

# Contract No.49

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR THE DELIVERY OF GOODS CENTRAL AND EASTERN EUROPE IN BULK OR BAGS FOB TERMS

*\*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 or in bags) .....  
**Packing** - if in bags, to be uniform weight bags suitable to withstand ordinary wear and tear to destination, such bags to be taken and paid for as goods.

**2. QUANTITY** .....  
tonnes of 1000 kilograms, 5% more or less at Buyers' option, at contract price. In the event of more than one delivery being made, each delivery shall be considered a separate contract, but the margin on the mean quantity sold shall not be affected thereby. Each mark/parcel shall stand as a separate parcel.

**3. PRICE** ..... per tonne of 1000 kilograms gross weight,  
delivered Free On Board Buyers' Vessel(s) in .....

**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 Delivery Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not delivered then brokerage shall be due on the 30th consecutive day after the last day for delivery.

**5. QUALITY** .....  
**Condition.** Delivery shall be made in good condition.

**6. PERIOD OF DELIVERY**  
**Delivery during** ..... at Buyers' call.

**Nomination of Vessel.** Buyers shall serve not less than .....consecutive days' notice of the name and probable readiness date of the vessel and the estimated tonnage required. The Buyer has the right to substitute any nominated vessel. Buyer's obligations regarding pre-advice shall only apply to the original vessel nominated. No new pre-advice is required to be given in respect of any substitute vessel, provided that the substitute vessel arrives no earlier than the estimated time of arrival of the original vessel nominated and always within the delivery period. Provided the vessel is presented at the loading port in readiness to load within the delivery period, Sellers shall if necessary complete loading after the delivery period and carrying charges shall not apply. Notice of substitution to be given as soon as possible but in any event no later than one business day before the estimated time of arrival of the original vessel. In case of re-sales a provisional notice shall be passed on without delay, where possible, by telephone and confirmed on the same day in accordance with the Notices Clause.

In any month containing an odd number of days the middle day shall be accepted as being in both halves of the month, except for pricing purposes the middle day shall be considered to be in the first half of the month.

46  
47 **7. LOADING**

48 Loading port .....

49  
50 If a range is given, Sellers to declare port/berth(s)..... days prior to commencement of the delivery  
51 period.

52 Vessel(s) to be clean and fit to receive the goods and to load in accordance with the custom of the port of loading  
53 unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the  
54 contrary.  
55

56 **8. EXTENSION OF DELIVERY**

57 The contract period of delivery shall be extended by an additional period of not more than 10 consecutive days,  
58 provided that Buyers serve notice claiming extension not later than the next business day following the last day of  
59 the delivery period. In this event Sellers shall carry the goods for Buyers' account and all charges for storage,  
60 interest, insurance and other such normal carrying expenses shall be for Buyers' account, unless the vessel  
61 presents in readiness to load within the contractual delivery period.

62 Any differences in export duties, taxes, levies etc, between those applying during the original delivery period and  
63 those applying during the period of extension, shall be for the account of Buyers. If required by Buyers, Sellers  
64 shall produce evidence of the amounts paid. In such cases the Duties, Taxes and Levies Clause shall not apply.

65 Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option  
66 of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges  
67 as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants  
68 shall be considered complete delivery of the contract on the part of Sellers.  
69

70 **9. INSURANCE**

71 Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers  
72 with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at  
73 least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers  
74 shall have the right to place such insurance at Buyers' risk and expense.  
75

76 **10. PAYMENT**

77 (a) By cash in .....  
78 against the following documents.....

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

82 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved  
83 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled  
84 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract  
85 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under  
86 sub-clause (a).  
87

88 **11. EC EXPORT LICENCE** if required, to be obtained by Buyers provided Buyers are an EC member otherwise, to be  
89 obtained by Sellers. For other countries export licence if required, to be obtained by Sellers.  
90

91 **12. DUTIES, TAXES AND LEVIES ON GOODS**

92 Any EC export duties, taxes, levies, and refunds etc present or future in the country of origin, shall be for the  
93 account of the holder of the Export Licence, otherwise national duties and taxes, present or future shall be for  
94 Sellers' account. For other countries any duties, taxes, levies, and refunds etc, present or future in the country of  
95 origin, shall be for Sellers' account.  
96

97 **13. PREVENTION OF DELIVERY**

98 Event of Force Majeure - "Event of Force Majeure" means (a) prohibition of export or other executive or  
99 legislative act done by or on behalf of the government of the country of origin or of the territory where the port  
100 or ports named herein is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c)  
101 acts of terrorism, or (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil  
102 commotion, or (g) breakdown of machinery, or (h) fire, or (i) Act of God, or (j) unforeseeable and unavoidable  
103 impediments to transportation or navigation, or (k) any other event comprehended in the term "force majeure".  
104

105 Should performance of this contract be prevented, whether partially or otherwise, by an Event of Force Majeure,  
106 the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that

Buyers/Sellers (the affected party) shall have served a notice on the other party within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Sellers/Buyers (the non-affected party) have the option to cancel the unfulfilled part of the contract by serving a notice on the other party not later than the first business day after expiry of the 21 day period.

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

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

The burden of proof lies upon the party claiming under this clause and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that the party relying on the clause shall have provided to the other party, if required, satisfactory evidence justifying the delay or non-fulfilment.

#### **Ice**

(a) If FOB at an ocean-going port, should delivery or loading of the goods or any part thereof be prevented at any time during the last 30 days of the delivery period or at any time during the delivery period if such be less than 30 days, by reason of ice at port(s) of loading or elsewhere preventing the forwarding of the goods to such port or ports, then the Sellers shall be entitled, at the termination of such ice, to as much time, not exceeding 21 days, for delivery at such port(s) as was left for delivery under the contract prior to the outbreak of ice, and in the event of the time left for delivery under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further ice preventing delivery or loading of the goods during the time by which the time of delivery has been extended by reason of the operation of the provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such ice.

(b) If FOB at an up-river port, should delivery or loading of the goods or any part thereof be prevented at any time during the last 30 days of the delivery period or at any time during the delivery period if such be less than 30 days, by reason of ice at port(s) of loading or elsewhere preventing the arrival of the vessel at the load port, then the Buyers shall be entitled at the termination of such ice to as much time, not exceeding 21 days, for delivery at such port(s) as was left for delivery under the contract prior to the outbreak of ice, and in the event of the time left for delivery under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of further ice preventing delivery or loading of the goods during the time by which the time of delivery has been extended by reason of the operation of the provisions of the foregoing paragraph, the additional extension shall be limited to the actual duration of such ice.

(c) Buyers or Sellers, as the case may be, shall serve notice not later than 5 business days after the commencement of ice or 5 business days after the commencement of the delivery period whichever is later if they intend to claim an extension of time for delivery under this clause.

(d) If required by either party, the other party must provide documentary evidence to establish any claim for extension under this clause.

#### **14. NOTICES**

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

#### **15. NON-BUSINESS DAYS**

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

## **16. WEIGHING**

The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract. Final at time and place of loading, as per GAFTA registered superintendent certificate at Sellers' choice and expense. Buyers have the right to attend at loading.

## **17. 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 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

## **18. FUMIGATION**

Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be incorporated into this contract.

## **19. DEFAULT**

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

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

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

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

(d) In all cases the damages shall, in addition, include any proven additional expenses which would directly and naturally result in the ordinary course of events from the defaulter's breach of contract, but shall in no case include loss of profit on any sub-contracts made by the party defaulted against or others unless the arbitrator(s) or board of appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared 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.

## **20. 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 delivery from the same port(s) of loading during the same period of delivery). Different currencies shall not invalidate the circle.

Subject to the terms of the Prevention of Delivery Clause in the contract, if the circle is established before the goods are delivered, or if the goods are not delivered, invoices based on the mean contract quantity, or if the goods have been delivered invoices based on the delivered 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 date for delivery, 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 delivery 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 the 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 it 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 if the difference between the closing out price and the contract price.

## **21. 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 payment 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), 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 serving 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 repurchase 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.

## **22. 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.

## **23. 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.

## **24. 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 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.

## **25. PHYTOSANITARY CERTIFICATE**

Where the provision of a phytosanitary certificate has been agreed between the parties, Sellers shall use their reasonable endeavours to supply, at their own cost, a phytosanitary certificate in circumstances where:

- (a) After the date on which the contract has been entered into the named country of import changes its phytosanitary requirements or
- (b) As at the date on which the contract has been entered into Sellers are not aware of the named country of import.

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

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**GAFTA**

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