

Effective 1<sup>st</sup> September 2018

# Contract No.39

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR FEEDINGSTUFFS FROM ARGENTINA IN BULK 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** .....

**2. QUANTITY** .....% more or less at Buyers' option at contract price, tolerance to be declared upon each nomination, and the margin shall be affected thereby. In the event of more than one delivery being made each delivery shall be considered a separate contract.

**3. PRICE** - delivered Free on Board Buyers' vessel in bulk at .....

(a) \*at US\$.....per tonne of 1000 kilograms;

(b) \* to be fixed basis CME .....

**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 Prevent 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.

**5. QUALITY** .....

Superintendent's certificate of inspection, at time and place of loading into the ocean-carrying vessel, in accordance with the Weighing, Sampling and Analysis Clause, shall be final as to weight, quality and condition.

Warranted to contain not less than.....% of oil and protein combined and not more than 1.50% of sand and/or silica. Should the whole, or any portion, not turn out equal to warranty, the goods must be taken at an allowance to be agreed or settled by arbitration as provided for below, except that for any deficiency of oil and protein there shall be allowances to Buyers at the following rates, viz.: 1% of the contract price for each of the first 3 units of deficiency under the warranted percentage; 2% of the contract price for the 4th and 5th units and 3% of the contract price for each unit in excess of 5 and proportionately for any fraction thereof. When the combined content of oil and protein is warranted within a margin (as for example 40%/42%) no allowance shall be made if the analysis ascertained as herein provided be not below the minimum, but if the analysis results below the minimum warranted the allowance for deficiency shall be computed from the mean of the warranted content.

For any excess of sand and/or silica there shall be an allowance of 1% of the contract price for each unit of excess and proportionately for any fraction thereof. Should the goods contain over 3% of sand and/or silica the Buyers shall be entitled to reject the goods, in which case the contract shall be null and void, for such quantity rejected.

For the purposes of sampling and analysis each parcel shall stand as a separate shipment. The right of rejection provided by this clause shall be limited to the parcels found to be defective.

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

45  
46 **6. PERIOD OF DELIVERY**

47 **(a) Delivery during** ..... at Buyers' call.

48 **(b) Nomination of Vessel.** Buyers shall nominate vessel in time for Sellers to receive at least 10 consecutive  
49 days' notice of vessel's expected time of arrival and Sellers shall be under no obligation to load prior to the  
50 expiry of such 10 consecutive days. Such nomination shall contain name and flag of vessel, demurrage rate,  
51 estimated quantity to be loaded, expected arrival date, agents at loading port, and final country of destination.  
52 Nomination once given or passed on shall not be withdrawn, unless the vessel is unable to proceed to the load  
53 port due to an event outside Buyers' control. In any event Buyers have the right to one substitution of the  
54 nominated vessel, provided that the substituted vessel is expected to arrive not more than 5 working days later  
55 than the nominated vessel.

56 The original delivery period and any extension shall not be affected thereby. For nominations of lots below  
57 1,000 tonnes or

58  
59 loading for reasons not attributable to Sellers of less than 100 tonnes, charges at the rate of .....  
60 shall be added to the invoice for Buyers' account.

61 **(c)** Bill of lading or mate's receipt shall be considered proof of delivery of the goods in the absence of evidence  
62 to the contrary.

63 **(d)** In any month containing an odd number of days the middle day shall be accepted as being in both halves of the  
64 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.

65  
66 **7. SHIPMENT AND CLASSIFICATION**

67 Shipment by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods,  
68 classed in accordance with the Institute Classification Clause of the International Underwriting Association in  
69 force at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or  
70 described in Lloyd's Shipping Index as "Ore/Oil" vessels.

71  
72 **8. LOADING**

73 Once the vessel is berthed alongside a berth suitable to Sellers, ready to load and the holds, on inspection, are found  
74 to be clean, dry and fit to receive the cargo, Sellers guarantee, provided that the vessel is able to receive, a minimum  
75 average loading rate of 1,500 tonnes per weather working day of 24 consecutive hours, holidays, Saturdays  
76 afternoons and Sundays excluded even if used. Sellers shall not be responsible for any time lost due to act of God,  
77 strikes, lockouts, riots and civil commotion, breakdown of machinery and/or winches, failure of power, fire or other  
78 similar cause which prevents loading. Demurrage rate as per charter party, no despatch is due by Buyers to Sellers.  
79 Any extra charges for loading single and/or tween deckers (self-trimming bulk carriers excluded) and in any  
80 space/hold/tank other than main holds shall be for Buyers' account and liquidated at the current costs at time and  
81 place of loading.

82  
83 **9. EXTENSION OF DELIVERY**

84 Should Buyers not tender vessel(s) in readiness to load within the specified contract period for delivery, they shall  
85 be in default unless they give notice to Sellers not later than 1600 hours on the next business day following the last  
86 day of the contract period for delivery that an extension is claimed, notwithstanding cases of resale's and/or  
87 provisions of the non-business day clause. Should such extension be timely claimed, Sellers shall carry the goods  
88 for additional 30 days in accordance with the full terms of the Carrying Charges.

89 Extension shall be deemed to have been claimed, and carrying charges shall consequently apply, when the 10 day  
90 period of the contractual nomination of the vessel expires after the contract period of delivery. Contractual  
91 nomination of 10 consecutive days to apply also during the extension period.

92 Any new and/or increase in existing export duties, taxes, levies etc, between those applying during the original  
93 delivery period and those applying during the period of extension, shall be for the account of Buyers.

94  
95 **10. CARRYING CHARGES**

96 **(a).** Buyers shall pay to Sellers carrying charges unless the nominated vessel files with the Argentine Port  
97 Authorities earlier than 5 consecutive days before the expiry of the contract delivery period. If the nomination  
98 period expires after the end of the contract delivery period, carrying charges shall become payable even if the  
99 vessel files earlier. No carrying charges shall apply if the nominated vessel files earlier than the final 5 consecutive  
100 days of the contract delivery period. If the nominated vessel files during the final 5 days of the contract delivery  
101 period, carrying charges shall accrue from the first day following the expiry of the contract delivery period, in  
102 accordance with clause (d).

103 **(b).** A vessel shall be considered filed if she has registered with the Argentine Port Authorities or has arrived at the  
104 nominated loading port and is in all respects fit and ready to receive the cargo. Should the vessel be prevented  
105 from proceeding to the nominated port or berth of loading for reasons outside the vessel's control, she will be

considered filed provided she has reached a point where she has been instructed to wait by the Argentine Port Authorities.

(c) Should the vessel be due to load at more than one berth she shall be considered filed as per sub-clause (b) exclusively in regard to the first berth but for any subsequent berth she shall be considered filed only upon completion of loading at the previous berth.

(d). If due, carrying charges to be paid by Buyers to Sellers shall be calculated from the first day following the last day of the delivery period specified in the contract until bill (s) of lading dates, bill(s) of lading issued on a day by day basis if Buyers so request, as follows: -

US\$..... per tonne per day for the first 10 days

US\$..... per tonne per day from the 11<sup>th</sup> day inclusive until the 20<sup>th</sup> day inclusive;

US\$..... per tonne per day from the 21<sup>st</sup> day inclusive until the 30<sup>th</sup> day inclusive or the bill of lading date, if later.

(e) Carrying charges shall be paid by Buyers to Sellers upon payment of shipping documents.

(f). If extension has been claimed, Sellers shall if necessary complete loading the nominated vessel after expiry of the extension period provided she has filed within the above definitions and time limits, but Buyers shall be in default of fulfilment if, after claiming extension, the vessel has not filed at the port of loading (or as close thereto as permitted by the Argentine Port Authorities) at least 24 hours prior to the end of the extension period, and the date of default shall be the first business day following such period. In such event Buyers shall pay to Sellers (i) default damages if any, (ii) carrying charges accrued and calculated in accordance with the provisions of this clause. (In all cases carrying charges as provided herein are to be considered in the nature of liquidated damages and, as such, no further proof of damages shall be required in substantiation thereof).

## 11. PAYMENT

(a) **Payment** - for 100% by telegraphic transfer shall be due within two working days after presentation of contractual documents, if presented not later than 1200 hours. If documents are presented after 1200 hours, presentation shall be deemed to have been made on the following day. Presentation in trust or by collection is at Sellers' option; bank charges incurred shall be for Sellers' account, but if Buyers demand presentation through a bank of their choice, those bank charges shall be for Buyers' account. Title to the goods shall not pass from Sellers to Buyers until full and final payment has been received.

(b) **Interest.** Interest at 2.50% over the New York Prime rate shall be charged: -

(i) if there has been a delay in any payment, computed from the first business day following the day when payment was due up to the day payment is received, both days inclusive.

(ii) if the bill(s) of lading are not at Sellers/Shippers' disposal at the end of the first business day following the day when bill(s) of lading are presented to vessel's agents in Buenos Aires, for any reasons beyond Sellers/Shippers' control, computed from the first working day after bill(s) of lading are presented to the agency up to the day they are released to Sellers/Shippers, both days inclusive, if Buyers' complete documentary instructions have not been timely received and presentation of documents is delayed for reasons not attributable to Sellers beyond the date of the bill(s) of lading computed from the first working day after the bill(s) of lading date up to the day documents are presented, both days inclusive.

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).

### (c) Documents

Sellers shall receive complete documentary instructions including splits and the name of the superintendents chosen not less than 5 working days prior to the vessel's expected readiness to load. For the purpose of this contract shipping documents shall consist of: -

(i) Full set of original clean on board bill(s) of lading in negotiable and transferable form or clean blank endorsed mate's receipts. Either party may request mate's receipts to be issued for partial or daily loaded quantities.

(ii) Certificates of origin issued by the Argentine Chamber of Commerce or Argentine Chamber of Exporters.

(iii) Superintendents' Certificates of weight, quality, and condition. Buyers shall accept Sellers' letter of guarantee for such certificate(s) if missing, but Buyers' rights shall not be affected thereby when such certificate(s) are eventually available.

(iv) Commercial invoice.

Sellers shall assist Buyers in regard to any additional documents not required for payment and any costs in this respect shall be for Buyers' account.

No clerical error in the documents shall entitle the 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.

### (d) Bills of Lading

(i) Sellers shall follow instructions/requirements of Buyers and/or vessel's agents and/or master regarding bill of lading forms to be used and conditions to be inserted therein, but Sellers assume no responsibility for the correctness of same. Sellers are not obliged to issue bills of lading other than to order and blank endorsed.

(ii) If the bill of lading refers to a charter party and/or any other document relating to the freight booking, Buyers warrant and guarantee to indemnify Sellers and hold them harmless against any detrimental consequences for clauses of such document, provided delivery is made in accordance with the terms of the contract.

(iii) If freight paid or freight pre-paid bill(s) of lading are requested, Buyers shall pay freight plus any taxes and expenses in sufficient time so that the bill(s) of lading are released at the end of the first business day following the day when the bill(s) of lading are presented to the vessel's agents in Buenos Aires.

(iv) In any of the above situations Sellers shall at their discretion have the right to demand that Buyers expressly hold them harmless of any possible consequences, charge Buyers interest in case of delay in release of bills of lading according to the Interest Clause, or demand payment against mate's receipt instead of bill of lading, as the case may be.

(v) Buyers shall accept as clean any mate's receipt or bill of lading showing a weight ascertained by the superintendents, irrespective of any remarks concerning a different weight determined by the shipowner or his servant. In the event of there being any difference in such weights this shall not entitle Buyers to withhold or delay payment.

(vi) If mate's receipts are presented for payment, Sellers shall be entitled to instruct vessel's agents that the bill(s) of lading may only be issued in exchange for the original mate's receipt.

## **12. FUTURES**

If the price is to be fixed basis Chicago Mercantile Exchange (CME) the following shall apply:

- (a) Futures in exchange, Sellers' give-up. Price to be fixed and futures to be given up not later than 5 consecutive days prior to the first day of the period of delivery, or no later than 2 business days prior to the First Notice Day of the applicable CME futures month serving as basis for the pricing of the contract, whichever is earlier.
- (b) Sellers to give up a number of future contracts to the nearest of the mean quantity stated in the contract.
- (c) Tolerance to be settled as determined by the parties, at contract premium or at contract price.
- (d) In case tolerance is to be settled at contract premium and is settled after the First Notice Day of the original underlying futures month, then it must be settled basis the next futures month, adjusting the contract premium for Board spread prevailing at close of CME 2 business days prior to the First Notice Day of the original futures month serving as a basis.
- (e) All exchange of futures shall be made within the range of price prevailing on the future market on the day of the exchange.
- (f) For the purpose of conversion one tonne of 1,000 kilograms equals 1.1023 short tons of soyabean meal.

## **13. INSURANCE**

In accordance with Gafta Insurance Terms No. 72 marine and war risk insurance basis WA with 3% franchise or better terms, including strikes, riots, civil commotion and mine risks to be effected by Buyers with first class underwriters and/or approved companies for at least the contract value plus 2% protecting the interest of Buyers and/or Sellers, as interests may appear; once the goods are delivered on board, all risks including all average to be for account of Buyers. Sellers shall receive confirmation together with documentary instructions that insurance according to these terms and at Buyers' expense has been covered. If Buyers fail to provide such confirmation, Sellers have the right to place their own insurance according to the terms of this clause at Buyers' risk and expense. If requested by Sellers, Buyers shall submit to Sellers a copy of the certificate and/or policy. Buyers agree to accept shipping documents containing the Chamber of Shipping War Deviation Clause and/or other recognised War Risk Clauses.

## **14. EXPORT/IMPORTS LICENCES**

Export licence if required, to be obtained by Sellers. Import licence if required, to be obtained by Buyers.

## **15. WEIGHING, SAMPLING AND ANALYSIS**

- (a) The shore weight to be determined and certified by a GAFTA registered independent superintendent in Argentina at Buyers' choice, and for Sellers' account.
- (b) Samples shall be taken at time and place of loading by a GAFTA registered independent superintendent at Buyers' choice and for Sellers' account. Analysts shall be appointed from the GAFTA register of analysts in Argentina.
- (c) The terms and conditions of GAFTA Weighing Rules No.123, GAFTA Sampling Rules No.124, and GAFTA Methods of Analysis No.130, are deemed to be incorporated into this contract, where they are not in contradiction with the express terms contained herein.

## **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. DOCUMENTS BY PASS (STRING)**

(a) In case of resales in string any party involved may propose a documents bypass whereby the first or a subsequent seller is to present documents at his own price directly to the last or a previous buyer.

(b) Such proposal is to be made in good time prior to commencement of loading of the nominated vessel and to contain names of sellers and buyers in the string, their individual prices and the suggested settlement of price differentials.

(c) All parties in the string may in their own absolute discretion refuse or agree without prejudice to their rights and obligations under their own contract, and the proposal will be declared in force only if all parties in the string have confirmed their agreement, otherwise it will be declared failed. Agreement by each party shall include their express acceptance of the Arbitration Clause and of the Insolvency Clause. Either declaration, in force or failed, to be notified without delay to all parties involved by the party having made the original proposal.

(d) If no such declaration is received by the time of the vessel has started to load, the first seller may withdraw his agreement and present documents to his own buyer, or at his option charge interest at the rate stipulated in the Interest Clause for any time lost in presentation of documents.

(e) When a string proposal is declared in force, each party shall be deemed to have entered into a contract with all other parties in the string (who also are trading on the same terms), including express agreement by all parties to arbitration and to the application of the Insolvency Clause. It shall also be deemed to have transferred automatically from the first to the last buyers the obligation to pay for the goods and to cover insurance in accordance with the Insurance Clause. Likewise the acceptance of a string proposal by the parties other than the first seller and the last buyers shall constitute their firm commitment to pay any price differentials and other monies due.

(f) Should the nominated vessel for a string already in force be substituted, totally or in part, the first seller is under no obligation to commence loading the substitute vessel prior to the receipt of his own counterparty's agreement.

(g) Despite agreeing without prejudice to a document bypass proposal, all the parties' rights and obligations under their individual contracts, save as amended by operation of the agreed bypass, shall remain fully in force. Prior to the presentation of documents to the end buyer any party in the string may in the event in the unforeseen and serious circumstances, including the insolvency or threatened insolvency of any party in the string, withdraw agreement giving immediate notice of such withdrawal to all other parties. The documents shall then be presented through the string between individual counter-parties.

(h) To permit settlement of price differentials the end buyer in the string shall without delay confirm receipt of shipping documents and the exact quality shipped to all parties involved, and price differentials as agreed shall then be paid within 48 hours from receipt of the relevant debit note. Carrying charges and/or quality allowances, if due, shall be settled between individual counter-parties. Interest shall be charged in the event of late payment of any invoice or debit note.

(i) All Sellers and Buyers under contracts containing the Documents By-Pass 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 in accordance with the Arbitration Clause of this contract.

## **18. NOTICES**

All notices required to be served on the parties pursuant to this contract shall be communicated 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.

## **19. 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.

## **20. 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.

## **21. 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 circle is established before the goods are delivered, or 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 contract 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.

## **22. INSOLVENCY**

If before the fulfilment of this contract, either party shall suspend payments, 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, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or 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 Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus 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. 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. 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.

## **23. 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.

## **24. 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.

## **25. 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.

## **26. PHYTOSANITARY CERTIFICATE**

Where the provision of a phytosanitary certificate has been agreed between the parties, the Seller shall use its reasonable endeavours to supply, at its 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 the Seller is not aware of the named country of import.

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

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