Effective 1st February 2021

Contract No.79A

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR UNITED KINGDOM AND IRELAND GRAIN
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. GOODS IN BULK .....

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

3. PRICE
At the price of.....
per tonne of 1000 kilograms delivered free on board Buyers' vessel(s), including trimming and/or stowage.

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 30th consecutive day after the last day for delivery.

5. LOADING PORT .....

Sellers have the option of declaring .....
as the loading port(s) for each period of shipment. To exercise this option, the first Sellers shall declare the loading port(s)

to their Buyers not later than 1000 hours on.....
Notice of Declaration may be passed by telephone in which case to be confirmed in writing on the same day.
The Notices Clause and the Non-Business Days Clause shall not apply to such declaration.
Where the date for declaring a port falls to be served on a non-business day (as defined in the Non-Business Days Clause) it shall be given not later than 1000 hours on the immediate preceding business day.
In case of re-sales all notices shall be served by any means of rapid written communication (or by telephone and confirmed by rapid written communication) on the same day if received not later than 1700 hours or not later than 1000 hours on the next business day if received after 1700 hours or on a non-business day.
A notice to the Brokers or Agent shall be deemed a notice under this contract.

6. QUALITY SPECIFICATIONS
.....

.....

* Final at time and place of loading as per GAFTA Registered Superintendents' certificate at Sellers' choice and expense.

Condition. Delivery shall be made in good condition.

7. DELIVERY PERIOD

A. Delivery during …….. at Buyers' call.

Vessel(s) to be clean and fit to receive the goods and to load in accordance with the custom of the port of loading at one safe berth per vessel at Sellers' option. Bill of lading shall be considered proof of date of delivery in the absence of evidence to the contrary.

B. Provided that the vessel is presented at loading port in readiness to load, Sellers shall if necessary complete loading after the contractual period, and such delivery shall be deemed to be within the contractual period, subject to the following provisions:

(a) Notwithstanding the provisions of the Nomination of Vessel's Clause the presentation shall allow at least

36/..... consecutive hours remaining prior to the end of the contractual delivery period.

(b) The presentation must be between 0800 hours and 1700 hours on a business day.

(c) Time from 1700 hours on a Friday or a day preceding a public holiday until 0800 hours on the next working day shall not count in computing (a) above.

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.

8. EXTENSION OF DELIVERY

The contract period of delivery shall be extended for not more than eight consecutive days, provided that Buyers serves notice claiming extension not later than the next business day following the last day of the delivery period. The notice need not state the number of additional days claimed. If delivery is made within the extended period of eight days, the contract price will be increased in accordance with the number of days by which the originally stipulated period is exceeded, in accordance with the following scale:

1 to 4 days 0.50%;
5 or 6 days 1%;
7 or 8 days 1.50% of the gross contract price.

Any difference in export duties, taxes, levies etc., between those applying during the original delivery period and those applying during the period of extension shall be for the account of Buyers; Sellers shall produce evidence of the amounts paid if required by Buyers. If any increase becomes due under this clause, the contract price shall be deemed to be the original contract price plus the increase and any other contractual differences shall be settled on the basis of such increased price. For the purpose of establishing the increased price, the calculation of extension shall commence 36/…….. consecutive hours after the vessel is presented at the loading port in readiness to load. If however, after having served notice to Sellers as above, subject to the provisions of Delivery Period Clause, above, Buyers fail to take delivery within such 8 days, then the contract shall be deemed to have called for delivery during the originally stipulated period plus 8 days, at contract price plus 1.50% and any settlement for default shall be calculated on that basis.

9. NOMINATION OF VESSELS

(a) **Nomination of Vessels**

(i) The last F.O.B. Buyers shall give at least 3 clear days notice of the name of the vessel(s) and the probable readiness date; the estimated quantity required to be loaded and the name of the Ship's Agents, to be despatched by telex by the last F.O.B. Buyers by 1000 hours on a business day. The above-mentioned notice shall not become effective under the terms of this contract before the expiry of the 3 clear day's notice.

(ii) Buyers shall instruct the Ship's Agents to keep the Sellers informed of any delay in the expected date of the vessel's readiness. In the event that the vessel does not present in readiness to load in compliance with the Delivery Period Clause within 5 days from the original probable readiness date, the nomination shall be deemed to have lapsed.

(b) **Substitution of Vessels**

Having nominated as in (a) (i) above, the last F.O.B. Buyers are entitled to substitute the last named vessel, provided that they serve a notice to the Sellers of the name of the substitute vessel and any change of the Ship's Agent. The substitute vessel shall present at the loading port in readiness to load in compliance with the Delivery Period Clause no later than 5 days from the expected probable readiness date of the vessel nominated in accordance with paragraph (a) (i) above.

In the case of resales notices shall be passed on without delay by telephone and confirmed on the same day by letter if delivered by hand on the date of writing, or E-mail, or other electronic means. A notice to the

Brokers or Agent shall be deemed a notice under this clause. The Notices Clause and the Non-Business Days Clause shall not apply.

10. SHIP'S CLASSIFICATION

By first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment, excluding Tankers and Vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping index as "Ore/Oil" Vessels.

11. HARVEST AS AVAILABLE

If the goods are contracted ' Harvest as available' the following replaces the Loading Port, the Delivery Period, Extension of Delivery and the Nomination of Vessels clauses.

Delivery period ……as available.

Vessel shall load at an accessible port in accordance with the custom of the port of loading at one safe berth at Sellers' option.

The first Sellers shall give notice of availability of grain and the load port/berth by 1000 hours on a business day and in any case no later than 15 consecutive days before the end of the contractual delivery period. Presentation of the vessel shall be made within 14 consecutive days from the date of such notice. The first Sellers are entitled to receive at least 2 clear business days notice of the name and probable readiness date of the vessel and the estimated tonnage required. Buyers have the right to substitute the nominated vessel. Provided that the vessel gives a valid Notice of Readiness by 0800 hours on the last business day for presentation, Sellers shall if necessary complete loading after the last day at the contract price. In case of re-sales all notices shall be passed on without delay by telephone and confirmed by rapid written communication on the same day.

12. PAYMENT

(a) Payment by cash in ..... on presentation of and in exchange for, bill(s) of lading or mate's receipt.

(b) No obvious clerical error in the documents shall entitle the Buyers to reject them or delay payment, but the 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 o not override the parties' contractual obligation under sub-clause (a).

13. EXPORT LICENCE, DUTIES AND TAXES ON GOODS

Export Licence, if required, to be obtained by Buyers and any EC export duties, taxes, levies, and refunds etc present or future in the country of origin, shall be for Buyers account, otherwise national duties and taxes, present or future shall be for Sellers' account.

14. WEIGHING

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

15. SUPERVISION

Sellers and Buyers and/or their Representatives shall have the right of supervision both as to delivery and weighing at port(s) of loading.

16. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract. Where the contract requires quality final at loading, samples shall be taken at time and place of loading. 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.

17. INSURANCE

Marine and War Risk Insurance including strikes, riots, civil commotions and mine risk shall be effected by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with

confirmation thereof at least 3 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers shall have the right to place such insurance at Buyers' risk and expense.

18. 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.

19. 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, where applicable, of the same analysis warranty, for delivery from the same port(s) of loading during the same period of delivery). 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 invoices based on the mean contract quantity or, if the goods have been delivered invoices based on the delivered 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 delivery, 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 price on the first day for contractual delivery, 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. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. 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.

20. 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. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

21. 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.

22. 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 a 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.

23. INSOLVENCY

23.1If 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.

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 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.

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. 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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GAFTA

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