

Effective 1st September 2019

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.....

SELLERS

INTERVENING AS BROKERS

BUYERS.....

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

1. GOODS origin

in

2. QUANTITY.....

full containers each estimated to contain.....

3. PRICE

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

4. BROKERAGE.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms of the Prevention of Delivery Clause. Brokerage shall be due on the day shipping documents are exchanged or, if the goods are not appropriated then brokerage shall be due on the 30th consecutive day after the last day for delivery.

5. QUALITY

*Final at point of stuffing the container

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

Condition. Delivery shall be made in good condition.

Fumigation

6. BILLS OF LADING

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

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

7. DELIVERY PERIOD

Delivery period of the stuffed container during

Buyers to giveday's pre-advice of nomination of the vessel.

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

8. PLACE OF DELIVERY

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

47
48
49 **9. EXTENSION OF DELIVERY**

50 The contract period of delivery shall be extended by an additional period of not more than 30 consecutive
51 days, provided that Buyers serve notice claiming extension not later than the next business day following
52 the last day of the delivery period. In this event Sellers shall carry the goods for Buyers' account and all
53 charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers'
54 account, unless the vessel presents in readiness to load within the contractual delivery period.

55 Any differences in export duties, taxes, levies etc, between those applying during the original delivery period and
56 those applying during the period of extension, shall be for the account of Buyers. If required by Buyers, Sellers shall
57 produce evidence of the amounts paid. In such cases the Duties, Taxes, Levies Clause shall not apply.

58 Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option
59 of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges
60 as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants
61 shall be considered complete delivery of the contract on the part of Sellers.
62

63 **10. LOADING**

64 Vessel(s) to load the containers in accordance with the custom of the port of loading at Sellers' expense. Bills of
65 lading shall be considered proof of shipment in the absence of evidence to the contrary. Bill or Bills of Lading
66 dated, or to be dated on the day the container is loaded on the seagoing vessel.
67

68 **11. PAYMENT**

69 (a) Payment by cash in
70

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

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

77 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved
78 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled
79 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract
80 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under
81 sub-clause (a).
82

83 **12. EXPORT LICENCE** - if required, to be obtained by Sellers.
84

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

86 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country
87 of origin, or the territory where the port or ports of shipment named herein is/are situate, shall be for Sellers'
88 account.
89

90 **14. INSURANCE**

91 Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers
92 with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at
93 least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers
94 shall have the right to place such insurance at Buyers' risk and expense.
95

96 **15. WEIGHING**

97 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this
98 contract. Final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers'
99 choice and expense. Buyers have the right to attend at loading.
100

101 **16. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

102 The terms and conditions of GAFTA Sampling Rules No.124 are deemed to be incorporated into this
103 contract. Samples shall be taken at the time and place of loading. The parties shall appoint
104 superintendents, for the purposes of supervision and sampling of the goods, from the GAFTA Register of
105 Superintendents. Unless otherwise agreed, analysts shall be appointed from the GAFTA Register of
106 Analysts.
107

108 **17. FUMIGATION**

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

111
112 **18. PREVENTION OF DELIVERY**

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

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

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

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

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

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

144 **19. CIRCLE**

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

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

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

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

172 **20. NOTICES**

173 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible
174 form. Methods of rapid communication for the purposes of this clause are defined and mutually

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

21. NON BUSINESS DAYS

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

22. DEFAULT

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

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

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

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

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

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

23. INSOLVENCY

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

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

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

24. DOMICILE

This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party

shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

25. ARBITRATION

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

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

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

26. INTERNATIONAL CONVENTIONS

The following shall not apply to this contract: -

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

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

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

(d) Incoterms.

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

Sellers Buyer

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