

Contract No.23

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR PULSES FOR HUMAN CONSUMPTION IN BULK OR BAGS FOB TERMS

* delete/specify as applicable

Date

1 **SELLERS**

2
3 **INTERVENING AS BROKERS**

4
5 **BUYERS**

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

7
8 **1. GOODS**

9
10 **2. PACKING**in bulk.

11 If in bags, in new and/or second-hand bags of suitable strength to withstand with ordinary wear and tear to port of
12 destination. Bags of each mark shall be of uniform weight and shall be properly marked.

13
14 **3. QUANTITY**

15 5% more or less at Buyers' option. In the event of the quantity contracted for being for a full and complete cargo
16 and/or cargoes the margin of contract quantity shall be 10% more or less, excess or deficiency over 5% shall be
17 settled at the FOB price on date of last bill of lading; value shall be fixed by arbitration unless mutually agreed. In
18 the event of more than one delivery being made each delivery shall be considered a separate contract, but the
19 margin on the mean quantity sold shall not be affected thereby.

20
21 **4. PRICE** at per tonne of 1000 kilograms

22 delivered Free on Board Buyers' vessel(s) at

23
24
25 **5. BROKERAGE**per tonne, to be paid by Sellers on the mean contract quantity, goods lost or

26 not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract
27 under the terms of the Prevention of Performance Clause. Brokerage shall be due on the day shipping
28 documents are exchanged, or if the goods are not delivered then the brokerage shall be due on the 30th
29 consecutive day after the last day of the period for presentation of the vessel. Any disputes arising out of this
30 clause shall be referred to arbitration in accordance with the arbitration clause.

31
32 **6. QUALITY**

33 ***Specifications**

34 Any excess or deficiency as the case may be, shall be allowed for by Sellers at contract price.

35
36 ***Certificate(s)** to be certified by an independent

37 internationally recognised body at origin. Should Sellers fail to provide a certificate which is independent; (e.g.
38 those based upon samples not independently drawn, or those which fail to identify the goods shipped with the
39 goods inspected), Buyers have the option to instruct their representatives to draw and seal delivery samples within
40 10 days of arrival, for the purposes of re-grading and/or analysis. Sellers' representatives to be in attendance at
41 sampling when duly appointed immediately after receipt of notice from Buyers of their intention to sample. In such
42 case Buyers and Sellers agree to accept the result of regrading/analysis. Charges for sampling, re-grading and/or
43 analysis to be borne half by Buyers and half by Sellers.

44
45 ***Sample** at time and place of delivery about as per sealed sample marked

46
47 in possession of..... the word "about" when referring to quality shall mean the equivalent
48 of 0.50% on contract price.

49
50 **Condition.** Goods must be sound, uniform, free from live, and practically free from dead insect infestation.
51 Delivery shall be made in good condition.
52

53 **7. PERIOD FOR PRESENTATION OF THE VESSEL**

54 **Presentation of the vessel during** at Buyers' call.
55

56 **Nomination of vessel.** Buyers shall serve not less than consecutive days' notice of the name and
57 probable readiness date of the vessel and the estimated tonnage required. The Buyer has the right to substitute
58 any nominated vessel. Buyers' obligations regarding pre-advice shall only apply to the original vessel nominated.
59 No new pre-advice is required to be given in respect of any substitute vessel, provided that the substitute vessel
60 arrives no earlier than the estimated time of arrival of the original vessel nominated and always within the
61 period for presentation of the vessel. Provided the vessel is presented at the loading port in readiness to load
62 within the period for presentation of the vessel, Sellers shall if necessary complete loading after the period for
63 presentation of the vessel and carrying charges shall not apply. Notice of substitution to be given as soon as
64 possible but in any event no later than one business day before the estimated time of arrival of the original
65 vessel. In case of re-sales a provisional notice shall be passed on without delay, where possible, by telephone and
66 confirmed on the same day in accordance with the Notices Clause.

67 In any month containing an odd number of days the middle day shall be accepted as being in both halves of the
68 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.
69

70 **8. LOADING**

71 Vessel(s) to be clean and fit to receive the goods and to load in accordance with the custom of the port of loading
72 unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the
73 contrary.
74

75 **9. SHIP'S CLASSIFICATION**

76 Shipment to be made by:-

77 (a) Ocean vessels, first class mechanically, self-propelled vessel(s) suitable for the carriage of the contract goods,
78 classed in accordance with the Institute Classification Clause of the International Underwriting Association in force
79 at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in
80 Lloyd's Shipping Index as "Ore/Oil" vessels.

81 (b) Coaster(s), mechanically self-propelled vessel(s), suitable for the carriage of the contract goods, excluding
82 tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as
83 "Ore/Oil" Vessels.

84 Buyers to ensure that the vessel(s) hold(s) are clean, easily accessible and if necessary, cargo duly protected.
85

86 **10. EXTENSION OF PERIOD FOR PRESENTATION OF THE VESSEL**

87 The period for presentation of the vessel shall be extended by an additional period of not more than 30 consecutive
88 days, provided that Buyers serve notice claiming extension not later than the next business day following the last
89 day of the period for presentation of the vessel. In this event Sellers shall carry the goods for Buyers' account and
90 all charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers' account,
91 unless the vessel presents in readiness to load within the original period for presentation of the vessel.

92 Any differences in export duties, taxes, levies etc, between those applying during the original period for
93 presentation of the vessel and those applying during the period of extension, shall be for the account of Buyers. If
94 required by Buyers, Sellers shall produce evidence of the amounts paid. In such cases the Duties, Taxes, Levies
95 Clause shall not apply.

96 Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option
97 of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges
98 as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants
99 shall be considered complete delivery of the contract on the part of Sellers.
100

101 **11. EXPORT LICENCE** - if required, to be obtained by Sellers.
102

103 **12. PAYMENT**

104 (a) By cash in

105 *(i) in exchange for and on presentation of shipping documents.

106 *(ii) by irrevocable Letter of Credit to be made available to Sellers by

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

110 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved
111 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled
112 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract
113 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under
114 sub-clause (a).
115

116 **13. DUTIES, TAXES, LEVIES, ETC.**

117 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of
118 origin or of the territory where the port or ports of loading named herein is/are situate, shall be for Sellers' account.
119

120 **14. WEIGHING**

121 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.
122 Final at time and place of loading, as per GAFTA registered superintendent certificate at Sellers' choice and
123 expense. Buyers have the right to attend at loading.
124

125 **15. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

126 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.
127 Samples shall be taken at time and place of loading. The parties shall appoint superintendents, for the purposes
128 of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed,
129 analysts shall be appointed from the GAFTA Register of Analysts.
130

131 **16. FUMIGATION**

132 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be
133 incorporated into this contract.
134

135 **17. INSURANCE**

136 On terms not less favourable than those set out hereunder and in detail in GAFTA Insurance Terms No. 72: -

- | | |
|--|------------------------|
| 137 (a) Cargo Clauses (WA) with average payable, with 3% franchise or better terms | - Section 2 of Form 72 |
| 138 (b) War Clauses (Cargo) | - Section 4 of Form 72 |
| 139 (c) Strikes, Riots and Civil Commotions Clauses (Cargo) | - Section 5 of Form 72 |

140 To be effected by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with
141 confirmation thereof at least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide
142 such confirmation, Sellers shall have the right to place such insurance at Buyers' risk and expense.
143

144 **18. PREVENTION OF PERFORMANCE**

145 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
146 of the government of the country of origin or of the territory where the port or ports named herein is/are situate,
147 restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e)
148 strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h)
149 fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or
150 navigation, or (l) any other event comprehended in the term "force majeure".
151

152 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
153 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
154 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later
155 than 21 consecutive days before commencement of the period for presentation of the vessel, whichever is later,
156 with the reasons therefor.
157

158 If the Event of Force Majeure continues for 21 consecutive days after the end of the period for presentation of the
159 vessel, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not
160 later than the first business day after expiry of the 21 day period.
161

162 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
163 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
164 shall be automatically cancelled.
165

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

171 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
172 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
173 justifying the delay or non-fulfilment.
174

175 **19. CIRCLE**

176 Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle
177 shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause
178 shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the
179 same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for delivery from
180 the same port(s) of delivery during the same period for presentation of the vessel). Different currencies shall not
181 invalidate the circle.
182

183 Subject to the terms of the Prevention of Performance Clause in the contract, if the goods are not delivered invoices
184 based on the mean contract quantity, or if the goods have been delivered invoices based on the delivered quantity,
185 shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of
186 the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15
187 consecutive days after the last day for presentation of the vessel, or, should the circle not be ascertained before the
188 expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

189 Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by
190 the market price on the first day for presentation of the vessel and invoices shall be settled between each Buyer and
191 his Seller in the circle by payment of the differences between the market price and the relative contract price in
192 currency of the contract.

193 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been
194 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and
195 Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of
196 contract.

197 Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency
198 Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided
199 for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in
200 the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make
201 payment to their Buyers of the difference between the closing out price and the contract price.
202

203 **20. NOTICES**

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

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

212 (c) A notice to the Brokers or Agent shall be deemed a notice under this contract.
213

214 **21. NON-BUSINESS DAYS**

215 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,
216 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time
217 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until
218 the first business day thereafter. The period for presentation of the vessel shall not be affected by this clause.
219

220 **22. DEFAULT**

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

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

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

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

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

234 (e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared then on
235 the mean contract quantity and any option available to either party shall be deemed to have been exercised
236 accordingly in favour of the mean contract quantity.

237 **23. INSOLVENCY**

238 **23.1** If before the fulfilment of this contract, either party shall:

239 (a) suspend payments;

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

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

243 (d) propose either:

244 (i) a voluntary arrangement; or

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

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

247 (f) be subject to either:

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

249 (ii) a notice of appointment of an administrator;

250 (g) have an administration order made;

251 (h) be subject to a winding up petition;

252 (i) have a winding up order made;

253 (j) have a receiver or manager appointed;

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

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

256 (m) have a bankruptcy petition presented against him,

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

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

263 **23.2** If such notice has not been served, then the other party, on learning of the occurrence of the Act of
264 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
265 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the
266 market price ruling on the first business day after the date when the Act of Insolvency occurred.

267 **23.3** In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
268 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the
269 re-purchase or re-sale price shall be the amount payable or receivable under this contract.

270 **24. DOMICILE**

271 This contract shall be deemed to have been made in England and to be performed in England, notwithstanding
272 any contrary provision, and this contract shall be construed and take effect in accordance with the laws of
273 England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this
274 contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief,
275 (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in
276 relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the
277 jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this
278 contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or
279 carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party
280 residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the
281 English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of
282 the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The
283 Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside
284 England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

285 **25. ARBITRATION**

286 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or
287 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No

291 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this
292 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the
293 application of such Rules.

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

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

306
307 **26. INTERNATIONAL CONVENTIONS**

308 The following shall not apply to this contract: -

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

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

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

314 (d) Incoterms.

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

317
318 **27. METHODS OF ANALYSIS**

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

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

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