

Contract No.115

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

MOLASSES CONTRACT F.O.B. 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 AND ORIGIN crop year.

2. QUANTITY% more or less at Buyers' option at contract price.

3. PRICE

*per tonne of 1000 kilograms, }
} gross weight, delivered Free on Board Buyers' vessel(s) at
*per ton of 1016 kilos or 2240 lbs. }

4. BROKERAGE.....per 1000 kilograms 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 Delivery Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not delivered then the brokerage shall be due on the 30th consecutive day after the last day for delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

5. QUALITY.....
Of satisfactory quality and condition as it came from the centrifugals, free from all adulteration or contamination and without the addition of steam, water and any other foreign substances prior to or at time of loading.

*Containing minimum.....total sugars or total sugars as invert, and maximum% invert sugars,

and minimum degrees Brix, and/or maximum% moisture.

Condition. Delivery shall be made in good condition.

6. SHIP'S CLASSIFICATION

Shipment 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.

7. LOADING, LAYTIME AND DEMURRAGE

Buyers shall tender vessel(s) clean and fit in readiness to load,

betweenandboth dates inclusive.

Sellers shall be entitled to receive at least.....consecutive days' notice of probable readiness of vessel and of the estimated tonnage required. Buyers shall be allowed to make substitution of a vessel. Upon arrival of the vessel at the port(s) of loading, the Master or authorised representative shall serve Sellers six (6) hours notice of readiness to commence loading of the cargo, berth or no berth, and laytime is deemed to commence upon expiry of such notice or upon all fast on berth, whichever takes place first. Sellers shall load the cargo as fast as the vessel can receive, working continuously day and night for seven (7) days a week, holidays

included at no less than the minimum loading rate oftonne per hour as agreed between Buyers and Sellers. In the event of failure, for whatever reason, to load the cargo as described above, Sellers shall pay demurrage to Buyers at the rate specified in the Charter Party. All other terms as per IMOL '78 Charter Party. In any month containing an odd number of days the middle day shall be accepted as being in both halves of the month, except for pricing purposes the middle day shall be considered to be in the first half of the month.

8. BERTH

Sellers shall nominate at a date not later than the first day of the delivery period stated in the Loading, Laytime and

Demurrage Clause above, a safe berth which will accommodate vessels with a maximum length of

metres and with a maximum draft ofmetres at the declared port(s), to which Buyers' vessel may proceed, lie at during and depart from after loading, always safely afloat.

9. EXTENSION OF DELIVERY

The contract period of delivery shall be extended by an additional period of not more than 30 consecutive days, provided that Buyers serve notice claiming extension not later than the next business day following the last day of the delivery period. In this event Sellers shall carry the goods for Buyers' account and all charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers' account. Any differences in export duties, taxes, levies etc, between those applying during the original delivery period and those applying during the period of extension, shall be for the account of Buyers. If required by Buyers, Sellers shall produce evidence of the amounts paid. In such cases the Duties, Taxes, Levies Clause shall not apply. Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants shall be considered complete delivery of the contract on the part of Sellers.

10. PAYMENT

* (a) By cash in

on presentation of documents at

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 of Buyers furnish an approved guarantee in respect thereto.

* (b) By Letter of Credit. Buyers shall open an irrevocable letter of credit, in favour of Sellers, not later than

prior to the commencement of the contractual delivery period, for the % of the total contract value, plus the tolerance, if any. The Letter of Credit shall include provisions to cover the extension clause of the Contract. The Letter of Credit shall include provisions to cover the extension clause of the Contract including carrying charges and payment against warehouse warrants, and shall be valid at least for 30^t consecutive days after the expiration of the delivery period. Buyers and Sellers will bear their respective bank charges.

(c) 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-clauses (a) and (b).

11. TAXES, DUES, DUTIES, LEVIES - and any other charges on the molasses contracted shall be for Sellers' account if imposed by the country of origin and/or loading port. Sellers shall customs clear the goods for export. Sellers will be responsible for obtaining whatever export permits are necessary. Freight tax, if levied, shall be for Buyers' account.

12. INSURANCE/RISK

Marine insurance shall be covered by Buyers. Buyers shall supply Sellers with confirmation thereof at least 5 consecutive days prior to the expected readiness of the vessel(s). If Buyers fail to provide such confirmation Sellers shall have the right to place such insurance at Buyers' risk and expense. Risk of loss and/or damage to the molasses contracted shall transfer from Sellers to Buyers at the time when the molasses passes the permanent hose connection of the receiving vessel at the port(s) of loading.

13. WEIGHT

The weight of molasses loaded shall be established and agreed jointly by Buyers' and Sellers' representatives at the port(s) of loading by means of pneumercator readings of shore tank(s) or, in absence or inaccuracy of same, by

means of vessel's displacement and deadweight figures and/or by gauging of lighter(s) before and after loading, or as otherwise agreed. The molasses loading pipeline is to be full before loading commences. If any loss of molasses occurs between point(s) of weight gauging and Buyers' vessel's permanent hose connections, due to leakage and/or damage to pipelines, pumps and/or other equipment at port(s) of loading, an independent surveyor will be appointed by Buyers and Sellers to ascertain the quantity of molasses so lost, which will then be deducted from the overall weight measured.

14. TEMPERATURE OF MOLASSES - not to exceed 41 degrees Celsius at any stage before and during the loading operation.

15. SAMPLING

Every hour throughout the loading, a half-litre sample shall be drawn in the presence of Buyers' and Sellers' representatives from the sample points in all loading pipelines at the vessel's manifold(s). A composite sample of these half-litre samples will be thoroughly mixed on completion of loading and split into six (6) samples of approximately one (1) litre each, jointly sealed by Buyers' and Sellers' representatives and numbered. Nos. 1 and 2 of these shall be for the Buyers and Nos. 3 & 4 for the Sellers. Nos. 5 & 6 are to be held by Buyers' representative for future reference. Jointly sealed samples may also be taken from the tanks of Buyers' vessel for verification purposes.

16. ANALYSIS

Buyers and Sellers shall each send one loading sample to an independent laboratory of their choice for the determination of total sugars (sucrose and invert) and Brix degrees and/or moisture content. The results shall be exchanged as soon as possible and where possible not later than 1 month after loading. If these results differ by one percent (1.0%) or less for total sugars content or by one degree (1.0) or less for Brix and/or by one percent (1.0%) or less for moisture, the mean of the respective results shall be taken to represent the total sugars content and Brix degrees and/or moisture content of the molasses loaded. If the results differ by more than one percent (1.0%) for total sugars or by more than one degree (1.0) for Brix and/or by more than one percent (1.0%) for moisture, loading sample No: 5 shall be sent without delay to Central Scientific Laboratories, London for third analysis where necessary. In each case, out of the three results so obtained, the average of the two closest will be final and binding for Buyers and Sellers. Buyers and Sellers will pay for their respective analyses and share equally the cost of any third test. Methods of Analysis to be prescribed by GAFTA Methods of Analysis No.130 for the time being in force. Analysts shall state on the certificate of analysis what methods they have used.

17. PREVENTION OF DELIVERY

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

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

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

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

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

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

18. 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. For the purpose of serving notices in a string, any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. In case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa. A notice to the Brokers or Agent shall be deemed a notice under this contract.

19. NON-BUSINESS DAYS

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

20. NO WAIVER OF RIGHTS

The waiver by either party of any particular right under this contract shall not be construed as a waiver of any other rights.

21. DEFAULT

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

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

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

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

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

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

22. INSOLVENCY

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall 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.

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23. DOMICILE

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

24. ARBITRATION

- (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the application of such Rules.
- (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute or claim.
- (c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it being understood and agreed that the substantive merits of any dispute or claim shall be determined solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.

25. INTERNATIONAL CONVENTIONS

- The following shall not apply to this contract: -
- (a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967.
 - (b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.
 - (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.
 - (d) Incoterms.
 - (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

Sellers.....Buyers

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GAFTA

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