

Contract No.79B

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR SALE AND PURCHASE OF EU GRAIN Delivery/Collection

**delete/specify as applicable*

Date

SELLERS

INTERVENING AS BROKERS

BUYERS

1. GOODS

2. QUANTITY5% more or less,
at *Sellers/Buyers option, any excess or deficiency over/under 5% to be settled by arbitration unless mutually agreed.

3. PRICE per tonne of 1000 kilograms,

delivered to

collected from

4. PAYMENT

(a) Payment to be by cash in

* (i) in exchange for and on presentation of shipping documents

* (ii) by irrevocable Letter of Credit to be made available to Sellers by

(b) **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).

5. BROKERAGEper 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 Force Majeure Clause. Brokerage shall be due on the last day of the period of delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

6. QUALITY

***Warranted to contain:-**

Type/Variety	Moisture	Admixture	Sprouted Grains	Natural Weight (specific)
	Max %	Max by weight %	by weight %	

***Moisture** - to be ascertained at point of destination. The Buyers have the option of rejecting the goods for any excess, or alternatively to take the goods with mutually agreed allowances off the contract price.

***Admixture and Sprouted Grains** - to be ascertained at point of destination. The Buyers have the option of rejecting the goods for any excess or alternatively to take the goods with mutually agreed allowances off the contract price.

***Natural Weight.** Warranted at time and place of destination.

Guaranteed..... %
 *Germinative capacity
 *Germinative energy
 (The test to be carried out by one of the growth methods prescribed in "Analytica" of the European Brewery Convention).

Condition. The goods are warranted to be in good condition, free from infestation, clean and to have a natural smell.
 Ergot not to exceed 0.001% by weight.

The goods are warranted to comply with the regulations for maximum residue levels for pesticides established for cereals in Directive EC 86/362, as amended to include Regulation 396/2005.

***7. IN ADDITION TO CLAUSE 6 ABOVE FOR MALTING BARLEY**

NITROGEN: Maximum dry basis	GERMINATION		SCREENING	
% Tolerance 0.05%	Capacity	Energy	Small Barley	Full Barley

Buyers do not have any option to reject unless the barley is out of condition or has a moisture level above the unit of the current scale.

Purity of Variety.....
 The test for purity of variety to be carried out by The National Institute of Agricultural Botany, Cambridge, in accordance with the appropriate tests for that variety. The cost for this test shall be borne by the party giving the instructions except where they are successful in obtaining an allowance, and then the cost shall be borne by the other party to the contract.

***8. IN ADDITION TO CLAUSE 7 ABOVE FOR MILLING WHEAT**

PROTEIN	HAGBERG	HARDNESS	GLUTEN
minimum/maximum		as per Stenvert Hardness Scale	

ZELNY	MACHINABILITY	SODIUM DODECYL SEDIMENTATION (SDS)	
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9. PERIOD OF DELIVERY

(a) **Collection** - Sellers shall have the grain available for collection at Buyers' call at a mutually agreed time, provided at least 1 business day's notice is given by Buyers. Sellers shall load in good condition in bulk, free onto Buyers vehicles on an accessible hard standing within the contract delivery period. Each vehicle load to be considered a separate contract, but the margin on the mean contract quantity shall not be affected thereby.
 (b) **Delivery** - Sellers shall deliver to Buyers nominated destination at Buyers' call at a mutually agreed time, provided that at least 1 business day's notice is given to Sellers by Buyers.

10. EXTENSION OF DELIVERY/COLLECTION

The contract period of delivery shall be extended for not more than 8 consecutive days, provided Buyers serves a notice claiming extension not later than the business day following the last day of the delivery/collection period.
 In the event that delivery/collection is made within the extended 8 consecutive days, the contract price shall be increased in accordance with the number of days by which the originally stipulated period of delivery is exceeded, as follows:

1 to 4 days 0.50%

5 or 6 days 1%

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

If however, after serving notice as above, Sellers fail to deliver or Buyers fail to collect within such 8 days then the contract shall be deemed to have called for delivery/collection during the originally stipulated period plus 8 days at contract price plus 1.50%.

11. WEIGHING

All the terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract. Buyers shall weigh the goods on delivery; such weights shall be accepted as final and advised to Sellers without delay. Buyers shall give a copy of the weight note to the driver.

12. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

The terms and conditions of GAFTA Sampling Rules No.124 are deemed incorporated into this contract. The parties shall appoint superintendents, for the purposes of supervision and sampling of goods, from the GAFTA Register of Superintendents. For quality certificates, unless otherwise agreed, analysts shall be appointed from the Register of Analysts.

13. FUMIGATION

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

14. INSURANCE

Sellers shall be responsible for insurance cover up to the point of delivery/collection, thereafter insurance shall be for the account of Buyers.

15. FORCE MAJEURE

Should the execution of this contract or any unfulfilled portion thereof be prevented by any cause comprehended in the term "force majeure", provided that notice has been served by Sellers/Buyers within 7 consecutive days from the occurrence, or not later than 21 days before the commencement of the delivery/collection period, whichever is the later, the time for delivery/collection shall be extended for a period of 30 consecutive days. After the additional period of 30 consecutive days the contract shall be void for the unfulfilled portion so prevented. Sellers/Buyers shall have no claim against Sellers/Buyers for delay or non-fulfilment under this clause, provided that they shall have supplied, if required, satisfactory evidence to justify the delay or non-fulfilment.

16. DEMURRAGE

In the event of there being any unreasonable delay by Sellers in loading vehicles, Buyers shall be entitled to recover from Sellers any proved additional expenses. In the event of there being any unreasonable delay by Buyers in discharging vehicles Sellers shall be entitled to recover from Buyers any proved additional expenses.

17. 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 county of origin, of the same quality and, where applicable, of the same analysis warranty and of the same delivery period). Different currencies shall not invalidate the circle.

If the goods are not delivered, invoices based on the mean contract quantity, (or if the goods have been delivered, on the invoice 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 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 the circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. 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 Seller shall make payment to their Buyers of the difference between the closing out price and the contract price.

18. NOTICES

(a) All notices required to be served on the parties pursuant to this contract shall be served in legible form by E-mail, or by other mutually recognised electronic method of rapid communication, always subject to the provision 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.

(b) 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, for the purpose of passing onto their sub buyers and sub sellers, to have been received on the business day following.

(c) A notice to the Brokers or Agent shall be deemed a notice under this contract.

19. 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 giving 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/ collection shall not be affected by this clause.

20. 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 mean contract quantity.

21. INSOLVENCY

21.1 If before the fulfilment of this contract, either party shall:

(a) suspend payments;

(b) 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;

(c) convene, call or hold a meeting of creditors;

(d) propose either:

(i) a voluntary arrangement; or

(ii) a restructuring plan under Part 26A Companies Act 2006;

(e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;

(f) be subject to either:

(i) a notice of intention to appoint an administrator; or

(ii) a notice of appointment of an administrator;

(g) have an administration order made;

(h) be subject to a winding up petition;

(i) have a winding up order made;

(j) have a receiver or manager appointed;

(k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);

(l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or

(m) 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 office-holder or other person representing the party committing the Act of Insolvency) that such notice was 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.

21.2 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.

21.3 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.

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 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.

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25. METHODS OF ANALYSIS

Unless otherwise agreed, the terms and conditions of GAFTA Methods of Analysis No. 130 are deemed to be incorporated into this contract.

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

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GAFTA

THE GRAIN AND FEED TRADE ASSOCIATION

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