

# Contract No.99

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR SHIPMENT OF NORTH AMERICAN HIPRO (HIGH PROTEIN) SOYABEAN MEAL AND/OR PELLETS IN BULK TALE QUALE – CIF/C&F/C&F/CIFFO

\* 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.  
United States and/or Canadian Solvent Extracted Toasted Soyabean Meal in bulk. Wherever the word "meal" is used, this is agreed to mean meal and/or pellets at Sellers' option.

**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 shipment at market value on the last day of discharge of the vessel at the port of destination; 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 AND DESTINATION**  
At the price (\*per tonne of 1,000 kilograms/\*per ton of 1016 kilograms or 2240 lbs) gross weight of .....

\*cost, insurance and freight to

.....  
.....

\*cost, insurance and freight free out to .....

\*cost and freight to .....

\*cost and freight free out to .....

**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 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 appropriation. Any disputes arising out of this clause shall be referred to arbitration in accordance with the arbitration clause.

**5. QUALITY**  
**\*Official** ..... certificate of inspection, at time of loading into the ocean carrying vessel, shall be final as to quality.

**\* Warranted to contain** .....at time and place of discharge.

**\*Warranted to contain -**

- (a) Protein: not less than 48.50%, allowances 1% for 1% and fractions in proportion for deficiency.
- (b) Fibre: not more than 3.50% allowances 10% for 1% and fractions in proportion for excess.
- (c) Moisture: not more than 12.0% allowances 1% for 1% and fractions in proportion for excess.
- (d) The goods are warranted to contain not more than 1.50% of sand and/or silica. For any excess of sand and/or silica there shall be an allowance of 1% of the contract price of each unit of excess and proportionately for any fraction thereof. Should the goods contain over 3% of sand and/or silica the Buyers shall be entitled to reject the goods, in which case the contract shall be null and void, for such quantity rejected.
- (e) The goods are warranted free from castor seed and/or castor seed husk, but should the analysis show castor seed husk not exceeding 0.005%, Buyers shall not be entitled to reject the goods, but shall accept them with the following allowances: 0.75% of contract price if not exceeding 0.001%, 1% of contract price if not exceeding 0.002%, and 1.50% of contract price if not exceeding 0.005%.
- Should the first analysis show the goods free from castor seed and/or castor seed husk such analysis shall be final but in the event of the first analysis showing castor seed husk to be present a second sample may be analysed at the request of either party and the mean of the two analyses shall be taken as final. Should the parcel contain castor seed husk in excess of 0.005% Buyers shall be entitled to reject the parcel, in which case the contract shall be null and void for such quantity rejected. Nevertheless, should Buyers elect to retain the parcel they shall be entitled to a further allowance for any excess over 0.005% of castor seed husk, to be settled by agreement or arbitration.
- For the purpose of sampling and analysis each parcel shall stand as a separate shipment.
- The right of rejection provided by this clause shall be limited to the parcel or parcels found to be defective.
- Condition.** Shipment shall be made in good condition.

**6. PERIOD OF SHIPMENT**

As per bill(s) of lading dated or to be dated .....

The bill(s) of lading to be dated when the goods are actually on board. Date of the bill(s) of lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves of the month.

**7. SALES BY NAMED VESSELS**

For all sales by named vessels, the following shall apply: -

(a) Position of vessel is mutually agreed between Buyers and Sellers;

(b) The word "now" to be inserted before the word "classed" in the Shipment and Classification Clause;

(c) Appropriation Clause cancelled if sold "shipped".

**8. SHIPMENT AND CLASSIFICATION**

Shipment direct or indirect, with or without transshipment from United States and/or Canadian port or ports, 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 on force at the time of shipment.

**9. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F TERMS**

(a) At a date agreed between the Parties but in any event prior to the commencement of loading, Sellers shall nominate the intended carrying vessel(s) to Buyers. The vessel(s) nominated shall comply with the terms of the Institute Classification Clause and any other requirements as set out in the contract.

(b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the terms of this clause.

**10. EXTENSION OF SHIPMENT**

The contract period for shipment, 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.

108 **11. APPROPRIATION**

109 (a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the  
110 presumed date of the bill of lading.

111 (b) The notice of appropriation shall within 5 business days from the date of the bill(s) of lading be served by or  
112 on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-  
113 Business Days Clause shall not apply.

114 (c) Notice of appropriation shall, within the period stated in sub-clause (b) be served by or on behalf of subsequent  
115 Sellers on their Buyers or on the Selling Agent or Brokers named in the contract, but if notice of appropriation is  
116 received by subsequent Sellers on the last day or after the period stated in sub-clause (b) from the date of the bill  
117 of lading, their notice of appropriation shall be deemed to be in time if served: -

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

119 (2) Not later than 1600 hours on the next business day, if received after 1600 hours or on a non-business day.

120 (d) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an  
121 appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like  
122 notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers  
123 serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either  
124 direct to the Buyers or to the Brokers.

125 (e) The bill of lading date stated in the notice of appropriation shall be for information only and shall not be binding,  
126 but in fixing the period laid down by this clause for serving notices of appropriation the actual date of the bill of  
127 lading shall prevail.

128 (f) Every notice of appropriation shall be open to correction of any errors occurring in transmission, provided that  
129 the sender is not responsible for such errors, and for any previous error in transmission which has been repeated  
130 in good faith.

131 (g) Should the vessel arrive before receipt of the appropriation and any extra expenses is incurred thereby, such  
132 expenses shall be borne by Sellers.

133 (h) When a valid notice of appropriation has been received by Buyers, it shall not be withdrawn except with their  
134 consent.

135 (i) In the event of less than 95 tonnes being tendered by any one vessel Buyers shall be entitled to refund of any  
136 proved extra expenses for sampling, analysis and lighterage incurred thereby at port of discharge.

137  
138 **12. PAYMENT**

139 (a) **Payment** ..... % of invoice amount by cash in

140 .....  
141 \* In exchange for and on presentation of shipping documents;

142 \* In exchange for shipping documents on or before arrival of the vessel at destination, at Buyers' option;  
143 Sellers, however, have the option of calling upon Buyers to take up and pay for documents on or after

144 .....  
145 consecutive days from the date of the bill(s) of lading.

146 (b) **Shipping documents** – shall consist of - 1. Invoice. 2. Full set(s) of on board Bill(s) of Lading and/or Ship's  
147 Delivery Order(s) and/or other Delivery Order(s) in negotiable and transferable form. Such other Delivery  
148 Order(s) if required by Buyers, to be countersigned by the Shipowners, their Agents or a recognised bank. 3. For  
149 CIF/CIFFO terms Policy (ies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the  
150 contract. The Letter(s) of Insurance to be certified by a recognised bank if required by Buyers. 4. Other  
151 documents as called for under the contract. Buyers agree to accept documents containing the Chamber of Shipping  
152 War Deviation Clause and/or other recognised official War Risk Clause.

153 (c) In the event of a complete set of shipping documents not being available when called for by Buyers, or on  
154 arrival of the vessel at destination, Sellers may at their option, in exchange for payment by Buyers, provide a letter  
155 of indemnity entitling Buyers to obtain delivery of the goods. Such payment shall not prejudice Buyers' rights  
156 under the contract when shipping documents are available.

157 (d) Costs of collection shall be for account of Sellers, but if Buyers demand presentation only through a bank of  
158 their choice, in that event any additional collection costs shall be borne by Buyers.

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

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

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

170 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of  
171 origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of destination,  
172 shall be for Buyers' account.  
173

174 **14. DISCHARGE**

175 (a) **For CIF/C&F terms**, discharge shall be as fast as the vessel can deliver in accordance with the custom  
176 of the port, but in the event of shipment being made under liner bill(s) of lading, discharge shall be as fast  
177 as the vessel can deliver in accordance with the terms of the bill(s) of lading. The cost of discharge from  
178 hold to ship's rail shall be for Sellers' account, from ship's rail overboard for Buyers' account.

179 (b) **For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.  
180

181 Discharge shall be at the average rate of ..... tonnes per Weather Working Day, Saturdays, Sundays,  
182 Holidays Excepted, Unless Used, (WWD SSEX UU), in which case actual time used to count. Notice of  
183 Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port Or Not,  
184 (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON), Whether  
185 Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next working day. Rate  
186 of demurrage/despatch as per Charter Party. In the event of a time charter, the daily hire rate shall be taken  
187 as the rate of demurrage, half despatch.

188 (c) If documents are tendered which do not provide for discharging as above or contain contrary  
189 stipulations, Sellers shall be responsible to Buyers for all extra expenses incurred thereby. Discharge by  
190 grab(s) shall be permitted unless specifically excluded at time of contract. If shipment is effected by lash  
191 barge, then the last day of discharge shall be the day of discharging the last lash barge at the port of  
192 destination.  
193

194 **15. WEIGHING**

195 The terms and conditions of Gafta Weighing Rules No. 123 are deemed to be incorporated into this contract.  
196 Unless otherwise agreed, final settlement shall be made on the basis of gross delivered weights at time and place  
197 of discharge at Buyers' expense. If the place of destination is outside the port limits, Buyers agree to pay the extra  
198 expenses incurred by Sellers or their agents for weighing. No payment shall be made for increase in weight  
199 occasioned by water and/or oil during the voyage. If final at time and place of loading, as per Gafta registered  
200 superintendents' certificate at Sellers' choice and expense, the Deficiency Clause will not apply.  
201

202 **16. DEFICIENCY**

203 Any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading weight shall  
204 be paid for by Buyers at contract price, (unless the Pro-rata clause applies).  
205

206 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

207 The terms and conditions of Gafta Sampling Rules No.124 are deemed to be incorporated into this contract.  
208 Samples shall be taken at the time of discharge on or before removal from the ship or quay, unless the parties  
209 agree that quality final at loading applies, in which event samples shall be taken at time and place of loading. The  
210 parties shall appoint superintendents, for the purposes of supervision and sampling of the goods, from the Gafta  
211 Register of Superintendents. Unless otherwise agreed, analysts shall be appointed from the Gafta Register of  
212 Analysts.  
213

214 **18. FUMIGATION**

215 Where fumigation has been agreed, the terms and conditions of Gafta Fumigation Rules No. 132 shall be  
216 incorporated into this contract.  
217

218 **19. INSURANCE**

219 **19.1 For Contracts Concluded on CIF/CIFFO terms** Sellers shall provide insurance on terms not less  
220 favourable than those set out hereunder, and as set out in detail in Gafta Insurance Terms No.72 viz:-

221 (a) Risks Covered: -

222 Cargo Clauses (WA), with average payable, with 3% franchise or better terms - Section 2 of Form 72

223 War Clauses (Cargo) - Section 4 of Form 72

224 Strikes, Riots and Civil Commotions Clauses (Cargo) - Section 5 of Form 72

225 (b) Insurers - The insurance to be effected with first class underwriters and/or companies who are domiciled or  
226 carrying on business in the United Kingdom or who, for the purpose of any legal proceedings, accept a British  
227 domicile and provide an address for service of process in London, but for whose solvency Sellers shall not be  
228 responsible.

229 (c) Insurable Value - Insured amount to be for not less than 2% over the invoice amount, including freight when

freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyers.

(d) Freight Contingency - When freight is payable on arrival or on right and true delivery of the goods and the insurance does not include the freight, Sellers shall effect insurance upon similar terms, such insurance to attach only as such freight becomes payable, for the amount of the freight plus 2%, until the termination of the risk as provided in the above mentioned clauses, and shall undertake that their policies are so worded that in the case of a particular or general average claim the Buyers shall be put in the same position as if the C.I.F. value plus 2% were insured from the time of shipment.

(e) Certificates/Policies - Sellers shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable) for original and increased value (if any) for the value stipulated in (c) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall be exchanged by Sellers for a policy if and when required and such certificate shall state on its face that it is so exchangeable. If required by Buyers, letter(s) of insurance shall be guaranteed by a recognised bank, or by any other guarantor who is acceptable to Buyers.

(f) Total Loss - In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 2% over the invoice amount shall be for Sellers' account and the party in possession of the policy (ies) shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(g) Currency of Claims - Claims to be paid in the currency of the contract.

(h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in London at time of shipment.

(i) Where Sellers are responsible for allowances or other payments to Buyers under Rye Terms or other contractual terms, (and which risks are also covered by the insurance provided by Sellers), the Buyers, on receipt of settlement, shall immediately return to Sellers the insurance documents originally received from them and shall, if required, subrogate to Sellers all right of claim against the Insurers in respect of such matters.

**19.2 For Contracts Concluded on C & F/C&FFO terms** Buyers shall be responsible for obtaining insurance cover as per Clause 19.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.

## 20. 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.

## **21. 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.

## **22. 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.

## **23. PRO RATA**

(a) Should any of the above mentioned quantity form part of a larger quantity of the same or a different period of shipment of bags of the same mark, or of a similar quality, whether in bags or bulk or whether destined to more than one port, no separation or distinction shall be necessary.

(b) All loose collected, damaged goods and sweepings shall be shared by and apportioned pro-rata in kind between the various Receivers thereof at the port of discharge named in the contract, buying under contracts containing this clause. In the event of this not being practicable or any of them receiving more or less than his pro-rata share or apportionment, he shall settle with the other(s) on a pro-rata basis in cash at the market price and each Receiver shall bear his proportion of the depreciation in market value. The pro-rata statement shall be established by the Sellers or their Representatives in conjunction with the Receivers or their Representatives.

(c) The above pro-rata apportionment between receivers shall have no bearing on the establishment of final invoices with Sellers and for the purpose of these invoices, the total quantity of loose collected, damaged goods and sweepings shall be regarded as delivered to those receivers who did not receive their full invoiced quantity.

(d) In the case of excess or deficiency, the difference between the invoiced and the total delivered quantity shall be settled at the market price by final invoices to be rendered by Receivers, who have received more or less than that paid for, to their immediate Sellers without taking into consideration the above pro-rata apportionment between Receivers.

(e) If an excess quantity is delivered to one or more receiver and a deficient quantity is delivered to one or more Receiver, the excess and deficiency shall be settled between them at the market price. Invoices shall be established with immediate Sellers for any balance resulting from this settlement.

(f) All Shippers, Sellers and Buyers of any part of such larger quantity as aforesaid under contracts containing this clause shall be deemed to have entered into mutual agreements with one another to the above effect, and to agree to submit to arbitration all questions and claims between them or any of them in regard to the execution of this clause as aforesaid in accordance with the Arbitration Clause of this contract. Sellers and Buyers shall serve as all reasonable assistance in execution of this clause. All Sellers shall be responsible for the settlement by the respective Buyers in accordance with this clause within a reasonable time.

(g) The market price wherever mentioned in this clause shall be the market price on the last day of discharge of the vessel in the port of destination, such price to be fixed by arbitration unless mutually agreed.

(h) In the event of this clause being brought into operation, any allowances payable in respect of condition, or quality, or under any of the other guarantees contained in this contract, shall be based upon the actual weight received by the Buyers and not on the pro-rata weight.

(i) In the event of any conflict in terms of apportionment applicable to the port of discharge the method published by Gafta shall, where applicable, take precedence over sub-clauses (b) to (h) above.

(j) In the event that sub-clause (a) applies or that the goods subsequently become co-mingled, and that the goods were shipped by more than one shipper and destined for one or more ports of discharge then, after the adjustment between Receivers under the terms of this clause, the shippers shall settle pro-rata between themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash and in the event of two or more discharging ports being involved, then the settlement price shall be the average of the market prices on the last day of discharge in the respective ports.

353  
354 **24. DEFAULT**

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

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

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

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

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

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

369 (f) Sellers may declare themselves in default at any time after expiry of the contract period, and the default date shall  
370 then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared  
371 then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been  
372 served by the 5<sup>th</sup> business day after the last day for appropriation laid down in the contract, the Sellers shall be  
373 deemed to be in default and the default date shall then be the first business day thereafter.  
374

375 **25. CIRCLE**

376 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof, a  
377 circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default  
378 Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description,  
379 from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for  
380 shipment to the same port(s) of destination during the same period of shipment). Different currencies shall not  
381 invalidate the circle. Subject to the terms of the Prevention of Shipment Clause in the contract, if a circle is  
382 established prior to the goods being appropriated to all parties in the circle, settlement shall be based on the mean  
383 contract quantity. However, where a circle is established after the goods have been appropriated to all parties in  
384 the circle, settlement shall be based on the appropriated quantity. No circle settlement shall apply where  
385 documents have been presented to and paid by one of the parties in the circle. Settlement shall be made between  
386 the parties in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over  
387 the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day  
388 for appropriation, or, should the circle not be ascertained before the expiry of this time, then payment shall be due  
389 not later than 15 consecutive days after the circle is ascertained. Where the circle includes contracts expressed in  
390 different currencies the lowest invoice amount shall be replaced by the market price on the first day for  
391 contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of  
392 the differences between the market price and the relative contract price in currency of the contract. All Sellers  
393 and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in  
394 accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the  
395 circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.  
396 Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency  
397 Clause of his contract, settlement by all parties in the circle shall be calculated at the closing out price as provided  
398 for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount  
399 in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make  
400 payment to their Buyers of the difference between the closing out price and the contract price.  
401

402 **26. INSOLVENCY**

403 26.1 If before the fulfilment of this contract, either party shall:

404 (a) suspend payments;

405 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to  
406 suspend payments of his debts;

407 (c) convene, call or hold a meeting of creditors;

408 (d) propose either:

409 (i) a voluntary arrangement; or

410 (ii) a restructuring plan under Part 26A Companies Act 2006;

411 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;

412 (f) be subject to either:

413 (i) a notice of intention to appoint an administrator; or

414 (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.

26.2 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.

26.3 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.

## 27. DOMICILE

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, (Gafsa), England. 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.

## 28. 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 Gafsa 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 Gafsa Arbitration Rules, No 125.

## 29. 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.

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**30. 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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**THE GRAIN AND FEED TRADE ASSOCIATION**  
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