

# Contract No.6

Copyright  
THE GRAIN AND FEED TRADE ASSOCIATION



## CONTRACT FOR PET FOOD RAW MATERIALS FULL CONTAINER LOADS (FCLs) BULK OR BAGS FOB 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** ..... origin

9 in .....

10  
11 **2. QUANTITY**.....

12 full containers each estimated to contain.....

13  
14 **3. PRICE** .....

15 delivered Free on Board Buyers' vessel in bulk or bags, per tonne of 1,000 kilograms, gross for net weight.

16  
17 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods

18 lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the  
19 contract under the terms of the Prevention of Delivery Clause. Brokerage shall be due on the day shipping  
20 documents are exchanged or, if the goods are not appropriated then brokerage shall be due on the 30th  
21 consecutive day after the last day for delivery. Any disputes arising out of this clause shall be referred to  
22 arbitration in accordance with the arbitration clause

23  
24 **5. QUALITY**

25 \*Final at point of stuffing the container .....

26  
27 \*Final as per sealed sample at time and place of shipment/discharge, in the possession of .....

28  
29 **Condition.** Delivery shall be made in good condition.

30  
31 **Fumigation** .....

32  
33 **6. BILLS OF LADING**

34 Bill or bills of lading dated, or to be dated.....

35 The bill/s of lading shall be dated when the goods are handed over to the Container Consortia or their Agents.

36  
37 **7. DELIVERY PERIOD**

38 Delivery period of the stuffed container during .....

39  
40 Buyers to give .....day's pre-advice of nomination of the vessel.

41 In any month containing an odd number of days the middle day shall be accepted as being in both halves of the  
42 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.

43  
44 **8. PLACE OF DELIVERY**

At point of stuffing at the container depot, base, or terminal in .....

**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, unless the vessel presents in readiness to load within the contractual delivery period.

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. LOADING**

Vessel(s) to load the containers in accordance with the custom of the port of loading at Sellers' expense. Bills of lading shall be considered proof of shipment in the absence of evidence to the contrary. Bill or Bills of Lading dated, or to be dated on the day the container is loaded on the seagoing vessel.

**11. PAYMENT**

(a) Payment by cash in .....

against the following shipping documents..... and Fumigation Certificate, Certificate of Cleanliness of the container and Certificate stating the previous owner of the cargo.

(b) No clerical error in the documents shall entitle the 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.

(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-clause (a).

**12. EXPORT LICENCE** - if required, to be obtained by Sellers.

**13. DUTIES, TAXES, LEVIES, ETC.**

Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of origin, or the territory where the port or ports of shipment named herein is/are situate, shall be for Sellers' account.

**14. INSURANCE**

Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers shall have the right to place such insurance at Buyers' risk and expense.

**15. WEIGHING**

The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract. Final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and expense. Buyers have the right to attend at loading.

**16. 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 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.

**17. FUMIGATION**

110 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be  
111 incorporated into this contract.  
112

## 113 **18. PREVENTION OF DELIVERY**

114 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on  
115 behalf of the government of the country of origin or of the territory where the port or ports named herein is/are  
116 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)  
117 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of  
118 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to  
119 transportation or navigation, or (l) any other event comprehended in the term "force majeure".  
120

121 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
122 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
123 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later  
124 than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons  
125 therefor.  
126

127 If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers  
128 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first  
129 business day after expiry of the 21 day period.  
130

131 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
132 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall  
133 be automatically cancelled.  
134

135 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall  
136 notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be extended,  
137 from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event  
138 of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of 14  
139 consecutive days shall be allowed.  
140

141 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-  
142 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence  
143 justifying the delay or non-fulfilment.  
144

## 145 **19. CIRCLE**

146 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part  
147 thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the  
148 provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean  
149 goods of the same description, from the same country of origin, of the same quality, and, where applicable,  
150 of the same analysis warranty, for shipment to the same port(s) of destination during the same period of  
151 shipment). Different currencies shall not invalidate the circle.

152 Subject to the terms of the Prevention of Delivery Clause in the contract, if the goods are not appropriated,  
153 or, having been appropriated documents are not presented, invoices based on the mean contract quantity  
154 shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the  
155 excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due  
156 not later than 15 consecutive days after the last day for appropriation, or, should the circle not be  
157 ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days  
158 after the circle is ascertained.

159 Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be  
160 replaced by the market price on the first day for contractual shipment and invoices shall be settled  
161 between each Buyer and his Seller in the circle by payment of the differences between the market price  
162 and the relative contract price in currency of the contract.

163 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been  
164 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between  
165 Buyers and Sellers in the circle, the non presentation of documents by Sellers to their Buyers shall not be  
166 considered a breach of contract. Should any party in the circle prior to the due date of payment commit  
167 any act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall  
168 be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a  
169 basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers  
170 shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the  
171 difference between the closing out price and the contract price.  
172

## 173 **20. NOTICES**

174 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible  
175 form. Methods of rapid communication for the purposes of this clause are defined and mutually  
176 recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or  
177 other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden  
178 of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the  
179 satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the  
180 notice was actually transmitted to the addressee. In case of resales/repurchases all notices shall be served  
181 without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours  
182 on a business day shall be deemed to have been received on the business day following. A notice to the  
183 Brokers or Agent shall be deemed a notice under this contract.  
184

## 185 **21. NON BUSINESS DAYS**

186 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any  
187 days, which GAFTA may declare as non business days for specific purposes, shall be non business days.  
188 Should the time limit for doing any act or serving any notice expire on a non business day, the time so  
189 limited shall be extended until the first business day thereafter. The period of shipment shall not be  
190 affected by this clause.  
191

## 192 **22. DEFAULT**

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

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

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

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

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

205 (e) Damages, if any, shall be computed on the quantity called for if any but, if no such quantity has been  
206 declared then on the mean contract quantity, and any option available to either party shall be deemed to  
207 have been exercised accordingly in favour of the mean contract quantity.  
208

## 209 **23. INSOLVENCY**

210 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors  
211 that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his  
212 debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an  
213 administration order made, have a winding up order made, have a receiver or manager appointed,  
214 convene, call or hold a meeting to go into liquidation (other than for re construction or amalgamation)  
215 become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy  
216 Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the  
217 party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of  
218 Insolvency on the other party to the contract and upon proof (by either the other party to the contract or  
219 the Receiver, Administrator, Liquidator or other person representing the party committing the Act of  
220 Insolvency) that such notice was served within 2 business days of the occurrence of the Act of Insolvency,  
221 the contract shall be closed out at the market price ruling on the business day following the serving of the  
222 notice.

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

227 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the  
228 closing out of the contract by re-purchase or re sale, and the difference between the contract price and  
229 the re purchase or re sale price shall be the amount payable or receivable under this contract.  
230

## 231 **24. DOMICILE**

232 This contract shall be deemed to have been made in England and to be performed in England,  
233 notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance  
234 with the laws of England. Except for the purpose of enforcing any award made in pursuance of the  
235 Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any  
236 application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the  
237 exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a

238 dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association  
239 pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party  
240 shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed  
241 Trade Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be  
242 held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have  
243 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of  
244 proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade  
245 Association, together with the posting of a copy of such proceedings to his address outside England, shall  
246 be deemed good service, any rule of law or equity to the contrary notwithstanding.  
247

248 **25. ARBITRATION**

249 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or  
250 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No  
251 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this  
252 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the  
253 application of such Rules.

254 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal  
255 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have  
256 been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the  
257 Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or  
258 board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any  
259 persons claiming under either of them to bring any action or other legal proceedings against the other of them in  
260 respect of any such dispute or claim.

261 (c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain  
262 security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such  
263 legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it  
264 being understood and agreed that the substantive merits of any dispute or claim shall be determined  
265 solely by arbitration in accordance with the GAFTA Arbitration Rules, No 125.  
266

267 **26. INTERNATIONAL CONVENTIONS**

268 The following shall not apply to this contract: -

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

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

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

274 (d) Incoterms.

275 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to  
276 this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.  
277

278 **27. METHODS OF ANALYSIS**

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

Sellers ..... Buyer .....

Printed in England and issued by

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