



Contract No.5

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION
**CONTRACT FOR PET FOOD RAW MATERIALS
FULL CONTAINER LOADS (FCLs)
IN BULK OR BAGS
TALE QUALE – CIF/CIFFO/C&F/C&FFO 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** origin
9
10 in

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12 **2. QUANTITY**..... full containers each estimated to
13
14 contain

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16 **3. PRICE AND DESTINATION**
17 At the price per tonne of 1,000 kilograms gross weight of
18
19 *cost, insurance and freight to
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21 *cost, insurance and freight free out to
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23 *cost and freight to
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25 * cost and freight free out to.....

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27 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost
28 or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the
29 contract under the terms of Prevention of Shipment Clause. Brokerage shall be due on the day shipping
30 documents are exchanged or, if the goods are not appropriated then brokerage shall be due on the 30th
31 consecutive day after the last day for appropriation. Any disputes arising out of this clause shall be referred
32 to arbitration in accordance with the arbitration clause.

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34 **5. QUALITY**
35 *Final at point of stuffing the container
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37 *Final at time and place of discharge (or at the unstuffing) of the container
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39 *Final as per sealed sample at time and place of shipment/discharge, in the possession of
40 **Condition.** Shipment shall be made in good condition.

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42 **6. FREIGHT**
43 Basic Service Rate (BSR) payable when due on or before arrival at terminal. U.K./Europe Zone charges if
44 applicable payable when due on or before arrival at terminal. The term "freight" is used to cover costs of
45 movement of the goods from the place of acceptance to place of delivery. Where place of delivery is other
46 than a container terminal, a U.K./Europe zone charge is payable to cover any onward movement. There is
47 no guarantee that the containers will be stowed below deck during their sea passage.

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7. 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 the vessel. 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.

8. 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".

9. SHIPMENT AND CLASSIFICATION

Shipment from.....
direct or indirect, with or without transshipment 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.

10. NOMINATION OF VESSEL(S) FOR CONTRACTS CONCLUDED ON C & F/C&FFO 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.
(b) Sellers are entitled to substitute the nomination(s) provided that the substituting vessel(s) complies with the terms of this clause

11. 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.

12. APPROPRIATION

(a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, and the date or the presumed date of the bill of lading.
(b) The notice of appropriation shall within 5 business 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) Notice of appropriation 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 notice of appropriation 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) A notice of appropriation served on a Selling Agent or Brokers named in the contract shall be considered an appropriation served on Buyers. A Selling Agent or Brokers receiving a notice of appropriation shall serve like notice of appropriation in accordance with the provisions of this clause. Where the Shipper or subsequent Sellers serves the notice of appropriation on the Selling Agent, such Selling Agent may serve notice of appropriation either direct to the Buyers or to the Brokers.

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

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

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

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

119 13. PAYMENT

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

122 * In exchange for and on presentation of shipping documents;

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

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

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

134 (c) In the event of shipping documents not being available when called for by Buyers, or on arrival of the
135 vessel at destination, Sellers shall provide other documents or an indemnity entitling Buyers to obtain
136 delivery of the goods and payment shall be made by Buyers in exchange for same, but such payment shall
137 not prejudice Buyers' rights under the contract when shipping documents are eventually available.

138 (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers
139 to take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the
140 other documents when presented. Any reasonable extra expenses, including the costs of such indemnity or
141 extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by
142 Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents
143 are eventually available.

144 (e) Should shipping documents be presented with an incomplete set of bill(s) of lading or should other
145 shipping documents be missing, payment shall be made provided that delivery of such missing documents is
146 guaranteed, such guarantee to be countersigned, if required by Buyers, by a recognised bank.

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

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

152 (h) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency
153 involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which
154 shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the
155 terms of the contract or by an award of arbitration. The terms of this clause do not override the parties'
156 contractual obligation under sub-clause (a).
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158 14. DUTIES, TAXES, LEVIES, ETC.

159 Sellers shall customs clear the goods for export. All export duties, taxes, levies, etc., present or future, in country
160 of origin, shall be for Sellers' account. All import duties, taxes, levies, etc., present or future, in country of
161 destination, shall be for Buyers' account.
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163 15. DISCHARGE

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

168 (b) **For C&FFO/CIFFO terms**, the cost of discharge shall be for Buyers' account.
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171 Discharge shall be at the average rate of tonnes per Weather Working Day, Saturdays, Sundays,
172 Holidays Excepted, Unless Used, (WWD SSHEX UU), in which case actual time used to count. Notice of
173 Readiness (NOR) shall be tendered during ordinary office hours on arrival, Whether In Port Or Not,
174 (WIPON), Whether In Berth Or Not, (WIBON), Whether In Free Pratique Or Not, (WIFPON), Whether
175 Customs Cleared Or Not (WCCON) and laytime shall commence at 0800 hours on the next working day. Rate
176 of demurrage/despatch as per Charter Party. In the event of a time charter, the daily hire rate shall be
177 taken as the rate of demurrage, half despatch.

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

183 184 **16. WEIGHING**

185 *Final at time and place of loading as Sellers' expense

186 *Final at time and place of discharge at Buyers' expense

187 If final at time and place of loading, as per GAFTA registered superintendents' certificate at Sellers' choice and
188 expense, in which case the Deficiency Clause will not apply. The terms and conditions of GAFTA Weighing Rules
189 No.123 are deemed to be incorporated into this contract.

190 191 **17. DEFICIENCY**

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

194 195 **18. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

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

202 203 **19. FUMIGATION**

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

206 207 **20. INSURANCE**

208 **20.1 For Contracts Concluded on CIF/CIFFO terms** Sellers shall provide insurance on terms not less
209 favourable than those set out hereunder, and as set out in detail in GAFTA Insurance Terms No.72 viz.:-

210 (a) Risks Covered:-

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

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

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

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

218 (c) Insurable Value - Insured amount to be for not less than 2% over the invoice amount, including freight
219 when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including
220 the amount of any War Risk premium payable by Buyers.

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

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

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

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

238 (h) War and Strike Risks Premiums - Any premium in excess of 0.50% to be for account of Buyers. The rate
239 of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing
240 whichever may be adopted by underwriters. Such excess premium shall be claimed from Buyers, wherever
241 possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than
242 7 consecutive days after the rate has been agreed with underwriters, whichever may be the later, otherwise
243 such claim shall be void unless, in the opinion of Arbitrators, the delay is justifiable. Sellers' obligation to
244 provide War Risk Insurance shall be limited to the terms and conditions in force and generally obtainable in
245 London at time of shipment.

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

251 **20.2 For Contracts Concluded on C & F/C&FFO terms** Buyers shall be responsible for obtaining insurance
252 cover as per Clause 20.1 above and shall, if required by Sellers, provide evidence to Sellers prior to the
253 commencement of loading that they have obtained suitable cover. If Buyers refuse or fail to provide
254 evidence Sellers are entitled (but not obliged) to cover insurance on the same terms at the Buyers' expense.
255

256 **21. PREVENTION OF SHIPMENT**

257 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
258 of the government of the country of origin or of the territory where the port or ports named herein is/are situate,
259 restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d) hostilities, or (e)
260 strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of machinery, or (h)
261 fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to transportation or
262 navigation, or (l) any other event comprehended in the term "force majeure".
263

264 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
265 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
266 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later
267 than 21 consecutive days before commencement of the shipment period, whichever is later, with the reasons
268 therefor.
269

270 If the Event of Force Majeure continues for 21 consecutive days after the end of the shipment period, then Buyers
271 have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first
272 business day after expiry of the 21 day period.
273

274 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
275 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
276 shall be automatically cancelled.
277

278 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers
279 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the
280 cessation, to as much time as was left for shipment under the contract prior to the occurrence of the Event of
281 Force Majeure. If the time that was left for shipment under the contract is 14 days or less, a period of 14
282 consecutive days shall be allowed.
283

284 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
285 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
286 justifying the delay or non-fulfilment.
287

288 **22. NOTICES**

289 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible
290 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised
291 as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other
292 electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof
293 of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the
294 arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually
295 transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by

296 sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day
297 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall
298 be deemed a notice under this contract.
299

300 **23. NON BUSINESS DAYS**

301 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any
302 days, which GAFTA may declare as non business days for specific purposes, shall be non business days.
303 Should the time limit for doing any act or serving any notice expire on a non business day, the time so
304 limited shall be extended until the first business day thereafter. The period of shipment shall not be affected
305 by this clause.
306

307 **24. PRO RATA**

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

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

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

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

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

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

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

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

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

344 (j) In the event that sub-clause (a) applies or that the goods subsequently become co mingled, and that the
345 goods were shipped by more than one Shipper and destined for one or more ports of discharge then, after
346 the adjustment between Receivers under the terms of this clause, the Shippers shall settle pro rata between
347 themselves in proportion to their bill of lading quantities. Such settlements shall be made in cash and in the
348 event of two or more discharging ports being involved, then the settlement price shall be the average of the
349 market prices on the last day of discharge in the respective ports.
350

351 **25. DEFAULT**

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

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

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

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

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

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

367 (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall
368 then be the first business day after the date of Sellers' advice to their Buyers. If default has not already been
369 declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has
370 not been served by the 10th consecutive day after the last day for appropriation laid down in the contract, where
371 the Appropriation Clause provides for 7 or more days for service of the appropriation, or if notice of appropriation
372 has not been served by the 4th business day after the last day for appropriation laid down in the contract where
373 the Appropriation Clause provides for less than 7 days for service of the appropriation, the Sellers shall be deemed
374 to be in default, and the default date shall then be the first business day thereafter.

375 **26. 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
378 Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same
379 description, from the same country of origin, of the same quality, and, where applicable, of the same analysis
380 warranty, for shipment to the same port(s) of destination during the same period of shipment). Different
381 currencies shall not invalidate the circle. Subject to the terms of the Prevention of Shipment Clause in the
382 contract, if a circle is established prior to the goods being appropriated to all parties in the circle, settlement shall
383 be based on the mean contract quantity. However, where a circle is established after the goods have been
384 appropriated to all parties in the circle, settlement shall be based on the appropriated quantity. No circle
385 settlement shall apply where documents have been presented to and paid by one of the parties in the circle.
386 Settlement shall be made between the parties in the circle by payment by all Buyers to their Sellers of the excess
387 of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15
388 consecutive days after the last day for appropriation, or, should the circle not be ascertained before the expiry of
389 this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained. Where the
390 circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the
391 market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his
392 Seller in the circle by payment of the differences between the market price and the relative contract price in
393 currency of the contract. All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle
394 shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As
395 between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be
396 considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act
397 comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall be calculated at
398 the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement,
399 instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their
400 Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price
401 and the contract price.

402 **27. INSOLVENCY**

403 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that
404 he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts,
405 convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order
406 made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting
407 to go into liquidation (other than for re construction or amalgamation) become subject to an Interim Order
408 under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of
409 which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency
410 shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract
411 and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other
412 person representing the party committing the Act of Insolvency) that such notice was served within 2
413 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price
414 ruling on the business day following the serving of the notice.

415 If such notice has not been served, then the other party, on learning of the occurrence of the Act of
416 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
417
418

419 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the
420 market price ruling on the first business day after the date when the Act of Insolvency occurred.
421 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
422 closing out of the contract by re purchase or re sale, and the difference between the contract price and the
423 re purchase or re sale price shall be the amount payable or receivable under this contract.
424

425 **28. DOMICILE**

426 This contract shall be deemed to have been made in England and to be performed in England,
427 notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance
428 with the laws of England. Except for the purpose of enforcing any award made in pursuance of the
429 Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any
430 application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the
431 exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a
432 dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant
433 to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be
434 deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade
435 Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be held to
436 have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have
437 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of
438 proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade
439 Association, together with the posting of a copy of such proceedings to his address outside England, shall be
440 deemed good service, any rule of law or equity to the contrary notwithstanding.
441

442 **29. ARBITRATION**

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

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

455 (c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain
456 security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such
457 legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it
458 being understood and agreed that the substantive merits of any dispute or claim shall be determined solely
459 by arbitration in accordance with the GAFTA Arbitration Rules, No 125.
460

461 **30. INTERNATIONAL CONVENTIONS**

462 The following shall not apply to this contract: -

463 (a) The Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform
464 Laws on International Sales Act 1967.

465 (b) The United Nations Convention on Contracts for the International Sale of Goods of 1980.

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

468 (d) Incoterms.

469 (e) Unless the contract contains any statement expressly to the contrary, a person who is not a party to this
470 contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of it.
471

472 **31. METHODS OF ANALYSIS**

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

Sellers Buyers

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THE GRAIN AND FEED TRADE ASSOCIATION

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