

Contract No.6

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION



CONTRACT FOR PET FOOD RAW MATERIALS FULL CONTAINER LOADS (FCLs) BULK OR BAGS FOB 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. GOODSorigin

in

2. QUANTITY.....

full containers each estimated to contain.....

3. PRICE

delivered Free on Board Buyers' vessel in bulk or bags, per tonne of 1,000 kilograms, gross for net weight.

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 Delivery 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 delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause

5. QUALITY

*Final at point of stuffing the container

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

Condition. Delivery shall be made in good condition.

Fumigation

6. BILLS OF LADING

Bill or bills of lading dated, or to be dated.....

The bill/s of lading shall be dated when the goods are handed over to the Container Consortia or their Agents.

7. DELIVERY PERIOD

Delivery period of the stuffed container during

Buyers to giveday's pre-advice of nomination of the vessel.

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

- 45 **8. PLACE OF DELIVERY**
46 At point of stuffing at the container depot, base, or terminal in
47
- 48 **9. EXTENSION OF DELIVERY**
49 The contract period of delivery shall be extended by an additional period of not more than 30 consecutive
50 days, provided that Buyers serve notice claiming extension not later than the next business day following
51 the last day of the delivery period. In this event Sellers shall carry the goods for Buyers' account and all
52 charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers'
53 account, unless the vessel presents in readiness to load within the contractual delivery period.
54 Any differences in export duties, taxes, levies etc, between those applying during the original delivery period and
55 those applying during the period of extension, shall be for the account of Buyers. If required by Buyers, Sellers shall
56 produce evidence of the amounts paid. In such cases the Duties, Taxes, Levies Clause shall not apply.
57 Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option
58 of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges
59 as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants
60 shall be considered complete delivery of the contract on the part of Sellers.
61
- 62 **10. LOADING**
63 Vessel(s) to load the containers in accordance with the custom of the port of loading at Sellers' expense. Bills of
64 lading shall be considered proof of shipment in the absence of evidence to the contrary. Bill or Bills of Lading dated,
65 or to be dated on the day the container is loaded on the seagoing vessel.
66
- 67 **11. PAYMENT**
68 (a) Payment by cash in
69
70 against the following shipping documents..... and
71 Fumigation Certificate, Certificate of Cleanliness of the container and Certificate stating the previous owner of the
72 cargo.
73 (b) No clerical error in the documents shall entitle the Buyers to reject them or delay payment, but Sellers shall be
74 responsible for all loss or expense caused to Buyers by reason of such error, and Sellers shall on request of Buyers
75 furnish an approved guarantee in respect thereto.
76 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved
77 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled
78 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract
79 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under
80 sub-clause (a).
81
- 82 **12. EXPORT LICENCE** - if required, to be obtained by Sellers.
83
- 84 **13. DUTIES, TAXES, LEVIES, ETC.**
85 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of
86 origin, or the territory where the port or ports of shipment named herein is/are situate, shall be for Sellers'
87 account.
88
- 89 **14. INSURANCE**
90 Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers with
91 first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at least
92 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers shall
93 have the right to place such insurance at Buyers' risk and expense.
94
- 95 **15. WEIGHING**
96 The terms and conditions of Gafta Weighing Rules No. 123 are deemed to be incorporated into this contract.
97 Final at time and place of loading, as per Gafta registered superintendents' certificate at Sellers' choice and
98 expense. Buyers have the right to attend at loading.
99
- 100 **16. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**
101 The terms and conditions of Gafta Sampling Rules No.124 are deemed to be incorporated into this contract.
102 Samples shall be taken at the time and place of loading. The parties shall appoint superintendents, for the
103 purposes of supervision and sampling of the goods, from the Gafta Register of Superintendents. Unless
104 otherwise agreed, analysts shall be appointed from the Gafta Register of Analysts.
105
106

107 **17. FUMIGATION**

108 Where fumigation has been agreed, the terms and conditions of Gafta Fumigation Rules No. 132 shall be
109 incorporated into this contract.
110

111 **18. PREVENTION OF DELIVERY**

112 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
113 of the government of the country of origin or of the territory where the port or ports named herein is/are situate,
114 restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e)
115 strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h)
116 fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or navigation,
117 or (l) any other event comprehended in the term "force majeure".
118

119 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
120 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided
121 that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later than 21
122 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.
123

124 If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers
125 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first
126 business day after expiry of the 21 day period.
127

128 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
129 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall
130 be automatically cancelled.
131

132 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall
133 notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be extended,
134 from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event of
135 Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of 14 consecutive
136 days shall be allowed.
137

138 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
139 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
140 justifying the delay or non-fulfilment.
141

142 **19. CIRCLE**

143 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof,
144 a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of
145 the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the
146 same description, from the same country of origin, of the same quality, and, where applicable, of the same
147 analysis warranty, for shipment to the same port(s) of destination during the same period of shipment).
148 Different currencies shall not invalidate the circle.

149 Subject to the terms of the Prevention of Delivery Clause in the contract, if the goods are not appropriated,
150 or, having been appropriated documents are not presented, invoices based on the mean contract quantity
151 shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the
152 excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not
153 later than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained
154 before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle
155 is ascertained.

156 Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be
157 replaced by the market price on the first day for contractual shipment and invoices shall be settled between
158 each Buyer and his Seller in the circle by payment of the differences between the market price and the
159 relative contract price in currency of the contract.

160 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been
161 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between
162 Buyers and Sellers in the circle, the non presentation of documents by Sellers to their Buyers shall not be
163 considered a breach of contract. Should any party in the circle prior to the due date of payment commit any
164 act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall be
165 calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis
166 for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make
167 payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between
168 the closing out price and the contract price.

169
170 **20. NOTICES**

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

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

180 (c) A notice to the Brokers or Agent shall be deemed a notice under this contract.
181

182 **21. NON BUSINESS DAYS**

183 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any
184 days, which Gafta may declare as non business days for specific purposes, shall be non business days. Should
185 the time limit for doing any act or serving any notice expire on a non business day, the time so limited shall
186 be extended until the first business day thereafter. The period of shipment shall not be affected by this
187 clause.
188

189 **22. DEFAULT**

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

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

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

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

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

202 (e) Damages, if any, shall be computed on the quantity called for if any but, if no such quantity has been
203 declared then on the mean contract quantity, and any option available to either party shall be deemed to
204 have been exercised accordingly in favour of the mean contract quantity.
205

206 **23. INSOLVENCY**

207 23.1 If before the fulfilment of this contract, either party shall:

208 (a) suspend payments;

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

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

212 (d) propose either:

213 (i) a voluntary arrangement; or

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

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

216 (f) be subject to either:

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

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

219 (g) have an administration order made;

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

221 (i) have a winding up order made;

222 (j) have a receiver or manager appointed;

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

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

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

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

227 then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act
228 of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or
229 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.

23.2 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.

23.3 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.

24. 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.

25. 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.....Buyer

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GAFTA
THE GRAIN AND FEED TRADE ASSOCIATION
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