

# Contract No.38



Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR GRAIN FROM ARGENTINA IN BULK FOB 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  
10 **2. QUANTITY**.....% more or less at Buyers' option at contract price, tolerance to be  
11 declared upon each nomination, and the margin shall be affected thereby. In the event of more than one delivery  
12 being made each delivery shall be considered a separate contract.

13  
14 **3. PRICE-** delivered Free on Board Buyers' vessel in bulk at .....

15  
16 **(a)** \*at US\$.....

17 per tonne of 1,000 kilograms;

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

19  
20 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or  
21 not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract  
22 under the terms of the Prevention of Delivery Clause. Brokerage shall be due on the day shipping documents are  
23 exchanged, or if the goods are not delivered then the brokerage shall be due on the 30<sup>th</sup> consecutive day after the  
24 last day for delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with  
25 the arbitration clause.

26  
27 **5. QUALITY**.....

28 Superintendent's certificate of inspection, at time and place of loading into the ocean-carrying vessel, in  
29 accordance with the Weighing, Sampling and Analysis Clause, shall be final as to weight, quality and condition.  
30 For the purposes of sampling and analysis each parcel shall stand as a separate shipment. The right of rejection  
31 provided by this clause shall be limited to the parcels found to be defective.

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

33  
34 **6. PERIOD OF DELIVERY**

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

36 **(b)Nomination of Vessel.** Buyers shall nominate vessel in time for Sellers to receive at least 10 consecutive  
37 days' notice of vessel's expected time of arrival and Sellers shall be under no obligation to load prior to the  
38 expiry of such 10 consecutive days. Such nomination shall contain name and flag of vessel, demurrage rate,  
39 estimated quantity to be loaded, expected arrival date, agents at loading port, and final country of destination.  
40 Nomination once given or passed on shall not be withdrawn, unless the vessel is unable to proceed to the load  
41 port due to an event outside Buyers' control. The original delivery period and any extension shall not be affected  
42 thereby. For nominations of lots below 1,000 tonnes or loading, for reasons not attributable to Sellers, of less

43  
44 than 1,000 tonnes, charges at the rate of .....shall be added to the invoice for  
45 Buyers' account.

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

48 (d) In any month containing an odd number of days the middle day shall be accepted as being in both halves of the  
49 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.  
50

51 **7. SHIPMENT AND CLASSIFICATION**

52 Shipment by first class mechanically self-propelled vessel(s) suitable for the carriage of the contract goods,  
53 classed in accordance with the Institute Classification Clause of the International Underwriting Association in  
54 force at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or  
55 described in Lloyd's Shipping Index as "Ore/Oil" vessels.  
56

57 **8. LOADING**

58 Once the vessel is berthed alongside a berth suitable to Sellers ready to load and the holds on inspection are found  
59 to be clean, dry and fit to receive the cargo, Sellers guarantee, provided the vessel is able to receive, a minimum  
60 average loading rate of 1,500 tonnes per weather working day of 24 consecutive hours, holidays, Saturday  
61 afternoons and Sundays excluded even if used. Sellers shall not be responsible for time lost due to act of God,  
62 strikes, lockouts, riots and civil commotion, breakdown of machinery and/or winches, failure of power, fire or other  
63 similar cause which prevents loading. Demurrage rate as per charter party, no despatch is due by Buyers to Sellers.  
64 Any extra charges for loading single and/or tween deckers (self-trimming bulk carriers excluded) and in any  
65 space/hold/tank other than main holds shall be for Buyers' account and liquidated at the current costs at time and  
66 place of loading.  
67

68 **9. EXTENSION OF DELIVERY**

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

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

77 Any new and/or increase in existing export duties, taxes, levies etc, between those applying during the original  
78 delivery period and those applying during the period of extension, shall be for the account of Buyers.  
79

80 **10. CARRYING CHARGES**

81 (a) Buyers shall pay Sellers carrying charges if the nominated vessel does not file with the Argentine Port  
82 Authorities before the expiry of the delivery period, or minimum 24 hours before the expiry of the delivery period  
83 if loading is to take place in upriver ports.

84 (b) A vessel shall be considered filed if she has registered with the Argentine Port Authorities or has arrived at the  
85 nominated loading port and is in all respects fit and ready to receive the cargo. Should the vessel be prevented  
86 from proceeding to the nominated port or berth of loading for reasons outside the vessel's control, she will be  
87 considered filed provided she has reached a point where she has been instructed to wait by the Argentine Port  
88 Authorities.

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

92 (d) If due, carrying charges to be paid by Buyers to Sellers shall be calculated from the first day following the last  
93 day of the delivery period specified in the contract until bill (s) of lading dates, bill(s) of lading issued on a day by  
94 day basis if Buyers so request, as follows:-  
95

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

97  
98 US\$ ..... per tonne per day from the 11<sup>th</sup> day inclusive until the 20<sup>th</sup> day inclusive;

99  
100 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  
101 lading date, if later.

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

103 (f) If extension has been claimed, Sellers shall if necessary complete loading the nominated vessel after expiry of  
104 the extension period provided she has filed within the above definitions and time limits, but Buyers shall be in  
105 default of fulfilment if, after claiming extension, the vessel has not filed at the port of loading (or as close thereto as  
106 permitted by the Argentine Port Authorities) at least 24 hours prior to the end of the extension period, and the date  
107 of default shall be the first business day following such period. In such event Buyers shall pay to Sellers (i) default  
108 damages if any, (ii) carrying charges accrued and calculated in accordance with the provisions of this clause. (In all

109 cases carrying charges as provided herein are to be considered in the nature of liquidated damages and, as such, no  
110 further proof of damages shall be required in substantiation thereof).

## 11. PAYMENT

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

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

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

122 (ii) if the bill(s) of lading are not at Sellers/Shippers' disposal at the end of the first business day following the  
123 day when bill(s) of lading are presented to vessel's agents in Buenos Aires, for any reasons beyond  
124 Sellers/Shippers' control, computed from the first working day after bill(s) of lading are presented to the agency  
125 up to the day they are released to Sellers/Shippers, both days inclusive,

126 (iii) if Buyers' complete documentary instructions have not been timely received and presentation of documents  
127 is delayed for reasons not attributable to Sellers beyond the date of the bill(s) of lading computed from the first  
128 working day after the bill(s) of lading date up to the day documents are presented, both days inclusive.

129 If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration.  
130 Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an award  
131 of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

### (c) Documents

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

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

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

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

141 (iv) Commercial invoice.

142 Sellers shall assist Buyers in regard to any additional documents not required for payment and any costs in this  
143 respect shall be for Buyers' account. No clerical error in the documents shall entitle Buyers to reject them or delay  
144 payment, but Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error.

### (d) Bills of Lading

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

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

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

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

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

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

## 12. FUTURES

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

168 (a) Futures in exchange, Sellers' give-up. Price to be fixed and futures to be given up not later than 5 consecutive  
169 days prior to the first day of the period of delivery, or no later than 2 business days prior to the First Notice Day  
170 of the applicable CME futures month serving as basis for the pricing of the contract, whichever is earlier.

- 171 (b) Sellers to give up a number of future contracts to the nearest of the mean quantity stated in the contract.  
172 (c) Tolerance to be settled as determined by the parties, at contract premium or at contract price.  
173 (d) In case tolerance is to be settled at contract premium and is settled after the First Notice Day of the original  
174 underlying futures month, then it must be settled basis the next futures month, adjusting the contract premium  
175 for Board spread prevailing at close of CME 2 business days prior to the First Notice Day of the original futures  
176 month serving as a basis.  
177 (e) All exchange of futures shall be made within the range of price prevailing on the future market on the day of  
178 the exchange.  
179 (f) For the purpose of conversion one tonne of 1,000 kilograms equals:  
180 (i) 36.7454 bushels of wheat, barley, rye, soyabeans  
181 (ii) 39.37 bushels of maize or sorghum  
182

### 183 **13. INSURANCE**

184 In accordance with Gafta Insurance Terms No. 72, marine and war risk insurance basis WA with 3% franchise or  
185 better terms, including strikes, riots, civil commotion and mine risks to be effected by Buyers with first class  
186 underwriters and/or approved companies for at least the contract value plus 2% protecting the interest of Buyers  
187 and/or Sellers, as interests may appear; once the goods are delivered on board, all risks including all average to be  
188 for account of Buyers. Sellers shall receive confirmation together with documentary instructions that insurance  
189 according to these terms and at Buyers' expense has been covered. If Buyers fail to provide such confirmation,  
190 Sellers have the right to place their own insurance according to the terms of this clause at Buyers' risk and expense.  
191 If requested by Sellers, Buyers shall submit to Sellers a copy of the certificate and/or policy. Buyers agree to accept  
192 shipping documents containing the Chamber of Shipping War Deviation Clause and/or other recognised War Risk  
193 Clauses.  
194

### 195 **14. EXPORT/IMPORT LICENCES**

196 Export licence if required, to be obtained by Sellers. Import licence if required, to be obtained by Buyers.  
197

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

- 199 (a) The shore weight to be determined and certified by a GAFTA registered independent superintendent in  
200 Argentina, at Sellers' choice and for Sellers' account.  
201 (b) Samples shall be taken at time and place of loading by a GAFTA registered independent superintendent at  
202 Sellers' choice and for Sellers' account. Analysts shall be appointed from the GAFTA register of analysts in  
203 Argentina.  
204 (c) The terms and conditions of GAFTA Weighing Rules No.123, GAFTA Sampling Rules No.124, and GAFTA  
205 Methods of Analysis No.130, are deemed to be incorporated into this contract, where they are not in  
206 contradiction with the express terms contained herein.  
207

### 208 **16. FUMIGATION**

209 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be  
210 incorporated into this contract.  
211

### 212 **17. PREVENTION OF DELIVERY**

213 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on  
214 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are  
215 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)  
216 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of  
217 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to  
218 transportation or navigation, or (l) any other event comprehended in the term "force majeure".  
219

220 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
221 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
222 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not  
223 later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the  
224 reasons therefor.  
225

226 If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then  
227 Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than  
228 the first business day after expiry of the 21 day period.  
229

230 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
231 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
232 shall be automatically cancelled.  
233

234 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers  
235 shall notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be  
236 extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence  
237 of the Event of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period  
238 of 14 consecutive days shall be allowed.

239  
240 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
241 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory  
242 evidence justifying the delay or non-fulfilment.

## 243 **18. DOCUMENTS BY-PASS (STRING)**

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

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

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

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

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

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

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

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

276 (i) All sellers and buyers under contracts containing the Documents By-Pass Clause shall be deemed to have  
277 entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all  
278 questions and claims between them or any of them in regard to the execution of this clause in accordance with the  
279 Arbitration Clause of this contract.

## 280 **19. NOTICES**

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

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

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

## 292 **20. NON-BUSINESS DAYS**

296 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,  
297 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
298 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended  
299 until the first business day thereafter. The period of delivery shall not be affected by this clause.

## 300 21. DEFAULT

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

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

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

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

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

315 (e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared then  
316 on the mean contract quantity and any option available to either party shall be deemed to have been exercised  
317 accordingly in favour of the mean contract quantity.

## 318 22. CIRCLE

319 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof, a  
320 circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the  
321 Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same  
322 description, from the same country of origin, of the same quality, and, where applicable, of the same analysis  
323 warranty, for delivery from the same port(s) of loading during the same period of delivery). Different currencies  
324 shall not invalidate the circle.

325 Subject to the terms of the Prevention of Delivery Clause in the contract, if the circle is established before the  
326 goods are delivered, or if the goods are not delivered, invoices based on the mean contract quantity, or if the  
327 goods have been delivered, invoices based on the delivered quantity, shall be settled by all buyers and their  
328 sellers in the circle by payment by all buyers to their sellers of the excess of the Sellers' invoice amount over the  
329 lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last date  
330 for delivery, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not  
331 later than 15 consecutive days after the circle is ascertained.

332 Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be  
333 replaced by the market price on the first day for contractual delivery and invoices shall be settled between each  
334 buyer and seller in the circle by payment of the differences between the market price and the relative contract  
335 price in the currency of the contract.

336 All sellers and buyers shall give every assistance to ascertain the circle and when a circle shall have been  
337 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between buyers  
338 and sellers in the circle, the non-presentation of documents by sellers to their buyers shall not be considered a  
339 breach of contract.

340 Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency  
341 Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided  
342 for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in  
343 the circle. In this event respective buyers shall make payment to their sellers or respective sellers shall make  
344 payment to their buyers of the difference between the closing out price and the contract price.

## 345 23. INSOLVENCY

346 23.1 If before the fulfilment of this contract, either party shall:

347 (a) suspend payments;

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

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

351 (d) propose either:

352 (i) a voluntary arrangement; or

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

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

355 (f) be subject to either:

- 359 (i) a notice of intention to appoint an administrator; or  
360 (ii) a notice of appointment of an administrator;  
361 (g) have an administration order made;  
362 (h) be subject to a winding up petition;  
363 (i) have a winding up order made;  
364 (j) have a receiver or manager appointed;  
365 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);  
366 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or  
367 (m) have a bankruptcy petition presented against him,

368 (any of which acts being hereinafter called an "**Act of Insolvency**")

369 then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act  
370 of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or  
371 the office-holder or other person representing the party committing the Act of Insolvency) that such notice  
372 was served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out  
373 at the market price ruling on the business day following the serving of the notice.

374 23.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of  
375 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first  
376 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the  
377 market price ruling on the first business day after the date when the Act of Insolvency occurred.

378 23.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the  
379 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the  
380 re-purchase or re-sale price shall be the amount payable or receivable under this contract.

#### 381 24. DOMICILE

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

#### 397 25. ARBITRATION

398 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or  
399 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No  
400 125, in the edition current at the date of this contract, such Rules are incorporated into and form part of this  
401 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the  
402 application of such Rules.

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

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

#### 415 26. INTERNATIONAL CONVENTIONS

416 The following shall not apply to this contract: -

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

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

- 422 (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the  
423 amending Protocol of 1980.  
424 (d) Incoterms.  
425 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this  
426 contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.  
427

428 **27. PHYTOSANITARY CERTIFICATE**

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

- 431 (a) After the date on which the contract has been entered into the named country of import changes its  
432 phytosanitary requirements or  
433 (b) As at the date on which the contract has been entered into the Seller is not aware of the named country of  
434 import.

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

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**(THE GRAIN AND FEED TRADE ASSOCIATION)**  
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