

# Contract No.81



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THE GRAIN AND FEED TRADE ASSOCIATION

## GENERAL CONTRACT CIF/CIFFO/C&F/C&FFO 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 AND DESTINATION**

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

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

\*cost, insurance and freight free out to .....

\*cost and freight to .....

\*cost and freight free out to .....

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

**5. QUALITY**

Specifications .....

**Condition.** Shipment shall be made in good condition.

**6. PERIOD OF SHIPMENT**

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

The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of 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. 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".

47  
48 **8. SHIPMENT AND CLASSIFICATION**

49 Shipment from

50 .....  
51 .....  
52 direct or indirect, with or without transshipment by first class mechanically self-propelled vessel(s) suitable for the  
53 carriage of the contract goods classed in accordance with the Institute Classification Clause of the International  
54 Underwriting Association in force at the time of shipment.  
55

56 **9. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F TERMS**

57 (a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers  
58 shall nominate the intended carrying vessel(s) to Buyers.

59 (b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies  
60 with the terms of this clause.  
61

62 **10. EXTENSION OF SHIPMENT**

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

66 Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number  
67 of days by which the originally stipulated period is exceeded, in accordance with the following scale: -

68 1 to 4 additional days, 0.50%;

69 5 or 6 additional days, 1%;

70 7 or 8 additional days 1.50% of the gross contract price.

71 If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the  
72 contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract  
73 price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under  
74 this clause, the contract price shall be deemed to be the original contract price less the allowance and any other  
75 contractual differences shall be settled on the basis of such reduced price.  
76

77 **11. APPROPRIATION**

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

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

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

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

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

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

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

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

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

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

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

## 12. 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 certified 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. In the event of a complete set of shipping documents not being available when called for by Buyers, or on arrival of the vessel at destination, Sellers may at their option, in exchange for payment by Buyers, provide a letter of indemnity entitling Buyers to obtain delivery of the goods. Such payment shall not prejudice Buyers' rights under the contract when shipping documents are available. Acceptance of this guarantee shall not prejudice Buyers' rights under this contract. No clerical error in the documents shall entitle Buyers to reject or to delay payment provided that Sellers furnish at the request of Buyers a guarantee, to be countersigned by a recognised bank, if required by Buyers. Sellers shall be responsible for any loss or expense incurred by Buyers on account of such error. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.

(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).

## 13. 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.

## 14. 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.

## 15. 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, the Deficiency Clause will not apply.

## **16. 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.

## **17. 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.

## **18. FUMIGATION**

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

## **19. INSURANCE**

**19.1 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 (W.A.), with average payable, with 3% franchise or better terms - - Section 2 of Form 72

War Clauses (Cargo) - - Section 4 of Form 72

Strikes, Riots and Civil Commotions Clauses (Cargo) - - Section 5 of Form 72

(b) Insurers - The insurance to be effected with first class underwriters and/or companies who are domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be responsible.

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

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

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

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

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

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

to the terms and conditions in force and generally obtainable in London at time of shipment.

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

**19.2 For Contracts Concluded on C & F/C&FFO terms** Buyers shall be responsible for obtaining insurance cover as per Clause 19.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.

## **20. PREVENTION OF SHIPMENT**

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

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 shipment period, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, 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. 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.

## **21. 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.

## **22. 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.

## 23. 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 a 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 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 quantity appropriated if any but, if no such quantity has been appropriated then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

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

## 24. INSOLVENCY

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

(a) suspend payments;

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

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

(d) propose either:

(i) a voluntary arrangement; or

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

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

(f) be subject to either:

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

(ii) a notice of appointment of an administrator;

(g) have an administration order made;

(h) be subject to a winding up petition;

(i) have a winding up order made;

(j) have a receiver or manager appointed;

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

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

(m) have a bankruptcy petition presented against him,

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

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

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

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

## 25. DOMICILE

This contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of

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

## **26. ARBITRATION**

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

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

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

## **26. 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.

## **27. METHODS OF ANALYSIS**

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

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

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**GAFTA**  
**THE GRAIN AND FEED TRADE ASSOCIATION**  
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