

Contract No.78

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR GOODS BY RAIL

**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 tonnes of 1000 kilograms, 5% more or less
Each consignment in whole or part fulfilment of this contract to be considered a separate contract, but the margin on the quantity sold shall not be affected thereby.

3. PRICE per tonne of 1000 kilograms gross weight.

*** Collected from**

*** Delivered to**

FCA/Free Carrier, or DAF/Delivered at Frontier, or DDP/Delivered Duty Paid, or DDU/Delivered Duty Unpaid, or CPT/Carriage Paid

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 Despatch Clause. Brokerage shall be due on the day contractual documents are exchanged, or if the goods are not despatched then the brokerage shall be due on the 30th consecutive day after the last day for advice of despatch.

5. QUALITY
***Warranted to contain**

***Sample.** At time and place of loading about as per sealed sample marked in possession

of the word "about" when referring to quality shall mean the equivalent of one-half of one percent on contract price.

In any assessment at arbitration of allowance for quality, due regard shall be given to any analyses under other guarantees.

Difference in quality shall not entitle Buyers to reject, except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in accordance with the Arbitration Rules specified in the Arbitration Clause

Condition. Despatch shall be made in good condition.

6. PERIOD OF DESPATCH
Despatch during

Buyers shall give full despatch instructions by, failing which Buyers shall be deemed to be in default, unless the parties agree to extend the period of despatch. The Consignment Note(s)/Railway Bill to be dated when the goods are despatched, and are to be considered proof of date of despatch in the absence of evidence to the

contrary

FCA – If Free Carrier – Sellers shall have the goods available within the collection period at Buyers' call withbusiness days pre-advance. Sellers shall load the goods in good condition, free from cost, 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.

DAF – If Delivered at Frontier – Sellers shall load the goods within the agreed period at their own expense to transport they have arranged and paid to carry the goods to the destination. All costs and risks to the point of shall be for Sellers' account.

DDP – If Delivered Duty Paid – Sellers shall load the goods within the agreed period at their own expense to transport they have arranged and paid to carry the goods to the destination. All costs and risks to the point of delivery including the cost of export and import customs duty and clearance, if any, shall be for Sellers' account. Discharge from the transport to be at Buyers' risk and expense.

DDU – If Delivered Duty Unpaid – Sellers shall load the goods within the agreed period at their own expense to transport they have arranged and paid to carry the goods to the destination. All costs and risks to the point of delivery including the cost of export shall be for Sellers' account. Import customs duty and clearance, if any, and discharge from the transport to be at Buyers' risk and expense.

CPT – Carriage Paid To – Sellers shall load the goods within the agreed period at their own expense to transport they have arranged and paid to carry the goods to the destination. All costs and risks to the point of delivery shall be for Sellers' account, save for the cost of import customs clearance and duty, if any, and discharge costs, if any, which shall be for Buyers' account.

Each wagon load to be considered a separate contract, but the margin on the mean contract quantity shall not be affected thereby.

7. WAGON CLASSIFICATION - per good grain carrying bulk wagon(s) suitable for the journey, clean, and free from smell or taint at time of loading.

8. LOADING

9. DESTINATION

10. ADVICE OF DESPATCH

(a) The advice of despatch shall state the wagons' numbers, the presumed weight loaded and the date or presumed date of the consignment note.

(b) The advice of despatch shall be served within two business days from the date of the consignment note by or on behalf of the consignor direct on his Buyers or on the Selling Agent or Broker named in this contract.

(c) The advice of despatch shall be passed on by subsequent Sellers to their Buyers with due despatch.

(d) Failure by Sellers to pass such advice to their Buyers will not constitute default, except as provided for in the Default Clause, but Sellers shall be responsible to their Buyers for proved extra expenses incurred as a consequence.

(e) The date of the consignment note stated in the notice of despatch shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving advice of despatch the actual date of the consignment note shall prevail.

(f) Every advice of despatch 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 that has been repeated in good faith.

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

11. PAYMENT

(a) **Payment** by net cash in in exchange for and on presentation of transport documents.

(b) **Transport documents** shall consist of 1. Invoice, 2. Duplicate consignment note or railway bill, as appropriate 3. Other documents as called for under the contract.

(c) In the event of transport documents not being available when called for by Buyers, or on arrival of the goods at destination, Sellers may 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 transport documents are eventually available.

(d) Should Sellers fail to present transport 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 recoverable 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 transport documents are eventually available.

(e) Should transport documents be presented with an incomplete set of consignment note(s) or should other transport documents be missing, payment shall be made provided that delivery of such missing documents is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

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

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

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

12. WEIGHING

The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract. For DAF and CPT weighing shall be final at loading. For DDU and DDP weighing shall be final at discharge and such weights shall be advised to Sellers without delay.

13. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract. Where the contract requires quality final at loading, 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.

14. PREVENTION OF DESPATCH

"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 despatch period, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the despatch 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 dispatch under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for dispatch 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.

15. NOTICES

All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

16. 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 despatch shall not be affected by this clause.

17. 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 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) If default has not already been declared then (notwithstanding the provisions stated in the Despatch Clause) if notice of advice is not passed by the 10th consecutive day after the last day for the advice of despatch laid down in the contract, Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.

18. INSOLVENCY

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served as aforesaid, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred.

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

19. DOMICILE

This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (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, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

20. 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.

21. 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.

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

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GAFTA

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