

Contract No.90

Copyright

THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR FULL CONTAINER LOADS (FCL or LCL) BULK, BAGS, CARTONS, DRUMS OR TINS EX STORE/FCA TERMS

* delete/specify as applicable

..... Date

SELLERS

INTERVENING AS BROKERS

BUYERS

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

1. GOODS

2. QUANTITY

3. PRICE per metric tonne.

Collected from FCA/Ex Store.

4. BROKERAGEper tonne, to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of the Prohibition or Force Majeure Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not delivered then the brokerage shall be due on the 30th consecutive day after the last day for delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

5. QUALITY

*Final at point of stuffing the container

*Final at time and place of discharge (or at the unstuffing) of the container

*Final as per sealed sample at time and place of shipment/discharge, in the possession of

*Government, Official or Customary Inspector's Certificates issued at time and place of stuffing shall be final as to quality.

*Certificate..... to be certified by an independent internationally recognised body at origin. Should Sellers fail to provide a certificate which is independent (e.g. those based upon samples not independently drawn, or those which fail to identify the goods shipped with the goods inspected), Buyers have the option to instruct their representatives to draw and seal delivery samples within 3 business days of unstuffing the container for the purposes of re-grading and/or analysis. Sellers' representatives to be in attendance at sampling when duly appointed immediately after receipt of notice from Buyers of their intention to sample. In such case Buyers and Sellers agree to accept the result of regrading/analysis. Charges for sampling, re-grading and/or analysis to be borne half by Buyers and half by Sellers.

Fumigation

Condition. Shipment shall be made in good condition.

6. PERIOD OF DELIVERY

FCA/Ex-Store – Sellers shall have the goods available within the collection period at Buyers' call with at least 7

days pre-advice. Sellers shall load the goods in good condition, at their expense, to Buyers' transport within the collection period. All costs and risks to the point of collection shall be for Sellers' account, thereafter for Buyers' account, including the cost of export customs clearance and duty, if any.

Collection of Goods. If Buyers do not collect the goods within the delivery period then Sellers shall carry the goods at the rates set out in the Insurance and Rent Clause. If, however, after payment, the goods or any part thereof, are not in store when the Buyers elect to collect them from the store, the default date shall be that date and the deficiency shall be settled in accordance with the Default Clause. If Buyers, having paid for the goods, fail to collect within 30 consecutive days after the last day of the contractual delivery period, Sellers shall be entitled at any time after the said 30 days to serve 14 days notice in writing to deliver the quantity due for collection or delivery, either in whole or part, to a third party store/warehouse at Buyers' risk with all charges for Buyers' account. For the portion thus moved the weight so established shall be the weight for final invoice purposes under this contract.

7. DELIVERY ORDERS

Delivery orders/transfer orders/warehouse warrants shall be for the mean contract quantity.

8. INSURANCE AND RENT

Insurance

Sellers shall provide insurance cover for the delivery period at their cost. Thereafter for the account of Buyers. The goods are to be held covered for the invoice value of each delivery order/transfer order/warehouse warrant, plus 2% against any risk or loss due to fire/lightning/explosion.

The insurance to be effective with first class underwriters and/or companies who are domiciled 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. In the event of any loss or damage, Sellers to provide Buyers without delay, on demand, evidence of such insurance as needed to recover any such loss from underwriters. Sellers and Buyers shall serve each other all reasonable assistance in the prosecution of claims.

Rent

For the duration of the delivery period rent will be for Sellers' account. Thereafter it shall be for Buyers' account at the rate of

9. PAYMENT

(a) Payment shall be either

(i) by cash in exchange for and on presentation of warehouse warrants and other documents specified in the contract, or

(ii) by cash days after delivery to buyers' transport

(b) Where certificates final are applicable, the copy certificates as required in the Quality Clause shall accompany the relevant documents. Should one or more of the copy certificates be missing, payment shall be made provided that delivery within 28 days of such missing certificates is guaranteed.

(c) **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).

10. WEIGHING

*Final at time and place of stuffing as Sellers' expense

*Final at time and place of discharge at Buyers' expense

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). The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract,

* Independent weighbridge certificate (unless otherwise agreed), with deduction of pallet weight where appropriate.

11. FUMIGATION

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

12. PREVENTION OF DELIVERY

"Event of Force Majeure" means (a) blockade, or (b) acts of terrorism, or (c) hostilities, or (d) strike, lockout or combination of workmen, or (e) riot or civil commotion, or (f) breakdown of machinery, or (g) fire, or (h) ice, or (i) Act of God.

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

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

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

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

The burden of proof lies upon 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.

13. 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 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.

(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.

14. NON-BUSINESS DAYS

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

15. DEFAULT

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

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

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

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

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

(e) Damages, if any, shall be computed on the mean contract quantity.

167
168 **16. INSOLVENCY**

169 16.1 If before the fulfilment of this contract, either party shall:

- 170 (a) suspend payments;
- 171 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to
- 172 suspend payments of his debts;
- 173 (c) convene, call or hold a meeting of creditors;
- 174 (d) propose either:
- 175 (i) a voluntary arrangement; or
- 176 (ii) a restructuring plan under Part 26A Companies Act 2006;
- 177 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- 178 (f) be subject to either:
- 179 (i) a notice of intention to appoint an administrator; or
- 180 (ii) a notice of appointment of an administrator;
- 181 (g) have an administration order made;
- 182 (h) be subject to a winding up petition;
- 183 (i) have a winding up order made;
- 184 (j) have a receiver or manager appointed;
- 185 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
- 186 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
- 187 (m) have a bankruptcy petition presented against him,
- 188 (any of which acts being hereinafter called an "**Act of Insolvency**")

189 then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act

190 of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or

191 the office-holder or other person representing the party committing the Act of Insolvency) that such notice

192 was served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out

193 at the market price ruling on the business day following the serving of the notice.

194 16.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency,

195 shall have the option of declaring the contract closed out at either the market price on the first business day after

196 the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on

197 the first business day after the date when the Act of Insolvency occurred.

198 16.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the

199 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-

200 purchase or re-sale price shall be the amount payable or receivable under this contract.

201
202 **17. DOMICILE**

203 This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any

204 contrary provision, and this contract shall be construed and take effect in accordance with the laws of England.

205 Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the

206 Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for

207 obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the

208 arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators

209 or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any

210 legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The

211 Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland

212 shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have

213 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings

214 upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the

215 posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of

216 law or equity to the contrary notwithstanding.

217
218 **18. ARBITRATION**

219 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or

220 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules,

221 No 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this

222 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the

223 application of such Rules.

224 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal

225 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first

226 have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance

227 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.

19. INTERNATIONAL CONVENTIONS

The following shall not apply to this contract: -

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

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

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

(d) Incoterms.

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

20. METHODS OF ANALYSIS

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

SellersBuyers

Printed in England and issued by

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(THE GRAIN AND FEED TRADE ASSOCIATION)
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