

Effective 01st September 2019

Contract No.23

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR PULSES FOR HUMAN CONSUMPTION IN BULK OR BAGS FOB TERMS

* 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. GOODS**

9
10 **2. PACKING**in bulk.

11 If in bags, in new and/or second-hand bags of suitable strength to withstand with ordinary wear and tear to port of
12 destination. Bags of each mark shall be of uniform weight and shall be properly marked.

13
14 **3. QUANTITY**

15 5% more or less at Buyers' option. In the event of the quantity contracted for being for a full and complete cargo
16 and/or cargoes the margin of contract quantity shall be 10% more or less, excess or deficiency over 5% shall be
17 settled at the FOB price on date of last bill of lading; value shall be fixed by arbitration unless mutually agreed. In the
18 event of more than one delivery being made each delivery shall be considered a separate contract, but the margin on
19 the mean quantity sold shall not be affected thereby.

20
21 **4. PRICE** atper tonne of 1000 kilograms

22 delivered Free on Board Buyers' Vessel(s) at.....

23
24
25 **5. BROKERAGE**per tonne, to be paid by Sellers on the mean contract quantity, goods lost or

26 not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract
27 under the terms of the Prevention of Delivery Clause. Brokerage shall be due on the day shipping documents are
28 exchanged, or if the goods are not delivered then the brokerage shall be due on the 30th consecutive day after the
29 last day for delivery.

30
31 **6. QUALITY**

32 ***Specifications**

33 Any excess or deficiency as the case may be, shall be allowed for by Sellers at contract price.

34
35 ***Certificate(s)** to be certified by an independent
36 internationally recognised body at origin. Should Sellers fail to provide a certificate which is independent; (e.g. those
37 based upon samples not independently drawn, or those which fail to identify the goods shipped with the goods
38 inspected), Buyers have the option to instruct their representatives to draw and seal delivery samples within 10
39 days of arrival, for the purposes of re-grading and/or analysis. Sellers' representatives to be in attendance at
40 sampling when duly appointed immediately after receipt of notice from Buyers of their intention to sample. In such
41 case Buyers and Sellers agree to accept the result of regrading/analysis. Charges for sampling, re-grading and/or
42 analysis to be borne half by Buyers and half by Sellers.

43
44 ***Sample** at time and place of shipment about as per sealed sample marked

45
46 in possession of..... the word "about" when referring to quality shall mean the equivalent
47 of 0.50% on contract price.

49 **Condition.** Goods must be sound, uniform, free from live, and practically free from dead insect infestation.
50 Delivery shall be made in good condition.

51
52 **7. PERIOD OF DELIVERY**

53 **Delivery during** at Buyers' call.

54
55 **Nomination of Vessel.** Buyers shall serve not less thanconsecutive days' notice of the name and
56 probable readiness date of the vessel and the estimated tonnage required. The Buyer has the right to substitute
57 any nominated vessel. Buyer's obligations regarding pre-advice shall only apply to the original vessel nominated.
58 No new pre-advice is required to be given in respect of any substitute vessel, provided that the substitute vessel
59 arrives no earlier than the estimated time of arrival of the original vessel nominated and always within the
60 delivery period. Provided the vessel is presented at the loading port in readiness to load within the delivery
61 period, Sellers shall if necessary complete loading after the delivery period and carrying charges shall not apply.
62 Notice of substitution to be given as soon as possible but in any event no later than one business day before the
63 estimated time of arrival of the original vessel. In case of re-sales a provisional notice shall be passed on without
64 delay, where possible, by telephone and confirmed on the same day in accordance with the Notices Clause.
65 In any month containing an odd number of days the middle day shall be accepted as being in both halves of the
66 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.

67
68 **8. LOADING**

69 Vessel(s) to be clean and fit to receive the goods and to load in accordance with the custom of the port of loading
70 unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the
71 contrary.

72
73 **9. SHIP'S CLASSIFICATION**

74 Shipment to be made by:-

75 (a) Ocean Vessels, first class mechanically, self-propelled vessel(s) suitable for the carriage of the contract goods,
76 classed in accordance with the Institute Classification Clause of the International Underwriting Association in force
77 at the time of shipment, excluding tankers and vessels which are either classified in Lloyd's Register or described in
78 Lloyd's Shipping Index as "Ore/Oil" vessels.

79 (b) Coaster(s), mechanically self-propelled vessel(s), suitable for the carriage of the contract goods, excluding
80 tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil"
81 Vessels.

82 Buyers to ensure that the vessel(s) hold(s) are clean, easily accessible and if necessary, cargo duly protected.

83
84 **10. EXTENSION OF DELIVERY**

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

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

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

97
98 **11. EXPORT LICENCE** - if required, to be obtained by Sellers.

99
100 **12. PAYMENT**

101 (a) By cash in

102 *(i) in exchange for and on presentation of shipping documents.

103 *(ii) by irrevocable Letter of Credit to be made available to Sellers by

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

107 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved
108 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled
109 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract

110 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under
111 sub-clause (a).
112

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

114 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country of
115 origin or of the territory where the port or ports of shipment named herein is/are situate, shall be for Sellers'
116 account.
117

118 **14. WEIGHING**

119 The terms and conditions of GAFTA Weighing Rules No. 123 are deemed to be incorporated into this contract.
120 Final at time and place of loading, as per GAFTA registered superintendent certificate at Sellers' choice and
121 expense. Buyers have the right to attend at loading.
122

123 **15. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

124 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.
125 Samples shall be taken at time and place of loading. The parties shall appoint superintendents, for the purposes of
126 supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed,
127 analysts shall be appointed from the GAFTA Register of Analysts.
128

129 **16. FUMIGATION**

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

133 **17. INSURANCE**

134 On terms not less favourable than those set out hereunder and in detail in GAFTA Insurance Terms No. 72: -

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

136 (b) War Clauses (Cargo) - Section 4 of Form 72

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

138 To be effected by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with
139 confirmation thereof at least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide
140 such confirmation, Sellers shall have the right to place such insurance at Buyers' risk and expense.
141

142 **18. PREVENTION OF DELIVERY**

143 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
144 of the government of the country of origin or of the territory where the port or ports named herein is/are situate,
145 restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e)
146 strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h)
147 fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or
148 navigation, or (l) any other event comprehended in the term "force majeure".
149

150 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
151 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
152 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later
153 than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons
154 therefor.
155

156 If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers
157 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first
158 business day after expiry of the 21 day period.
159

160 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
161 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
162 shall be automatically cancelled.
163

164 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers
165 shall notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be
166 extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of
167 the Event of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of
168 14 consecutive days shall be allowed.
169

170 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
171 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
172 justifying the delay or non-fulfilment.
173

174 **19. CIRCLE**

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

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

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

190 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained
191 in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the
192 circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.
193 Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency
194 Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for
195 in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the
196 circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment
197 to their Buyers of the difference between the closing out price and the contract price.
198

199 **20. NOTICES**

200 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form.
201 Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either
202 telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always
203 subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the
204 sender who shall, in the case of dispute, establish, to the satisfaction of the arbitrators(s) or board of appeal
205 appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In the
206 case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice
207 versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the
208 business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.
209

210 **21. NON-BUSINESS DAYS**

211 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,
212 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time
213 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until
214 the first business day thereafter. The period of delivery shall not be affected by this clause.
215

216 **22. DEFAULT**

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

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

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

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

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

230 (e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared then on
231 the mean contract quantity and any option available to either party shall be deemed to have been exercised
232 accordingly in favour of the mean contract quantity.
233

234 **23. INSOLVENCY**

235 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is
236 unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or
237 hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up
238 order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than
239 for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act
240 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of
241 Insolvency") then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such
242 Act of Insolvency to the other party to the contract and upon proof (by either the other party to the contract or the
243 Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that
244 such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be
245 closed out at the market price ruling on the business day following the serving of the notice. If such notice has not
246 been served then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of
247 declaring the contract closed out at either the market price on the first business day after the date when such party
248 first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the
249 date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of
250 ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference
251 between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this
252 contract.
253

254 **24. DOMICILE**

255 This contract shall be deemed to have been made in England and to be performed in England, notwithstanding
256 any contrary provision, and this contract shall be construed and take effect in accordance with the laws of
257 England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this
258 contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief,
259 (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in
260 relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction
261 of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the
262 purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at
263 the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on
264 business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in
265 Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The
266 service of proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade
267 Association, together with the posting of a copy of such proceedings to his address outside England, shall be
268 deemed good service, any rule of law or equity to the contrary notwithstanding.
269

270 **25. ARBITRATION**

271 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or
272 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No
273 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this
274 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the
275 application of such Rules.

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

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

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26. INTERNATIONAL CONVENTIONS

The following shall not apply to this contract: -

- (a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967.
- (b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.
- (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.
- (d) Incoterms.
- (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.

SellersBuyers

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