

Contract No.2

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THE GRAIN AND FEED TRADE ASSOCIATION



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

**delete/specify as applicable*

Date

1 **SELLERS**

2
3 **INTERVENING AS BROKERS**

4
5 **BUYERS**.....

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

7
8 **1. GOODS**

9 in new and/or secondhand bags of suitable strength to withstand ordinary wear and tear to port of
10 destination. Such bags to be taken and paid for as goods.

11
12 **2. QUANTITY**.....2% more or less.

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

18
19 **3. PRICE AND DESTINATION**

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

21
22 *cost, insurance and freight to.....

23
24 *cost, insurance and freight free out to

25
26 *cost and freight to

27
28 * cost and freight free out to

29
30 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost

31 or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the
32 contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day shipping
33 documents are exchanged or, if the goods are not appropriated then brokerage shall be due on the 30th
34 consecutive day after the last day for appropriation. Any disputes arising out of this clause shall be referred
35 to arbitration in accordance with the arbitration clause.

36
37 **5. QUALITY**

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

39
40 ***Official**.....certificate of inspection, at time of loading into the ocean carrying vessel, shall
41 be final as to quality.

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

43 **Admixture**. Any admixture of dirt and/or other foreign substance over 3% and up to 5% to be allowed for by Sellers
44 at contract price, but any excess over 5% to be allowed for at double contract price.

45
46 Any grain other than to be reckoned as foreign substances at half their
47 quantities. The percentage of admixture to be determined by the Analysts appointed by Gafta. The costs of analysis

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

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

53
54 **6. PERIOD OF SHIPMENT**

55 As per bill(s) of lading dated or to be dated
56 The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be
57 accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing
58 an odd number of days, the middle day shall be accepted as being in both halves of the month.

59
60 **7. PORTS OF SHIPMENT**

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

64
65 **8. SALES BY NAMED VESSELS**

66 For all sales by named vessels, the following shall apply: -

- 67 (a) Position of vessel is mutually agreed between Buyers and Sellers;
- 68 (b) The word "now" to be inserted before the word "classed" in the Shipment and Classification Clause;
- 69 (c) Appropriation Clause cancelled if sold "shipped".

70
71 **9. SHIPMENT AND CLASSIFICATION**

72 Shipment from.....
73 direct or indirect, with or without transshipment by first class mechanically self-propelled vessel(s) suitable
74 for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the
75 International Underwriting Association in force at the time of shipment.

76
77 **10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS**

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

82
83 **11. EXTENSION OF SHIPMENT**

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

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

- 91 1 to 4 additional days, 0.50%;
- 92 5 or 6 additional days, 1%;
- 93 7 or 8 additional days 1.50% of the gross contract price.

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

100
101 **12. APPROPRIATION**

- 102 (a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the
103 presumed date of the bill of lading.
- 104 (b) The notice of appropriation shall within 5 business days from the date of the bill(s) of lading be served
105 by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract.
- 106 (c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of
107 subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of

108 appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b)
109 from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served:

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

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

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

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

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

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

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

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

130 131 **13. PAYMENT**

132 (a) **Payment**..... % of invoice amount by cash in

133 * In exchange for and on presentation of shipping documents;

134 * In exchange for shipping documents on or before arrival of the vessel at destination, at Buyers' option;

135 Sellers, however, have the option of calling upon Buyers to take up and pay for documents on or after
136

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

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

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

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

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

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

160 **14. DUTIES, TAXES, LEVIES, ETC.**

161 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country
162 of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of
163 destination, shall be for Buyers' account.
164

165 **15. DISCHARGE**

166 (a) **For CIF/C&F terms**, discharge shall be as fast as the vessel can deliver in accordance with the custom of
167 the port, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as fast as

168 the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge from hold
169 to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account.

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

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

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

183 184 **16. WEIGHING**

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

192 193 **17. DEFICIENCY**

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

196 197 **18. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

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

204 205 **19. FUMIGATION**

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

208 209 **20. INSURANCE**

210 **20.1 For Contracts Concluded on CIF/CIFFO terms.** Sellers shall provide insurance on terms not less
211 favourable than those set out hereunder, and as set out in detail in Gafta Insurance Terms No.72 viz.:-

212 (a) Risks Covered:-

213 Cargo Clauses (WA), with average payable, with 3% franchise or better terms, Section 2 Form 72

214 War Clauses (Cargo)

- Section 4 of Form 72

215 Strikes, Riots and Civil Commotions Clauses (Cargo)

- Section 5 of Form 72

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

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

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

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

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

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

240 (h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The rate
241 of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing
242 whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever
243 possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than
244 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise
245 such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to
246 provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable
247 in London at time of shipment.

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

253 **20.2 For Contracts Concluded on C & F/C&FFO terms.** Buyers shall be responsible for obtaining insurance
254 cover as per Clause 20.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the
255 commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence
256 Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.
257

258 21. PREVENTION OF SHIPMENT

259 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
260 of the government of the country of origin or of the territory where the port or ports named herein is/are situate,
261 restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e)
262 strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h)
263 fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or navigation,
264 or (l) any other event comprehended in the term "force majeure".
265

266 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
267 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
268 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later
269 than 21 consecutive days before commencement of the shipment period, whichever is later, with the reasons
270 therefor.
271

272 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then Buyers
273 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first
274 business day after expiry of the 21 day period.
275

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

279 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers
280 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the
281 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of Force
282 Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14 consecutive
283 days shall be allowed.
284

285 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
286 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
287 justifying the delay or non-fulfilment.
288
289
290

291 **22. NOTICES**

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

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

301 (c) A notice to the Brokers or Agent shall be deemed a notice under this contract.
302

303 **23. NON BUSINESS DAYS**

304 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any
305 days, which Gafta may declare as non business days for specific purposes, shall be non business days. Should
306 the time limit for doing any act or serving any notice expire on a non business day, the time so limited shall
307 be extended until the first business day thereafter. The period of shipment shall not be affected by this
308 clause.
309

310 **24. PRO RATA**

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

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

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

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

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

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

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

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

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

346 (j) In the event that sub-clause (a) applies or that the goods subsequently become co mingled, and that the
347 goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after
348 the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro rata between
349 themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash and in the
350 event of two or more discharging ports being involved, then the settlement price shall be the average of the
351 market prices on the last day of discharge in the respective ports.
352

353 **25. DEFAULT**

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

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

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

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

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

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

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

374
375 **26. CIRCLE**

376 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof,
377 a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of
378 the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the
379 same description, from the same country of origin, of the same quality, and, where applicable, of the same
380 analysis warranty, for shipment to the same port(s) of destination during the same period of
381 shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prevention of
382 Shipment Clause in the contract, if a circle is established prior to the goods being appropriated to all parties
383 in the circle, settlement shall be based on the mean contract quantity. However, where a circle is established
384 after the goods have been appropriated to all parties in the circle, settlement shall be based on the
385 appropriated quantity. No circle settlement shall apply where documents have been presented to and paid
386 by one of the parties in the circle. Settlement shall be made between the parties in the circle by payment by
387 all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the
388 circle. Payment shall be due not later than 15 consecutive days after the last day for appropriation, or,
389 should the circle not be ascertained before the expiry of this time, then payment shall be due not later than
390 15 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in
391 different currencies the lowest invoice amount shall be replaced by the market price on the first day for
392 contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by
393 payment of the differences between the market price and the relative contract price in currency of the
394 contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall
395 have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As
396 between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall
397 not be considered a breach of contract. Should any party in the circle prior to the due date of payment
398 commit any act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle
399 shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as
400 a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers
401 shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the
402 difference between the closing out price and the contract price.

403
404 **27. INSOLVENCY**

405 27.1 If before the fulfilment of this contract, either party shall:

406 (a) suspend payments;

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

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

410 (d) propose either:

411 (i) a voluntary arrangement; or

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

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

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

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

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

430 27.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency,
431 shall have the option of declaring the contract closed out at either the market price on the first business day
432 after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price
433 ruling on the first business day after the date when the Act of Insolvency occurred.

434 27.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
435 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-
436 purchase or re-sale price shall be the amount payable or receivable under this contract.

437 28. DOMICILE

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

449 29. ARBITRATION

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

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

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

467 30. INTERNATIONAL CONVENTIONS

468 The following shall not apply to this contract: -

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

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

475 (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974
476 and the amending Protocol of 1980.
477 (d) Incoterms.
478 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this
479 contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.
480

481 **31. METHODS OF ANALYSIS**

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

Sellers Buyers

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