

# Contract No.106

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR TRANSHIPMENT FOB GOODS SHIPPED FROM ORIGIN WITH SUBSEQUENT DELIVERY AT DISCHARGE PORT TO BUYERS' VESSEL. PARCELS OR CARGOES

\* 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** .....

**2. QUANTITY** ..... 2% more or less.

Sellers shall have the option of shipping a further 3% more or less than the contract quantity. The excess above 2% or the deficiency below 2% shall be settled on the quantity thereof at market value on the last day of discharge of the vessel at the port of transshipment; the value to be fixed by arbitration, unless mutually agreed. Should Sellers exercise the option to ship up to 5% more, the excess over 2% shall be paid for provisionally at contract price. The difference between the contract price and the market price calculated in accordance with the provisions of this clause shall be adjusted in a final invoice. In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin on the mean quantity sold shall not be affected thereby.

**3. PRICE** .....

per tonne of 1000 kilograms, gross weight, delivered free on board Buyers' vessel at .....

**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 Shipment Clause. Brokerage shall be due on the day of payment, or if the goods are not shipped then brokerage shall be due on the 30th consecutive day after the last day for shipment/delivery period, as the case maybe. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

**5. QUALITY** .....

Specifications .....

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

**Damaged or Out of Condition Goods.** Buyers have the right to appoint superintendents to act for them at the transshipment port. Should damaged or out of condition goods be ascertained at the transshipment port, the Buyers or their Superintendents to decide whether such damaged or out of condition goods be transhipped, and to instruct Sellers accordingly.

**6. SHIPMENT AND DELIVERY** .....

Shipment/Delivery in one bottom, unless otherwise agreed.

\*a) Delivery ex shipment from country of origin as per bill/s of lading dated

Sellers' Advice of shipment shall include the ETA of the vessel and the name and contact details of Sellers' Forwarding Agents. Buyers or their Agents shall be responsible for contacting Sellers' Forwarding Agent in order to coordinate delivery by mutual agreement.

Should the vessel arrive at the transshipment port less than 2 business days after sellers' ETA and Advice of Shipment is served, any proven additional expenses incurred by Buyers shall be for Sellers' account. Sellers or their Forwarding Agents shall be responsible for keeping Buyers or their Agents duly advised of the vessel's arrival and discharge sequence and shall notify Buyers in sufficient time for Buyers to arrange to receive the goods without undue delay. Once so notified, if Buyers are prevented from receiving the cargo within 12 hours of the indicated time, any proven additional expenses shall for Sellers' account.

However, if Buyers having received sufficient notice, fail to provide transport or storage in due time, and the parties' respective agents are unable to resolve the issue, Sellers or their agents shall be entitled, after giving final written notice to Buyers, to discharge the goods into barge or other suitable storage for Buyers' account and delivery under the contract shall thereupon be deemed to be complete.

or,

\*b) Delivery at port of transshipment between.....

In case of contracts for delivery rather than shipment, Sellers shall serve notice of the vessel giving a reasonable ETA within the agreed period of delivery. Sellers shall not be in breach of the contract if the vessel arrives and tenders a valid notice of readiness on the final day of the delivery period. However, if the vessel is delayed, Sellers shall be entitled to claim an extension in accordance with the Extension Clause.

## **7. LOADING**

Vessel(s) to load in accordance with the custom of the transshipment port unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the contrary.

## **8. EXTENSION OF SHIPMENT/DELIVERY**

The contract period for shipment/delivery 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.

## **9. SHIP'S CLASSIFICATION**

Shipment 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.

## **10. ADVICE OF SHIPMENT**

(a) The advice of shipment shall state the vessel's name, the presumed weight shipped, and the date or the presumed date of the bill of lading, the ETA of the vessel and the details of the Sellers' forwarding agents.

(b) The advice of shipment shall within 8 consecutive days from the date of the bill(s) of lading be served by or on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-Business Days Clause shall not apply.

(c) The advice of shipment 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 the advice of shipment notice is received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill of lading, their notice of appropriation shall be deemed to be in time if served: -

(1) On the same calendar day, if received not later than 1600 hours on any business day, or

(2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.  
(d) An advice of shipment served on a Selling Agent or Brokers named in the contract shall be considered a notice served on Buyers. A Selling Agent or Brokers receiving an advice of shipment shall serve like notice in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the advice of shipment on the Selling Agent, such Selling Agent may serve the notice either direct to the Buyers or to the Brokers.  
(e) The bill of lading date stated in the advice of shipment shall be for information only and shall not be binding, but in fixing the period laid down by this clause for serving an advice of shipment the actual date of the bill of lading shall prevail.  
(f) Every advice of shipment shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.  
(g) Should the vessel arrive before receipt of the advice of shipment and any extra expenses incurred thereby, such expenses shall be borne by Sellers.  
(h) When a valid advice of shipment has been received by Buyers, it shall not be withdrawn except with their consent.

## **11. PAYMENT**

(a) Payment to be made by cash in ..... in exchange for invoice on the date of delivery at the transshipment port. If required by Sellers, the original bill(s) of lading or other documents of title shall be held by Sellers as security until payment is received.  
(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).

## **12. 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 transshipment, as per GAFTA registered superintendent certificate at Sellers' choice and expense. Buyers have the right to attend at loading.

## **13. 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 transshipment or before removal from the ship or quay, unless the parties agree that quality final at loading from origin 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.

## **14. FUMIGATION**

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

## **15. 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 as early as possible but in no case later than commencement of transshipment. If Buyers fail to provide such confirmation Sellers shall have the right to place such insurance at Buyers' risk and expense and shall not be obliged to commence loading until such insurance is in place.

## **16. DEEMED PERIOD OF SHIPMENT**

When the parties have agreed a Delivery Period but not a Shipment Period, it is agreed between Buyers and Sellers that the period of fulfilment under this contract shall be preceded by a reasonable number of voyage days from origin to destination, and for the purpose of this contract, a deemed period of shipment of 31 days at origin shall precede those days.

## **17. PREVENTION OF SHIPMENT**

"Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports named herein is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of

machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or navigation, or (l) any other event comprehended in the term "force majeure".

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

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

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

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

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

## **18. NOTICES**

(a) All notices required to be served on the parties pursuant to this contract shall be served in legible form by E-mail, or by other mutually recognised electronic method of rapid communication, always subject to the provision 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.

(b) 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, for the purpose of passing onto their sub buyers and sub sellers, to have been received on the business day following.

(c) A notice to the Brokers or Agent shall be deemed a notice under this contract.

## **19. 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.

## **20. 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 a 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 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, 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.

## **21. INSOLVENCY**

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

- (a) suspend payments;
  - (b) 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;
  - (c) convene, call or hold a meeting of creditors;
  - (d) propose either:
    - (i) a voluntary arrangement; or
    - (ii) a restructuring plan under Part 26A Companies Act 2006;
  - (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
  - (f) be subject to either:
    - (i) a notice of intention to appoint an administrator; or
    - (ii) a notice of appointment of an administrator;
  - (g) have an administration order made;
  - (h) be subject to a winding up petition;
  - (i) have a winding up order made;
  - (j) have a receiver or manager appointed;
  - (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
  - (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
  - (m) 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 office-holder 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.

21.2 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.

21.3 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.

## **22. 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 registered office 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.

## **23. 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.

#### **24. 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.

#### **25. PHYTOSANITARY CERTIFICATE**

Where the provision of a phytosanitary certificate has been agreed between the parties, Sellers shall use their reasonable endeavours to supply, at their own cost, a phytosanitary certificate in circumstances where:

(a) After the date on which the contract has been entered into the named country of import changes its phytosanitary requirements or

(b) As at the date on which the contract has been entered into Sellers are not aware of the named country of import.

#### **26. METHODS OF ANALYSIS**

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

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

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