

Contract No.200

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

SUPPLY CONTRACT GENERAL TERMS IN BULK OR BAGS

*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 (in bulk or in bags)

Packing/marks - if in bags, to be uniform weight bags suitable to withstand ordinary wear and tear to destination, such bags to be taken and paid for as goods.

2. QUANTITY tonnes of 1000 kilograms, plus or minus 2%.
Each mark/parcel shall stand as a separate parcel. In the event of more than one delivery being made, each delivery shall be considered a separate contract, but the margin on the mean contract quantity sold shall not be affected thereby.

3. PRICE per tonne of 1000 kilograms gross weight.

* **Collected from**

* **Delivered 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 Delivery Clause. Brokerage shall be due on the last day of the period of delivery.

5. QUALITY

Clauses of Addendum No. 93 to apply.

6. PERIOD OF DELIVERY/DESPATCH/COLLECTION - (DELIVERY PERIOD)

Period of Delivery/Despatch/Collection

(a) **If Collection:** Sellers shall have the goods available for collection within the collection period at Buyers' call

with business day(s) pre-advice. Sellers shall load in good condition, free on to Buyers' transport within the collection period. Each lorry/barge/wagon load to be considered a separate contract, but the margin on the mean contract quantity shall not be affected thereby. All costs and risk to the point of collection shall be for Sellers' account, thereafter for Buyers' account.

(b) **If Delivery/Despatch:** Sellers shall deliver/despatch to Buyers' nominated destination at time(s) agreed between the parties, otherwise at Buyers' call within the delivery/despatch period. All costs and risk to the point of delivery/despatch shall be for Sellers' account, thereafter for Buyers' account.

(c) **If Delivered at Frontier:** Sellers shall deliver to Buyers' nominated destination at time(s) agreed between the Parties, otherwise at Buyers' call, within the delivery period. Sellers shall pay the costs of customs formalities necessary for exportation of the goods as well as all duties, taxes and other official charges payable upon exportation, and where necessary for their transit through another country. Buyers shall pay all duties, taxes

and other official charges as well as the costs of carrying out customs formalities payable upon importation of the goods

7. EXTENSION

8. PAYMENT

(a) Payment shall be by cash in
against the following documents

(b) **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).

9. PROPRIETARY RIGHTS

The contract goods shall become the property of Buyers only after the contractual terms of payment have been fulfilled. Buyers shall co-operate with Sellers in respect of any means the latter may intend to pursue in order to protect their proprietary rights to the goods contracted. If third parties try to assert or substantiate right to the goods in which Sellers still have proprietary rights, Buyers will immediately inform Sellers of any such action.

10. INSURANCE

Sellers shall be responsible for insurance cover up to the point of the delivery/despatch/collection, thereafter insurance shall be for the account of Buyers.

11. WEIGHTS

The goods shall be weighed as agreed between the parties and such weights shall be final. Sellers and Buyers have the right to superintend.

12. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated in the contract. 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.

13. PREVENTION OF DELIVERY

"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 period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, 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. The period of delivery shall be extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for delivery 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.

14. CIRCLE

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

Subject to the terms of the Prevention of Delivery Clause in the contract, if the goods are not delivered/despached/collected, invoices based on the mean contract quantity (or if the goods have been delivered/despached/collected the invoice quantity), shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for the delivery/despatch/collection, or should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market rice on the first day for the contractual delivery period and invoices shall be settled between each buyer and his seller in the circle by payment of the differences between the market price and the relative contract price in the currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

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. For the purpose of serving notices in a string, any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa. 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 delivery/despatch/collection 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 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) damages, if any, shall be computed on the mean contract quantity.

173 **18. INSOLVENCY**

174 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is
175 unable to meet debts or that he has suspended or that he is about to suspend payment of his debts, convene, call or
176 hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding
177 up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other
178 than for re-construction or amalgamation), or have a Bankruptcy Petition presented against him (any of which acts
179 being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith
180 serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by
181 either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the
182 party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of
183 the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the
184 serving of the Notice. If such Notice has not been served, then the other party, on learning of the occurrence of the
185 Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
186 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market
187 price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party
188 to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-
189 purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the
190 amount payable or receivable under this contract.

191
192 **19. DOMICILE**

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

207
208 **20. ARBITRATION**

209 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or
210 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No
211 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this
212 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the
213 application of such Rules.

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

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

226
227 **21. INTERNATIONAL CONVENTIONS**

228 The following shall not apply to this contract: -

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

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

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

234 (d) Incoterms.

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

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

Printed in England and issued by

GAFTA
THE GRAIN AND FEED TRADE ASSOCIATION
9 LINCOLN'S INN FIELDS, LONDON WC2A 3BP