

Contract No.31



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THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR CANADIAN AND/OR UNITED STATES OF AMERICA PACIFIC COAST GRAIN IN BULK CARGOES OR 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

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

11 Sellers shall have the option of shipping a further 3%, more or less on contract quantity, excess or deficiency
12 over the above 2%, shall be settled at the market price on the date of bill of lading, and on the quantity thereof;
13 value to be fixed by arbitration, unless mutually agreed. In the event of more than one shipment being made
14 each shipment to be considered a separate contract, but the tolerance on the mean quantity sold not to be
15 affected thereby.

16

17 **3. PRICE AND DESTINATION**

18 At the price (*per tonne of 1,000 kilograms/*per ton of 1016 kilograms or 2240 lbs) gross weight of

19

20

21

22 *cost, insurance and freight to

23

24

25

26 *cost, insurance and freight free out to

27

28

29

30 *cost and freight to

31

32

33

34 *cost and freight free out to

35

36

37

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

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

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

41 documents are exchanged or, if the goods are not appropriated then brokerage shall be due on the 30th

42 consecutive day after the last day for appropriation. Any disputes arising out of this clause shall be referred

43 to arbitration in accordance with the arbitration clause.

44

45

46 **5. QUALITY**

47 * **Warranted to contain**.....
48 at time and place of discharge.

49
50 * **Official**..... certificate of inspection, or certification of inspection of at time and place of
51 loading into the ocean carrying vessel, shall be final as to quality. Buyers shall not be entitled to reject a tender
52 of a higher grade of the same colour and description.

53
54 ***Sample**, at time and place of shipment about as per sealed sample marked in possession of
55
56; the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.
57 Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal,
58 as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

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

62
63 **6. PERIOD OF SHIPMENT**

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

65
66 The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be
67 accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an
68 odd number of days, the middle day shall be accepted as being in both halves of the month.

69
70
71 **7. PORTS OF SHIPMENT**

72
73 from a Canadian and/or United States of America Pacific Coast port or ports.

74
75 **8. SALES BY NAMED VESSELS**

76 For all sales by named vessels the following shall apply: -
77 (a) Position of vessel is mutually agreed between Buyers and Sellers;
78 (b) The word "now" to be inserted before the word "classed" in the Ship's Classification Clause;
79 (c) Appropriation Clause cancelled if sold "shipped".

80
81 **9. SHIP'S CLASSIFICATION**

82 Shipment direct or indirect, by first class mechanically self-propelled vessel(s) suitable for the carriage of the
83 contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting
84 Association in force at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's
85 Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

86
87 **10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS**

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

92
93 **11. EXTENSION OF SHIPMENT**

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

98 Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the
99 number of days by which the originally stipulated period is exceeded, in accordance with the following scale: -
100 1 to 4 additional days, 0.50%;
101 5 or 6 additional days, 1%;
102 7 or 8 additional days 1.50% of the gross contract price.

103 If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days,
104 then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8
105 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any
106 allowance becomes due under this clause, the contract price shall be deemed to be the original contract price
107 less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

108 **12. APPROPRIATION**

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

111 (b) The notice of appropriation shall within 5 business days from the date of the bill(s) of lading be served
112 by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract.

113 (c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of
114 subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of
115 appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b)
116 from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

- 117 (1) On the same calendar day, if received not later than 1600 hours on any business day, or
- 118 (2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business
119 day.

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

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

128 (f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided
129 that the sender is not responsible for such errors, and for any previous error in transmission which has been
130 repeated in good faith.

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

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

135 (i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any
136 proved extra expenses for sampling, analysis and lighthouse incurred thereby at port of discharge
137

138 **13. PAYMENT**

139 **(a) Payment**..... % of invoice amount by cash in
140
141in exchange for and on presentation of shipping
142 documents.

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

150 (c) In the event of a complete set of shipping documents not being available when called for by Buyers, or on
151 arrival of the vessel at destination, Sellers may at their option, in exchange for payment by Buyers, provide a
152 letter of indemnity entitling Buyers to obtain delivery of the goods. Such payment shall not prejudice Buyers’
153 rights under the contract when shipping documents are available.

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

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

159 (f) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency
160 involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which
161 shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the
162 terms of the contract or by an award of arbitration. The terms of this clause do not override the parties’
163 contractual obligation under sub-clause (a).
164

165 **14. INSURANCE**

166 **14.1 For Contracts Concluded on CIF/CIFFO Terms** Sellers shall provide insurance on terms not less
167 favourable than those set out hereunder, and as set out in detail in Gafta Insurance Terms No.72 viz:-

168 (a) Risks Covered: -
169 Cargo Clauses (WA) with average payable, with 3% franchise or better terms - Section 2 of Form 72

170 War Clauses (Cargo) - Section 4 of Form 72
171 Strikes, Riots and Civil Commotions Clauses (Cargo) -Section 5 of Form 72
172 Australian, Canadian, South African and United States of America Acts - Section 6 of Form 72
173 (b) Insurers - The insurance to be effected with first class underwriters and/or companies who are domiciled
174 or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British
175 domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be
176 responsible.
177 (c) Insurable Value - Insured amount to be for not less than 2% over the invoice amount, including freight when
178 freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount
179 of any War Risk premium payable by Buyers.
180 (d) Freight Contingency - When freight is payable on arrival or on right and true delivery of the goods and the
181 insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach
182 only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as
183 provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case
184 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%
185 were insured from the time of shipment.
186 (e) Certificates/Policies - Sellers shall give all policies and/or certificates and/or letters of insurance provided
187 for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated
188 in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be
189 exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so
190 exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any
191 other guarantor who is acceptable to Buyers.
192 (f) Total Loss - In the event of total or constructive total loss, or where the amount of the insurance becomes
193 payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the
194 party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the
195 other party on that basis.
196 (g) Currency of Claims - Claims to be paid in the currency of the contract.
197 (h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The rate of
198 such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever
199 may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with
200 the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days
201 after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be
202 void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk
203 Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of
204 shipment.
205 (i) Where Sellers are responsible for allowances or other payments to Buyers under the contractual terms, (and
206 which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall
207 immediately return to Sellers the insurance documents originally received from them and shall, if required,
208 subrogate to Sellers all right of claim against the Insurers in respect of such matters.
209 **14.2 For Contracts Concluded on C & F/C&FFO terms** Buyers shall be responsible for obtaining insurance
210 cover as per Clause 14.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the
211 commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence
212 Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.

213
214 **15. DUTIES, TAXES, LEVIES, ETC.**

215 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country
216 of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of
217 destination, shall be for Buyers' account.
218

219 **16. DISCHARGE**

220 **(a) For CIF/C&F terms, discharge shall be as fast as the vessel can deliver in accordance with the custom**
221 **of the port**, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as
222 fast as the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge
223 from hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account.
224 **(b) For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.
225

226 Discharge shall be at the average rate of tonnes per Weather Working Day, Saturdays,
227 Sundays, Holidays Excepted, Unless Used, (WWD SSEX UU), in which case actual time used to count.
228 Notice of Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port
229 Or Not, (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON),
230 Whether Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next

231 working day. Rate of demurrage/despatch as per Charter Party. In the event of a time charter, the daily
232 hire rate shall be taken as the rate of demurrage, half despatch.

233 (c) If documents are tendered which do not provide for discharging as above or contain contrary
234 stipulations, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Discharge
235 by grab(s) shall be permitted unless specifically excluded at time of contract. If shipment is effected
236 by lash barge, then the last day of discharge shall be the day of discharging the last lash barge at the
237 port of destination.

238 239 **17. PRO RATA**

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

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

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

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

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

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

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

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

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

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

280 281 **18. WEIGHING**

282 The terms and conditions of Gafta Weighing Rules No.123 are deemed to be incorporated into this contract.
283 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and
284 place of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to
285 pay the extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for
286 increase in weight occasioned by water and/or oil during the voyage. If final at time and place of loading, as
287 per Gafta approved register of superintendents' certificate at Sellers' choice and expense, the Deficiency
288 Clause will not apply.

289 290 **19. DEFICIENCY**

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

293 **20. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

294 The terms and conditions of Gafta Sampling Rules No.124 are deemed to be incorporated into this contract.
295 Samples shall be taken at the time of discharge on or before removal from the ship or quay, unless the parties
296 agree that quality final at loading applies, in which event samples shall be taken at time and place of loading.
297 The parties shall appoint superintendents, for the purposes of supervision and sampling of the goods, from
298 the Gafta Approved Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from
299 the Gafta Approved Register of Analysts.
300

301 **21. FUMIGATION**

302 Where fumigation has been agreed, the terms and conditions of Gafta Fumigation Rules No. 132 shall
303 be incorporated into this contract.
304

305 **22. PREVENTION OF SHIPMENT**

306 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on
307 behalf of the government of the country of origin or of the territory where the port or ports named herein
308 is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or
309 (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g)
310 breakdown of machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable
311 impediments to transportation or navigation, or (l) any other event comprehended in the term "force
312 majeure".
313

314 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of
315 Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force
316 Majeure, provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the
317 occurrence or not later than 21 consecutive days before commencement of the shipment period, whichever
318 is later, with the reasons therefor.
319

320 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then
321 Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later
322 than the first business day after expiry of the 21 day period.
323

324 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
325 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
326 shall be automatically cancelled.
327

328 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled,
329 Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled,
330 from the cessation, to as much time as was left for shipment under the contract prior to the occurrence of the
331 Event of Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period
332 of 14 consecutive days shall be allowed.
333

334 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or
335 non-fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory
336 evidence justifying the delay or non-fulfilment.
337

338 **23. CIRCLE**

339 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof,
340 a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of
341 the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the
342 same description, from the same country of origin, of the same quality, and, where applicable, of the same
343 analysis warranty, for shipment to the same port(s) of destination during the same period of
344 shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prevention of
345 Shipment Clause in the contract, if a circle is established prior to the goods being appropriated to all parties
346 in the circle, settlement shall be based on the mean contract quantity. However, where a circle is established
347 after the goods have been appropriated to all parties in the circle, settlement shall be based on the
348 appropriated quantity. No circle settlement shall apply where documents have been presented to and paid
349 by one of the parties in the circle. Settlement shall be made between the parties in the circle by payment by
350 all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the
351 circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should
352 the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15
353 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in different
354 currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual
355 shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the

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

366 **24. NOTICES**

367 (a) All notices required to be served on the parties pursuant to this contract shall be served in legible form
368 by E-mail, or by other mutually recognised electronic method of rapid communication, always subject to the
369 provision that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender
370 who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal
371 appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee.

372 (b) In case of resales/repurchases, all notices shall be served without delay by sellers on their respective
373 buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed, for the
374 purpose of passing onto their sub buyers and sub sellers, to have been received on the business day following.

375 (c) A notice to the Brokers or Agent shall be deemed a notice under this contract.
376

377 **25. NON-BUSINESS DAYS**

378 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,
379 which Gafta may declare as non-business days for specific purposes, shall be non-business days. Should the
380 time limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be
381 extended until the first business day thereafter. The period of shipment shall not be affected by this clause.
382

383 **26. DEFAULT**

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

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

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

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

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

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

399 (f) Sellers may declare themselves in default at any time after expiry of the contract period, and the default date
400 shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already
401 been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of
402 appropriation has not been served by the 5th business day after the last day for appropriation laid down in the
403 contract, the Sellers shall be deemed to be in default and the default date shall then be the first business day
404 thereafter.
405

406 **27. INSOLVENCY**

407 **27.1** If before the fulfilment of this contract, either party shall:

408 (a) suspend payments;

409 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to
410 suspend payments of his debts;

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

412 (d) propose either:

413 (i) a voluntary arrangement; or

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

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

416 (f) be subject to either:

417 (i) a notice of intention to appoint an administrator; or
418

- 419 (ii) a notice of appointment of an administrator;
420 (g) have an administration order made;
421 (h) be subject to a winding up petition;
422 (i) have a winding up order made;
423 (j) have a receiver or manager appointed;
424 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
425 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
426 (m) have a bankruptcy petition presented against him,

427 (any of which acts being hereinafter called an "Act of Insolvency")

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

433 27.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of
434 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
435 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at
436 the market price ruling on the first business day after the date when the Act of Insolvency occurred.

437 27.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on
438 the closing out of the contract by re-purchase or re-sale, and the difference between the contract price
439 and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

440 28. DOMICILE

441 This contract shall be construed and take effect in accordance with the laws of England. Except for the
442 purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts
443 of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for
444 obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in
445 relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the
446 jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of
447 this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily
448 resident or carrying on business at the offices of The Grain and Feed Trade Association, (Gafta),
449 England. The service of proceedings upon any such party by leaving the same at the offices of The Grain
450 and Feed Trade Association, together with the posting of a copy of such proceedings to his address
451 outside England, shall be deemed good service, any rule of law or equity to the contrary
452 notwithstanding.

453 29. ARBITRATION

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

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

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

471 30. INTERNATIONAL CONVENTIONS

472 The following shall not apply to this contract: -

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

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

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

478 (d) Incoterms.

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

484

485 **31. METHODS OF ANALYSIS**

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

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

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GAFTA

**THE GRAIN AND FEED TRADE ASSOCIATION
9 LINCOLN'S INN FIELDS, LONDON WC2A 3BP**