

# Contract No.112

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR FEEDINGSTUFFS IN BULK TALE QUALE FREE OUT ALONGSIDE BUYERS BERTH (TO DENMARK)

*\*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 goods. Wherever the word "cakes" is used, this is agreed to mean goods of 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 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 in/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 appropriation.

**5. QUALITY**

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

Not less than .....% of 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 parcel 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 SHIPMENT**

As per bill(s) of lading dated or to be dated .....

The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

## **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) Appropriation 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. In case of grab discharge, the vessel to be suitable for grab discharge. Vessel's owners shall be Members of a P. & I. Club and vessel shall be less than 25 years of age. Loading in wing, deep and ballast tanks are not allowed.

## **9. EXTENSION OF SHIPMENT**

The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed.

Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period 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, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment 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. APPROPRIATION**

(a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the presumed date of the bill of lading.

(b) The notice of appropriation shall within 10 consecutive days from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from

the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

(1) On the same calendar day, if received not later than 1600 hours on any business day, or

(2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.

(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

(e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of lading shall prevail.

(f) Every notice of appropriation 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.

(g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

(h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their consent.

(i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.

## 11. PAYMENT

(a) **Payment** by cash in .....in exchange for shipping documents on or before arrival of the vessel at destination at Buyers' option. In the case of non-arrival of vessel at destination on account of events listed below, Buyers shall pay on presentation of documents on the originally estimated day of arrival.

(i) Ship lost

(ii) Discharge at/deviation to other than contractual destination in case of (i) War. (ii) Strikes. (iii) Liberties  
Clauses as per bill of lading or Charter Party.

(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

The cost of discharge shall be for Buyers' account.

Discharge shall be at the average rate of .....tonnes per weather working day of 24 consecutive hours, Fridays from 1700 hours to Monday at 0700 hours and holidays excluded, unless used, in which case actual time used to count. NOR in first or sole discharging port shall be tendered on arrival of the vessel WIPON WIBON WIIFPON WCCON. Time used before commencement of laytime shall not count, even if used. Laytime shall commence at 0700 hours on next working day if NOR received after noon during ordinary working hours, or at 1400 hours on the same working day if NOR received during ordinary office hours before noon. Laytime in Buyers' second or third port of discharge in Denmark to count immediately on arrival at the port(s). Whenever the vessel discharges simultaneously to more than one Receiver, at the same berth, the time taken to discharge will be pro-rated among all the buyers/receivers at that berth. Rate of demurrage as per Charter Party/Booking Note/Despatch half demurrage. If documents are tendered which do not provide for discharge 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. 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.

235 **15. WEIGHING**

236 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
237 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place  
238 of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the  
239 extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight  
240 occasioned by water and/or oil during the voyage. If final at time and place of loading, as per GAFTA registered  
241 superintendents' certificate at Sellers' choice and expense, (in which case the Deficiency Clause will not apply.  
242

243 **16. DEFICIENCY**

244 Any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading weight  
245 shall be paid for by Buyers at contract price, (unless the Pro-rata clause applies).  
246

247 **17. SAMPLING ANALYSIS AND CERTIFICATES OF ANALYSIS**

248 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.  
249 Samples shall be taken at the time of discharge on or before removal from the ship or quay, unless the parties  
250 agree that the quality final at loading applies, in which event samples shall be taken at time and place of loading.  
251 The parties shall appoint superintendents, for the purposes of supervision and sampling of the goods, from the  
252 GAFTA Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA  
253 Register of Analysts.  
254

255 **18. FUMIGATION**

256 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be  
257 incorporated into this contract.  
258

259 **19. PREVENTION OF SHIPMENT**

260 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on  
261 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are  
262 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)  
263 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of  
264 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to  
265 transportation or navigation, or (l) any other event comprehended in the term "force majeure".  
266

267 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
268 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
269 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not  
270 later than 21 consecutive days before commencement of the shipment period, whichever is later, with the  
271 reasons therefor.  
272

273 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then Buyers  
274 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first  
275 business day after expiry of the 21 day period.  
276

277 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
278 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
279 shall be automatically cancelled.  
280

281 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers  
282 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the  
283 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of  
284 Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14  
285 consecutive days shall be allowed.  
286

287 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
288 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence  
289 justifying the delay or non-fulfilment.  
290

291 **20. PRO RATA**

292 Pro-rata arrangements shall be in accordance with the Regulations applicable in Denmark, published by DAKOFO  
293 and GAFTA in the edition current at the time of discharge.  
294

295 **21. CIRCLE**

296 Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle  
297 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 shipment). 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 appropriated, or, having been appropriated 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 for appropriation, 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 shipment 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.

## **22. 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.

## **23. 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 shipment shall not be affected by this clause.

## **24. 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 no case shall damages 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 appropriated if any, but if no such quantity has been appropriated 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) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

## **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 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 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, 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, Wherever the word "cakes" is used, this is agreed to mean goods of the contractual description. 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 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.

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(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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