

Effective 1st September 2019

Contract No.40

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR GRAIN FROM ARGENTINA OR URUGUAY CARGOES/PART CARGOES/PARCELS IN BULK TALE QUALE – CIF/CIFFO/C&F/C&FFO 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 5% more or less in
Sellers' option at contract price/contract premium. In the event of more than one shipment being made each shipment to be considered a separate contract, but the margin on the mean quantity sold not to be affected thereby.

3. PRICE AND DESTINATION

At the price per tonne of 1,000 kilograms of

*cost, insurance and freight to

*cost, insurance and freight free out to

*cost and freight to

*cost and freight free out, to

4. 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:

(i) 36.7454 bushels of wheat, barley, rye, soyabeans

(ii) 39.37 bushels of maize or sorghum

5. BROKERAGEper 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 Shipment Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.

48 **6. WEIGHT AND QUALITY**

49 (Specifications and allowances).....

51
52 (a) The certificate of inspection at time and place of loading into ocean-carrying vessel shall be final as to weight
53 and quality in accordance with the Weighing, Sampling and Certificates of Analysis Clause, or

54 (b) For parcels only, weight and/or quality warranted at time and place of discharge in accordance with the
55 Weighing, Sampling and Certificates of Analysis Clause.

56 **Condition.** Shipment shall be made in good condition.

57
58 **7. PERIOD OF SHIPMENT**

59 As per bill(s) of lading dated or to be dated.....

60 The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted
61 as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of
62 days, the middle day shall be accepted as being in both halves of the month.

63
64 **8. PORT OF SHIPMENT-** from a port or ports in Argentina and/or Uruguay.

65
66 **9. SALES BY NAMED VESSELS**

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

68 (a) Position of vessel is mutually agreed between Buyers and Sellers;

69 (b) The word "now" to be inserted between the word "classed" in the Ship's Classification Clause;

70 (c) Appropriation Clause cancelled if sold "shipped".

71
72 **10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F TERMS**

73 (a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers shall
74 nominate the intended carrying vessel(s) to Buyers.

75 (b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the
76 terms of this clause.

77
78 **11. SHIP'S CLASSIFICATION**

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

83
84 **12. EXTENSION OF SHIPMENT**

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

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

90 1 to 4 additional days, 0.50%;

91 5 or 6 additional days, 1%;

92 7 or 8 additional days 1.50% of the gross contract price.

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

98
99 **13. APPROPRIATION**

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

102 (b) The notice of appropriation shall within 10 consecutive days from the date of the bill(s) of lading be served by
103 or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The
104 Non-Business Days Clause shall not apply.

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

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

(2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.
(d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

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

(f) Every notice of appropriation 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 which has been repeated in good faith.

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

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

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

14. PAYMENT

(a) Payment for 100% by telegraphic transfer shall be due within two working days after presentation of documents.-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 charges shall be for Buyers' account.

Where the contract calls for payment by Letter of Credit, such Letter of Credit shall be irrevocable and confirmed, payable at sight of contractual shipping documents for 100% of the invoice, and to be opened by Buyers within 7 consecutive days from the date of the Contract or 31 consecutive days before the first day of the shipment period, whichever is later.

Title to the goods shall not pass from Sellers to Buyers until full and final payment has been received. Amounts payable under this contract shall be settled without delay.

(b) Shipping Documents -.For the purpose of payment under this contract shipping documents shall consist of:

1. Invoice

2. Full set(s) of clean on board Bill(s) of Lading issued to order and blank endorsed, and/or Ship's Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank.

3. For CIF Terms, Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance

4. Certificate of origin issued by the Chamber of Commerce or Chamber of Exporters of the country of origin.

5. Superintendents' certificates of weight and quality at time and place of loading.

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

Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.

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

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

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

(f) 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.

(g) Interest – If there has been unreasonable delay in any payment, interest at 2.50% over the New York prime rate shall be charged from the first business day following the day when payment was due up to the day payment is received, both days inclusive. The terms of this clause do not override the parties' contractual obligation under sub-clause (a).

15. **INSURANCE**

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

(a) Risks Covered: -

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

War Clauses (Cargo) - Section 4 of Form 72

Strikes, Riots and Civil Commotions Clauses (Cargo) - Section 5 of Form 72

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

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

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

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

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

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

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

15.2 For Contracts Concluded on C & F, C&FFO Terms Buyers shall be responsible for obtaining insurance cover as per Clause 15.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.

16. **DUTIES, TAXES, LEVIES, ETC.**

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

17. **DISCHARGE**

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

(b) For C&FFO/CIFFO terms, the cost of discharge shall be for Buyers' account. Discharge shall be at the average rate of

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

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

18. WEIGHING, SAMPLING AND ANALYSIS CERTIFICATES

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.

18.1 For Weight and Quality final at time and place of loading. At time and place of loading the shore weight shall be determined and certified, and samples shall be taken by a Gafta registered independent superintendent, at Sellers' choice and for Sellers' account. Analysts shall be appointed from the Gafta Register of Analysts in Argentina.

18.2 For Weight and/or Quality final at time and place of discharge. Final settlement shall be made on the basis of gross delivered weights at time and place of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight occasioned by water and/or oil during the voyage. Samples shall be taken at time of discharge on or before removal from the ship or quay. The parties shall appoint superintendents, for the purpose of supervision and sampling of the goods from the Gafta Register of Superintendents. Analysts shall be appointed from the Gafta Register of Analysts.

19. FUMIGATION

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

20. PRO RATA- this clause applies where the goods are parcels sold on delivered weights.

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

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

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

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

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

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

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

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

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

(j) In the event that sub-clause (a) applies or that the goods subsequently become co-mingled, and that the goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro-rata between themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash and in the event of two or more discharging ports being involved, then the settlement price shall be the average of the market

prices on the last day of discharge in the respective ports.

21. PREVENTION OF SHIPMENT

"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 shipment period, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, 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. Sellers shall be entitled, from the cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for shipment 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.

22. 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 shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not invalidate the circle. Subject to the terms of the Prevention of Shipment Clause in the contract, if the goods are not appropriated, or, having been appropriated documents are not presented, invoices based on the mean contract 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 appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment 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 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.

23. NOTICES

All Notices required to be served on the parties pursuant to this contract shall be rapidly served in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always

subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

24. NON-BUSINESS DAYS

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

25. 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 no case shall damages 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 appropriated if any but, if no such quantity has been appropriated 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.
- (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Seller shall be deemed to be in default and the default date shall then be the first business day thereafter.

26. 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.

27. 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.

28. 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.

29. 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.

Sellers Buyers

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