



Contract No.78UA

Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR GOODS BY RAIL AND/OR ROAD

**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. QUANTITY** tonnes of 1000 kilograms, 5% more or less

11 Each consignment in whole or part fulfilment of this contract to be considered a separate contract, but the margin on
12 the quantity sold shall not be affected thereby.

13

14 **3. QUALITY AND CONDITION**

15

16 ***Warranted to contain**

17 In case of FCA / CPT (as defined below), unless otherwise agreed, quality and condition shall be final at time and
18 Place of Despatch (as defined below).

19 In case of DAT/ DAP/ DDP (as defined below), unless otherwise agreed, quality and condition shall be final at time
20 and Place of Destination (as defined below).

21

22 **4. PRICE**..... per tonne of 1000 kilograms net weight.

23

24 ***Despatched from** (“Place of Despatch”)

25 FCA / CPT as defined below.

26

27 *** Delivered to** (“Place of Destination”)

28 CPT / DAP / DAT / DDP as defined below.

29

30 **5. BROKERAGE** per tonne to be paid by Sellers on the mean contract quantity, goods lost or not lost,

31 contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract under the terms

32 of the Prevention of Fulfilment Clause. Brokerage shall be due on the day contractual documents are exchanged, or

33 if the goods are not despatched/delivered then the brokerage shall be due on the 30th consecutive day after the last

34 day of the Period of Despatch / Period of Delivery.

35

36 **6. PERIOD OF DESPATCH / PERIOD OF DELIVERY**

37 Buyers shall give despatch instructions latest by,

38 failing which Sellers shall be entitled to declare Buyers in default unless the parties agree to extend the Period of

39 Despatch / Period of Delivery.

40

41 For FCA/ CPT/ DAP/ DAT/ DDP terms, despatch/delivery shall be in approximately evenly spread quantities

42 throughout the Period of Despatch / Period of Delivery as the case may be.

43

44 (a) For despatch on FCA/ CPT terms, despatch during (“Period of Despatch”)

45

46 The consignment note(s) /railway bill to be dated when the goods are despatched, and shall be considered proof of

47 the date of despatch in the absence of evidence to the contrary.

48

49 (b) For delivery on DAP/ DAT/ DDP terms, delivery at Place of Destination during..... (“Period of

50 Delivery”)

51 The date when the goods arrive at the Place of Destination is deemed to be considered the date of delivery in the
52 absence of evidence to the contrary.
53

54
55 **7. DEFINITION OF DELIVERY TERMS:**

56 For the purposes of this Contract, the terms FCA /CPT /DAP /DAT /DDP shall be as defined as follows:

57 FCA - Free Carrier - means that Sellers will load the goods at the Place of Despatch on Buyers' nominated transport.

58 CPT - Carriage Paid To - means that Sellers will load the goods at the Place of Despatch and will arrange and pay for
59 transport to the Place of Destination.

60 DAP - Delivered At Place - means that Sellers will deliver goods on Sellers' nominated transport when they arrive at
61 the Place of Destination.

62 DAT - Delivered At Terminal - means that Sellers will deliver goods when they are unloaded at the Place of
63 Destination.

64 DDP - Delivered Duty Paid - means that Sellers will deliver the goods on Sellers' nominated transport cleared for
65 import at the Place of Destination.

66
67 **Risk:** Under FCA and CPT terms the goods will be at Buyers' risk from the Place of Despatch.

68 Under DAP/DAT/DDP terms the goods will be at Sellers' risk up to the Place of Destination.
69

70 **8. DUTIES, TAXES, LEVIES, ETC.**

71 (a) **Under FCA, CPT, DAP and DAT terms:** Sellers shall customs clear the goods for export. All export duties, taxes,
72 levies, etc. present or future, shall be for Sellers' account. Buyers shall customs clear the goods for import. All
73 import duties, taxes, levies, etc., present or future, shall be for Buyers' account.
74

75 (b) **Under DDP terms:** Sellers shall customs clear the goods for export and import. All export and import duties,
76 taxes, levies, etc. present or future, shall be for Sellers' account.
77

78 **9. TRANSPORT CLASSIFICATION** - per good bulk grain carrying truck and/or rail wagon(s) suitable for transport of
79 the goods, clean, and free from smell or taint at time of loading.
80

81 **10. NOTICE OF DESPATCH (applicable only to CPT/ DAP/ DAT/ DDP terms)**

82 (a) The notice of despatch shall state the truck /rail wagons' numbers, the presumed weight loaded and the date or
83 presumed date of the consignment note or railway bill.

84 (b) The notice of despatch shall be served within two business days from the date of the consignment note or
85 railway bill by or on behalf of Sellers direct on his Buyers or on the Selling Agent or Broker named in this contract.

86 (c) The notice of despatch shall be passed on by subsequent Sellers to their Buyers with due despatch.

87 (d) Failure by Sellers to pass such notice to their Buyers will not constitute default, except as provided for in the
88 Default Clause, but Sellers shall be responsible to their Buyers for proved extra expenses incurred as a consequence.

89 (e) The date of the consignment note or railway bill stated in the notice of despatch shall be for information only but
90 in fixing the period laid down by this clause for serving advice of despatch the actual date of the consignment note or
91 railway bill shall prevail.

92 (f) Every notice of despatch shall be open to correction of any errors occurring in transmission, provided that the
93 sender is not responsible for such errors, and for any previous error in transmission that has been repeated in good
94 faith.

95 (g) Should the truck/ rail wagon(s) arrive before receipt of the notice of despatch and any extra expenses is incurred
96 thereby, such expenses shall be borne by Sellers.
97

98 **11. PAYMENT**

99 (a) **Payment** by net cash in in exchange for and on presentation of documents required for payment.

100 (b) **Documents required for payment** shall consist of 1. Invoice, 2. Consignment note or railway bill, as
101 appropriate 3. Other documents as called for under the contract.

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

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

107 (d) 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 by
109 arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract or by an
110 award of arbitration. The terms of this clause do not override the parties' contractual obligation under sub-clause
111 (a).

112
113 **12. WEIGHING**

114 The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract. For
115 FCA and CPT weighing shall be final at Place of Despatch. For DAP / DAT and DDP, weighing shall be final at
116 Place of Destination, unless otherwise agreed, and such weights shall be advised to Sellers without delay.
117

118 **13. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

119 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.
120 Where the contract requires quality and condition final at Place of Despatch, samples shall be taken at time and
121 place of loading at Place of Despatch. Where the contract requires quality and condition final at time and Place of
122 Destination, samples shall be taken at Place of Destination. The parties shall appoint superintendents, for the
123 purposes of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless
124 otherwise agreed, analysts shall be appointed from the GAFTA Register of Analysts.
125

126 **14. PREVENTION OF FULFILMENT**

127 "Event of Force Majeure" means (a) prohibition of export or other executive or legislative act done by or on behalf
128 of the government of the country of origin or of the territory where the Place of Despatch named herein is/are
129 situate, restricting export, whether partially or otherwise, or (b) blockade, or (c) acts of terrorism, or (d)
130 hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil commotion, or (g) breakdown of
131 machinery, or (h) fire, or (i) ice, or (j) Act of God, or (k) unforeseeable and unavoidable impediments to
132 transportation, or (l) any other event comprehended in the term "force majeure".
133

134 Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force
135 Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure,
136 provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not
137 later than 21 consecutive days before commencement of Period of Despatch / Period of Delivery , whichever is
138 later, with the reasons therefor.
139

140 If the Event of Force Majeure continues for 21 consecutive days after the end of the Period of Despatch / Period of
141 Delivery then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers
142 not later than the first business day after expiry of the 21 day period.
143

144 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14
145 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract
146 shall be automatically cancelled.
147

148 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers
149 shall notify Buyers without delay that the Event of Force Majeure has ceased. Sellers shall be entitled, from the
150 cessation, to as much time as was left for in the Period of Despatch / Period of Delivery under the contract prior
151 to the occurrence of the Event of Force Majeure. If the time that was left in the Period of Despatch / Period of
152 Delivery under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.
153

154 The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-
155 fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence
156 justifying the delay or non-fulfilment.
157

158 **15. NOTICES**

159 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible form.
160 Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either
161 telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, always
162 subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the
163 sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal
164 appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In case of
165 resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa,
166 and any notice received after 1600 hours on a business day shall be deemed to have been received on the
167 business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.
168

169 **16. NON-BUSINESS DAYS**

170 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,
171 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time
172 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until
173 the first business day thereafter. The Period of Despatch / Period of Delivery shall not be affected by this clause.
174

175 **17. DEFAULT**

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

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

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

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

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

189 (e) If default has not already been declared then if notice of despatch for CPT/DAP/DAT/DDP terms is not passed by
190 the 5th consecutive day after the last day for the notice of despatch laid down in the contract, Sellers shall be deemed
191 to be in default, and the default date shall then be the first business day thereafter.

18. INSOLVENCY

194 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is
195 unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or
196 hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding
197 up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other
198 than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency
199 Act 1986, or have a Bankruptcy Petition presented against him (any of which acts being hereinafter called an "Act of
200 Insolvency") then the party committing such Act of Insolvency shall serve a notice of the occurrence of such Act of
201 Insolvency on the other party to the contract and upon proof (by either the other party to the contract or the
202 Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that
203 such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be
204 closed out at the market price ruling on the business day following the serving of the notice. If such notice has not
205 been served as aforesaid, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the
206 option of declaring the contract closed out at either the market price on the first business day after the date when
207 such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business
208 day after the date when the Act of Insolvency occurred.

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

19. DOMICILE

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

20. ARBITRATION

230 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or
231 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No
232 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this
233 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the
234 application of such Rules.

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

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

247

248 **21. INTERNATIONAL CONVENTIONS**

249 The following shall not apply to this contract: -

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

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

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

255 (d) Incoterms

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

258

259 **22. METHODS OF ANALYSIS**

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

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

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GAFTA

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