

# Contract No.89

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR FULL CONTAINER LOADS (FCL) BULK OR BAGS FREE CARRIER (FCA) 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. GOODS** ..... of ..... origin

**2. QUANTITY** .....

full containers each estimated to contain ..... Metric tons in bulk or bags

**3. PRICE** .....

Delivered FCA to Buyers' nominated carriers ("Carrier") in containers at Place of Delivery (as defined according to Clause 6) per tonne of 1000 kilograms, gross for net weight.

FCA means delivery Free Carrier whereby Sellers will stuff the containers and deliver the containers to the Place of Delivery.

**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 delivered then the brokerage shall be due on the 30<sup>th</sup> consecutive day after the last day for delivery. Any dispute arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

**5. QUALITY AND CONDITION**

Quality and Condition shall be final at time and place of stuffing the container at Sellers' expense as per GAFTA registered superintendent's certificate at Sellers' choice and expense.

**Condition.** Delivery shall be made in good condition.

**6. DELIVERY TERMS**

Buyers to give ..... consecutive days' pre-advice of name of Carrier, the closing date for receipt of the containers containing the stuffed goods ("Closing Date"), the name of the vessel as nominated by Buyers for intended loading of the containers ("Vessel") and the place of delivery by Seller for such containers. ("Place of Delivery"). The nominated Closing Date to be within the Delivery Period.

Buyers will make available to Sellers clean and odourless containers fit for the carriage of the Goods no later than 14 days prior to the Closing Date ("Container Delivery Date").

Sellers shall collect the empty containers, stuff the containers with the Goods at their cost and deliver the containers to the Carrier by the Closing Date at the Place of Delivery.

## 7. DELIVERY PERIOD

Delivery period of the stuffed container to Carrier at the Place of Delivery to be during ..... ("Delivery Period")

The bill(s) of lading confirming that the goods have been received for shipment shall be dated when the goods are handed over to the Carrier.

Buyers have the right to substitute the Carrier but the original Delivery Period and any extension shall not be affected thereby. In case of re-sales all notices shall be passed on without delay in accordance with the Notices Clause.

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, in relation to which the middle day shall be considered to be in the first half of the month.

## 8. EXTENSION

For Buyers, the Container Delivery Date may be extended by an additional period of not more than 8 days, provided that Buyers serve notice claiming extension not later than the Container Delivery Date. The notice need not state the number of additional days claimed. Buyers shall make an allowance to Sellers, to be added in the invoice to the contract price, based on the number of days after the Container Delivery Date is exceeded, in accordance with the following scale:

1 to 4 additional days, 0.50%;

5 or 6 additional days, 1%;

7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Sellers as above, Buyers fail to have containers available for stuffing within such 8 days, then the contract shall be deemed to have called for acceptance by the Container Delivery Date plus 8 days, at contract price plus 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price plus the allowance and any other contractual differences shall be settled on the basis of such revised price. If Buyers exercise their right to claim an extension under the terms of this clause, the Closing Date will be automatically extended by the same number of days of extension of the Container Delivery Date.

For Sellers, the obligation to deliver the stuffed containers by the Closing Date shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the Closing Date. The notice need not state the number of additional days claimed.

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

1 to 4 additional days, 0.50%;

5 or 6 additional days, 1%;

7 or 8 additional days 1.50% of the gross contract price.

If, however, after having served notice to Buyers as above, Sellers fail to deliver the containers within such 8 days, then the contract shall be deemed to have called for delivery of the containers by the Closing Date plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

## 9. PAYMENT

(a) **Payment**..... By cash, in ..... against the following documents.....

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

(c) **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).

#### **10. WEIGHING**

Final at time and place of stuffing the container at Sellers' expense as per GAFTA registered superintendent's certificate at Sellers' choice and expense. Containers to be sealed at Sellers' expense.

The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract.

#### **11. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this 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.

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

#### **12. FUMIGATION**

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

#### **13. EXPORT LICENCE** - if required, to be obtained by Sellers.

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

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

#### **15. INSURANCE**

(a) Inland insurance from the Place of Delivery to the load port to be for Buyers' account and risk.

(b) Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be obtained by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at least 5 consecutive days prior to the Closing Date. If Buyers fail to provide such confirmation, Sellers shall have the right to place such insurance at Buyers' risk and expense.

#### **16. 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.

## **17. 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.

## **18. 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 shall not be affected by this clause.

## **19. 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 quantity called for if any but, if no such quantity has been declared then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

## **20. INSOLVENCY**

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

(a) suspend payments;

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

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

(d) propose either:

(i) a voluntary arrangement; or

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

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

(f) be subject to either:

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

(ii) a notice of appointment of an administrator;

(g) have an administration order made;  
(h) be subject to a winding up petition;  
(i) have a winding up order made;  
(j) have a receiver or manager appointed;  
(k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);  
(l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or  
(m) have a bankruptcy petition presented against him,  
(any of which acts being hereinafter called an "**Act of Insolvency**")  
then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the 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.

20.2 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.

20.3 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.

## **21. DOMICILE**

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

## **22. 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.

## **23. 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; and
- (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.

#### **24. PHYTOSANITARY CERTIFICATE**

Where the provision of a phytosanitary certificate has been agreed between the parties, Sellers shall use their reasonable endeavours to supply, at their own cost, a phytosanitary certificate in circumstances where:

- (a) After the date on which the contract has been entered into the named country of import changes its phytosanitary requirements or
- (b) As at the date on which the contract has been entered into Sellers are not aware of the named country of import.

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

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