% more or less than the contract quantity. The excess above 2% or the deficiency below 2% shall be settled on the quantity thereof at shipment at market value on the last day of discharge of the vessel at the port of destination, the value to be fixed by arbitration, unless mutually agreed. Should the Sellers exercise the option to ship up to 5% more, the excess over 2% shall be paid for provisionally at contract price. The difference between the contract price and the market price calculated in accordance with the provisions of this clause shall be adjusted in a final invoice. In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin on the mean quantity sold shall not be affected thereby.

**3. PRICE AND DESTINATION at** .....

* per tonne of 1000 kilograms	}	
	}	gross weight, cost, insurance and freight to .....
* per ton of 1016 kilograms or 2240 lbs.	}	

**4. BROKERAGE** ..... per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not appropriated then brokerage shall be due on the 30th consecutive day after the last day for fulfilment.

**5. QUALITY**  
\* **Warranted to contain** ..... at time and place of discharge.

Not less than ..... % oil and protein combined, and not more than 1.50% of sand and/or silica. Should the whole, or any portion, not turn out equal to warranty, the goods must be taken at an allowance to be agreed or settled by arbitration as provided for below, except that for any deficiency of oil and protein there shall be allowances to Buyers at the following rates, viz.: 1% of the contract price for each of the first 3 units of deficiency under the warranted percentage; 2% of the contract price for the 4<sup>th</sup> and 5<sup>th</sup> units and 3% of the contract price for each unit in excess of 5 and proportionately for any fraction thereof. When the combined content of oil and protein is warranted within a margin (as for example 40%/42%) no allowance shall be made if the analysis ascertained as herein provided be not below the minimum, but if the analysis results are below the minimum warranted the allowance for deficiency shall be computed from the mean of the warranted content.

For any excess of sand and/or silica there shall be an allowance of 1% of the contract price for each unit of excess and proportionately for any fraction thereof. Should the goods contain over 3% of sand and/or silica the Buyers shall be entitled to reject the goods, in which case the contract shall be null and void, for such quantity rejected.

The goods are warranted free from castor seed and/or castor seed husk, but should the analysis show castor seed husk not exceeding 0.005%, the Buyers shall not be entitled to reject the goods, but shall accept them with the

following allowances: 0.75% of contract price if not exceeding 0.001%, 1% of contract price if not exceeding 0.002%, and 1.50% of contract price if not exceeding 0.005%. Should the first analysis show the goods free from castor seed and/or castor seed husk such analysis shall be final but in the event of the first analysis showing castor seed husk to be present a second sample may be analysed at the request of either party and the mean of the two analyses shall be taken as final. Should the parcel contain castor seed husk in excess of 0.005% Buyers shall be entitled to reject the parcel, in which case the contract shall be null and void for such quantity rejected. Nevertheless, should Buyers elect to retain the parcel they shall be entitled to a further allowance for any excess over 0.005% of castor seed husk, to be settled by agreement or arbitration. For the purpose of sampling and analysis each mark shall stand as a separate shipment. The right rejection provided by this clause shall be limited to the parcel or parcels found to be defective.

**\* Official**..... certificate of inspection, at time of loading into the ocean carrying vessel, shall be final as to quality.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition.** Shipment shall be made in good condition.

## **6. PERIOD OF FULFILMENT**

(a) Sellers shall have complied with the provisions of this clause with the vessel having entered into customs or registered with the port authority/pilot station at the discharge port.

(b) If the vessel has entered into Customs or registered with the port authorities at the discharge port before the period of fulfilment, the entry is deemed to have been effected on the first day of the period of fulfilment. Sellers shall be responsible for any extra costs incurred through the premature entry at Customs or registration with port authorities/pilot station.

(c) The period of fulfilment ends with its last calendar day. If fulfilment is prevented due to the period ending on a non-business day, the preceding business day is deemed to be the last day of fulfilment.

## **7. SALES BY NAMED VESSELS**

For all sales by named vessels, the following shall apply: -

(a) Position of vessel is mutually agreed between Buyers and Sellers;

(b) The word "now" to be inserted before the word "classed" in the Shipment and Classification Clause;

(c) Advice of Shipment Clause cancelled if sold "shipped".

## **8. SHIPMENT AND CLASSIFICATION**

Shipment from.....  
direct or indirect, with or without transshipment by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment.

## **9. EXTENSION OF FULFILMENT**

Sellers shall be entitled, without notice, to an extension of the contract period for fulfilment by an additional period not exceeding 8 consecutive days, from the last day of the originally stipulated period of fulfilment.

Sellers shall make an allowance to Buyers, from the contract price, based on the number of days by which the originally stipulated period, without taking into consideration the Period of Fulfilment Clause par.(c), is exceeded, in accordance with the following scale: -

1 to 4 additional days, 0.50%;

5 or 6 additional days, 1%;

7 or 8 additional days 1.50% of the gross contract price.

If, however, Sellers fail to fulfil within such 8 days, then the contract shall be deemed to have called for fulfilment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

## **10. ADVICE OF SHIPMENT**

(a) Sellers shall advise Buyers in due course, the name of the vessel and presumed quantity allocated to this contract and for information only the port of shipment and bills of lading date.

(b) An advice of shipment shall be served by Sellers or their Agents or Brokers either direct to the Buyers, or to their Agents or Brokers.

(c) Every advice of shipment shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission, which has been repeated in good faith.

(d) If the vessel enters into customs or registers with port authorities/pilot station during the period of fulfilment

before receipt of advice of shipment any proven extra expenses incurred thereby shall be borne by Sellers.  
(e) Prior to the arrival of the vessel, Sellers are entitled to withdraw the advice of shipment and advise Buyers in due course the name of another vessel(s).

## 11. PAYMENT

(a) **Payment** ..... % of invoice amount by cash in .....

\* In exchange for and on presentation of shipping documents.

\* In exchange for shipping documents on or before arrival of the vessel within the period of fulfilment, at Buyers' option.

Sellers, however, have the option of calling upon Buyers to take up and pay for documents on or after .....

(b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.

(c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

(e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other shipping documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

(f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.

(g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish an approved guarantee in respect thereto.

(h) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

## 12. DUTIES, TAXES, LEVIES, ETC.

Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination, shall be for Buyers' account.

## 13. DISCHARGE

Discharge shall be as fast as the vessel can deliver in accordance with the custom of the port, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as fast as the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge from hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account. If documents are tendered which do not provide for discharging as above or contain contrary stipulations, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Discharge by grab(s) shall be permitted unless specifically excluded at the time of contract. If shipment is effected by lash barge, then the last day of discharge shall be the day of discharging the last lash barge at the port of destination.

## 14. WEIGHING

The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract. Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during the voyage. If final at time and place of loading, as per GAFTA registered

superintendents' certificate at Sellers' choice and expense, (in which case the Deficiency Clause will not apply).

## **15. DEFICIENCY**

Any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading weight shall be paid for by Buyers at contract price, (unless the Pro-rata clause applies).

## **16. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

The terms and conditions of GAFTA Sampling Rules No.124 are deemed to be incorporated into this contract. Samples shall be taken at the time of discharge on or before removal from the ship or quay, unless the parties agree that quality final at loading applies, in which event samples shall be taken at time and place of loading. The parties shall appoint superintendents, for the purposes of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA Register of Analysts.

## **17. INSURANCE**

Sellers shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No. 72 viz.: -

(a) Risks Covered: -

Cargo Clauses (WA), with average payable, with 3% franchise or better terms - Section 2 of Form 72

War Clauses (Cargo) - Section 4 of Form 72

Strikes, Riots and Civil Commotions Clauses (Cargo) - Section 5 of Form 72

(b) Insurers - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be responsible.

(c) Insurable Value - Insured amount to be for not less than 2% over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) Freight Contingency - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

(e) Certificates/Policies - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

(f) Total Loss - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) Currency of Claims - Claims to be paid in the currency of the contract.

(h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the provisional invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

(i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against the Insurers in respect of such matters.

## **18. DEEMED PERIOD OF SHIPMENT**

When the parties have agreed a Delivery Period, but not a Shipment Period, it is agreed between Buyers and Sellers that the period of fulfilment under this contract shall be preceded by a reasonable number of voyage days from origin to destination, and for the purpose of this contract, a deemed period of shipment of 31 days at origin shall precede those days.

236  
237 **19. PREVENTION OF SHIPMENT**

238 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on  
239 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are  
240 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)  
241 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of  
242 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to  
243 transportation or navigation, or (l) any other event comprehended in the term "force majeure".  
244

245 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
246 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
247 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not  
248 later than 21 consecutive days before commencement of the shipment period, whichever is later, with the  
249 reasons therefor.

250  
251 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then Buyers  
252 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first  
253 business day after expiry of the 21 day period.

254  
255 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
256 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
257 shall be automatically cancelled.

258  
259 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers  
260 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the  
261 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of  
262 Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14  
263 consecutive days shall be allowed.

264  
265 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
266 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence  
267 justifying the delay or non-fulfilment.  
268

269 **20. NOTICES**

270 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form.  
271 Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either  
272 telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always  
273 subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the  
274 sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal  
275 appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of  
276 resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa,  
277 and any notice received after 1600 hours on a business day shall be deemed to have been received on the  
278 business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.  
279

280 **21. NON-BUSINESS DAYS**

281 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,  
282 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
283 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until  
284 the first business day thereafter. The period of fulfilment shall not be affected by this clause.  
285

286 **22. DEFAULT**

287 In default of fulfilment of contract by either party, the following provisions shall apply: -

288 (a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter  
289 to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default  
290 price.

291 (b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages  
292 cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

293 (c) The damages payable shall be based on, but not limited to, the difference between the contract price and either  
294 the default price established under (a) above or upon the actual or estimated value of the goods, on the date of  
295 default, established under (b) above.

296 (d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or  
297 others unless the arbitrator(s) or board of appeal, having regard to special circumstances, shall in his/their sole and  
298 absolute discretion think fit.

(e) Damages, if any, shall be computed on the advice of shipment quantity, provided the advice(s) are within the contract quantity, but if no such quantities have been advised then on the mean contract quantity and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity. (f) In the event that Buyers have taken up and paid for shipping documents, but the vessel does not arrive in time, Buyers are entitled to reject the goods and ask for the payment to be refunded in exchange for shipping documents together with interest thereon, but if Sellers have not accepted in writing Buyers rejection within 2 business days, Buyers are entitled to sell the goods against Sellers and maintain an action for recovery of any losses suffered. (g) If Buyers do not elect to reject or sell against Sellers due to late entry into customs of the vessel, or where applicable with port authorities/pilot station, any differences in import duties, taxes, levies or costs of a similar nature, between those applying during the original period of fulfilment and those applying at time of entry into Customs or where applicable at a freeport shall be for account of Sellers.

## 23. PRO RATA

(a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of fulfilment of bags of the same mark, or of a similar quality, whether in bags or bulk or whether destined to more than one port, no separation or distinction shall be necessary.

(b) All loose collected, damaged goods and sweepings shall be shared by and apportioned pro-rata in kind between the various Receivers thereof at the port of discharge named in the contract, buying under contracts containing this clause. In the event of this not being practicable or any of them receiving more or less than his pro-rata share or apportionment, he shall settle with the other(s) on a pro-rata basis in cash at the market price and each Receiver shall bear his proportion of the depreciation in market value. The pro-rata statement shall be established by the Sellers or their Representatives in conjunction with the Receivers or their Representatives.

(c) The above pro-rata apportionment between Receivers shall have no bearing on the establishment of final invoices with Sellers and for the purpose of these invoices, the total quantity of loose collected, damaged goods and sweepings shall be regarded as delivered to those Receivers who did not receive their full invoiced quantity.

(d) In the case of excess or deficiency, the difference between the invoiced and the total delivered quantity shall be settled at the market price by final invoices to be rendered by Receivers, who have received more or less than that paid for, to their immediate Sellers without taking into consideration the above pro-rata apportionment between Receivers.

(e) If an excess quantity is delivered to one or more receiver and a deficient quantity is delivered to one or more receiver, the excess and deficiency shall be settled between them at the market price. Invoices shall be established with immediate Sellers for any balance resulting from this settlement.

(f) All Shippers, Sellers and Buyers of any part of such larger quantity as aforesaid under contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all questions and claims between them or any of them in regard to the execution of this clause as aforesaid in accordance with the Arbitration Clause of this contract. Sellers and Buyers shall give all reasonable assistance in execution of this clause. All Sellers shall be responsible for the settlement by the respective Buyers in accordance with this clause within a reasonable time.

(g) The market price wherever mentioned in this clause shall be the market price on the last day of discharge of the vessel in the port of destination, such price to be fixed by arbitration unless mutually agreed.

(h) In the event of this clause being brought into operation, any allowances payable in respect of condition, or quality, or under any of the other guarantees contained in this contract, shall be based upon the actual weight received by the Buyers and not on the pro-rata weight.

(i) In the event of any conflict in terms of apportionment applicable to the port of discharge the method published by GAFTA shall, where applicable, take precedence over sub-clauses (b) to (h) above.

(j) In the event that sub-clause (a) applies or that the goods subsequently become co-mingled, and that the goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro-rata between themselves in proportion to their bill of lading quantities.

Such settlements shall be made in cash and in the event of two or more discharging ports being involved, then the settlement price shall be the average of the market prices on the last day of discharge in the respective ports.

## 24. CIRCLE

Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for shipment to the same port(s) of destination during the same period of fulfilment). Different currencies shall not invalidate the circle. Subject to the terms of the Prevention of Shipment Clause in the contract, if the goods are not advised, or, having been advised documents are not presented, invoices based on the mean contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after

the last day of the originally stipulated period of fulfilment, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual fulfilment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

## **25. INSOLVENCY**

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the served of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

## **26. DOMICILE**

This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

## **27. ARBITRATION**

(a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any

persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.  
(c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

## **28. INTERNATIONAL CONVENTIONS**

The following shall not apply to this contract: -

(a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967.

(b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.

(c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

(d) Incoterms.

(e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers .....Buyers .....

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