

FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS LIMITED FOSFA INTERNATIONAL

ISSUED IN CONJUNCTION WITH AGRICULTURAL INDUSTRIES CONFEDERATION (AIC) CONTRACT FOR UK RAPESEED IN BULK SUITABLE FOR OIL EXTRACTION EX FARM/DELIVERED

26A

Revised and Effective
from 1st September 2008

Reference Nos

SELLERS:

BUYERS:

BROKERS:

Date:

*An asterisk denotes alternative wording, and should be matter of agreement between the parties.

1. Sellers have agreed to sell and Buyers have agreed to buy UK grown RAPESEED of good merchantable quality suitable for oil extraction net delivered during the period
Destination:

1. QUANTITY	2. PRICE	3. QUALITY					
* Production Acres/Hectares		ON ARRIVAL THE BASIS SHALL BE			ERUCIC ACID MAX	FFA MAX	GLUCOSINOLATES MAX
		OIL	MOISTURE	ADMIXTURE			
* tons of 1000 kilos		40%	9%	2%	2% of oil in seed	2% of oil in seed	35 micromoles

2. **TOLERANCE:** Sellers have the option of delivering 2% more or less or 5 tons more or less of the mean contract quantity, whichever is the greater. In the event of failure to deliver, damages, if any, under the Default Clause hereof shall be calculated on the mean quantity. (In the event of delivery in excess of the tolerance the Buyers shall have the right of rejecting the excess over the tolerance limit. In the event of the excess being accepted settlement shall be in terms of the Default Clause.) Subject to the above on arrival at point of first discharge, any excess over the tolerance to be settled at the market price on the day of transport arriving. When the quantity is delivered in more than one consignment, settlement is to be made at market price on the date of the last consignment to arrive. Such market price to be agreed amicably or decided by arbitration. Any deficiency under the tolerance to be settled at the market price on the last day of the contract period. When more than one consignment is made, each consignment to be considered as a separate contract but the margin on the mean contract quantity shall not be affected thereby.

3. **SPECIAL TERMS:**

.....

.....

.....

.....

4. **ALLOWANCES, PREMIUMS, REJECTIONS:** Oil Content — A reciprocal allowance of 1.5% of the Contract Price shall be made to Buyers or Sellers for each 1% excess or deficiency of oil content, fractions in proportion.
Moisture — Buyers shall have the right to reject a parcel containing over 10% or below 6% moisture. Buyers shall be entitled to an allowance of 1% of the Contract Price for each 1% of moisture from 9% up to 10%, fractions in proportion. If the right to reject is not exercised where the moisture is in excess of 10% or below 6% the allowance to be agreed amicably or settled by arbitration. Where the moisture is less than the basis but above 6%, Sellers shall be entitled to a premium of 1% of the Contract Price for each 1% below the basis down to 6%, fractions in proportion.
Admixture — Buyers shall have the right to reject a parcel containing over 4% admixture. Buyers shall be entitled to an allowance of 2% of the Contract Price for each 1% of admixture in excess of the basis up to 3% and to an allowance of 4% of the Contract Price for each 1% of admixture in excess of 3% up to 4%, fractions in proportion. If the right to reject is not exercised where the admixture is in excess of 4% the allowance to be agreed amicably or settled by arbitration. Where the admixture is less than the basis Sellers shall be entitled to a premium of 1% of the Contract Price for each 1% below the basis, fractions in proportion.
Erucic Acid and FFA — Buyers have the right to reject if a parcel contains erucic acid or FFA in excess of 2% of oil in seed.
Glucosinolates — If the glucosinolate content of the rapeseed exceeds 35 micromoles max Buyers have the right to reject.
 If the right to reject is not exercised, the allowances to be agreed amicably or by arbitration. Buyers' claim to reject shall be notified to Sellers immediately on arrival of the goods and when the option to reject is not exercised settlement of allowances to Buyers shall be agreed amicably or by arbitration.

5. **PESTICIDE RESIDUE:** The Seller warrants that the goods on delivery will comply with the provisions of the Food & Environment Act 1985 and the Pesticide (Maximum Residue Levels in Crops, Food and Feedingstuffs) Regulations 1994, or any other legislation applicable. The Seller shall notify the Buyer in writing whether or not any post harvest chemical treatment has been applied to the goods by or on behalf of the Seller or a previous owner. The Seller must supply written details of that treatment on a Post Harvest Pesticide Declaration Form (Passport) and ensure that a completed form accompanies each load collected/delivered. This Pesticide Declaration must be made on an official declaration form and signed by the Seller or a person authorised by him. The Buyer reserves the right to reject any load which is not accompanied by a Post Harvest Pesticide Declaration Form. All parties involved in the transmission of information required by this clause must take all reasonable steps to avoid delays.

6. DELIVERY AND WEIGHTS:	40
(a) Sales on Ex Farm basis — Delivery shall be made free on vehicles on an accessible hard standing. Buyers undertake to advise the Sellers of intended times of collection as far as it is possible with a minimum of 24 hours notice. Where Buyers collect unweighed seed they shall notify Sellers of the net weight as quickly as possible. Buyers responsible for weighing shall, whenever practicable, adopt the procedure stated in the Code of Practice for bulk weighing which shall be stated in writing to the other party at the latter's request. A copy or duplicate of the weight ticket shall likewise be produced on request provided such request is within 2 months of collection/delivery.	41 42 43 44 45
(b) Sales on a delivered basis — Deliveries shall be at Buyers call unless otherwise stated.	46
(i) In the case of deliveries to UK crushing mills and inland store facilities, final Buyers shall give their Sellers notice of delivery instructions a minimum of 3 business days before date and time during the contract period when Buyers require goods to be delivered. Buyers shall give sufficient delivery instructions to allow Sellers to deliver the full contract quantity during the contract period. Should Sellers fail to deliver at the date, time and place appointed above, this shall not void the contract but Buyers, taking note of the Notices Clause and 6(b) (iv), shall give Sellers revised delivery instructions to allow Sellers to deliver the full quantity of these failed deliveries as follows: Buyers shall give Sellers a minimum of 2 business days notice of the revised date and time when Buyers require the goods to be delivered. The revised date and time of delivery shall fall within the contractual period, except where the operation of this clause makes this impossible. In this case Buyers shall give Sellers such extension to the contract period as necessary to enable them to effect deliveries in accordance with this clause. Should Sellers fail to deliver the full quantity of those failed deliveries in accordance with the revised delivery instructions, Sellers shall be in default and the provisions of the Default Clause shall apply.	47 48 49 50 51 52 53 54 55 56
(ii) In the case of deliveries to UK export facilities, final Buyers shall give to their Sellers notice of delivery instructions a minimum of 3 business days before date and time during the contract period when Buyers require the goods to be delivered. Should Sellers fail to deliver by the date, time, and place appointed, Sellers shall be in default and the Default Clause shall apply unless further delivery instructions can be mutually agreed between Buyers and Sellers.	57 58 59 60
(iii) If final Buyers do not in the first instance give their Sellers notice of delivery instructions a minimum of 3 business days before expiry of the contract period then Sellers shall, after notification in writing to the Buyers, deliver the goods to a first class store suitable for the long-term storage of rapeseed within 75 radial miles of the delivery point and tender the goods to Buyers. Costs of receiving into store and all charges thereafter shall be borne by Buyers.	61 62 63 64
(iv) If Buyers are not the final receivers, notice of delivery instructions shall be passed on with due despatch or by 10.00 hours on the following day if received after 16.00 hours local time (provided always that final Buyers have given a minimum of 3 business days notice to final Sellers). Goods may not be delivered into store by any Sellers in the string without first ascertaining that final Buyers failed to give notice of delivery instructions as stipulated above.	65 66 67 68
(v) A receipt for the weight accepted shall be given to the driver of the vehicle at the time of delivery. Weights of those loads delivered, and notification of loads not delivered, shall be advised to the Seller within 5 business days. Buyers' weights are final unless other satisfactory evidence is produced on arrival of the seed. Buyers shall if required produce proof of weights received.	69 70 71 72
(c) Weighbridge charges shall be for the Sellers account unless otherwise stated in Clause 3.	
7. DEMURRAGE: In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering the goods Sellers or Buyers, whoever are responsible, shall be liable for the loss that results from the delay of that particular load only.	73 74
8. PAYMENT: Payment to be made on	75 76
Payment shall not be deemed to have been effected before receipt of cleared funds by the payee or his bank. If payment is agreed to be by bank transfer, the party shall effect payment to the payee's bank on or before the due date for payment and payment instructions shall specify a value date not later than the second bank working day after the day of payment.	77 78 79
Any monies due by either party to the contract to the other for final invoices and/or accounts for items on deliveries fulfilling this contract shall be settled by either party without delay (except as otherwise provided under awards of arbitration or appeal as governed by the other provisions in the contract) and if not settled a dispute shall be deemed to have arisen which may be referred to arbitration.	80 81 82
9. INTEREST: If any payment is not made on or before the due date for payment, interest shall be payable. If there is no due date for payment, interest shall be payable if there has been an unreasonable delay in payment. Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration in accordance with the Arbitration Clause. Nothing in this clause shall affect a party's rights to invoke the provisions of the Default Clause in a case where a failure to effect timely payment could give rise to a claim under that clause.	83 84 85 86 87 88
10. ANALYSTS: Reference in the contract to analysts shall mean UK analysts who are members of FOSFA International and represented in the Oilseeds Section.	89
11. SAMPLING AND ANALYSIS: On arrival, final Buyers to arrange for sealed samples to be taken in duplicate from each delivery in accordance with ISO 542 (1990) as amended from time to time, whether accepted or rejected, and to be analysed for oil, moisture, impurities, erucic acid, FFA and glucosinolates where applicable and the original certificate of analysis for each individual consignment, passed to the last Seller within 21 consecutive days from the receipt of the goods and thereafter with due despatch to the first Seller. Should the analysis results not be passed on within the time limits stipulated in this clause, Buyers shall give Sellers an allowance of 0.25% of the contract price per week for the first two weeks and thereafter 0.5% of the contract price per ton per week. Duplicate samples to be retained as Sellers or Buyers may call for a check analysis by an analyst whose analysis shall be final (provided such a request is made by the claimants within 2 months of the date of the delivery of the goods). Following such request, Buyers shall send the sample to the analyst within 5 business days and the original certificate of retest shall be passed to the Seller within 14 consecutive days from the date of that retest certificate. Should the original retest certificate not be passed to the Seller within 14 consecutive days, Buyers shall give Sellers an allowance of 0.25% of the contract price per ton per week for the first two weeks and thereafter 0.5% of the contract price per ton per week. The cost of check analysis to be borne by the Buyers providing that the analysis varies from the original test by more than 0.4% for oil or moisture or 0.2% for impurities or erucic acid or FFA or 5 micromoles per gramme of seed for glucosinolates. If the retest is within these tolerances cost of check analysis to be for the party who called for the check. All duplicate samples to be retained by the final Buyers for 2 months from the date of delivery. The check analysis for oil, moisture, admixture, erucic acid, FFA and glucosinolates shall be carried out in accordance with the methods laid down in the Federation's Standard Contractual Methods List. Under the terms of this clause due despatch shall mean within one business day following receipt.	90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105
12. NOTICES: Notices to be despatched by any means of rapid written communication. All notices shall be under reserve for errors in transmission. Notices shall be passed on with due despatch by intermediate Buyers and Sellers. Any notice received after 16.00 hours on a business day shall be deemed to have been received on the following business day. Notice from a broker shall be a valid notice under this contract.	106 107 108
13. NON-BUSINESS DAYS: Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday in the country where the party required to do the act or give the notice resides or carries on business or in the country where the act has to be done or the notice has to be received or on any day which the Federation shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 16.00 hours Mondays to Fridays inclusive. The contract delivery period not to be affected by this clause.	109 110 111 112
14. ODD DAYS: In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.	113
15. FORCE MAJEURE: Should Sellers be prevented from making physical delivery of the material sold, or Buyers from taking delivery by reason of Act of God, strikes, lockouts, riots, civil commotions, fires or any other cause comprehended by the term Force Majeure, the time of delivery shall be extended until 15 days after the operation of the cause of prevention has ceased. The party invoking this clause shall notify the other party within 5 business days of the occurrence or the first business day of the delivery period whichever is the later and shall furnish proof of prevention if required. Should such cause exist for a period of 60 days beyond the contract period, the contract or any unfulfilled part thereof so affected shall be cancelled. In case of default after extension, the default date shall be similarly deferred.	114 115 116 117 118 119
16. BANKRUPTCY/INSOLVENCY: If before the fulfilment of this contract, either party shall suspend payment, notify any of his creditors that he is unable to meet his debts or that he has suspended payment or that he is about to suspend payment of his debts, convene, call or hold a meeting of his creditors, propose a voluntary arrangement, apply for an official moratorium, 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 reconstruction or amalgamation), become subject to an Interim Order under Section 252 of the Insolvency Act 1986 or have a Bankruptcy Petition presented against him the contract shall forthwith be closed, either at the actual or estimated market price then current for similar goods or, at the option of the other party, at a price to be ascertained by re-purchase or re-sale and the difference between the contract price and such closing-out price shall be the amount which the other party shall be entitled to claim or shall be liable to account for under this contract. Should either party be dissatisfied with the price ascertained by re-purchase or re-sale, then the matter shall be referred to arbitration. If no re-purchase or re-sale takes place and if the parties cannot agree to a closing-out price, then on application of either party, the closing-out price shall be fixed by a sole arbitrator appointed by the Federation subject to the right of appeal under the Federation's Rules of Arbitration and Appeal.	120 121 122 123 124 125 126 127 128 129

17. CIRCLE: Where a Seller repurchases from his Buyer, or from any subsequent Buyer, the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so repurchased 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, of the same quality and, where applicable, of the same analysis warranty.)
The invoices for the quantity in question shall then be settled between the Buyers and Sellers in the circle by payment by each Buyer to his Seller of the amount by which the invoice exceeds the lowest amount in the circle. The settlement shall be due not later than 15 consecutive days after the day on which the circle has been established (or the next business day if the 15th is a non-business day) but not earlier than on the first and not later than on the last business day of the period of delivery. Should the existence of a circle become apparent only from the notices of delivery, the day on which the goods should have been made available shall be taken as the day of settlement. If a circle appears to exist only after the delivery order was issued or after presentation, payment shall be made as if no circle had been established.
All Sellers and Buyers shall give every assistance to the establishment of the circle and when a circle shall have been established same shall be binding on all parties to the circle. Should any party in the circle commit prior to the due date for payment any act comprehended in the Bankruptcy/Insolvency Clause, the invoice amount for the goods calculated at the closing-out price as provided for in the Bankruptcy/Insolvency Clause, shall be taken as the basis for settlement instead of the lowest invoice amount in the circle, and in this event each Buyer shall make payment to his Seller or each Seller shall make payment to his Buyer of the difference between the closing-out price and the contract price, as the case may be.
In the event of a claim under the Force Majeure Clause the date for settlement shall be deferred until the expiry of the extended delivery period. Thereafter, if the contract is cancelled under the terms of the Force Majeure Clause, this clause is not applicable.

18. DEFAULT: In default of fulfilment of this contract by either party, the other party at his discretion shall, after giving notice, have the right either to cancel the contract, or the right to sell or purchase, as the case may be, against the defaulter who shall on demand make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase, or if neither of the above rights is exercised, the damages, if any, shall, failing amicable settlement, be determined by arbitration. The damages awarded against the defaulter shall be limited to the difference between the contract price and the actual or estimated market price on the day of default. Damages to be computed on the mean contract quantity. If the arbitrators consider the circumstances of the default justify it they may, at their absolute discretion, award damages on a different quantity and/or award additional damages.
Prior to the last day for making delivery a Seller may notify his Buyer of his inability to deliver but the date of such notice shall not become the default date without the agreement of the Buyer. If, for any other reason, either party fails to fulfil his contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration.
In the event of failure of the Seller to delivery against the second delivery instruction, default shall be the first business day following the day on which default was established.

19. DOMICILE: This contract shall be deemed to have been made in England and the construction, validity and performance thereof shall be governed in all respects by English Law. Any dispute arising out of or in connection therewith shall be submitted to arbitration in accordance with the Rules of the Federation. The serving of proceedings upon any party by sending same to their last known address together with leaving a copy of such proceedings at the offices of the Federation shall be deemed good service, rule of law or equity to the contrary notwithstanding.

20. 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 Law 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 the Limitation Period in the International Sale of Goods of 1974 and the amending Protocol of 1980.

21. ARBITRATION: Any dispute arising out of this contract, including any question of law arising in connection therewith, shall be referred to arbitration in London (or elsewhere if so agreed) in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Associations Limited, in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant.
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 arbitrators, umpire or Board of Appeal (as the case may be), in accordance with the Rules of Arbitration and Appeal of the Federation, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators, umpire or Board of Appeal (as the case may be), shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.
In any case where the dispute involves a member of the Agricultural Industries Confederation or of the National Farmers' Union of England and Wales or of the National Farmers' Union of Scotland, a party may appoint a suitably qualified member of Agricultural Industries Confederation or a nominee of the National Farmers' Union of England and Wales or the National Farmers' Union of Scotland, subject to the Rules of Arbitration and Appeal of FOSFA International.
In the case of an appeal against an arbitration award on this contract, the National Farmers' Union of England and Wales, or the National Farmers' Union of Scotland shall have the right to appoint a member of the Board of Appeal to consider the dispute, subject to the Rules of Arbitration and Appeal of FOSFA International.



APPROVED AIC CONTRACT NOTE FOR HOME GROWN GRAIN AND PULSES

Prepared by AIC in Consultation with the NFUs of England & Wales and Scotland

Suitable for Producer/First Buyer Transactions.

This Contract is valid only when issued by a Member or Licensee of the Agricultural Industries Confederation Limited

Date:

Buyer's Ref: Seller's Ref:

Sellers:

Buyers:

being the only two parties who have any rights whatsoever under this contract have this day entered into a contract whereby the Buyer agrees to buy and the Seller agrees to sell goods not necessarily being the Seller's own produce, on the terms and conditions given below. For the avoidance of doubt and subject to Clause 20, the unavailability of the Seller's own produce does not remove the obligation on the Seller to make available goods, having been produced elsewhere in the UK, which meet the following terms and conditions:

1. Goods sold on *Sample/*Description: Contractual quality for each individual consignment as under:

Type/ Variety	Max Moisture %	Min Specific Weight (kg/hl)	Min/Max Nitrogen % (basis dry matter)	Min/Max* Protein % (basis dry matter)	Min Germinative Capacity %	Min Hagberg Falling No	Max Admixture/ Impurities (by weight) %	Max Sprouted Grains (by weight) %	Max Screenings (by weight) % (enter sieve size)	Hardness Min/Max* (SKCS Value)

2. Weighing Charge: Weighing Charges of £...../tonne* / £...../load* shall be for Buyers*/Sellers* account.

3. Special Terms:

4. Drying: Undried/dried or conditioned*

5. Contract Quantity: About* tonnes OR between and tonnes*. Where the word 'about' is used in reference to quantity the Seller shall have the option of delivering 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contract quantity at the contract price. This variation of 5% or 15 tonnes is hereinafter referred to as 'the tolerance'. Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the Buyer to reject the excess if they so wish. If they do not so reject, the price of any quantity in excess of the contract quantity shall be settled by mutual agreement or otherwise by arbitration. If the Seller delivers less than the minimum quantity permitted by the tolerance they shall be deemed to be in default and shall compensate the other party in accordance with the Default clause herein. Calculation of damages in all instances shall be against the contract quantity. (Where deliveries of individual consignments reach a tonnage within the tolerance of the contract quantity, the contract shall be deemed to have been completed).

6. Contract Price:per tonne ex-farm/ex-store/delivered to*(location).

7. Movement Period:

8. Payment Terms:

THIS CONTRACT IS SUBJECT TO THE CONDITIONS ON THE FOLLOWING PAGES SO FAR AS THEY ARE NOT INCONSISTENT WITH THE TERMS SET OUT ABOVE. (Whenever the words 'grain' or 'pulses' are used, these refer to goods of the contractual description).

*Delete words which do not apply. **Signature on behalf of Buyer*/ Seller***

9. **Farm Assurance:** The Seller is responsible for ensuring the goods supplied against the contract meet the requirements of a recognised crop assurance scheme and membership of such scheme remains valid through the movement period.
- 10 **Origin:** The Seller guarantees that Goods have been grown in the United Kingdom.
11. **Quality:** In addition to obligations arising under the Sale of Goods Act 1979 (as amended) the following conditions shall apply:
- All goods to which this contract refers shall be of satisfactory quality, sound, free from mould, heat damage, green grain, infestation or other injurious materials and from objectionable smell or taste.
 - Feed grain (as specified under Goods sold on Sample/Description above) shall not contain more than 0.001% Ergot by weight. All other goods shall be free from Ergot.
 - Where the goods have been dried after storage in a sealed silo or container, or where any chemical treatment has been used as a desiccant on the crop from which the goods are produced, these facts shall be declared in writing by the Seller at the time of sale.
 - Where wheat is sold for flour milling, gluten shall be present and elastic, and of a satisfactory colour; maximum admixture, as stated above under Contractual Quality, shall include all material passing through a 2.0mm slotted aperture sieve and non-wheat tailings retained over a 3.5mm slotted aperture sieve.
 - In the case of goods purchased on sample, the goods shall in all other respects be as per sample.
12. **Pre-delivery Storage:** The Seller must ensure that Goods sold for delivery against this contract are at all times stored in clean and hygienic conditions. Sellers shall allow Buyers, their agents or sub-buyers, access to any store containing the contract goods and, if required, shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the goods.
13. **Pesticide Residues:** The Seller guarantees that the goods, on delivery, will comply with the provisions of the Food and Environment Protection Act 1985 or any amendment thereof, the Plant Protection Products Regulations 2011 or any amendment thereof and legislation pertaining to permitted pesticide maximum residue limits applicable for the region of the UK in which the goods have been grown.
14. **Combinable Crops Passport (CCP):**
- The Seller shall ensure that an appropriately completed and signed CCP accompanies each load that is collected/delivered.
 - The Seller shall notify the Buyer on a CCP whether or not any post-harvest treatment has been applied to the goods by or on behalf of the Seller or a previous owner.
- The Buyer reserves the right to reject any load which is not accompanied by an appropriately completed CCP.
15. **Salmonella:**
- The Seller must observe the Defra published Code of Practice for the control of Salmonella during the Production, Storage and Transport of Compound Feeds, Premixtures, Feed Materials and Feed Additives, or any amendment thereof.
 - The goods shall be available for delivery/collection as required during the movement period irrespective of salmonella sampling/monitoring/testing.
 - In the event that a Statutory Order is issued preventing the movement of the contractual goods prior to the expiry of the movement period, the Force Majeure clause will apply. In the event that payment has been made for all or part of the goods, and the goods are then subject to the provisions of the Order preventing the movement of the contractual goods during the movement period, then any monies paid for goods shall be returned to the Buyer for that part of the contract so cancelled. Any monies due under this clause shall be repaid within seven consecutive days of notification by the Buyer that the contract or any portion of the contract has been cancelled.
- The Buyer shall have no claim against the Seller for delay or non-fulfilment under this clause provided that the Seller supplies to the Buyer, if required, satisfactory evidence justifying the delay.
16. **Sampling:**
- Deliveries shall be sampled by the receiver at the final consignment point in accordance with the procedure laid down in the ISO 24333 Standard or any amendment thereof.
 - Analysis of all samples shall be determined in accordance with equipment calibrated to the reference methods specified in the AIC Code of Practice for Testing Facilities of Combinable Crops, or equivalent, currently in force at the time of delivery. Samples submitted for independent testing shall be analysed using the reference methods stated in that Code and not by using rapid or other methods.
17. **Vehicle Cleanliness:** Acceptance or rejection of the vehicle for fitness to carry grain/pulses to enter the food chain shall be at the discretion of the party responsible for loading the vehicle. Any additional haulage costs arising from the rejection of the vehicle shall be the liability of the party responsible for the movement of the goods. In the event

of any vehicle being rejected as above, within three business days of the end of the movement period, the movement period shall be extended by three business days.

- 18. Delivery & Weights:** All deliveries/collections shall be made in bulk at Buyer's call within the movement period unless otherwise agreed. The Buyer's weights are final unless other satisfactory evidence is produced. The Buyer shall if required produce proof of weight received to the Seller.
- a. **Ex-farm or ex-store sales**
The Seller shall load the goods free of charge on vehicles on an accessible hard standing. The Buyer undertakes to advise the Seller of intended times of collection as far as possible and to provide vehicles suitable in all respects for the carriage of bulk grain or pulses. Where the Buyer collects unweighed goods they shall notify the Seller of the net weight as quickly as possible and will produce a copy of the weight ticket on request.
 - b. **Sales on a delivered basis**
The goods shall be delivered to the nominated place of consignment on the instructions of the Buyer. The Seller undertakes to advise the Buyer of all despatches, stating the haulier's name and approximate net weight. A receipt for the weight at the time of delivery shall be given to the driver of the vehicle. The Seller shall ensure that the goods are carried on vehicles which comply with the TASCC Code of Practice for Road Haulage of Combinable Crops and Animal Feeds unless agreed otherwise in writing.
- 19. Passing of Ownership and Risk:** Ownership and risk shall remain with the Seller until the goods are delivered to the Buyer. If, however, delivery has not taken place through no fault of the Seller, and the Seller has notified the Buyer in writing that the goods are ready for delivery, then risk shall pass to the Buyer on the expiration of the movement period.
- 20. Force Majeure:** Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, break-down of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within five business days of the occurrence, or not later than five business days after the beginning of the movement period, whichever is the later. For the avoidance of doubt, neither party shall have the right to rely on, as Force Majeure, any strike which is limited to the employees of that party or its subcontractors, or any delay or default of that party's sub-contractors in the performance of their obligations. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the movement period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.
- 21. Consignment:** Each individual delivery or consignment shall meet all contract terms.
- 22. Claims:** The Buyer shall have the right to claim an allowance or to reject the goods if they do not comply with the terms of the Contract.
- a. When goods are sold subject to a specification requiring analysis, the Buyer shall have the right to claim an allowance from a pre-determined scale, or to be agreed, or to reject the goods on the basis of an analysis made by them or on their behalf. When the Buyer exercises this right a representative sealed sample shall be retained and, if required by the Seller, shall be submitted to an agreed independent analyst in accordance with Clause 16 for the justification of any claim or rejection. If required by the Seller this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable. Costs of independent sampling and analysis so incurred shall be for the Seller's account if any claim or rejection is confirmed, otherwise for the Buyer's account.
 - b. Claims must be confirmed by the Buyer by fax, e-mail or other electronic means or by letter sent by first class post, within two business days following the arrival of the goods at their ultimate destination in the United Kingdom.
 - c. All claims other than those based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be notified so as to be received by the Seller within 90 consecutive days from the last day of the movement period.
- 23. Notices:**
- a. All notices required to be served or information passed on under this contract shall be communicated without delay by telephone or by rapid written communication. Notices which are served or passed on by telephone shall be confirmed by rapid written communication within one business day. Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. If receipt is contested, the burden of proof 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 notice was actually transmitted to the addressee.

- b. Notices received after 1600 hours on any business day shall be deemed to have been received on the next business day.
- c. A notice to a broker named in this contract is a notice to a principal.

24. Demurrage: In cases of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering goods howsoever caused (including delays resulting from the non-provision of essential documentation) the Seller or the Buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

25. Default: In the event of the Seller failing to complete deliveries or to make the goods available for collection by the Buyer (whichever is their duty under the contract) by the last day of the movement period, the quantity not delivered against the contract quantity shall be deemed in default. The Buyer may, after giving prior written notice sent by fax, e-mail or other electronic means or by letter sent by first class post,

- (a) purchase to replace the goods in default, the Seller being liable to compensate the Buyer for any resultant loss on such purchase, or
- (b) claim damages to be agreed mutually or settled by arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default.

In the event of the Buyer not accepting delivery of, or collecting the contract quantity by, the last day of the movement period (whichever is their duty under the contract) the Seller may, at their option, after having given prior written notice by fax, e-mail or other electronic means or by letter sent by first class post, to the Buyer:

- (a) sell the goods at the market price, the Buyer being liable to compensate the Seller for any resultant loss (including any reasonable expenses arising from the sale) suffered by the Seller; or
- (b) claim damages to be settled by mutual agreement or arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default. All damages to be calculated on the contract quantity.

The date of default shall be the first business day following the expiry of the movement period. When an extension of collection/delivery has been either claimed as under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

26. Arbitration: Any dispute (other than a claim for an unpaid debt or as provided under (b) below) arising out of this Contract shall be referred to arbitration as follows:

- (a) Unless otherwise agreed the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation and/or <https://www.agindustries.org.uk/legal/arbitration/>), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
- (b) If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed may, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within twenty eight days the party making the request shall be at liberty to commence Court proceedings leaving it to the other party, if the other party so wishes, to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

27. Time Limits for Claiming Arbitration: Arbitration shall be claimed within the following time limits: (i) in relation to any aspect of the consignment quantity, quality or condition of the goods that is discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 28 consecutive days after the date of the arrival of the goods at their ultimate destination in the United Kingdom and (ii) in relation to all other claims including without limitation claims for quantity, quality or condition not discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 90 consecutive days after the last day of the movement period. Subject to paragraph 26(b): (i) the making of an award shall be a condition precedent to any Court action, excepting that which is expressly referred to in Clause 44 (3) of the Arbitration Act 1996 (or any amendment thereof), by either party or any person claiming under either of them and (ii) in the event that arbitration is not claimed within the time limits prescribed above, all causes of action relating the subject claim whether by way of arbitration or in any Courts of Law shall be deemed waived and shall be barred absolutely unless the Arbitration Tribunal shall in its absolute discretion determine otherwise.

28. Non-Payment: The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other Contract with them by the Buyer have been received and reserves a lien upon - and the right to sell or otherwise dispose of - all goods the subject of this Contract whether appropriated to it or not in respect of any such payments.

- 29. Insolvency:** If either party to this Contract (“the Affected Party”):
has a Receiver, Administrative Receiver or Administrator appointed in respect of any of its property or business undertakings;
or announces that it has ceased, or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts);
or suspends or is about to suspend, payment of its debts or fails to pay, or is unable to pay or admits or states its inability to pay its debts as they fall due;
or disposes of or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party);
or convenes, calls or holds a meeting of its creditors or makes or proposes any arrangement or composition with its creditors;
or states an intention to make or give notice of a voluntary arrangement under Part 1 of the Insolvency Act 1986;
or has a resolution or petition (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) passed for the winding up or voluntary winding up or liquidation;
or is dissolved, or applies for an Interim Order under Part VIII of the Insolvency Act 1986; or a Bankruptcy Petition or a Statutory Demand in bankruptcy is presented or served;
or suffers to the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises;
or if a party being a partnership, any of the above events occurs with respect to the partnership or to any partner therein (hereafter called “Act of Insolvency”) then,
notwithstanding any previous arrangement between the parties for deferred payments, the full or full remaining price for any goods delivered shall become immediately due and payable by the party committing an Act of Insolvency.

The party not committing an Act of Insolvency (“the Innocent Party”) shall have the right, upon giving written notice to the other party, without prejudice to any other rights and remedies available to the Innocent party, to cancel and/or suspend and/or to refuse to make or accept any further deliveries and to close out and settle the Contract as detailed below.

The Affected Party shall serve written notice of the relevant Act of Insolvency by fax, e-mail or other electronic means or by letter sent by means of a recorded delivery to the Innocent Party. Where proof is available that such notice was served within two business days of the occurrence of the Act of Insolvency, the Innocent Party shall have the right to close out the Contract which shall be settled at the market price on the first business day following the occurrence of the Act of Insolvency.

In all other circumstances, the Innocent Party, upon learning of the occurrence of the Act of Insolvency shall have the right to close out and settle the Contract at either:

- (a) the market price on the first business day following the Innocent Party becoming aware of the Act of Insolvency, or
- (b) at the market price on the first business day following the occurrence of the Act of Insolvency.

In the event that the market price is lower than the contract price then the Innocent Party may add the difference between the market price and the contract price to the debt owed by the Affected Party.

In the event that the market price is higher than the contract price then the Affected Party is not entitled to claim the difference between the market price and the contract price from the Innocent Party.

- 30. Product Liability Insurance:** The Seller is advised to have insurance to cover any product liability or other claims for which they may be legally liable. This advice will be referred to at any time should it become necessary.
- 31. Statutory Charges:** The price of the goods is subject to alteration by reason of the imposition of or alteration by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.
- 32. Processors and Growers Research Organisation (PGRO):** In the case of Pulses the Buyer shall deduct the PGRO Levy from the payment to the Seller.
- 33. Business Day/Non-Business Days:** A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognised national holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation Limited may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

34. **Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.I(1)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.
35. **Domicile:** This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all aspects by English law

Copyright © 2021 AIC



APPROVED AIC CONTRACT NOTE FOR GRAIN AND PULSES (WHOLESALE TERMS)

Date

Buyer's Ref Seller's Ref Broker's Ref

The Seller:

Intervening as BROKERS

The Buyer:

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

1. Goods sold on *Sample/*Description: Contractual quality for each individual consignment as under:

Type/ Variety	Max Moisture %	Min Specific Weight (kg/hl)	Min/Max* Nitrogen % (basis dry matter)	Min/Max* Protein % (basis dry matter)	Min Germinati ve Capacity %	Min Hagberg Falling No	Max Admixture / Impurities (by weight) %	Max Sprouted Grains (by weight) %	Max Screenings (by weight) % (enter sieve size)	Hardness Min/Max* (SKCS Value)
Country of Origin										

2. Weighing Charge: Weighing Charges of £...../tonne* / £...../load* shall be for Buyer's*/Seller's* account.

3. Special Terms:

4. Contract Quantity: About* tonnes OR between and tonnes*. Where the word 'about' is used in reference to quantity the Seller shall have the option of delivering 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contract quantity at the contract price.

a. This variation of 5% or 15 tonnes is hereinafter referred to as 'the tolerance'. Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the Buyer to reject the excess if they so wish. If they do not so reject, the price of any quantity in excess of the contract quantity shall be settled by mutual agreement or otherwise by arbitration. If the Seller delivers less than the minimum quantity permitted by the tolerance they shall be deemed to be in default and shall compensate the other party in accordance with the Default clause herein. Calculation of damages shall be against the contract quantity.

b. Where deliveries of individual consignments reach a tonnage within the tolerance of the contract quantity, the contract shall be deemed to have been completed.

c. In the event of more than one collection/delivery instruction applying, such subdivided quantities shall be deemed to be separate contracts so far as the provisions of the 'Quantity' clause apply.

5. Contract Price.....per tonne ex-farm/ex-store/delivered

to*

.....(location).

6. Movement Period):

7. Payment Terms:

8. Brokerage: Brokerage, if appropriate, to be paid by Seller.

THIS CONTRACT IS SUBJECT TO THE CONDITIONS ON THE FOLLOWING PAGES SO FAR AS THEY ARE NOT INCONSISTENT WITH THE TERMS SET OUT ABOVE. (Whenever the words 'grain' or 'pulses' are used, these refer to goods of the contractual description).

* Delete words which do not apply

Signature on behalf of Buyer*/Seller*

9. **Assurance:** The Seller must be assured at the date of delivery under TASCC or an AIC recognised equivalent assurance scheme. All Goods supplied must be from a source assured under an approved Assurance Scheme, unless otherwise agreed.
10. **Origin:** The Seller guarantees that Goods have been grown in the UK/EU unless otherwise agreed.
11. **Quality:** In addition to obligations arising under the Sale of Goods Act 1979 as amended the following conditions shall apply:
- All goods to which this contract refers shall be of satisfactory quality, sound, free from mould, heat damage, green grain, infestation or other injurious materials and from objectionable smell or taste.
 - Feed grain (as specified under Goods sold on Sample/Description above) shall not contain more than 0.001% Ergot by weight. All other goods shall be free from Ergot.
 - Where the goods have been dried after storage in a sealed silo or container, or where any chemical treatment has been used as a desiccant on the crop from which the goods are produced, these facts shall be declared in writing by the Seller at the time of sale.
 - Where wheat is sold for flour/milling gluten shall be present and elastic, and of a satisfactory colour; maximum admixture, as stated above under Contractual Quality, shall include small grains passing through a 2.0mm slotted aperture sieve and non-wheat tailings retained over a 3.5mm slotted aperture sieve.
 - In the case of goods sold on sample, the goods shall in all other respects be as per sample.

12. **Pre-delivery Storage:**

The Seller must ensure that Goods sold for delivery against this contract are at all times stored in clean and hygienic conditions. Sellers shall allow Buyers, their agents or sub-buyers, access to any store containing the contract goods and, if required, shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the goods.

13. **Pesticide Residues:** The Seller guarantees that the goods, on delivery, will comply with the provisions of the Food and Environment Protection Act 1985 or any amendment thereof, the Plant Protection Products Regulations 2011 or any amendment thereof and legislation pertaining to permitted pesticide maximum residue limits applicable for the region of the UK in which the goods have been grown.

14. **Combinable Crops Passport (CCP)**

- The Seller shall ensure that an appropriately completed and signed CCP accompanies each load that is collected/ delivered.
- The Seller shall notify the Buyer on a CCP whether or not any post harvest treatment has been applied to the goods by or on behalf of the Seller or a previous owner.

The Buyer reserves the right to reject any load which is not accompanied by an appropriately completed CCP.

15. **Salmonella:**

- The Seller must observe the Defra published Code of Practice for the Control of Salmonella during the Production, Storage, and Transport of Compound Feeds, Premixtures, Feed Materials and Feed Additives, or any amendment thereof.
- The goods shall be available for delivery/collection as required during the movement period irrespective of salmonella sampling/monitoring/testing.
- In the event that a Statutory Order is issued preventing the movement of the contractual goods prior to the expiry of the movement period, the Force Majeure clause will apply. In the event that payment has been made for all or part of the goods, and the goods are then subject to the provisions of the Order preventing the movement of the contractual goods during the movement period, then any monies paid for goods shall be returned to the Buyer for that part of the contract so cancelled. Any monies due under this clause shall be repaid within seven consecutive days of notification that the contract or any portion of the contract has been cancelled.

The Buyer shall have no claim against the Seller for delay or non-fulfilment under this clause provided that the Seller supplies to the Buyer, if required, satisfactory evidence justifying the delay.

16. **Sampling:**

- Deliveries shall be sampled by the receiver at the final consignment point in accordance with the procedure laid down in the ISO 24333 Standard or any amendment thereof.
- Analysis of all samples shall be determined in accordance with equipment calibrated to the reference methods specified in the AIC Code of Practice for Testing Facilities of Combinable Crops, or equivalent, currently in force at the time of delivery. Samples submitted for independent testing shall be analysed using the reference methods stated in that Code and not by using rapid or other methods.

17. **Delivery and/or Collection Instructions:**

- The last Buyer shall give delivery instructions or, if appropriate, the first Seller shall give collection instructions not later than 1200 hours on the fifth business day prior to the start of the movement period, and in the event of failure to do so shall be deemed in default. Thereafter, should a series of similar contracts concerning the goods, or part of the goods, be involved, delivery/collection instructions shall be passed on

within 3 hours of receipt. Any unexpired portion of this 3 hour period remaining at 1600 hours shall be carried forward to the following business day. In the event of the party responsible for giving such instructions failing to do so by 1600 hours on the last business day before the commencement of the movement period, such party shall be deemed to be in default. The date of the default shall be the next business day. Under the terms of this clause, the definition of the last Buyer/First Seller shall be that party who at 1200 hours on the fifth business day prior to the start of the movement period is responsible for the initiation of instructions.

- b. Failure to pass on instructions within these time limits constitutes a technical breach of contract but will not give any party in the string any rights to reject these instructions unless the ultimate result of such delay is that a Buyer/Seller is thereby unable to give their instructions to the first Seller (responsible for loading) in the case of delivery instructions, or the last Buyer in the case of collection instructions, by 1600 hours on the last business day before the commencement of the movement period.
- c. All instructions shall be passed in accordance with the Notices clause.
- d. Delivery instructions must include date of contract, Buyer's contract number and/or reference, contract quantity, brief description of goods, quantity relating to the particular instruction and destination. Collection instructions must include date of contract, Seller's contract number and/or reference, contract quantity, brief description of goods, quantity relating to the particular instruction, name, address and telephone number of point of collection and, where appropriate.
- e. When a contract is purchased with a specific delivery address or sold with a specific collection address, then delivery/ collection instructions as specified in this clause do not need to be sent.

18. Vehicle Cleanliness:

Acceptance or rejection of the vehicle for fitness to carry grain/pulses to enter the food chain shall be at the discretion of the party responsible for loading the vehicle. Any additional haulage costs arising from the rejection of the vehicle shall be the liability of the party responsible for the movement of the goods. In the event of any vehicle being rejected as above, within three business days of the end of the movement period, the movement period shall be extended by three business days.

19. Delivery & Weights: All deliveries/collections shall be made in bulk at Buyer's call within the movement period unless otherwise agreed. The Buyer's weights are final unless other satisfactory evidence is produced. The Buyer shall if required produce proof of weight received to the Seller.

a. Ex-farm or ex-store sales

The Seller shall load the goods free of charge on vehicles on an accessible hard standing. The Buyer undertakes to advise the Seller of intended times of collection as far as possible and to provide vehicles suitable in all respects for the carriage of bulk grain or peas/beans. Where the Buyer collects unweighed goods they shall notify the Seller of the net weight as quickly as possible and will produce a copy of the weight ticket on request.

b. Sales on a delivered basis

The goods shall be delivered to the nominated place of consignment on the instructions of the Buyer subject to at least two clear business days' notice. A receipt for the weight at the time of delivery shall be given to the driver of the vehicle. The Seller shall ensure that the goods are carried on vehicles which comply with the TASC Code of Practice for Road Haulage of Combinable Crops and Animal Feeds, or equivalent, unless agreed otherwise in writing.

20. Passing of Ownership and Risk: Ownership and risk shall remain with the Seller until the goods are delivered to the Buyer. If, however, delivery has not taken place through no fault of the Seller, and the Seller has notified the Buyer in writing that the goods are ready for delivery, then risk shall pass to the Buyer on the expiration of the movement period.

21. Force Majeure: Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, break-down of machinery, power failure or fire, provided that the party invoking this clause despatches written notice in accordance with the Notices clause to the other party within five business days of the occurrence, or not later than five business days after the beginning of the movement period, whichever is the later. For the avoidance of doubt, neither party shall have the right to rely on, as Force Majeure, any strike which is limited to the employees of that party or its subcontractors, or any delay or default of that party's subcontractors in the performance of their obligations. In the case of resale such information shall be passed on without delay. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the movement period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.

22. Consignment: Each individual delivery or consignment shall meet all contract terms.

23. Claims: The Buyer shall have the right to claim an allowance or to reject the goods if they do not comply with the terms of the Contract.

- a. When goods are sold subject to a specification requiring analysis, the Buyer shall have the right to claim an allowance from a pre-determined scale, or to be agreed or to reject the goods on the basis of an analysis made by them or on their behalf. When the Buyer exercises this right a representative sealed sample shall be retained and, if required by the Seller, shall be submitted to an agreed independent analyst in accordance with Clause 16(b) for the justification of any claim or rejection. If required by the Seller this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable. Costs of independent sampling and analysis so incurred shall be for the Seller's account if any claim or rejection is confirmed, otherwise for the Buyer's account.
- b. Claims must be confirmed by the Buyer by fax, e-mail or other electronic means or by letter sent by first class post within two business days following the arrival of the goods at their ultimate destination in the United Kingdom. In the event of this contract being one of a series of contracts, all claims shall be passed on without delay after receipt and if so passed on shall be deemed to be proper claims from Buyer to Seller as required by the provision of this clause whether within the two business days period or not.
- c. All claims other than those based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be notified so as to be received by the Seller within 90 consecutive days from the last day of the movement period with the same proviso as to series of contracts as in (b) above.

24. Notices:

- a. All notices required to be served or information passed on under this contract shall be communicated without delay by telephone or by rapid written communication. Notices which are served or passed on by telephone shall be confirmed by rapid written communication within one business day. Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. If receipt is contested, the burden of proof 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 notice was actually transmitted to the addressee.
- b. Notices received after 1600 hours on any business day shall be deemed to have been received on the next business day.
- c. A notice to a broker named in this contract is a notice to a principal.

25. Demurrage: In cases of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering goods howsoever caused (including delays resulting from the non-provision of essential documentation) the Seller or the Buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

26. Extension of Delivery Period: Where the first Seller (responsible for loading) has received delivery instructions in accordance with the Delivery and/or Collection Instructions clause, the first Seller and the Buyer responsible for receiving the goods may, by mutual agreement, arrange an extension of delivery up to a maximum of 14 consecutive days without prior reference to their respective immediate Buyer and Seller who shall, however, be informed promptly of such an agreement.

27. Default: In the event of default of fulfilment of contract by either party, the other at their discretion shall have the right, after giving notice in accordance with the Notices clause to sell or purchase, as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration. In the event of default by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but nothing contained in or implied under this contract shall entitle the Buyer/Seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the contract quantity. The date of default, other than as provided in the Delivery and/or Collection Instructions clause, shall be the first business day following the expiry of the movement period. When an extension of collection/delivery has been either claimed under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

28. Circle: Where a Seller repurchases from their Buyer or from any subsequent Buyer the same goods or part thereof, a Circle shall exist as regards the particular goods so repurchased 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 delivery/collection at the same delivery/collection points, during the same movement period). The Circle shall be settled by each Buyer and their Seller in the Circle by payment by each Buyer to their Seller, of the excess of the Seller's invoice amount over the lowest invoice amount in the Circle.

Payment shall be due not later than 15 consecutive days from the last day of the movement period. 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. 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 Buyer and Seller in this Circle, the failure to supply delivery/collection instructions shall not be considered a breach of contract. Should any party in the Circle commit any act comprehended in the Insolvency clause of this Contract prior to the date of payment being due as stated above, the invoice amount for the goods shall be calculated on the current market price for similar goods or, at the option of the other party, the price shall be ascertained by repurchase or resale. The price ascertained after the exercise of this option shall be taken as the basis of settlement instead of the lowest invoice amount in the Circle, and in this event each Buyer shall make

payment to their Seller or each Seller shall make payment to their Buyer, of the difference between the price and their contract price as the case may be.

- 29. Arbitration:** Any dispute (other than a claim for an unpaid debt or as provided under (c) below) arising out of this Contract shall be referred to arbitration as follows:
- a. Unless otherwise agreed the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, obtainable from the registered office of the Confederation and/or <https://www.agindustries.org.uk/legal/arbitration/> and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby. In the event of any dispute in a string of which this contract forms part, the parties to this contract must provide such information as may be required by the Arbitrators.
 - b. Where a dispute as to quality arises regarding goods which are the subject of two or more contracts identical in terms except as to date and price, then any arbitration may, with the consent of all parties concerned, be held as between the first Seller and the last Buyer in the series of transactions as if they were the only contracting parties and any award then made shall, subject to the rights of appeal as provided in the relevant rules, be binding on all intermediate parties in the series of transactions and may be enforced by any such intermediate party against their intermediate contracting party as if a separate award had been made under each separate contract. All such intermediate contracts shall be made available to the Arbitrators.
 - c. If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party may, in writing, before the time for commencing arbitration proceedings has lapsed request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within 28 consecutive days the party making the request shall be at liberty to commence Court proceedings leaving it to the other party if the other party so wishes to apply for a stay of proceedings invoking the Arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 consecutive days of the receipt of any refusal or 56 consecutive days from the date of the request if no answer to it is received.
- 30. Time Limits for Claiming Arbitration:** Arbitration shall be claimed within the following time limits: (i) in relation to any aspect of consignment quantity, quality or condition of the goods that is discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 28 consecutive days after the date of the arrival of the goods at their ultimate destination in the United Kingdom and (ii) in relation to all other claims including without limitation claims for quantity, quality or condition not discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 90 consecutive days after the last day of the movement period. Subject to paragraph 29(c): (i) the making of an award shall be a condition precedent to any Court action, excepting that which is expressly referred to in Clause 44(3) of the Arbitration Act 1996 (or any amendment thereof), by either party or any person claiming under either of them and (ii) in the event that arbitration is not claimed within the time limits prescribed above all courses of action relating to the subject claim whether by way of arbitration or in any Court of Law are deemed waived and shall be barred absolutely unless the Arbitration Tribunal shall in its absolute discretion determine otherwise.
- 31. Non-Payment:** The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other Contract with them by the Buyer have been received and reserves a lien upon - and the right to sell or otherwise dispose of - all goods the subject of this Contract whether appropriated to it or not in respect of any such payments.
- 32. Insolvency:**
- If either party to this Contract ("the Affected Party"):
- has a Receiver, Administrative Receiver or Administrator appointed in respect of any of its property or business undertakings;
 - or announces that it has ceased, or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts);
 - or suspends or is about to suspend, payment of its debts or fails to pay, or is unable to pay or admits or states its inability to pay its debts as they fall due;
 - or disposes of or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party);
 - or convenes, calls or holds a meeting of its creditors or makes or proposes any arrangement or composition with its creditors;
 - or states an intention to make or give notice of a voluntary arrangement under Part 1 of the Insolvency Act 1986;
 - or has a resolution or petition (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) passed for the winding up or voluntary winding up or liquidation;
 - or is dissolved, or applies for an Interim Order under Part VIII of the Insolvency Act 1986; or a Bankruptcy Petition or a Statutory Demand in bankruptcy is presented or served;
 - or suffers to the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises;

or if a party being a partnership, any of the above events occurs with respect to the partnership or to any partner therein (hereafter called "Act of Insolvency") then, notwithstanding any previous arrangement between the parties for deferred payments, the full or full remaining price for any goods delivered shall become immediately due and payable by the party committing an Act of Insolvency.

The party not committing an Act of Insolvency ("the Innocent Party") shall have the right, upon giving written notice to the other party, without prejudice to any other rights and remedies available to either party, to cancel and/or suspend or to refuse to make or accept any further deliveries and to close out and settle the Contract as detailed below.

The Affected Party shall serve written notice of the relevant Act of Insolvency in accordance with the Notices clause of this Contract to the other party. Where proof is available that such notice was served within two business days of the occurrence of the Act of Insolvency, the Innocent Party shall have the right to close out the Contract which shall be settled at the market price on the first business day following the occurrence of the Act of Insolvency.

In all other circumstances the Innocent Party, upon learning of the occurrence of the Act of Insolvency shall have the right to close out and settle the Contract at either:

- (a) the market price on the first business day following the Innocent Party becoming aware of the Act of Insolvency or
- (b) at the market price on the first business day following the occurrence of the Act of Insolvency.

- 33. **Product Liability Insurance:** The Seller is advised to have insurance to cover any product liability or other claims for which he may be legally liable. This advice will be referred to at any time should it become necessary.
- 34. **Statutory Charges:** The price of the goods is subject to alteration by reason of the imposition of or alteration by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.
- 35. **Business Day/Non-Business Days:** A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays, officially recognised national holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation Limited may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing notices and claims.
- 36. **Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.I(1)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.
- 37. **Domicile:** This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all aspects by English Law.

Copyright © 2021 AIC