

Contract No.2

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION



GENERAL CONTRACT FOR CHINESE GOODS IN BAGS/PARCELS TALE QUALE – CIF/CIFFO/C&F/C&FFO 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 in new and/or secondhand bags of suitable strength to withstand ordinary wear and tear to port of
10 destination. Such bags to be taken and paid for as goods.

11

12 **2. QUANTITY**.....2% more or less.

13 Sellers have the option of shipping a further 3% more or less than contract quantity, excess or deficiency
14 over the above 2% be settled at the market price on the date of the bill of lading, and on the quantity
15 thereof; value to be fixed by arbitration, unless mutually agreed. In the event of more than one shipment
16 being made each shipment to be considered a separate contract, but the margin on the mean quantity sold
17 not to be affected thereby.

18

19 **3. PRICE AND DESTINATION**

20 At the price per tonne of 1,000 kilograms gross weight of

21

22 *cost, insurance and freight to.....

23

24 *cost, insurance and freight free out to

25

26 *cost and freight to

27

28 * cost and freight free out to

29

30 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods

31 lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the
32 contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day
33 shipping documents are exchanged or, if the goods are not appropriated then brokerage shall be due on
34 the 30th consecutive day after the last day for appropriation.

35

36 **5. QUALITY**

37 * **Warranted to contain**at time and place of discharge.

38

39 ***Official**.....certificate of inspection, at time of loading into the ocean carrying vessel, shall
40 be final as to quality.

41 ***Sample**, at time and place of loading into ocean carrying vessel, shall be final as to quality.

42 **Admixture**. Any admixture of dirt and/or other foreign substance over 3% and up to 5% to be allowed for by
43 Sellers at contract price, but any excess over 5% to be allowed for at double contract price.

44

45 Any grain other than to be reckoned as foreign substances at half their
46 quantities. The percentage of admixture to be determined by the Analysts appointed by GAFTA. The costs of
47 analysis to be borne by Buyers if the admixture of dirt and/or other foreign substances is 3% or less, and by Sellers
48 if in excess of 3%.

49 **Condition.** Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall
50 be made for the time of the year in which the shipment took place. The fact of the goods so arriving shall not
51 necessarily be sufficient proof of an improper shipment.
52

53 **6. PERIOD OF SHIPMENT**

54 As per bill(s) of lading dated or to be dated
55 The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be
56 accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing
57 an odd number of days, the middle day shall be accepted as being in both halves of the month.
58

59 **7. PORTS OF SHIPMENT**

60 From a port or ports on the Yang-tze Kiang River between Hankow and Shanghai, both inclusive, and/or
61 Changsha, and/or Shasi, and/or port or ports in the China Seas, and/or Dalny and/or Vladivostock via the
62 Suez Canal and/or Cape of Good Hope, and/or Panama Canal.
63

64 **8. SALES BY NAMED VESSELS**

65 For all sales by named vessels, the following shall apply: -

- 66 (a) Position of vessel is mutually agreed between Buyers and Sellers;
- 67 (b) The word "now" to be inserted before the word "classed" in the Shipment and Classification Clause;
- 68 (c) Appropriation Clause cancelled if sold "shipped".
69

70 **9. SHIPMENT AND CLASSIFICATION**

71 Shipment from.....
72 direct or indirect, with or without transshipment by first class mechanically self-propelled vessel(s)
73 suitable for the carriage of the contract goods, classed in accordance with the Institute Classification
74 Clause of the International Underwriting Association in force at the time of shipment.
75

76 **10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS**

- 77 (a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers
78 shall nominate the intended carrying vessel(s) to Buyers.
- 79 (b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies
80 with the terms of this clause.
81

82 **11. EXTENSION OF SHIPMENT**

83 The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of
84 not more than 8 days, provided that Sellers serve notice claiming extension not later than the next
85 business day following the last day of the originally stipulated period. The notice need not state the
86 number of additional days claimed.

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

- 90 1 to 4 additional days, 0.50%;
- 91 5 or 6 additional days, 1%;
- 92 7 or 8 additional days 1.50% of the gross contract price.

93 If, however, after having served notice to Buyers as above, Sellers fail to make shipment within such 8
94 days, then the contract shall be deemed to have called for shipment during the originally stipulated period
95 plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If
96 any allowance becomes due under this clause, the contract price shall be deemed to be the original
97 contract price less the allowance and any other contractual differences shall be settled on the basis of such
98 reduced price.
99

100 **12. APPROPRIATION**

101 (a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the
102 presumed date of the bill of lading.

103 (b) The notice of appropriation shall within consecutive days from the date of the bill(s) of
104 lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers
105 named in the contract. The Non-Business Days Clause shall not apply.

106 (c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of
107 subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice
108 of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause
109 (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served:

- 110 (1) On the same calendar day, if received not later than 1600 hours on any business day, or

111 (2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-
112 business day.

113 (d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be
114 considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of
115 appropriation shall serve like notice of appropriation in accordance with the provisions of this clause.
116 Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such
117 Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

118 (e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not
119 be binding, but in fixing the period laid down by this clause for serving notices of appropriation the actual
120 date of the bill of lading shall prevail.

121 (f) Every notice of appropriation shall be open to correction of any errors occurring in transmission,
122 provided that the sender is not responsible for such errors, and for any previous error in transmission
123 which has been repeated in good faith.

124 (g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred
125 thereby, such expenses shall be borne by Sellers.

126 (h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except
127 with their consent.

128 (i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund
129 of any proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.
130

131 13. PAYMENT

132 (a) **Payment**..... % of invoice amount by cash in

133 * In exchange for and on presentation of shipping documents;

134 * In exchange for shipping documents on or before arrival of the vessel at destination, at Buyers' option;

135 Sellers, however, have the option of calling upon Buyers to take up and pay for documents on or after
136

137 consecutive days from the date of the bill(s) of lading.

138 (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or
139 Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other
140 Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a
141 recognised bank. 3. For CIF/CIFFO terms Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of
142 Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if
143 required by Buyers. 4. Other documents as called for under the contract. Buyers agree to accept
144 documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War
145 Risk Clause.

146 (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the
147 vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain
148 delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall
149 not prejudice Buyers' rights under the contract when shipping documents are eventually available.

150 (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers
151 to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for
152 the other documents when presented. Any reasonable extra expenses, including the costs of such
153 indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be
154 borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping
155 documents are eventually available.

156 (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other
157 shipping documents be missing, payment shall be made provided that delivery of such missing documents
158 is guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

159 (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a
160 bank of their choice, in that event any additional collection costs shall be borne by Buyers.

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

164 (h) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency
165 involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which
166 shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the
167 terms of the contract or by an award of arbitration. The terms of this clause do not override the parties'
168 contractual obligation under sub-clause(a).
169

170 14. DUTIES, TAXES, LEVIES, ETC.

171 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in
172 country of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in
173 country of destination, shall be for Buyers' account.
174

15. DISCHARGE

175
176 (a) **For CIF/C&F terms**, discharge shall be as fast as the vessel can deliver in accordance with the custom
177 of the port, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as fast
178 as the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge from
179 hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account.

180 (b) **For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.
181

182 Discharge shall be at the average rate of tonnes per Weather Working Day, Saturdays, Sundays,
183 Holidays Excepted, Unless Used, (WWD SSHEX UU), in which case actual time used to count. Notice of
184 Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port Or Not,
185 (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON), Whether
186 Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next working day.
187 Rate of demurrage/despatch as per Charter Party. In the event of a time charter, the daily hire rate shall
188 be taken as the rate of demurrage, half despatch.

189 (c) If documents are tendered which do not provide for discharging as above or contain contrary
190 stipulations, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Discharge by
191 grab(s) shall be permitted unless specifically excluded at time of contract. If shipment is effected by lash
192 barge, then the last day of discharge shall be the day of discharging the last lash barge at the port of
193 destination.
194

16. WEIGHING

195
196 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this
197 contract. Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at
198 time and place of discharge at Buyers' expense. If the place of destination is outside the port limits,
199 Buyers agree to pay the extra expenses incurred by Sellers or their agents for weighing. No payment shall
200 be made for increase in weight occasioned by water and/or oil during the voyage. If final at time and place
201 of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and expense, (in which
202 case the Deficiency Clause will not apply).
203

17. DEFICIENCY

204
205 Any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading
206 weight shall be paid for by Buyers at contract price, (unless the Pro-rata clause applies).
207

18. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS

208
209 The terms and conditions of GAFTA Sampling Rules No.124 are deemed to be incorporated into this
210 contract. Samples shall be taken at the time of discharge on or before removal from the ship or quay,
211 unless the parties agree that quality final at loading applies, in which event samples shall be taken at time
212 and place of loading. The parties shall appoint superintendents, for the purposes of supervision and
213 sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed, analysts
214 shall be appointed from the GAFTA Register of Analysts.
215

19. FUMIGATION

216
217 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be
218 incorporated into this contract.
219

20. INSURANCE

220
221 **19.1 For Contracts Concluded on CIF/CIFFO terms.** Sellers shall provide insurance on terms not less
222 favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz.:-

223 (a) Risks Covered:-

224 Cargo Clauses (WA), with average payable, with 3% franchise or better terms, Section 2 Form 72

225 War Clauses (Cargo)

- Section 4 of Form 72

226 Strikes, Riots and Civil Commotions Clauses (Cargo)

- Section 5 of Form 72

227 (b) Insurers - The insurance to be effected with first class underwriters and/or companies who are
228 domiciled or carrying on business in the United Kingdom or who, for the purpose of any legal proceedings,
229 accept a British domicile and provide an address for service of process in London, but for whose solvency
230 Sellers shall not be responsible.

231 (c) Insurable Value - Insured amount to be for not less than 2% over the invoice amount, including freight
232 when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including
233 the amount of any War Risk premium payable by Buyers.

234 (d) Freight Contingency - When freight is payable on arrival or on right and true delivery of the goods and
235 the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such
236 insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the
237 termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies
238 are so worded that in the case of particular or general average claim the Buyers shall be put in the same
239 position as if the c.i.f. value plus 2% were insured from the time of shipment.

240 (e) Certificates/Policies - Sellers shall serve all policies and/or certificates and/or letters of insurance
241 provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the
242 value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such
243 certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state
244 on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a
245 recognised bank, or by any other guarantor who is acceptable to Buyers.

246 (f) Total Loss - In the event of total or constructive total loss, or where the amount of the insurance
247 becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers'
248 account and the party in possession of the policy (ies) shall collect the amount of insurance and shall
249 thereupon settle with the other party on that basis.

250 (g) Currency of Claims - Claims to be paid in the currency of the contract.

251 (h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The
252 rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's
253 sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers,
254 wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not
255 later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the
256 later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable.
257 Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and
258 generally obtainable in London at time of shipment.

259 (i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other
260 contractual terms, (and which risks are also covered by the insurance provided by Sellers), the Buyers, on
261 receipt of settlement, shall immediately return to Sellers the insurance documents originally received
262 from them and shall, if required, subrogate to Sellers all right of claim against the Insurers in respect of
263 such matters.

264 **19.2 For Contracts Concluded on C & F/C&FFO terms.** Buyers shall be responsible for obtaining
265 insurance cover as per Clause 19.1 above and shall, if required by Sellers, provide evidence to Sellers prior
266 to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide
267 evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers'
268 expense.

21. PREVENTION OF SHIPMENT

270 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on
271 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are
272 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)
273 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of
274 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to
275 transportation or navigation, or (l) any other event comprehended in the term "force majeure".
276

277
278 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
279 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
280 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not
281 later than 21 consecutive days before commencement of the shipment period, whichever is later, with the
282 reasons therefor.

283
284 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then
285 Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than
286 the first business day after expiry of the 21 day period.

287
288 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
289 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
290 shall be automatically cancelled.

291
292 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers
293 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the
294 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of
295 Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14
296 consecutive days shall be allowed.

297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359

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.

22. 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.

23. 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 shipment shall not be affected by this clause.

24. PRO RATA

(a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of shipment of bags of the same mark, or of a similar quality, whether in bags or bulk or whether destined to more than one port, no separation or distinction shall be necessary.

(b) All loose collected, damaged goods and sweepings shall be shared by and apportioned pro rata in kind between the various Receivers thereof at the port of discharge named in the contract, buying under contracts containing this clause. In the event of this not being practicable or any of them receiving more or less than his pro rata share or apportionment, he shall settle with the other(s) on a pro rata basis in cash at the market price and each Receiver shall bear his proportion of the depreciation in market value. The pro rata statement shall be established by the Sellers or their Representatives in conjunction with the Receivers or their Representatives.

(c) The above pro rata apportionment between Receivers shall have no bearing on the establishment of final invoices with Sellers and for the purpose of these invoices, the total quantity of loose collected, damaged goods and sweepings shall be regarded as delivered to those Receivers who did not receive their full invoiced quantity.

(d) In the case of excess or deficiency, the difference between the invoiced and the total delivered quantity shall be settled at the market price by final invoices to be rendered by Receivers, who have received more or less than that paid for, to their immediate Sellers without taking into consideration the above pro rata apportionment between Receivers.

(e) If an excess quantity is delivered to one or more Receiver and a deficient quantity is delivered to one or more Receiver, the excess and deficiency shall be settled between them at the market price. Invoices shall be established with immediate Sellers for any balance resulting from this settlement.

(f) All Shippers, Sellers and Buyers of any part of such larger quantity as aforesaid under contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all questions and claims between them or any of them in regard to the execution of this clause as aforesaid in accordance with the Arbitration Clause of this contract. Sellers and Buyers shall serve all reasonable assistance in execution of this clause. All Sellers shall be responsible for the settlement by the respective Buyers in accordance with this clause within a reasonable time.

(g) The market price wherever mentioned in this clause shall be the market price on the last day of discharge of the vessel in the port of destination, such price to be fixed by arbitration unless mutually agreed.

(h) In the event of this clause being brought into operation, any allowances payable in respect of condition, or quality, or under any of the other guarantees contained in this contract, shall be based upon the actual weight received by the Buyers and not on the pro rata weight.

(i) In the event of any conflict in terms of apportionment applicable to the port of discharge the method published by GAFTA shall, where applicable, take precedence over sub clauses (b) to (h) above.

(j) In the event that sub-clause (a) applies or that the goods subsequently become co mingled, and that the goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after

360 the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro rata
361 between themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash
362 and in the event of two or more discharging ports being involved, then the settlement price shall be the
363 average of the market prices on the last day of discharge in the respective ports.
364

365 **25. DEFAULT**

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

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

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

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

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

378 (e) Damages, if any, shall be computed on the quantity appropriated if any but, if no such quantity has
379 been appropriated then on the mean contract quantity, and any option available to either party shall be
380 deemed to have been exercised accordingly in favour of the mean contract quantity.

381 (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall
382 then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been
383 declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has
384 not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, where
385 the Appropriation Clause provides for 7 or more days for service of the appropriation, or if notice of
386 appropriation has not been served by the 4th business day after the last day for appropriation laid down in the
387 contract where the Appropriation Clause provides for less than 7 days for service of the appropriation, the
388 Sellers shall be deemed to be in default, and the default date shall then be the first business day thereafter.
389

390 **26. CIRCLE**

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

397 Subject to the terms of the Prevention of Shipment Clause in the contract, if the goods are not
398 appropriated, or, having been appropriated documents are not presented, invoices based on the mean
399 contract quantity shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to
400 their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle.
401 Payment shall be due not later than 15 consecutive days after the last day for appropriation, or, should the
402 circle not be ascertained before the expiry of this time, then payment shall be due not later than 15
403 consecutive days after the circle is ascertained.

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

408 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been
409 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between
410 Buyers and Sellers in the circle, the non presentation of documents by Sellers to their Buyers shall not be
411 considered a breach of contract. Should any party in the circle prior to the due date of payment commit
412 any act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall
413 be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a
414 basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers
415 shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the
416 difference between the closing out price and the contract price.
417

418 **27. INSOLVENCY**

419 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors
420 that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his
421 debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an

422 administration order made, have a winding up order made, have a receiver or manager appointed,
423 convene, call or hold a meeting to go into liquidation (other than for re construction or amalgamation)
424 become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy
425 Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the
426 party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of
427 Insolvency on the other party to the contract and upon proof (by either the other party to the contract or
428 the Receiver, Administrator, Liquidator or other person representing the party committing the Act of
429 Insolvency) that such notice was served within 2 business days of the occurrence of the Act of Insolvency,
430 the contract shall be closed out at the market price ruling on the business day following the serving of the
431 notice.

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

436 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
437 closing out of the contract by re-purchase or re sale, and the difference between the contract price and
438 the re purchase or re sale price shall be the amount payable or receivable under this contract.
439

440 **28. DOMICILE**

441 This contract shall be deemed to have been made in England and to be performed in England,
442 notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance
443 with the laws of England. Except for the purpose of enforcing any award made in pursuance of the
444 Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any
445 application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the
446 exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a
447 dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association
448 pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party
449 shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed
450 Trade Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be
451 held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have
452 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of
453 proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade
454 Association, together with the posting of a copy of such proceedings to his address outside England, shall
455 be deemed good service, any rule of law or equity to the contrary notwithstanding.
456

457 **29. ARBITRATION**

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

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

470 (c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain
471 security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such
472 legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it
473 being understood and agreed that the substantive merits of any dispute or claim shall be determined
474 solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.
475

476 **30. INTERNATIONAL CONVENTIONS**

477 The following shall not apply to this contract: -

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

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

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

483 (d) Incoterms.

484 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to
485 this 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