

S.A. CONTRACT FOR GRAIN, PULSES AND OILSEEDS AND PRODUCTS DERIVED THEREFROM

(Approved by Animal Feed Manufacturers Association, Grain Silo Industry, Grain South Africa, National Chamber of Milling, S A Cereals and Oilseeds Trade Association)

Contract Date:

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

SELLER:
.....
.....

Acting as Broker only:

BUYER:
.....
.....

- A. FAILURE OF THE RECEIVER OF THIS CONFIRMATION TO SIGN AND RETURN IT TO THE ISSUER SHALL NOT RENDER THE TRANSACTION INVALID UNLESS THE VERBAL AGREEMENT SPECIFICALLY PROVIDES FOR SUCH A REQUIREMENT. OTHERWISE IRRESPECTIVE OF THE LACK OF RECEIVER'S SIGNATURE THE DETAILS ENTERED HEREIN SHALL BE CONTRACTUAL AND ENFORCEABLE.
- B. Every item marked with an asterisk* requires a choice to be made. This must be clearly marked by both BUYER and SELLER.
- C. INCO Terms 2000 or subsequent versions of INCO Terms are to apply.

1. SELLER and BUYER 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 commodities not necessarily being the SELLER'S own produce, on the following terms and conditions:

Commodity type *

Origin * State country of origin

2. **Quality**

All commodities to which this contract refers shall be good, sound and merchantable, and fit in all respects for the purpose for which they were purchased. The BUYER shall have the right of rejection if the commodities do not comply with this requirement. (Refer Clause 10).

Commodities sold on *

Contractual quality and condition of commodity for each individual consignment as hereunder: Specifications as per the laws governed by the RSA Agricultural Products Standards Act 1990, or any amendments thereof, including any other, as follows:

3. Quantity

3.1. _____ metric tons _____ % more or less or to the nearest full road or rail truck
 (whichever is the lesser quantity) at the contract price.

3.2. The above variation 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 he so wishes. If he does not so reject, the price of any quantity in excess of the upper tolerance shall be settled by mutual agreement or otherwise by arbitration. If the SELLER delivers less than the minimum quantity permitted by the tolerance he shall be deemed to be in default and shall compensate the BUYER in accordance with the Default Clause herein. Calculation of damages shall be against the mean contract quantity. Where deliveries of individual consignments reach a tonnage within the tolerance of the contractual quantity, the contract shall be deemed to have been completed.

4. **Price** _____ per metric ton Net Gross
 On farm In silo Ex silo Bulk/Silo Bags FCA CFR DDU

5. Place Of Despatch/Delivery

 (PLACE)

6. Despatch/Delivery

6.1 DESPATCH DELIVERY *
 6.2 BULK BAGS * [Stipulate Weight]
 6.3 PERIOD FROM _____ UP TO _____
 6.4 RATE _____
 6.5 METHOD _____

7. Payment Terms

Payment shall be made in _____ (PLACE) within _____ days against presentation of the following documents:

Should the BUYER make payment after any agreed date, he shall be in default and shall be liable to pay interest at _____ % per annum, from the date on which payment was due until the date on which payment is made. Such default shall not be grounds for cancellation by the SELLER of any balance of the contract for which payment is being made.

8. Warehouse and/or silo Storage and Handling costs

8.1 Storage costs shall be paid by SELLER BUYER *

8.2 Handling IN until _____ shall be paid by SELLER BUYER *

8.3 Handling OUT until _____ shall be paid by SELLER BUYER *

9. Mass Determination

9.1. Where the commodity has been sold delivered to BUYER's nominated store, basis DDU or DDP, and fails to meet the quantity as specified herein, the Receiver shall not unload the commodity, and shall advise the SELLER as soon as possible, but no later than 24 hours from arrival of the commodity. Failure of the Receiver to give such notice as required shall preclude BUYER from claiming for deficiency against the SELLER. SELLER shall be allowed 24 hours from time of the notice of deficiency being given to inspect the commodity to verify the quantity. If SELLER waives this right he shall be deemed to accept the Receiver's findings as to quantity.

BUYER shall advise SELLER by fax or e-mail within 24 hours of the end of each delivery period, or at such times as may be otherwise agreed (see 6) between the parties, the following information:

(a) SELLER's contract No.

(b) Lorry or Rail Truck Registration No's.

(c) Gross, Tare and Nett Mass.

9.2. In the case of delivery ex-silo or ex-works, FCA, CPT or CIP, with sender's mass final, the mass as determined at the silo/warehouse shall be final and shall be accepted by both SELLER and BUYER. SELLER and BUYER shall have the right to superintend.

9.3. In the case of delivery to a silo/warehouse, the mass taken in by the silo/warehouse shall be final and shall be binding on the parties.

9.4. Where the commodity has been sold "on-farm" the * shall have the commodity weighed at the nearest assized weighbridge. Weighing costs shall be paid by *

9.5. All weighing tickets shall be mechanically or electronically printed. Weighbridges used to determine mass shall conform to the verification periods for weighing and measuring instruments used in trade as required by the RSA laws governing trade metrology.

9.6. If the commodity being traded is in a silo/warehouse as indicated on a Silo Certificate / Document of Title the mass as indicated on the Silo Certificate / Document of Title shall be final and shall be accepted by both SELLER and BUYER.

10. Sampling & Analysis

10.1. Where the commodity has been sold delivered to BUYER's nominated store, basis DDU or DDP, and fails to meet the quality as specified herein, the Receiver shall not unload the commodity, and shall advise the SELLER as soon as possible, but no later than 24 hours from arrival of the commodity. Failure of the Receiver to give such notice as required shall preclude BUYER from claiming for deficiency of quality against SELLER. SELLER shall be allowed 24 hours from time of the notice of deficiency being given to inspect the commodity to verify the quality. If SELLER waives this right he shall be deemed to accept the Receiver's findings as to quality.

Should the SELLER and BUYER fail to agree on the quality of the commodity, a second sample shall be drawn in accordance with the Agricultural Products Standards Act 1990 (and any amendments thereof) by a person or persons agreed to by the parties. Such sample shall be sealed and shall bear on the label all relevant information required for analysis. All analysis shall be done by an independent analyst/surveyor agreed to by the parties. The results so determined shall be final and binding upon the parties. If allowances resulting from this analysis cannot be mutually agreed by the parties the matter shall be submitted to arbitration for determination as herein provided. All costs of sampling and analysis shall be borne by the defaulting party.

10.2. Where the commodity has been sold ex-silo/ex-works, FCA, CPT or CIP, the quality shall be determined by the Silo/Warehouse Operator and the quality so determined shall, unless the parties agree otherwise in writing, be final and binding on the parties.

10.3. Where commodity represented by Silo Certificate/s is traded, the quality or grade determined at the time of unloading shall be final and binding on the parties.

10.4. Where commodity is despatched for export by sea the quality shall be determined from a sample taken by a recognised first class surveyor or inspection agency upon arrival of the commodity at the port of export. The quality so determined shall be final and binding on the parties.

10.5. Where commodity has been sold "on farm" the commodity shall be graded as follows:

11. Force Majeure

11.1 Neither the BUYER nor the SELLER shall be responsible for delay in despatch or delivery of commodity or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within RSA or elsewhere if commodities are imported), 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 contract period, whichever is the later. 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 contract 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 consecutive 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.

11.2 Crop failure resulting from weather conditions of any nature, or damage to or destruction of crops by any other means, will NOT be considered grounds for invoking Force Majeure under the terms of this clause.

11.3 *SELLER is advised that failure to execute the contract in part or in total by reason of shortage of the commodity herein described may render him liable to a claim for damages by the BUYER (see 15).*

12. Pre-delivery Storage

Commodities sold for delivery against this contract must at all times be stored in clean and hygienic conditions. SELLER shall allow BUYER, by prior written agreement, access to any store containing the contract commodities 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 commodities.

13. Notices

Any notices in respect of this contract received after 16:00 on a Business Day shall be deemed to have been received on the Business Day following. All such notices shall be given by letter (to be delivered on the day of writing), or by telegram, telex, fax or e-mail. Proof of sending shall be deemed to be proof of receipt.

14. Business Day/Non-Business Days

A business day is the period between 09:00 and 16:00 inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognised national holidays applicable throughout the RSA and any days which may from time to time be declared as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

15. Default

15.1. In the event of the SELLER failing to complete deliveries or to make the commodities available for despatch/collection by the BUYER (whichever is his duty under the contract) by the last day of the contract period, the quantity not delivered against the contract quantity shall be deemed in default. The BUYER may, after giving prior written notice:

- (a) purchase against such default, the SELLER to make good the loss, if any, 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.

15.2. In the event of the BUYER not accepting delivery of or collecting the contract quantity by the last day of the contract period (whichever is his duty under the contract) the SELLER may at his option after having given prior written notice by recorded delivery to the BUYER.

- (a) sell the commodities 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 mean contract quantity.

The date of default shall be the first business day following the expiry of the contract 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.

15.3. In all cases the claim for damages may include any proved additional reasonable expenses which arise directly and naturally in the ordinary course of events from the defaulting party's breach, but it shall not include any loss of profit on any sub-contract made by the claimant party, nor shall it include the cost of any management or staff time resulting from their involvement with matters arising directly or indirectly from the default.

16. Dispute Resolution

16.1 In the case of a dispute concerning the interpretation of this SAGOS contract the English version thereof shall prevail. The dispute resolution clauses 16 and 17 hereunder are severable from the rest of the contract.

16.2 Arbitration

- (a) Unless the parties agree in writing, any dispute arising out of or under this contract shall be referred to arbitration in accordance with the SAGAS Rules of Arbitration in the edition current at the date of this contract, and the parties agree to be bound by these rules and are deemed to know them.
- (b) If compelling reasons exist why the dispute should be referred to ordinary court litigation rather than 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 28 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.

16.3 Mediation

The parties concerned, if they mutually agree to do so, may appoint a mediator, acceptable to both parties, who shall endeavour to cause the parties to agree to the resolution of the dispute. Any agreement concluded between the parties pursuant to such resolution shall be binding on them. If at any time during arbitration the parties decide to submit their dispute to mediation, the arbitration proceedings shall be suspended and the provisions of this sub clause shall apply. Should the mediation not resolve the dispute within 20 business days from the parties agreement to invoke mediation, the arbitration proceedings shall be resumed.

17 Time Limits for Claiming Arbitration

Arbitration shall be claimed in relation to quantity, quality or condition within 28 consecutive days from the date of the arrival of the commodities at their ultimate destination in the RSA. Arbitration shall be claimed in relation to other claims (including default of fulfilment of all or part of the contract) within 90 consecutive days from the last day of the period of delivery. If arbitration proceedings regarding any claims are not instituted within the time limit prescribed all causes of action relating to that claim whether by way of arbitration or in any Courts of Law are deemed time barred and waived.

18 Vehicle Cleanliness

Acceptance or rejection of any road vehicle or rail truck for fitness to carry grain 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 any road vehicle or rail truck shall be the liability of the party responsible for the movement of the commodities. In the event of any road vehicle or rail truck being rejected as above, within three business days of the end of the delivery period, the delivery period shall be extended by three business days.

19 Delivery

All collections/deliveries shall be made at BUYER's call unless otherwise agreed in terms of clause 5.

20 Passing of Ownership and Risk

Ownership and risk shall remain with the SELLER until the commodities 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 commodities are ready for delivery, then risk shall pass to the BUYER at one of the following times:

- 20.1 If a delivery date has been agreed in this contract, immediately on the expiration of that date;
- 20.2 If a period for delivery has been agreed in this contract, immediately upon the expiration of the last day of that period;
- 20.3 If a spot delivery or no delivery date or period has been agreed, at the expiration of one calendar month from the date of sale as evidenced by the date on this contract.

Provided in each case that the SELLER has, before the expiration of such of the above time limits for delivery as is applicable, notified the BUYER in writing that the commodities are in a deliverable state and appropriated to the contract.

21 Claims

- 21.1 When commodities are sold subject to a specification requiring analysis, the BUYER shall have the right to claim an allowance to be agreed or to reject the commodities on the basis of an analysis made by him or on his behalf. When the BUYER exercises this right a representative sample shall be drawn, sealed and, if required by the SELLER, shall be submitted to an agreed independent analyst 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 the claim or rejection is upheld, otherwise for the BUYER's account.

21.2 Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised by the BUYER as soon as possible and confirmed by fax, telex or by letter sent by first class post within two business days from the arrival of the commodities at their ultimate destination in the RSA.

21.3 All claims other than those under (21.2) above must be notified so as to be received by the SELLER within 90 days from the last day of the contract period.

22 Demurrage

In cases of unreasonable delay in the arrival, loading or discharge of vehicle/trucks collecting or delivering commodities 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.

23 Non-Payment

The SELLER reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this Contract with him by the BUYER have been received and reserves a lien upon – and the right to sell or otherwise dispose of – all commodities the subject of this Contract whether appropriated to it or not in respect of any such payments.

24 Statutory Changes

The price of the commodities is subject to alteration by reason of the imposition of or alteration by the Government of RSA in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon commodities 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.

25 Domicile: SELLER and BUYER agree that, for the purpose of proceedings

25.1 This contract shall be deemed to have been made in South Africa, and to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment, or otherwise, notwithstanding, and

25.2 Arbitrators appointed in South Africa (except for the purpose of enforcing any award made in pursuance of the Arbitration Clause hereof) shall have exclusive jurisdiction over all disputes which may arise under this contract. Such disputes shall be settled according to the law of South Africa whatever the domicile, residence or place of business of the parties to this contract may be or become.

26 Special Terms

