

# Contract No.24

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR PULSES FOR HUMAN CONSUMPTION IN BULK OR BAGS TALE QUALE – CIF/CIFFO/C&F/C&FFO TERMS

*\*delete/specify as applicable*

Date .....

**SELLERS** .....

**INTERVENING AS BROKERS** .....

**BUYERS** .....

have this day entered into a contract on the following terms and conditions.

**1. GOODS** .....

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

**3. QUANTITY** .....  
Sellers have the option of shipping 5% more or less at contract price. 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.

**4. PRICE AND DESTINATION**  
At the price per tonne of 1,000 kilograms 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 .....

**5. 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.

**6. QUALITY**  
**\*Specifications** .....  
Any excess or deficiency as the case may be, shall be allowed for by Sellers at contract price

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

Sellers agree to accept the result of regrading/analysis. Charges for sampling, re-grading and/or analysis to be borne half by Buyers and half by Sellers.

**\*Sample** at time and place of shipment about as per sealed sample marked in possession of..... ; word "about" when referring to quality shall mean the equivalent of 0.50% on contract price.

Where specifications are to be determined at discharge analysis to be determined by GAFTA or its duly appointed analysts.

Difference in quality shall not entitle Buyers to reject, except under the award of arbitrator(s) or board of appeal, as the case may be, referred to in the Arbitration Rules specified in the Arbitration Clause.

**Condition.** Goods must be sound, uniform, free from live, and practically free from dead insect infestation. Shipment shall be made in good condition. Should the goods arrive out of condition, due regard shall be made for the time of year in which the shipment took place. The fact of the goods so arriving shall not necessarily be sufficient proof of an improper shipment.

## **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. 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. PORTS OF SHIPMENT**

From a port or ports in .....

## **9. 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 Ship's Classification Clause;
- (c) Appropriation Clause cancelled if sold "shipped".

## **10. SHIP'S CLASSIFICATION**

Shipment to be made by:

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

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

## **11. 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.

## **12. 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.

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

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

114  
115 **14. APPROPRIATION**

116 (a) Notice of appropriation shall state the vessel's name, the presumed weight shipped, the date or the presumed  
117 date of the bill of lading, and in the case of C&F the port of shipment.

118 (b) The notice of appropriation shall, within 8 consecutive days from the date of the bill(s) of lading, be served by or  
119 on behalf of the Shipper direct on his Buyers or on the Selling Agent or Brokers named in the contract. The Non-  
120 Business Days Clause shall not apply. The 8 consecutive days stated in the Appropriation Clause of the contract for  
121 notice of appropriation shall be deemed to apply to USA and Canadian load ports. For other load ports the following  
122 number of days shall apply: -

123 10 consecutive days if shipped from a Mediterranean, African or South American port, or

124 14 consecutive days if shipped from an Australasian port, or

125 28 consecutive days if shipped from an Asian port, or .....consecutive days as agreed between  
126 Buyers and Sellers.

127 (c) Notice of Appropriation shall, within the period stated in sub-clause (a) be served in accordance with sub-clause  
128 (e) or on behalf of subsequent Sellers on their Buyers or the Representative or Selling Agent or Brokers named in  
129 the contract, but if Notice of Appropriation is received by subsequent Sellers on the last day or after the period  
130 stated in sub-clause (a) from the date of the bill of lading, their Notice of Appropriation shall be deemed to be in  
131 time if served: -

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

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

134 (d) Buyers, on receiving a Notice of Appropriation, shall, on demand, give a written receipt therefore, and if  
135 required, Sellers shall give to Buyers a copy of the particulars contained in the notice received by them and the time  
136 and date of its receipt.

137 (e) The Shipper's Notice of Appropriation and every subsequent Sellers' Notice of Appropriation shall state the  
138 date or the presumed date of the bill of lading and port of shipment which shall be for information only and shall  
139 not be binding, but in fixing the period laid down by this clause for serving Notices of Appropriation the actual date  
140 of the bill of lading shall prevail.

141 (f) Every such Notice of Appropriation shall be open to correction of any errors occurring in transmission, provided  
142 that the sender is not responsible for such errors, and for any previous error in transmission which has been  
143 repeated in good faith. Should the vessel arrive before receipt of the appropriation and any extra expenses be  
144 incurred thereby, such expenses are shall be borne by Sellers.

145 (g) When a valid Notice of Appropriation has been received by Buyers, it shall not be withdrawn except with their  
146 consent.

147 (h) A Notice of Appropriation served on the Representative, or Selling Agent, or Brokers named in the contract  
148 shall be considered an appropriation served on Buyers.

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

151  
152 **15. PAYMENT**

153 (a) **Payment** to be by cash in .....

154 \*(i) In exchange for and on presentation of shipping documents;

155 \*(ii) By irrevocable letter of credit to be made available to Sellers by .....

156 \*(iii) In exchange for shipping documents on or before arrival of the vessel at destination at Buyers' option;

157 Sellers, however, have the option of calling upon Buyers to take up and pay for the documents on or after .....  
158 consecutive days from the date of the bill(s) of lading.

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

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

170 (d) Should Sellers fail to present shipping documents or other documents or an indemnity entitling Buyers to  
171 take delivery, Buyers shall take delivery under an indemnity provided by themselves and shall pay for the other

documents when presented. Any reasonable extra expenses, including the costs of such indemnity or extra charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers, but such payment shall not prejudice Buyers' rights under the contract when shipping documents are eventually available.

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

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

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

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

## 16. INSURANCE

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

(a) Risks Covered: -

\* (i) Either Cargo Clauses (All risks) - Section 1 of Form 72

Or,

\* Cargo Clauses (WA) - Section 2 of Form 72

plus the following: -

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

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

(iv) Where applicable, Australian, Canadian, South African  
and limited United States of America Acts - Section 6 of Form 72

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

(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 full contract 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.

(j) In the case of goods being shipped in an over age vessel, any additional premium to be for account of Sellers.

**16.2 For Contracts Concluded on C & F/C&FFO terms** - Buyers shall be responsible for obtaining insurance cover as per Clause 16.1 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.

## **17. DISCHARGE**

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

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

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

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

## **18. WEIGHING**

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

## **19. DEFICIENCY**

Any deficiency in the bill of lading weight shall be paid for by Sellers and any excess over bill of lading weight shall be paid for by Buyers at contract price.

## **20. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

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

## **21. FUMIGATION**

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

## **22. 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.

### **23. CIRCLE**

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

### **24. NOTICES**

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

358  
359 **25. NON-BUSINESS DAYS**

360 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,  
361 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
362 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended  
363 until the first business day thereafter. The period of shipment shall not be affected by this clause.  
364

365 **26. DEFAULT**

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

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

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

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

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

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

381 (f) Default may be declared by Sellers at any time after expiry of the contract period, and the default date shall then  
382 be the first business day after the date of Sellers' advice to their Buyers. If default has not already been declared  
383 then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation has not been  
384 served by the 10th consecutive day after the last day for appropriation laid down in the contract, the Sellers shall  
385 be deemed to be in default and the default date shall then be the first business day thereafter.  
386

387 **27. INSOLVENCY**

388 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is  
389 unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call  
390 or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a  
391 winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into  
392 liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section  
393 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being  
394 hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith serve a  
395 notice of the occurrence of such Act of Insolvency to the other party to the contract and upon proof (by either the  
396 other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party  
397 committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the  
398 Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the  
399 serving of the notice. If such notice has not been served, then the other party, on learning of the occurrence of the  
400 Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first  
401 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market  
402 price ruling on the first business day after the date when the Act of Insolvency occurred.

403 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing  
404 out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or  
405 re-sale price shall be the amount payable or receivable under this contract.  
406

407 **28. DOMICILE**

408 This contract shall be deemed to have been made in England and to be performed in England, notwithstanding  
409 any contrary provision, and this contract shall be construed and take effect in accordance with the laws of  
410 England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this  
411 contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief,  
412 (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in  
413 relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the  
414 jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this  
415 contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or  
416 carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party  
417 residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the  
418 English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of  
419 the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The

Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

## **29. ARBITRATION**

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

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

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

## **30. 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.

## **31. METHODS OF ANALYSIS**

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

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

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**GAFTA**  
**THE GRAIN AND FEED TRADE ASSOCIATION**  
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