

# Contract No.94

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR THE ARRIVAL OF GRAIN IN BULK RYE TERMS

\* delete/specify as applicable

Date .....

**SELLERS** .....

**INTERVENING AS BROKERS** .....

**BUYERS** .....

**1. GOODS** .....

**2. QUANTITY** .....tonnes, 5% more or less.

In the event of the quantity contracted for being for a full and complete cargo and/or cargoes the margin of contract quantity to be 10%, more or less, excess or deficiency over 5% shall be settled at the market price on the date of last bill of lading and on the quantity thereof; value to be fixed by arbitration, unless mutually agreed. In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin on the mean quantity sold shall not be affected thereby.

**3. PRICE**

At the price of .....

\* per tonne of 1000 kilograms } .....

} to.....

\* per ton of 1016 kilograms or 2240 lbs. } .....

**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 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 fulfilment.

**5. QUALITY**

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

\***Official** ..... certificate of inspection, or certification of inspection of ..... at time and place of loading into the ocean carrying vessel, shall be final as to quality. Buyers shall not be entitled to reject a tender of a higher grade of grain of the same colour and description.

\***Sample**. At time and place of shipment about as per sealed sample marked ..... in possession of ..... ; the word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

\***Natural Weight** .....kilograms per hectolitre warranted at time and place of discharge to be ascertained by GAFTA or other accepted Authority and any deficiency so determined to be allowed for off contract price, in accordance with the GAFTA Sampling Rules No. 124.

\***Admixture**. Any admixture of dirt and/or other foreign substance over 2% to be allowed for by Sellers at contract price, but any grain or seed other than the grain contracted for to be reckoned as foreign substances at half their quantities. The percentage of admixture to be determined by GAFTA, or its duly appointed analyst.

\***Moisture**. Moisture content guaranteed not to exceed .....to be ascertained by the ISO 712 standard,

\* (a) at time of loading, as per first class superintendents/competent authorities' certificate,

\* (b) at time of discharge

If the moisture content exceeds the guarantee Buyers shall have the right of rejection and the Default Clause shall then apply.

Difference in quality shall not entitle Buyers to reject except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

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

## 6. PERIOD OF FULFILMENT

(a) Sellers shall have complied with the provisions of this clause with the vessel having entered into Customs or registered with the port authority/pilot station at the discharge port.

(b) If the vessel has entered into Customs or registered with the port authorities at the discharge port before the period of fulfilment, the entry is deemed to have been effected on the first day of the period of fulfilment.

Sellers shall be responsible for any extra costs incurred through the premature entry at Customs or registration with port authorities/pilot station.

(c) The period of fulfilment ends with its last calendar day. If fulfilment is prevented due to the period ending on a non-business day, the preceding business day is deemed to be the last day of fulfilment.

## 7. SALES BY NAMED VESSELS

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

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

(b) The word "now" to be inserted before the word "classified" in the Shipment and Classification Clause;

(c) Advice of Shipment Clause cancelled if sold "shipped".

## 8. SHIPMENT AND CLASSIFICATION

Shipment from .....  
direct or indirect, with or without transshipment by first class mechanically self propelled vessel(s) suitable for the carriage of the contract goods, classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" Vessels.

## 9. EXTENSION OF FULFILMENT

Sellers shall be entitled, without notice, to an extension of the contract period for fulfilment by an additional period not exceeding 8 consecutive days, from the last day of the originally stipulated period of fulfilment.

Sellers shall make an allowance to Buyers, from the contract price, based on the number of days by which the originally stipulated period, without taking into consideration the Period of Fulfilment Clause par.(c), is exceeded, in accordance with the following scale: -

1 to 4 additional days, 0.50%;

5 or 6 additional days, 1%;

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

If, however, Sellers fail to fulfil within such 8 days, then the contract shall be deemed to have called for fulfilment during the originally stipulated period plus 8 days, at contract price less 1.50%, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

## 10. ADVICE OF SHIPMENT

(a) Sellers shall advise Buyers in due course, the name of the vessel and presumed quantity allocated to this contract and for information only the port of shipment and bills of lading date.

(b) An advice of shipment shall be served by Sellers or their Agents or Brokers either direct to the Buyers, or to their Agents or Brokers.

(c) Every advice of shipment 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.

(d) If the vessel enters into customs or registers with port authorities/pilot station during the period of fulfilment before receipt of advice of shipment any proven extra expenses incurred thereby shall be borne by Sellers.

(e) Prior to the arrival of the vessel, Sellers are entitled to withdraw the advice of shipment and advise Buyers in due course the name of another vessel(s).

## 11. PAYMENT

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

\* In exchange for and on presentation of shipping documents.

\* In exchange for shipping documents on or before arrival of the vessel within the period of fulfilment, at Buyers' option.

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

(b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading 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. Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for under the contract. 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 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) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their choice, in that event any additional collection costs shall be borne by Buyers.

(g) 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.

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

## 12. INSURANCE

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 Provisional 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.

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

### **13. 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.

### **14. DISCHARGE**

Vessel to discharge according to the custom of the port at Buyers' expense. Vessel to discharge afloat or safely aground: -

(a) within ..... running hours, weather permitting, or

(b) at an average rate of ..... per tonne per weather working day of 24 consecutive hours, plus any balance of time not used in loading, if reversible, whether in berth or not. Time between last working hours Friday/Saturday according to regulations governing discharging port(s) and 0800 hours next working day, or between 1700 hours on the last working day preceding a legal holiday and 0800 hours on the first working day thereafter, not to count in discharging unless used or the guaranteed laytime has expired. If laytime is exceeded, Buyers shall pay demurrage at the rate stipulated in the charter party. If documents are tendered which do not provide for discharging as above, or contain contrary stipulations, Sellers to be responsible to Buyers for all extra expenses incurred thereby. Discharge by grab(s) shall be permitted, unless specifically excluded at time of contract.

### **15. WEIGHING**

The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract. Unless otherwise agreed, 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. If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and expense, (in which case the Deficiency Clause will not apply).

### **16. DEFICIENCY**

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

### **17. RYE TERMS**

Condition guaranteed on arrival, (subject to any country damaged grain in the fair average quality of the season's crop), slight dry warmth not injuring the grain not to be objected to. In the event of goods arriving at destination damaged or out of condition, Buyers shall be entitled to an allowance for deterioration

calculated on a percentage based on the contract price to be fixed by arbitration unless mutually agreed.  
In the event of Buyers receiving an allowance from Sellers under this clause, Sellers and Buyers shall give all reasonable assistance to each other in the prosecution of the claim for recovery from shipowners and/or other parties. Any sum recovered under this clause shall be for the benefit of Sellers, and any proven reasonable expenses incurred by Buyers in connection with the claim shall be deducted.  
Buyers shall furnish Sellers on settlement of Rye Terms allowances with the usual documents required by average adjusters for preparation of average statement and return to Sellers the policy (ies) and/or certificates received from them and in addition documents for claiming against the ship or any party, failing which Buyers shall pay contribution to average as Sellers may be unable to recover in consequence.

## **18. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

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

## **19. DEEMED PERIOD OF SHIPMENT**

When the parties have agreed a Delivery Period, but not a Shipment Period, it is agreed between Buyers and Sellers that the period of fulfilment under this contract shall be preceded by a reasonable number of voyage days from origin to destination, and for the purpose of this contract, a deemed period of shipment of 31 days at origin shall precede those days.

## **20. 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.

## **21. DISCHARGING STRIKE/ICE**

In the event of a strike or lockout affecting the discharge of cargo at, or ice preventing the vessel reaching, the port of destination named in the contract the terms of the "Gencon" or "Synacomex" or "Britcon" Clause shall apply. If during any of the time allowed for fulfilment the port of destination is inaccessible because of ice to ships of the size required under the contract, and the Sellers are unable to charter for this reason, then

Sellers shall - by serving notice on Buyers - be entitled at the termination of such inaccessibility to as much time for fulfilment as was left for fulfilment prior to the commencement of the inaccessibility, with a minimum of 14 days always to be allowed for. Current charges in force at time of contract, after the date of the originally stipulated contract period of fulfilment to be for Buyers' account. The question of accessibility to be decided by Lloyd's Agent, if necessary.

## **22. NOTICES**

All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

## **23. NON-BUSINESS DAYS**

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

## **24. 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 a 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 or 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 advice of shipment quantity, provided that the advice(s) are within the contract quantity but, if no such quantities have been advised 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) In the event that Buyers have taken up and paid for shipping documents, but the vessel does not arrive during the contractual period of fulfilment, Buyers are entitled to reject the goods and ask for the payment to be refunded in exchange for shipping documents together with interest thereon but if Sellers have not accepted in writing Buyers rejection within 2 business days, Buyers are entitled to sell the goods against Sellers and maintain an action for recovery of any losses suffered.

(g) If Buyers do not elect to reject or sell against Sellers due to late entry into Customs of the vessels, or where applicable with port authorities/pilot station, any differences in import duties, taxes, levies or costs of a similar nature, between those applying during the original period of fulfilment and those applying at time of entry into Customs or where applicable at a freeport shall be for account of Sellers.

## **25. PRO RATA**

(a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of fulfilment 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 one or more Receivers are delivered in excess and one or more Receivers bears a shortage, 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 give 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 allowance 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.

## **26. CIRCLE**

Where Sellers repurchase 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 repurchased, 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 fulfilment). 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 advised, or, having been advised 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 of the originally stipulated period of fulfilment, 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 fulfilment 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.

## **27. 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 given 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.

## **28. 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.

## **29. 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.

## **30. INTERNATIONAL CONVENTIONS**

The following shall not apply to this contract: -



- 478 (a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform  
479 Laws on International Sales Act 1967.  
480 (b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.  
481 (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974  
482 and the amending Protocol of 1980.  
483 (d) Incoterms.  
484 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this  
485 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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