

# Contract No.78UA

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION  
CONTRACT FOR GOODS BY RAIL AND/OR ROAD

\*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** .....

**2. QUANTITY** ..... tonnes of 1000 kilograms, 5% more or less  
Each consignment in whole or part fulfilment of this contract to be considered a separate contract, but the margin on the quantity sold shall not be affected thereby.

**3. QUALITY AND CONDITION**

**\*Warranted to contain** .....

In case of FCA / CPT (as defined below), unless otherwise agreed, quality and condition shall be final at time and Place of Despatch (as defined below).

In case of DAT/ DAP/ DDP (as defined below), unless otherwise agreed, quality and condition shall be final at time and Place of Destination (as defined below).

**4. PRICE** ..... per tonne of 1000 kilograms net weight.

**\*Despatched from** ..... ("Place of Despatch")

FCA / CPT as defined below.

**\* Delivered to** ..... ("Place of Destination")

CPT / DAP / DAT / DDP as defined below.

**5. 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 Fulfilment Clause. Brokerage shall be due on the day contractual documents are exchanged, or if the goods are not despatched/delivered then the brokerage shall be due on the 30th consecutive day after the last day of the Period of Despatch / Period of Delivery.

**6. PERIOD OF DESPATCH / PERIOD OF DELIVERY**

Buyers shall give despatch instructions latest by ....., failing which Sellers shall be entitled to declare Buyers in default unless the parties agree to extend the Period of Despatch / Period of Delivery.

For FCA/ CPT/ DAP/ DAT/ DDP terms, despatch/delivery shall be in approximately evenly spread quantities throughout the Period of Despatch / Period of Delivery as the case may be.

(a) For despatch on FCA/ CPT terms, despatch during ..... ("Period of Despatch")

The consignment note(s) /railway bill to be dated when the goods are despatched, and shall be considered proof of the date of despatch in the absence of evidence to the contrary.

(b) For delivery on DAP/ DAT/ DDP terms, delivery at Place of Destination during ..... ("Period of Delivery")

The date when the goods arrive at the Place of Destination is deemed to be considered the date of delivery in the absence of evidence to the contrary.

## 7. DEFINITION OF DELIVERY TERMS:

For the purposes of this Contract, the terms FCA /CPT /DAP /DAT /DDP shall be as defined as follows:

FCA - Free Carrier - means that Sellers will load the goods at the Place of Despatch on Buyers' nominated transport.

CPT - Carriage Paid To - means that Sellers will load the goods at the Place of Despatch and will arrange and pay for transport to the Place of Destination.

DAP - Delivered At Place - means that Sellers will deliver goods on Sellers' nominated transport when they arrive at the Place of Destination.

DAT - Delivered At Terminal - means that Sellers will deliver goods when they are unloaded at the Place of Destination.

DDP - Delivered Duty Paid - means that Sellers will deliver the goods on Sellers' nominated transport cleared for import at the Place of Destination.

**Risk:** Under FCA and CPT terms the goods will be at Buyers' risk from the Place of Despatch.

Under DAP/DAT/DDP terms the goods will be at Sellers' risk up to the Place of Destination.

## 8. DUTIES, TAXES, LEVIES, ETC.

(a) **Under FCA, CPT, DAP and DAT terms:** Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc. present or future, shall be for Sellers' account. Buyers shall customs clear the goods for import. All import duties, taxes, levies, etc., present or future, shall be for Buyers' account.

(b) **Under DDP terms:** Sellers shall customs clear the goods for export and import. All export and import duties, taxes, levies, etc. present or future, shall be for Sellers' account.

## 9. TRANSPORT CLASSIFICATION - per good bulk grain carrying truck and/or rail wagon(s) suitable for transport of the goods, clean, and free from smell or taint at time of loading.

## 10. NOTICE OF DESPATCH (applicable only to CPT/ DAP/ DAT/ DDP terms)

(a) The notice of despatch shall state the truck /rail wagons' numbers, the presumed weight loaded and the date or presumed date of the consignment note or railway bill.

(b) The notice of despatch shall be served within two business days from the date of the consignment note or railway bill by or on behalf of Sellers direct on his Buyers or on the Selling Agent or Broker named in this contract.

(c) The notice of despatch shall be passed on by subsequent Sellers to their Buyers with due despatch.

(d) Failure by Sellers to pass such notice to their Buyers will not constitute default, except as provided for in the Default Clause, but Sellers shall be responsible to their Buyers for proved extra expenses incurred as a consequence.

(e) The date of the consignment note or railway bill stated in the notice of despatch shall be for information only but in fixing the period laid down by this clause for serving advice of despatch the actual date of the consignment note or railway bill shall prevail.

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

(g) Should the truck/ rail wagon(s) arrive before receipt of the notice of despatch and any extra expenses is incurred thereby, such expenses shall be borne by Sellers.

## 11. PAYMENT

(a) **Payment** by net cash in ..... in exchange for and on presentation of documents required for payment.

(b) **Documents required for payment** shall consist of 1. Invoice, 2. Consignment note or railway bill, as appropriate 3. Other documents as called for under the contract.

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

(d) 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 furnish an approved guarantee in respect thereto.

(e) 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).

114 **12. WEIGHING**

115 The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract. For  
116 FCA and CPT weighing shall be final at Place of Despatch. For DAP / DAT and DDP, weighing shall be final at  
117 Place of Destination, unless otherwise agreed, and such weights shall be advised to Sellers without delay.

118  
119 **13. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

120 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.  
121 Where the contract requires quality and condition final at Place of Despatch, samples shall be taken at time and  
122 place of loading at Place of Despatch. Where the contract requires quality and condition final at time and Place of  
123 Destination, samples shall be taken at Place of Destination. The parties shall appoint superintendents, for the  
124 purposes of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless  
125 otherwise agreed, analysts shall be appointed from the GAFTA Register of Analysts.

126  
127 **14. PREVENTION OF FULFILMENT**

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

134  
135 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
136 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
137 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not  
138 later than 21 consecutive days before commencement of Period of Despatch / Period of Delivery , whichever is  
139 later, with the reasons therefor.

140  
141 If the Event of Force Majeure continues for 21 consecutive days after the end of the Period of Despatch / Period  
142 of Delivery then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers  
143 not later than the first business day after expiry of the 21 day period.

144  
145 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
146 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
147 shall be automatically cancelled.

148  
149 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers  
150 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the  
151 cessation, to as much time as was left for in the Period of Despatch / Period of Delivery under the contract prior  
152 to the occurrence of the Event of Force Majeure. If the time that was left in the Period of Despatch / Period of  
153 Delivery under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.

154  
155 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
156 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory  
157 evidence justifying the delay or non-fulfilment.

158  
159 **15. NOTICES**

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

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

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

169  
170 **16. NON-BUSINESS DAYS**

171 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,  
172 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
173 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended  
174 until the first business day thereafter. The Period of Despatch / Period of Delivery shall not be affected by this  
175 clause.

177 **17. DEFAULT**

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

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

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

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

187 (d) In all cases the damages shall, in addition, include any proven additional expenses which would directly and  
188 naturally result in the ordinary course of events from the defaulter's breach of contract, but shall in no case include,  
189 loss of profit on any sub-contracts made by the party defaulted against or others unless the arbitrator(s) or board  
190 of appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

191 (e) If default has not already been declared then if notice of despatch for CPT/DAP/DAT/DDP terms is not passed  
192 by the 5th consecutive day after the last day for the notice of despatch laid down in the contract, Sellers shall be  
193 deemed to be in default, and the default date shall then be the first business day thereafter.

194  
195 **18. INSOLVENCY**

196 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is  
197 unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call  
198 or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a  
199 winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into  
200 liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section  
201 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being  
202 hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall serve a notice of  
203 the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other  
204 party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing  
205 the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of  
206 Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of  
207 the notice. If such notice has not been served as aforesaid, then the other party, on learning of the occurrence of the  
208 Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first  
209 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market  
210 price ruling on the first business day after the date when the Act of Insolvency occurred.

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

214  
215 **19. DOMICILE**

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

230  
231 **20. ARBITRATION**

232 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or  
233 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No  
234 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this  
235 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the  
236 application of such Rules.

237 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal  
238 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have  
239 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.

## **21. 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.

## **22. METHODS OF ANALYSIS**

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

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

Printed in England and issued by

**GAFTA**

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