

Contract No.2

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION



GENERAL CONTRACT FOR CHINESE GOODS IN BAGS/PARCELS TALE QUALE – CIF/CIFFO/C&F/C&FFO TERMS

**delete/specify as applicable*

Date

1 **SELLERS**

2

3 **INTERVENING AS BROKERS**

4

5 **BUYERS**.....

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

7

8 **1. GOODS**

9 in new and/or secondhand bags of suitable strength to withstand ordinary wear and tear to port of

10 destination. Such bags to be taken and paid for as goods.

11

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

13 Sellers have the option of shipping a further 3% more or less than contract quantity, excess or deficiency

14 over the above 2% be settled at the market price on the date of the bill of lading, and on the quantity

15 thereof; value to be fixed by arbitration, unless mutually agreed. In the event of more than one shipment

16 being made each shipment to be considered a separate contract, but the margin on the mean quantity sold

17 not to be affected thereby.

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19 **3. PRICE AND DESTINATION**

20 At the price per tonne of 1,000 kilograms gross weight of

21

22 *cost, insurance and freight to.....

23

24 *cost, insurance and freight free out to

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26 *cost and freight to

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28 * cost and freight free out to

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30 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods

31 lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the

32 contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day

33 shipping documents are exchanged or, if the goods are not appropriated then brokerage shall be due on

34 the 30th consecutive day after the last day for appropriation. Any disputes arising out of this clause shall

35 be referred to arbitration in accordance with the arbitration clause.

36

37 **5. QUALITY**

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

39

40 ***Official**.....certificate of inspection, at time of loading into the ocean carrying vessel, shall

41 be final as to quality.

42 ***Sample**, at time and place of loading into ocean carrying vessel, shall be final as to quality.

43 **Admixture**. Any admixture of dirt and/or other foreign substance over 3% and up to 5% to be allowed for by

44 Sellers at contract price, but any excess over 5% to be allowed for at double contract price.

45

46 Any grain other than to be reckoned as foreign substances at half their

47 quantities. The percentage of admixture to be determined by the Analysts appointed by GAFTA. The costs of

analysis to be borne by Buyers if the admixture of dirt and/or other foreign substances is 3% or less, and by Sellers if in excess of 3%.

Condition. Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

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 date 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. PORTS OF SHIPMENT

From a port or ports on the Yang-tze Kiang River between Hankow and Shanghai, both inclusive, and/or Changsha, and/or Shasi, and/or port or ports in the China Seas, and/or Dalny and/or Vladivostock via the Suez Canal and/or Cape of Good Hope, and/or Panama Canal.

8. 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".

9. 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.

10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS

(a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers shall nominate the intended carrying vessel(s) to Buyers.
(b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the terms of this clause.

11. 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.

12. 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 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.

13. 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 at destination, at Buyers' option;

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

..... consecutive days from the date of the bill(s) of lading.

(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. For CIF/CIFFO terms 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).

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14. 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.

15. DISCHARGE

(a) **For CIF/C&F terms**, 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.

(b) **For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.

Discharge shall be at the average rate of tonnes per Weather Working Day, Saturdays, Sundays, Holidays Excepted, Unless Used, (WWD SSHEX UU), in which case actual time used to count. Notice of Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port Or Not, (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON), Whether Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next working day. Rate of demurrage/despatch as per Charter Party. In the event of a time charter, the daily hire rate shall be taken as the rate of demurrage, half despatch.

(c) 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 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.

16. 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).

17. 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).

18. 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.

19. FUMIGATION

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

20. INSURANCE

20.1 For Contracts Concluded on CIF/CIFFO terms. 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 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,

230 accept a British domicile and provide an address for service of process in London, but for whose solvency
231 Sellers shall not be responsible.

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

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

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

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

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

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

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

265 **20.2 For Contracts Concluded on C & F/C&FFO terms.** Buyers shall be responsible for obtaining
266 insurance cover as per Clause 20.1 above and shall, if required by Sellers, provide evidence to Sellers prior
267 to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide
268 evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers'
269 expense.

270 21. PREVENTION OF SHIPMENT

271 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on
272 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are
273 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)
274 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of
275 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to
276 transportation or navigation, or (l) any other event comprehended in the term "force majeure".
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279 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
280 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
281 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not
282 later than 21 consecutive days before commencement of the shipment period, whichever is later, with the
283 reasons therefor.

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

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

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

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

22. 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.

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. PRO RATA

(a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of shipment 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 serve 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.

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

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

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

360 (j) In the event that sub-clause (a) applies or that the goods subsequently become co mingled, and that the
361 goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after
362 the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro rata
363 between themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash
364 and in the event of two or more discharging ports being involved, then the settlement price shall be the
365 average of the market prices on the last day of discharge in the respective ports.
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367 **25. DEFAULT**

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

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

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

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

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

380 (e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has
381 been appropriated then on the mean contract quantity, and any option available to either party shall be
382 deemed to have been exercised accordingly in favour of the mean contract quantity.

383 (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall
384 then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been
385 declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has
386 not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, where
387 the Appropriation Clause provides for 7 or more days for service of the appropriation, or if notice of
388 appropriation has not been served by the 4th business day after the last day for appropriation laid down in the
389 contract where the Appropriation Clause provides for less than 7 days for service of the appropriation, the
390 Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.
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392 **26. CIRCLE**

393 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part
394 thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the
395 provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean
396 goods of the same description, from the same country of origin, of the same quality, and, where applicable,
397 of the same analysis warranty, for shipment to the same port(s) of destination during the same period of
398 shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prevention of
399 Shipment Clause in the contract, if a circle is established prior to the goods being appropriated to all
400 parties in the circle, settlement shall be based on the mean contract quantity. However, where a circle is
401 established after the goods have been appropriated to all parties in the circle, settlement shall be based on
402 the appropriated quantity. No circle settlement shall apply where documents have been presented to and
403 paid by one of the parties in the circle. Settlement shall be made between the parties in the circle by
404 payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice
405 amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for
406 appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be
407 due not later than 15 consecutive days after the circle is ascertained. Where the circle includes contracts
408 expressed in different currencies the lowest invoice amount shall be replaced by the market price on the
409 first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the
410 circle by payment of the differences between the market price and the relative contract price in currency
411 of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle
412 shall have been ascertained in accordance with this clause same shall be binding on all parties to the

413 circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their
414 Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of
415 payment commit any act comprehended in the Insolvency Clause of his contract, settlement by all parties
416 in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which
417 shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event
418 respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their
419 Buyers of the difference between the closing out price and the contract price.

420 **27. INSOLVENCY**

421 27.1 If before the fulfilment of this contract, either party shall:

- 422 (a) suspend payments;
- 423 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to
- 424 suspend payments of his debts;
- 425 (c) convene, call or hold a meeting of creditors;
- 426 (d) propose either:
 - 427 (i) a voluntary arrangement; or
 - 428 (ii) a restructuring plan under Part 26A Companies Act 2006;
- 429 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- 430 (f) be subject to either:
 - 431 (i) a notice of intention to appoint an administrator; or
 - 432 (ii) a notice of appointment of an administrator;
- 433 (g) have an administration order made;
- 434 (h) be subject to a winding up petition;
- 435 (i) have a winding up order made;
- 436 (j) have a receiver or manager appointed;
- 437 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
- 438 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
- 439 (m) have a bankruptcy petition presented against him,
- 440 (any of which acts being hereinafter called an "**Act of Insolvency**")

441 then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act
442 of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or
443 the office-holder or other person representing the party committing the Act of Insolvency) that such notice
444 was served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out
445 at the market price ruling on the business day following the serving of the notice.

446 27.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of
447 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
448 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the
449 market price ruling on the first business day after the date when the Act of Insolvency occurred.

450 27.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
451 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the
452 re-purchase or re-sale price shall be the amount payable or receivable under this contract.
453

454 **28. DOMICILE**

455 This contract shall be deemed to have been made in England and to be performed in England,
456 notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance
457 with the laws of England. Except for the purpose of enforcing any award made in pursuance of the
458 Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any
459 application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the
460 exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a
461 dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association
462 pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party
463 shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed
464 Trade Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be
465 held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have
466 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of
467 proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade
468 Association, together with the posting of a copy of such proceedings to his address outside England, shall
469 be deemed good service, any rule of law or equity to the contrary notwithstanding.
470

471 **29. ARBITRATION**

472 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or
473 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration
474

475 Rules, No 125, in the edition current at the date of this contract; such Rules are incorporated into and form
476 part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly
477 agreed to the application of such Rules.

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

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

490
491 **30. INTERNATIONAL CONVENTIONS**

492 The following shall not apply to this contract: -

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

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

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

498 (d) Incoterms.

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

501
502 **31. METHODS OF ANALYSIS**

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

Sellers..... Buyers

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GAFTA

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