

## **Venta de mercancías perecederas y materias primas - General General free on board terms contract (F.O.B.)**

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Date \_\_\_\_\_

Sellers \_\_\_\_\_

Intervening as brokers \_\_\_\_\_

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

1. Goods \_\_\_\_\_

\_\_\_\_\_

2. Quantity \_\_\_\_\_

\_\_\_\_\_

3. Price

\_\_\_\_\_ per tonne of 1000 kilograms, free on board

4. Quality

Specifications \_\_\_\_\_

5. Delivery

Buyers shall tender vessel(s) in readiness to load between \_\_\_\_\_  
\_\_\_\_\_ both dates inclusive.

Vessel(s) to load in accordance with the custom at the port of loading unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the contrary. Buyers have the right to substitute the nominated vessel, but in any event the original delivery period and any extension shall not be affected thereby.

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## 6. Nomination

Sellers shall be entitled to receive at least \_\_\_\_\_ consecutive days notice of probable readiness and of the estimated tonnage required.

## 7. Extension of delivery

The contract period of delivery shall, if desired by Buyers, be extended by an additional period of 21 consecutive days, provided that Buyers give notice in accordance with the Notices Clause not later than the next business day following the last day of the delivery period.

In this event Sellers shall carry the goods for Buyers' account and all charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers' account. Any differences in export duties, taxes, levies etc., between those applying during original delivery period and those applying during the period of extension shall be for the account of Buyers and Sellers shall produce evidence of the amounts paid for if required by Buyers and in such cases Clause 11 shall not apply. Should the Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option of declaring the Buyers to be in default or shall be

entitled to demand payment at contract price plus such charges as stated above, less current F.O.B. charges, against warehouse warrants and the tender of such warehouse warrants shall be considered complete delivery of the contract on the part of the Sellers.

## 8. Shipment and classification

Shipment by first class-mechanically self-propelled vessel(s) suitable for the carriage of the contract goods classed Lloyds 100A1, or equivalent class, or in accordance with the Institute Classification Clause of the Institute of London Underwriters, excluding tankers and vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil" vessels.

## 9. Payment

\_\_\_\_\_

Final invoices for monies due may be prepared by either party and shall be settled without- delay. If not settled, either party may declare that a dispute has arisen which may be referred to arbitration as herein provided.

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#### 10. 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 obligation under the Payment Clause.

#### 11. Duties, taxes, levies, etc

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

#### 12. Weighing

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#### 13. Sampling and analysis

If required by Buyers, samples shall be taken at time and place of shipment by Buyers' and Sellers' representatives and analysis instructions given in accordance with the GAFTA Sampling Rules Form No.124. When superintendents are required for the purposes of supervision and sampling of the goods in accordance with these Rules, then the parties agree to appoint from superintendents in the GAFTA Approved Register of Superintendents. Methods of Analysis to be prescribed by the Grain and Feed Trade Association being the GAFTA Regulations, Form 130.

#### 14. Insurance

Marine and War Risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at least five consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation Sellers shall have the right to place such insurance at Buyers' risk and expense.

#### 15. Prohibition

In case of prohibition of export, blockade or hostilities or in case of any 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 of shipment named herein is/are situate, restricting export, whether partially or otherwise, any such

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restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. Sellers shall advise Buyers without delay with the reasons therefor and, if required, Sellers must produce proof to justify the cancellation.

#### 16. Force majeure, strikes etc

Sellers shall not be responsible for delay in delivery of the goods or any part thereof occasioned by any Act of God, strike, lockout, riot or civil commotion, combination of workmen, breakdown of machinery, fire or any cause comprehended in the term "force majeure". If delay in delivery is likely to occur for any of the above reasons, Sellers shall give notice to Buyers by telegram, telex or by similar advice within 7 consecutive days of the occurrence, or not less than 21 consecutive days before the commencement of the contract period, whichever is later. The notice shall state the reason(s) for the anticipated delay. If after giving such notice an extension to the delivery period is required, then the Sellers shall give further notice not later than 2 business days after the last day of the contract period of delivery. If delivery be delayed for more than 30 consecutive days, Buyers shall have the option of cancelling the delayed portion of the contract, such option to be exercised by Buyers giving notice to be received by Sellers not later than the first business day after the additional 30 consecutive days. If Buyers do not exercise this option, such delayed portion shall be automatically extended for a further period of 30 consecutive days. If delivery under this clause be prevented during the further 30 consecutive days extension, the contract shall be considered void. Buyers shall have no claim against Sellers for delay or non-delivery under this clause, provided that Sellers shall have supplied to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

#### 17. Notices

All notices served on the parties pursuant to this contract shall be served by letter, if delivered by hand on day of writing, or by telegram or by telex or by other method of rapid written communication. A notice to the broker or agent shall be deemed a notice under this contract.

For the purpose of time limits, the date and time of despatch shall, unless otherwise stated, be deemed to be the date and time of service. In case of resales all notices shall be passed on without delay by Buyers to their respective Sellers or vice-versa.

#### 18. Non-business days

Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days which The Grain and Feed Trade Association

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may declare as non-business days for specific purposes, shall be non-business days. Should the time limit for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of delivery shall not be affected by this clause.

#### 19. Default

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

(a) The party other than the defaulter shall, at their discretion have the right, after giving notice by letter, telegram or telex to the defaulter to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

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

(c) The damages payable shall be based on the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

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

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

#### 20. Insolvency

If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy

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Petition presented against him (any of which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency shall forthwith transmit by telex or telegram or by other method of rapid written communication a notice of the occurrence of such Act of Insolvency to the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus given within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the giving of the notice. If such notice be not given as aforesaid, then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred.

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

## 21. Domicile

Buyers and Sellers agree that, for the purpose of proceedings either legal or by arbitration, this contract shall be deemed to have been made in England, and to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment, or otherwise, notwithstanding, and the Courts of England or arbitrators appointed in England, as the case may be, shall, except for the purpose of enforcing any award made in pursuance of the Arbitration Clause hereof, have exclusive jurisdiction over all disputes which may arise under this contract. Such disputes shall be settled according to the law of England, whatever the domicile, residence or place of business of the parties to this contract may be or become. Any party to this contract residing or carrying on business elsewhere than in England or Wales, shall for the purpose of proceedings at law or in arbitration be considered as ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, and if in Scotland, he shall be held to have prorogated jurisdiction against himself to the English Courts; or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the office of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address abroad, or in Scotland or in Northern Ireland, shall be deemed good service, any rule of law or equity to the contrary notwithstanding. Where goods forming the subject of this contract are not for consumption in Great Britain or Northern Ireland nothing in the foregoing shall

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make the sale subject to the provisions of the Agriculture Act for the time being in force.

## 22. Arbitration

(a) Any dispute arising out of or under this contract shall be settled by arbitration in accordance with the Arbitration Rules, No. 125, of The Grain and Feed Trade Association, in the edition current at the date of this contract, such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognisant.

(b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute 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 a 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.

## 23. 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; and

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

Sellers \_\_\_\_\_ Buyers \_\_\_\_\_