

# Contract No.203

Copyright

THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT TERMS BIOMASS PRODUCTS IN BULK EX STORE/SILO

*\*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. **BIOMASS** (in bulk) ..... is the biodegradable  
9 fraction of products, waste and residues from agriculture (including vegetal and animal substances), forestry and  
10 related industries, as well as the biodegradable fraction of industrial and municipal waste to be used for the  
11 production of power under EU regulations.

12  
13 2. **QUANTITY** ..... per tonne of 1000 kilograms, plus or minus 1%.

14  
15 3. **PRICE** - at ..... per tonne of 1000 kilograms, ex store/silo

16  
17 .....  
18  
19 4. **BROKERAGE** ..... % of the contract price,  
20 to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled unless  
21 such non-fulfilment is due to the cancellation of the contract under the terms of the Prevention of Delivery  
22 Clause. Brokerage shall be due on the last day of the period of delivery.

23  
24 5. **QUALITY**.....  
25 **Condition.** Delivery shall be made in good condition.

26  
27 6. **PERIOD OF DELIVERY**.....  
28 If sold "prompt" the delivery period shall be deemed to be 14 consecutive days from the date of the contract. Sellers  
29 shall have the goods available for delivery in good condition when required by Buyers during the contract period.  
30 Each delivery period shall be considered a separate contract.

31  
32 7. **INVOICE AND DELIVERY ORDERS**  
33 Invoice and delivery orders shall be for the mean contract quantity.

34  
35 8. **INSURANCE**  
36 Sellers shall provide insurance cover for 14 days from the first date of the delivery period or from the expiry of 3  
37 days' notice under the Payment Clause, whichever be the later, at their cost. Thereafter for the account of Buyers.  
38 The goods are to be held covered for the invoice value of each delivery order plus 2% against any risk or loss due to  
39 fire/lightning/explosion. The insurance to be effected with first class underwriters and/or companies who are  
40 domiciled in the United Kingdom, or who for the purpose of any legal proceedings accept a British domicile and  
41 provide an address for service of process in London, but for whose solvency Sellers shall not be responsible. In the  
42 event of any loss or damage, Sellers shall provide Buyers without delay, on demand; evidence of such insurance as  
43 needed to recover any such loss from underwriters. Sellers and Buyers shall serve each other all reasonable  
44 assistance in the prosecution of claims.

45 **Rent:** For 14 days from due date of payment rent shall be for account of Sellers. Thereafter rent shall be for Buyers'  
46 account at

47  
48 the rate of .....  
49

50 **9. PAYMENT**

51 (a) Payment shall be by cash in..... on first presentation of and in exchange for Sellers' invoice, (serving  
52 delivery order reference number, location and description of goods), at the request of either party having served  
53 notice not less than 3 business days on or after the first day of the delivery period.

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

59  
60 **10. STORAGE**

61 The parties agree that imported dry bulk goods may only be stored in accordance with the requirements of the  
62 GTAS code of practice for storage.

63  
64 **11. DELIVERY WEIGHTS**

65 The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract.

66  
67 Ex store/silo weights shall be final. If the delivery exceeds or is deficient of the mean contract quantity by less than  
68 1% then settlement shall be based on the delivered quantity at the contract price. If the delivery exceeds the mean  
69 contract quantity by more than 1% then settlement of the total excess shall be based on the price ruling on the  
70 date of the last collection. If Sellers fail to provide goods when called for by Buyers during the delivery period to  
71 within 1% less than the mean contract quantity the deficiency shall be dealt with in accordance with the  
72 provisions of the Default Clause.

73 **Collection of goods: -**

74 If Buyers do not collect the goods within the delivery period then Sellers shall carry the goods at the rates set out in  
75 the Rent and Insurance Clauses. If however, after payment, the goods or any part thereof, are not in store when  
76 Buyers elect to collect them from the store the default shall be that date and the deficiency shall be settled in  
77 accordance with the Default Clause.

78 If Buyers, having paid for the goods, fail to collect within 30 consecutive days after the last day of the contractual  
79 delivery period, Sellers shall be entitled at any time after the said 30 days to serve 14 days notice in writing to  
80 deliver the quantity due for collection or delivery, either in whole or in part, to a third party store/warehouse at  
81 Buyers' risk with all charges for Buyers' account. For that portion thus moved the weight so established shall be the  
82 weight for final invoice purposes under this contract.

83  
84 **12. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

85 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed incorporated into this contract. The parties  
86 shall appoint superintendents, for the purposes of supervision and sampling of goods, from the GAFTA Register of  
87 Superintendents. Unless otherwise agreed, Analysis will be performed by an ISO 17025 accredited laboratory as  
88 listed on the GAFTA Register of Analysts for Biomass analysis

89  
90 **13. DEEMED PERIOD OF SHIPMENT**

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

95  
96 **14. PREVENTION OF DELIVERY**

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

103  
104 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force  
105 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,  
106 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not  
107 later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the  
108 reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, 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. The period of delivery shall be extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for delivery 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.

## **15. 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, of the same delivery period and, where applicable, of the same analysis warranty). Different currencies shall not invalidate the circle.

Subject to the terms of the Prevention of Delivery Clause in the contract, if the goods are not delivered, invoices based on the mean contract quantity (or if the goods have been delivered, on the invoice 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 day 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 delivery 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.

All 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. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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 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 be not served as aforesaid, 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.

## **20. 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.

## **21. 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.

## **22. 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..... Buyers.....

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