



# Contract No.79

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR UNITED KINGDOM AND IRELAND GRAIN IN BULK RYE TERMS – CIF/CIFFO/C&F/C&FFO TERMS

*\*delete/specify as applicable*

Date.....

1 **SELLERS** .....

2  
3 **INTERVENING AS BROKERS** .....

4  
5 **BUYERS** .....

6 have this day entered into a contract on the following terms and conditions.

7  
8 **1. GOODS IN BULK** .....

9  
10 **2. QUANTITY**..... tonnes, say 5% more or less.  
11 In the event of the quantity contracted for being for a full and complete cargo and/or cargoes the margin of  
12 contract quantity to be 10% more or less, excess or deficiency over 5% to be settled at the market price on date of  
13 last bill of lading and on the quantity thereof; value to be fixed by arbitration unless mutually agreed. In the event of  
14 more than one shipment being made each shipment to be considered a separate contract, but the margin on the  
15 mean quantity sold not to be affected thereby.

16  
17 **3. PRICE AND DESTINATION**  
18 At the price per tonne of 1,000 kilograms gross weight of .....

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20 \*cost, insurance and freight to.....

21  
22 \*cost, insurance and freight free out to .....

23  
24 \*cost and freight to .....

25  
26 \*cost and freight free out to .....

27  
28 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or  
29 not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract  
30 under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day shipping documents  
31 are exchanged, or if the goods are not appropriated then brokerage shall be due on the 30th consecutive day  
32 after the last day for appropriation. Any disputes arising out of this clause shall be referred to arbitration in  
33 accordance with the arbitration clause.

34  
35 **5. QUALITY**  
36 .....

37  
38 .....

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40 \* Final at time and place of loading as per GAFTA Registered Superintendents' Certificate at Sellers' choice and  
41 expense.

42  
43 **\*Warranted to contain** ..... at time and place of discharge.

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45 **\*Sample.** At time and place of loading about as per sealed sample marked .....  
46 in possession of .....; the word "about" shall mean the equivalent of 0.50% of the contract price.  
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Unless otherwise agreed 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 SHIPMENT**

As per bill(s) of lading dated or to be dated.....  
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 as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

**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 "classed" in the Shipment and Classification Clause;  
(c) Appropriation Clause cancelled if sold shipped.

**8. SHIPMENT AND CLASSIFICATION**

Shipment from .....  
direct or indirect, 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. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO TERMS**

(a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers shall nominate the intended carrying vessel(s) to Buyers.  
(b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the terms of this clause.

**10. EXTENSION OF SHIPMENT**

The contract period for shipment, if such be 31 days or less, shall be extended by an additional period of not more than 8 days, provided that Sellers serve notice claiming extension not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed. Sellers shall make an allowance to Buyers, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period 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, after having served notice to Buyers as above, Sellers fail to make shipment within such 8 days, then the contract shall be deemed to have called for shipment 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.

**11. APPROPRIATION**

(a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the presumed date of the bill of lading.  
(b) The notice of appropriation shall within 2 business days from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.  
(c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -  
(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

111 serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation  
112 either direct to the Buyers or to the Brokers.

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

116 (f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided  
117 that the sender is not responsible for such errors, and for any previous error in transmission which has been  
118 repeated in good faith.

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

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

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

## 12. PAYMENT

127 (a) **Payment** ..... % of invoice amount by cash in.....  
128 in exchange for and on presentation of shipping documents.

129 (b) **Shipping documents** – shall consist of – 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's  
130 Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery Order(s)  
131 if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. For CIF/CIFFO  
132 terms Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The  
133 Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other documents as called for  
134 under the contract. Buyers agree to accept documents containing the Chamber of Shipping War Deviation Clause  
135 and/or other recognised official War Risk Clause.

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

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

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

148 (f) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of their  
149 choice, in that event any additional collection costs shall be borne by Buyers.

150 (g) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall  
151 be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall on request furnish  
152 an approved guarantee in respect thereto.

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

## 13. DUTIES, TAXES, LEVIES, ETC.

160 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of  
161 origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination,  
162 shall be for Buyers' account. Where the goods become the subject of a European Union export refund in accordance  
163 with the EC regulations in force at time of export, they are not eligible for re-importation to the European Union.

## 14. INSURANCE

166 **14.1 For Contracts Concluded on CIF/CIFFO terms** Sellers shall provide insurance on terms not less  
167 favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz.: -

168 (a) Risks Covered: -

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

170 War Clauses (Cargo) - Section 4 of Form 72

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

172 (b) Insurers - The insurance to be effected with first class underwriters and/or companies who are domiciled or  
173 carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British

174 domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be  
175 responsible.

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

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

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

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

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

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

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

207 **14.2 For Contracts Concluded on C & F/C&FFO terms** Buyers shall be responsible for obtaining  
208 insurance cover as per Clause 14.1 above and shall, if required by Sellers, provide evidence to Sellers prior  
209 to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide  
210 evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.  
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## 212 213 **15. DISCHARGE**

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

216  
217 (a) within ..... running hours, weather permitting, or

218  
219 (b) at an average rate of ..... per tonne per weather working day of 24 consecutive hours, plus any  
220 balance of time not used in loading, if reversible, whether in berth or not. Time between last working hours  
221 Friday/Saturday according to regulations governing discharging port(s) and 0800 hours next working day, or  
222 between 1700 hours on the last working day preceding a legal holiday and 0800 hours on the first working day  
223 thereafter, not to count in discharging unless used or the guaranteed laytime has expired. If laytime is exceeded,  
224 Buyers shall pay demurrage at the rate stipulated in the charter party. If documents are tendered which do not  
225 provide for discharging as above, or contain contrary stipulations, Sellers to be responsible to Buyers for all  
226 extra expenses incurred thereby. Discharge by grab(s) shall be permitted, unless specifically excluded at time of  
227 contract.

## 228 229 **16. WEIGHING**

230 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.  
231 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place  
232 of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the  
233 extra expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight  
234 occasioned by water and/or oil during the voyage. If final at time and place of loading as per GAFTA registered  
235 superintendents' certificate at Sellers' choice and expense, (in which case the Deficiency Clause will not apply).  
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**17. 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).

**18. ALLOWANCES**

(a) **Natural Weight** - to be ascertained by GAFTA or other accepted authority and any deficiency so determined to be allowed for off the contract price in accordance with the GAFTA Sampling Rules No.124.

(b) **Moisture** - any excess in the guaranteed maximum moisture content shall be allowed for off the contract price on the following scale:

1% for 1% up to the first 1% excess.

1.50% for 1% of the excess over the first 1% up to 2%.

2.50% for 1% of the excess over 2% up to 3%.

Fractions in proportion.

If the excess exceeds 3%, the allowance to be mutually agreed or settled by arbitration.

(c) **Admixture** - any admixture of dirt and/or other foreign substance in excess of the guaranteed maximum shall 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 Analysts.

**19. 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.

**20. FUMIGATION**

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

**21. 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.

**22. 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.

300 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
301 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
302 shall be automatically cancelled.  
303

304 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers  
305 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the  
306 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of  
307 Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14  
308 consecutive days shall be allowed.  
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310 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
311 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory  
312 evidence justifying the delay or non-fulfilment.  
313

### 314 **23. DISCHARGING STRIKES/ICE**

315 In the event of a strike or lock-out affecting the discharge of the cargo at, or ice preventing the vessel reaching the  
316 port of destination named in the contract, the terms of the "Gencon" or "Synacomex" or "Britcon" Clauses to apply.  
317 If during any of the time allowed for shipment the port of destination is inaccessible because of ice to ships of the  
318 size required under this contract, and the Sellers are unable to charter for this reason, then Sellers shall by serving  
319 notice on Buyers, be entitled at the termination of such inaccessibility to as much time for shipment as was left for  
320 shipment prior to the commencement of the inaccessibility, with a minimum of 14 days always to be allowed for.  
321 Current charges in force at time of contract, after the date of the originally stipulated contract period of shipment to  
322 be for Buyers' account. The question of accessibility to be decided by Lloyd's Agent, if necessary.  
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### 324 **24. PRO RATA**

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

328 (b) All loose collected, damaged goods and sweepings shall be shared by and apportioned pro-rata in kind between  
329 the various

330 Receivers thereof at the port of discharge named in the contract, buying under contracts containing this clause. In  
331 the event of this not being practicable or any of them receiving more or less than his pro-rata share or  
332 apportionment, he shall settle with the other(s) on a pro-rata basis in cash at the market price and each Receiver  
333 shall bear his proportion of the depreciation in market value. The pro-rata statement shall be established by the  
334 Sellers or their Representatives in conjunction with the Receivers or their Representatives.

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

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

342 (e) If one or more Receivers are delivered in excess and one or more Receivers bears a shortage, the excess and  
343 deficiency shall be settled between them at the market price. Invoices shall be established with immediate Sellers  
344 for any balance resulting from this settlement.

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

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

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

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

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

363 of discharge in the respective ports.

364  
365 **25. CIRCLE**

366 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof, a  
367 circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the  
368 Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same  
369 description, from the same country of origin, of the same quality, and, where applicable, of the same analysis  
370 warranty, for shipment to the same port(s) of destination during the same period of shipment). Different  
371 currencies shall not invalidate the circle. Subject to the terms of the Prevention of Shipment Clause in the  
372 contract, if a circle is established prior to the goods being appropriated to all parties in the circle, settlement shall  
373 be based on the mean contract quantity. However, where a circle is established after the goods have been  
374 appropriated to all parties in the circle, settlement shall be based on the appropriated quantity. No circle  
375 settlement shall apply where documents have been presented to and paid by one of the parties in the circle.  
376 Settlement shall be made between the parties in the circle by payment by all Buyers to their Sellers of the excess  
377 of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than  
378 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry  
379 of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained. Where  
380 the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the  
381 market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his  
382 Seller in the circle by payment of the differences between the market price and the relative contract price in  
383 currency of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a  
384 circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle.  
385 As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall  
386 not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit  
387 any act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall be  
388 calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for  
389 settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make  
390 payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the  
391 closing out price and the contract price.

392  
393 **26. NOTICES**

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

403  
404 **27. NON-BUSINESS DAYS**

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

409  
410 **28. DEFAULT**

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

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

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

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

420 (d) In no case shall damages include loss of profit on any sub-contracts made by the party defaulted against or  
421 others unless the arbitrator(s) or board of appeal, having regard to special circumstances, shall in his/their sole  
422 and absolute discretion think fit.

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

426 (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then  
427 be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared  
428 then (notwithstanding the provisions stated in the Appropriation Clause), if notice of appropriation has not been  
429 served by the 4th business day after the last day for appropriation laid down in the contract, the Sellers shall be  
430 deemed to be in default, and the default date shall then be the first business day thereafter.

## 431 432 **29. INSOLVENCY**

433 29.1 If before the fulfilment of this contract, either party shall:

- 434 (a) suspend payments;
- 435 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to  
436 suspend payments of his debts;
- 437 (c) convene, call or hold a meeting of creditors;
- 438 (d) propose either:
  - 439 (i) a voluntary arrangement; or
  - 440 (ii) a restructuring plan under Part 26A Companies Act 2006;
- 441 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- 442 (f) be subject to either:
  - 443 (i) a notice of intention to appoint an administrator; or
  - 444 (ii) a notice of appointment of an administrator;
- 445 (g) have an administration order made;
- 446 (h) be subject to a winding up petition;
- 447 (i) have a winding up order made;
- 448 (j) have a receiver or manager appointed;
- 449 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
- 450 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
- 451 (m) have a bankruptcy petition presented against him,  
452 (any of which acts being hereinafter called an "**Act of Insolvency**")

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

458 29.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency,  
459 shall have the option of declaring the contract closed out at either the market price on the first business day after  
460 the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on  
461 the first business day after the date when the Act of Insolvency occurred.

462 29.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the  
463 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-  
464 purchase or re-sale price shall be the amount payable or receivable under this contract.

## 465 466 **30. DOMICILE**

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

## 481 482 **31. ARBITRATION**

483 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or  
484 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No  
485 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this  
486 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the  
487 application of such Rules.

488 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal



489 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have  
490 been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the  
491 Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or  
492 board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any  
493 persons claiming under either of them to bring any action or other legal proceedings against the other of them in  
494 respect of any such dispute or claim.

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

500

501 **32. INTERNATIONAL CONVENTION**

502 The following shall not apply to this contract: -

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

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

506 (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the  
507 amending Protocol of 1980.

508 (d) Incoterms

509 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this  
510 contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

511

512 **33. METHODS OF ANALYSIS**

513 Unless otherwise agreed, the terms and conditions of GAFTA Methods of Analysis No. 130 are deemed to  
514 be incorporated into this contract.

515

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

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**GAFTA**  
**THE GRAIN AND FEED TRADE ASSOCIATION**  
**9 LINCOLN'S INN FIELDS, LONDON WC2A 3BP**