



**GTA FOB Contract No 1
CONTRACT FOR GRAIN AND OILSEEDS IN BULK FOB TERMS**

DATE:

SELLERS:

BUYERS:

BROKERS:

Have this day entered into a Contract on the following terms and conditions:

1. **QUANTITY:** Sellers have agreed to sell and Buyers have agreed to buy _____ tonnes.
2. **COMMODITY:**

3. **GRADE AND SPECIFICATIONS:**

4. **PACKAGING:** In Bulk.
5. **WEIGHTS:** Weights to be final at port of loading in Australia, as per Independent Superintendent Company certificates, at Sellers' option and cost. Buyers right to appoint their own superintendent at load at their cost.
6. **TOLERANCE:** 10% more or less at Buyers' option, at contract price.
7. **PRICE:** Priced at US170 per metric tonne.
8. **PRICE BASING POINT:** Delivered FREE ON BOARD, stowed and spout trimmed at Berth 3 Lascelles Wharf, Geelong.

9. DELIVERY PERIOD AND NOMINATION

- (a) DELIVERY PERIOD: Vessel to arrive and tender valid NOR at first loading port between _____, ("Delivery Period") both dates inclusive.
- (b) EXTENSION OF DELIVERY PERIOD: For the avoidance of doubt, any extension to or variation of the Delivery Period must be agreed by the parties and confirmed in writing.
- (c) NOMINATION: Buyers to give Sellers notice of vessel nomination within the time specified in any applicable Port Protocol but no fewer than 22 consecutive days before the first day of the Delivery Period, declaring the vessel's laytime-cancelling range ("laycan") (which laycan must fall wholly within the Delivery Period), together with vessel ETA, vessel name, ships agent, vessel details, approximate loading tonnage, demurrage/despatch rate (if applicable) and destination. Final Loading tonnage as per stow plan to be confirmed 10 days prior to vessel ETA. Should a trade string exist, proof of string to be provided, if required, by either party. All Notices as per clause 20.

10. QUALITY: Quality and condition to be final at port of loading in Australia, as per Independent Superintendent Company certificates, at Sellers' option and expense. Buyers' right to appoint their own superintendent at load at their cost.

11. SAMPLING AND ANALYSIS:

- (a) Representative samples of the goods shall be drawn during loading by the port terminal in accordance with standard protocols as employed at the port terminal to satisfy the sampling requirements of the Commonwealth Department of Agriculture and to obtain a representative sample of the entire contract/shipment
- (b) Final determination of quality shall be established on the composite sample drawn on loading by the nominated surveyor/laboratory in accordance with clause 10.

12. FREIGHT AND CLASSIFICATION: Buyers undertake to provide the freight to permit shipment to be made in accordance with this contract. Vessel's classification to be first-class power-engine ship (excluding Tankers, Tween Deckers and Vessels which are either classified in Lloyd's Register or described in Lloyd's Shipping Index as "Ore/Oil Vessels") classed in accordance with the Institute Classification Clause of the International Underwriting Association in force at the time of shipment and at all times acceptable to the Australian Maritime Safety Authority. Buyers are to ensure that Vessel(s) holds(s) are clean, easily accessible and if necessary cargo duly protected. Buyers must include the following clause in or as an addendum to any charterparty or freight arrangement related to this contract:

"The Owners of the Vessel guarantee that the minimum terms and conditions of employment of the crew of the Vessel are now or will be prior to presentation of the Vessel for loading and will remain for the period of the Charterparty covered by an I.T.F. [International Transportworker's Federation] Agreement or a bona fide trade union agreement acceptable to the I.T.F."

13. SUBSTITUTION OF VESSEL: Buyers are allowed to substitute the nominated Vessel(s) provided that (i) the substitute Vessel is able to load the same nominated quantity within the same laycan as the original Vessel; (ii) the Buyers notify the Sellers of such substitution as soon as possible before the expected arrival of the original Vessel(s). A substituted vessel must meet all terms and conditions of the accepted original vessel nomination, unless agreed by Seller. If the ETA of the substituted vessel is earlier than the originally nominated ETA, time will not count as laytime until the original ETA unless loading commences sooner.

14. NOTICE OF READINESS:

When the Vessel is ready in all respects to load at any berth ordered by the Sellers, the Master may give written notice (Notice of Readiness).

Notice of Readiness may only be given from Monday to Friday, except holidays at the loading port, between 0900 hours and 1700 hours local time.

Notice of Readiness may be given whether in berth or not provided that the vessel is ready in all respects. The Sellers may give orders for a loading berth after receiving notice of the vessel's arrival in the Port.

At the first Port the time for loading starts to count 24 hours after the receipt of a valid Notice of Readiness save that time will not start to count before the commencement of the Delivery Period unless actual loading commences in which case time starts to count from commencement of loading.

Notice of Readiness is only to be given at the first loading port or place.

If the loading berth is occupied on the vessel's arrival at or off the first loading port (or so near as the vessel is permitted to approach), the master will be entitled to give Notice of Readiness upon arrival at the port or waiting place.

If so, laytime counts as if the vessel was in berth and in all respects ready for loading. Time spent moving from the waiting place to the loading berth is not to count as laytime or demurrage, even if on demurrage.

A Notice of Readiness is invalid if the vessel is not, at the time a Notice of Readiness is given, in fact ready in all respects. If an invalid Notice of Readiness is given, a fresh valid Notice of Readiness must be given by the master when the vessel is in fact ready in all respects and laytime does not begin to count until 24 hours after a fresh valid Notice of Readiness has been received. Any further Notice of Readiness must comply with the procedures set out in above clause.

At the second or subsequent loading port (if any) the time for loading is to count from 1200 hours on the day of arrival at the port (or so near as the vessel is permitted to approach if the vessel arrives before 1200 hours), and from 0900 hours on the following day if the vessel arrives at or after 1200 hours, unless loading is commenced earlier, in which case the time is to count from the commencement of loading. In either case, time only so commences if on arrival the vessel is in fact ready in all respects.

In the case of multiple loading ports, time changing ports is not to count as laytime or demurrage, even if on demurrage. Time changing ports means time from the completion of loading at a port, time sailing from a port to the next loading port, and until laytime starts to count again as per above clause.

If separations are required the cost of such separations must be paid by the Buyers.

The Sellers may send the cargo alongside continuously (Saturday, Sundays and holidays included) and if the Sellers so direct the Buyers must procure that the vessel loads continuously (Saturdays, Sundays and holidays included).

All overtime costs incurred through working outside customary port working hours must be paid by the party ordering that working, except officers' and /or crew's overtime which are always for the Buyers account.

Should the Buyers nominated Vessel(s) fail to present valid notice of readiness to load within the Delivery Period, the Sellers may at their option declare the Buyers in default and claim damages for costs directly incurred as a result of the buyers default or in their absolute discretion affirm this contract or the Sellers may carry the goods for the Buyers' account at the rate for storage, interest and insurance current at the time of the Vessel's presentation. Such carrying charges shall accrue from the day following the expiration of the Delivery Period until the day that goods are loaded and must be paid by the Buyers upon the Sellers' invoice.

- 15. LOADING:** The cargo shall be loaded within the time allowed at a loading rate of minimum 4,000 mt per day, provided that the Vessel can receive at the appropriate rate.

all weather working days of 24 consecutive hours (Saturdays, Sundays included and holidays excluded even if used). Any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented thereby. The Sellers must appoint and pay for the stevedores at the loading port(s).

Survey at Loading Port:

Before loading is commenced, and at each loading port, the vessel must pass the customary survey of a) any relevant Australian government quarantine and inspection agency authorised officer/surveyor and b) an independent marine surveyor appointed by the Buyers and acceptable to the Sellers. The cost of the surveys are for the Buyers account. Time spent for all surveys not to count as time used, even if the vessel is on demurrage.

Fumigation

Buyers have the option to fumigate subsequent to loading, in which case all costs, consequences and liabilities resulting there from are solely for Buyers account.

ISPS Clause

Buyers warrant, represent and undertake that the vessel complies fully with all the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS and all amendments from time to time in force (ISPS Code). Upon request, Buyers shall, inter alia, provide the relevant International Ship Security Certificate (ISSC) Notwithstanding any prior acceptance of the vessel by Sellers, if at any time prior to or during the vessel's stay at the loading port the vessel is found not to be compliant with the ISPS Code or the MTSA or ceases to be so, Sellers have the right not to berth such nominated vessel and any and all damages/costs/expenses including, but not limited to demurrage, carrying charges, levies or taxes shall be for the account of the Buyers.

Buyers are, accordingly, obliged to substitute such nominated vessel with a vessel complying with the requirements of the ISPS Code.

- 16. DEMURRAGE / DESPATCH:** The rate of demurrage/despatch provided shall be as per charter party and pro-rata for any part of a day for the relevant cargo quantity. Information relating to Demurrage/Despatch from the charter party, must be communicated to the sellers. Demurrage/despatch to be settled within 30 days of the last day of loading.

17. PAYMENT:

- (a) The Buyers shall pay 100pct of the invoice by electronic transfer within 1 working day after presentation of following original shipping documents including faxed or electronic copies of shipping documents.
- (b) Payment against:
 - Commercial Invoice for the Cargo
 - Weight Certificate (as per clause 4)
 - Quality Certificate (as per clause 9)
 - Origin Certificate
 - Bill of Lading or Mates Receipt
- (c) If payment against faxed/electronic copies then Sellers will not release any bill of lading that has been issued in respect of cargo to the Buyers unless the Sellers have received confirmation from the Sellers' bank that payment for such cargo has been received into the Sellers' Account in accordance with these terms.
- (d) If any payment is not made on or before the due date for payment, interest shall be payable. Interest will be paid on any amount owing from the day after it falls due until the day on which it is paid. Interest accrues daily at a compound annual interest rate of the Australian 90-day bank bill rate (or US Prime Rate, for contracts denominated in US-dollars) plus 5%. Nothing in this clause shall affect a party's rights to invoke the provision of the Default Clause in a case where a failure to effect timely payment could give rise to a claim under that clause.
- (e) Documentary instructions to be forwarded to the seller minimum of 5 business days prior the vessel ETA.

No obvious clerical error in the shipping documents shall entitle the Buyers to reject or delay them or delay payment, but the Sellers shall be responsible for all proven loss or expense

caused to the Buyers by reason of such error, and the Sellers shall on request of the Buyers furnish a guarantee acceptable to Buyers in respect thereto. Debit Notes for additional charges originated at loading port for reasons not attribute to Sellers must be settled within 2 business days.

In the event of the Vessel and/or cargo being lost before completion of loading or if loading be stopped for any reason beyond the Sellers' control, the Buyers to pay the Sellers for any quantity loaded, on presentation of bill(s) of lading or mate's receipt or other proof of shipment which Buyers shall accept as final.

18. DUTIES, TAXES, LEVIES, ETC: All export duties, taxes, levies, licenses, etc., in the state of origin where the port or ports of shipment are situated, shall be for Sellers' account All taxes, levies, licences, imposts of any nature on freight and cargo outside Australia are for the Buyers' account.

19. AUTHORISATIONS:

(a) Unless otherwise agreed, Sellers must obtain at their own risk and expense any export licence or other official authorisation and carry out, where applicable, all administrative formalities necessary for the export of the cargo.

(b) Sellers and Buyers acknowledge and agree that regulations in place at the Load Port may require that the Vessel and cargo comply with import permits and regulations in place at the intended place of import/destination. Buyers undertake to use best endeavours to provide Sellers as soon as practicable with all information and documentation which Sellers may reasonably require to obtain permits necessary to facilitate loading and shipment.

(c) For the avoidance of doubt, Buyers must obtain at their own risk and expense any import licence or other official authorisation and carry-out all customs formalities for the import of the goods. Save that Sellers warrant that the goods on shipment meet the specifications set out in this contract, the Sellers give no warranty that the goods comply with import requirements at the place of import/destination.

20. NOTICES: Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email or by other method of rapid written communication, subject to the burden of proof of successful transmission to be with the sender. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours EST on a business day shall be deemed to have been received on the business day following. A notice to a party's Brokers or Agent shall be deemed a valid notice under this contract. In case of resale, all notices shall be passed on without delay by Buyers to their respective Sellers or vice versa. Should the notice be received after 1600 hours EST on the last business day permissible under this contract, the Sellers shall pass it on as soon as practical, but no later than 1000 hours EST on the next business day thereafter. Upon request, the Sellers shall provide the Buyers with documentary evidence of Sellers' receipt of notice.

21. NON-BUSINESS DAYS: Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday the time so limited shall be extended until the first business day thereafter. The contract delivery period is not affected by this clause.

22. PREVENTION OF DELIVERY

“Event of Force Majeure” means:

- (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports named herein is/are situate, restricting export, whether partially or otherwise, or
- (b) blockade, or
- (c) acts of terrorism, or
- (d) hostilities, or
- (e) strike, lockout or combination of workmen, or
- (f) riot or civil commotion, or
- (g) breakdown of machinery, or
- (h) fire, or
- (i) ice, or
- (j) act of God, or
- (k) unforeseeable and unavoidable impediments to transportation or navigation, or
- (l) any other event comprehended in the term “force majeure”.

Should Sellers’ performance of this contract be prohibited or prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first business day after expiry of the 21 day period.

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

If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be extended, from the cessation, to as much time as

was left for delivery under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.

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

23. **INSURANCE:** Cargo to be at Buyers' risk upon delivery over the ship's rail, and the Buyers shall insure the cargo placed on board, or in custody of the Master, from the commencement of loading until payment in accordance with this contract. Buyers to produce evidence of insurance cover at Seller's request.
24. **BANKRUPTCY/INSOLVENCY:** If before the fulfilment of this contract the Buyers or the Sellers suspend payment of debts, notifies any of their creditors that they are unable to meet debts, or convenes or holds a meeting of creditors, or commits an act of bankruptcy, or being a company shall be made subject to external administration or shall have a receiver appointed, or hold a meeting for the purpose of considering a resolution that the company be wound up or go into liquidation, such Buyers or Sellers shall forthwith notify by means of rapid written communication the other party within two business days of the occurrence and shall be deemed to be in Default hereunder.
- (a) Such contract shall be closed out at market price on the business day following the giving of the notice. If notice is not given as aforesaid, the other party, on learning of the occurrence of the act of insolvency, shall have the option of declaring this contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the act of insolvency or at market price ruling on the first business day after the date of the act of insolvency occurred.
 - (b) In all cases the party in Default shall have the option to ascertain the settlement price on the closing out of this contract by repurchase or resale, and the difference between the contract price and the repurchase or resale price shall be the amount payable or receivable under this Clause.

Should either party be dissatisfied with the price ascertained by re-purchase or re-sale, then the matter shall be referred to GTA for 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 GTA.

25. **CIRCLE:** Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for delivery from the same port(s) of loading during the same period of delivery). Different currencies shall not invalidate the circle.

If the circle is established before the goods are shipped, or if the goods are not shipped, invoices based on the mean contract quantity, or if the goods have been shipped invoices based on the shipped quantity, shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days

after the last date for shipment, or should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual delivery and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in the currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.

Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

- 26. DEFAULT:** If a party defaults on any of its obligations under this contract the party not in default may at its discretion and upon giving the defaulter notice of default elect to either cancel this contract, or 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 be determined by arbitration, failing amicable settlement. 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 are to be calculated on the mean contract quantity. The arbitrators may at their absolute discretion award damages on different quantity and/or award additional damages if they consider it justified by the circumstances of the default.

Prior to the last day of the contract delivery period either party may notify the other party of its inability to deliver or take delivery but the date of such notice shall not become the default date without the agreement of the other party. If, for any other reason, either party fails to fulfil this 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. Except as otherwise specifically provided for in this contract, no party to this contract shall be liable in an event of default for the other party's indirect, consequential or special losses, loss of profits or other general damages.

27. **CHOICE OF LAW:** This contract shall be interpreted according to and governed by the laws in force in New South Wales with specific reference to the Sale of Goods Act 1923 and the Warehouseman's Liens Act 1935. Performance of this contract is subject to orders, rules, and regulations of all government agencies.
28. **INTERNATIONAL CONVENTIONS AND FOREIGN STATUTE:** The following shall not apply to this contract:
- (a) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967
 - (b) the United Nations Convention on Contract for the International Sale of Goods of 1980, which was given effect by the Sale of Goods (Vienna Convention) Act 1987 (NSW)
 - (c) the United Nations Convention of Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980
29. **RULES OF TRADE:** This contract is subject to and operates in accordance with Incoterms 2010 except that this contract prevails to the extent of any inconsistency therewith, but no further.

Time is of the essence in relation to the performance of this contract.

ARBITRATION: Any dispute arising out of this contract, including any question of law arising in connection therewith shall be referred to arbitration in accordance with the GTA Dispute Resolution Rules in force at the commencement of the arbitration and of which both parties hereto shall be deemed to be cognizant except that this contract prevails to the extent of any inconsistency but no further. 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 arbitration in accordance with the Dispute Resolution Rules of GTA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators 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. Notice of appointment of an arbitrator must be given in writing by the party commencing arbitration within 6 months of the Vessel's arrival at the first discharge port named in this contract, otherwise all claims shall be deemed to be waived and no proceedings whatsoever whether by way of arbitration or litigation shall be commenced.

-End-