

# Contract No.80A

Copyright

THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR EU GRAIN IN BULK

PARCELS OR CARGOES

TALE QUALE - 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. PARCELS/CARGO (ES)** .....  
9 shipped in bulk.

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

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

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

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

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

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

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

35  
36 **5. QUALITY SPECIFICATIONS**  
37 .....

38  
39 .....

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

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

45  
46 \*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. 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 direct or indirect, from .....  
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 last bill 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.
- (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 last 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.

108 (d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered  
109 an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall  
110 serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or  
111 subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve  
112 notice of appropriation 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  
115 of the bill of lading shall prevail.

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

119 (g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby,  
120 such 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  
122 their consent.

## 12. PAYMENT

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

### (b) Shipping documents

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

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

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

145 (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other  
146 shipping documents be missing, payment shall be made provided that delivery of such missing documents is  
147 guaranteed, 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  
149 of their 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  
151 Sellers shall be responsible for all loss or expense caused to Buyers by reason of such error and Sellers shall  
152 on request furnish an approved guarantee in respect thereto.

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

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

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

## 14. INSURANCE

168 **14.1 For Contracts Concluded on CIF/CIFFO terms** Sellers shall provide insurance on terms not  
169 less favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms  
170 No.72 viz.:-

171 (a) Risks Covered:-

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

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

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

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

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

182 (d) Freight Contingency - When freight is payable on arrival or on right and true delivery of the goods and the  
183 insurance does not

184 include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such  
185 freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in  
186 the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a  
187 particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2%  
188 were insured from the time of shipment.

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

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

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

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

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

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

## 218 15. DISCHARGE

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

224 (b) **For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.

225  
226  
227 Discharge shall be at the average rate of ..... tonnes per Weather Working Day, Saturdays,  
228 Sundays, Holidays Excepted, Unless Used, (WWD SSEX UU), in which case actual time used to count.

229 Notice of Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether in Port  
230 or Not, (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON),  
231 Whether Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next  
232 working day. Rate of demurrage/despatch as per Charter Party. In the event of a time charter, the  
233 daily hire rate shall be taken as the rate of demurrage, half despatch.

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

#### 240 **16. WEIGHING**

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

#### 249 **17. DEFICIENCY**

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

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

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

#### 261 **19. FUMIGATION**

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

#### 265 **20. PREVENTION OF SHIPMENT**

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

273  
274 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of  
275 Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force  
276 Majeure, provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the  
277 occurrence or not later than 21 consecutive days before commencement of the shipment period, whichever  
278 is later, with the reasons therefor.

279  
280 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then  
281 Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later  
282 than the first business day after expiry of the 21 day period.

283  
284 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
285 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the  
286 contract shall be automatically cancelled.

287  
288 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled,  
289 Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be

290 entitled, from the cessation, to as much time as was left for shipment under the contract prior to the  
291 occurrence of the Event of Force Majeure. If the time that was left for shipment under the contract is 14  
292 days or less, a period of 14 consecutive days shall be allowed.

293  
294 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or  
295 non-fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required,  
296 satisfactory evidence justifying the delay or non-fulfilment.

## 297 298 **21. NOTICES**

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

## 309 310 **22. NON-BUSINESS DAYS**

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

## 316 317 **23. DEFAULT**

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

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

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

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

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

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

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

## 338 339 **24. PRO RATA**

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

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

350 (c) The above pro-rata apportionment between Receivers shall have no bearing on the establishment of final

351 invoices with Sellers and for the purpose of these invoices, the total quantity of loose collected, damaged  
352 goods and sweepings shall be regarded as delivered to those Receivers who did not receive their full invoiced  
353 quantity.

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

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

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

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

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

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

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

## 380 381 **25. CIRCLE**

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

412 **26. INSOLVENCY**

413 26.1 If before the fulfilment of this contract, either party shall:

- 414 (a) suspend payments;
- 415 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is  
416 about to suspend payments of his debts;
- 417 (c) convene, call or hold a meeting of creditors;
- 418 (d) propose either:
  - 419 (i) a voluntary arrangement; or
  - 420 (ii) a restructuring plan under Part 26A Companies Act 2006;
- 421 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- 422 (f) be subject to either:
  - 423 (i) a notice of intention to appoint an administrator; or
  - 424 (ii) a notice of appointment of an administrator;
- 425 (g) have an administration order made;
- 426 (h) be subject to a winding up petition;
- 427 (i) have a winding up order made;
- 428 (j) have a receiver or manager appointed;
- 429 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or  
430 amalgamation);
- 431 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
- 432 (m) have a bankruptcy petition presented against him,  
433 (any of which acts being hereinafter called an "**Act of Insolvency**")

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

440 26.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of  
441 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first  
442 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the  
443 market price ruling on the first business day after the date when the Act of Insolvency occurred.

444 26.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the  
445 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the  
446 re-purchase or re-sale price shall be the amount payable or receivable under this contract.

447  
448 **27. DOMICILE**

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

464  
465 **28. ARBITRATION**

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

471 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal  
472 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first



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

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

483  
484 **29. INTERNATIONAL CONVENTIONS**

485 The following shall not apply to this contract: -

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

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

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

491 (d) Incoterms.

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

494  
495 **30. METHODS OF ANALYSIS**

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

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

Printed in England and issued by

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