

Contract No.113

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR UNITED KINGDOM PRODUCED FEEDINGSTUFFS OF MARINE AND ANIMAL ORIGIN IN BAGS OR BULK.

**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

In bulk or in bags. If in bags, such bags to be taken and paid for as goods.

2. QUANTITY

3. PRICE AND TERMS- At
per tonne of 1000 kilograms

4. BROKERAGE at 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 Force Majeure Clause. Brokerage shall be due on the last day of the period of delivery.

5. QUALITY

***Warranted to contain:**

.....% Protein,..... % of Oil

.....% of Phosphorous, equal to

.....% of Bone%..... phosphate of Lime

.....% of Moisture

***Allowances for excess and/or deficiency**

Undesirable Substances. These goods are not intended for sale nor sold as being suitable for straight feedingstuffs, but are only suitable as raw materials for further processing and mixture with other materials as to which no warranty is given or to be implied as the percentage of these goods to be used in any such operation which are at Buyers sole risk.

Salmonella

(a) The goods shall be available for delivery as required under the Period of Delivery Clause irrespective of salmonella sampling/monitoring/testing.

(b) In the event however that the Government issues an order preventing the movement of the contractual goods prior to the expiry of the delivery period, Sellers shall serve a notice on Buyers within 2 business days of the order and the delivery shall then be delayed until the order is lifted, provided this does not exceed 30 consecutive days.

If the order delays delivery in excess of 30 consecutive days then Buyers shall have the option of cancelling the delayed portion of the contract. Such option to be exercised by Buyers serving notice to be received by Sellers not later than the first business day after the extended delivery period. If Buyers do not exercise this option, such delayed portion shall be automatically extended for a further period of 30 consecutive days.

If delivery be prevented for more than the further 30 consecutive days extension, the contract shall be cancelled.

In the event that payment has been made for the delivery orders/transfer orders/warehouse warrants as required under the Payment Clause and the goods are then subject to the provisions of the Government Order preventing the movement of the contractual goods during the delivery period, then any monies paid for goods forming part of this order shall be returned to Buyers for that portion of the contract so cancelled. Any monies due to be repaid under this clause shall be made within 7 days of notification that the contract or any portion of the contract has been cancelled.

Buyers shall have no claim against Sellers for delay or non-fulfilment under this clause provided that Sellers have supplied to Buyers, if required, satisfactory evidence justifying the delay.

6. DELIVERY PERIOD

7. PART DELIVERIES

Each delivery shall stand as a separate contract.

8. PAYMENT

(a) By Cash in

(b) **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).

9. WEIGHING

10. 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.

11. FUMIGATION

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

12. FORCE MAJEURE- Neither Buyers nor Sellers shall be responsible for delay in delivery of the goods or any part thereof occasioned by any Act of God, action by any Government, strike, lockout, combination of workmen, breakdown of machinery, power failure or fire, provided that notice is served in accordance with the Notices Clause to reach the Buyers/Sellers within 7 consecutive days of the other party's knowledge of the occurrence, but if the delivery shall be delayed for more than 30 consecutive days, the party who has suffered the delay shall have the option of cancelling the delayed portion of the contract, if not already in course of transit, by serving the other party notice to that effect, but shall not be entitled to any compensation for non-fulfilment. If this option is not exercised the delivery period for such delayed portion shall be extended by 30 consecutive days. If delivery under this clause be prevented during the further 30 days extension, the contract shall be considered void. Buyers shall have no claim against Sellers for delay or non-delivery under this clause, provided that Sellers shall have supplied to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

13. CIRCLE

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

Subject to the terms of the Force Majeure Clause in the contract, if the circle is established before the goods are delivered or if the goods are not delivered, invoices based on the mean contract quantity, or if the goods have been delivered invoices based on the delivered quantity, shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last date for delivery, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

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

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

14. NOTICES

All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. 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.

15. NON-BUSINESS DAYS

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

16. DEFAULT

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

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

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

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

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

(e) Damages, if any, shall be computed on the mean contract quantity.

17. INSOLVENCY

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall serve a notice of the occurrence of such Act of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred.

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

18. DOMICILE

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

19. 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.

20. 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; and

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

(d) Incoterms

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

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

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GAFTA

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