

Contract No.4



Copyright
THE GRAIN AND FEED TRADE ASSOCIATION

CONTRACT FOR UK PRODUCED CAKES AND/OR MEAL

**delete/specify as appropriate*

Date

1 **SELLERS**

2

3 **INTERVENING AS BROKERS**

4

5 **BUYERS**.....

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

7

8 **1. GOODS**

9

10 **2. QUANTITY**..... per tonne of 1,000 kilograms.

11

12 **3. PRICE**

13

14 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost

15 or not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the

16 contract under the terms of the Force Majeure Clause. Brokerage shall be due on the last day of the period

17 of delivery.

18

19 **5. QUALITY**

20 of satisfactory quality. Notwithstanding the particulars of the Statutory Declaration provided in accordance with

21 the Feedingstuffs Regulations for the time being in force, any contractual analysis allowances shall be in

22 accordance with the terms of the Quality Clause of the contract. The goods are not intended for sale nor sold as

23 being suitable for straight feedingstuffs, but are only suitable as raw materials for further processing and mixture

24 with other materials as to which no warranty is given or to be implied as to the percentage of these goods to be

25 used in any such operations which are at Buyers' sole risk.

26

27 **6. WEIGHING**.....

28

29 **7. PERIOD OF DELIVERY**.....

30 Buyers shall accept delivery and Sellers shall deliver within the period specified in the contract. Should

31 Buyers through no fault of Sellers fail to collect or refuse delivery of the whole or part by the end of the

32 delivery period, Buyers shall pay the purchase price in accordance with the payment terms as though

33 delivery had been made. Sellers may at their option and after notification in writing of their intentions,

34 deliver the quantity due for collection or delivery either in whole or in part to a third party

35 store/warehouse at Buyers' risk with all charges for Buyers' account. Should Sellers, through no fault of

36 Buyers not have completed delivery within the specified period of the contract for proved failure of delivery

37 by the supplying mill, not due to reasons covered by the Force Majeure, Strikes Clause, Sellers shall make

38 Buyers an allowance in accordance with the following scale:-

39 1 - 14 days inclusive, 0.50% off the contract price

40 15 - 28 days inclusive, a further 1% off the contract price

41 29 - 42 days inclusive, a further 1% off the contract price

42 after which time the Sellers shall be deemed to be in default and the contract price shall be deemed to be

43 the original contract price, less the 2.50% allowance and any other contractual differences shall be settled

44 on the basis of such reduced price.

45

46 **8. PART DELIVERIES**

47 Each delivery shall be considered a separate contract.

48

49 **9. PAYMENT**

50 (a) Payment

51 (b) Amounts payable under this contract shall be settled without delay. If not so settled, either party may
52 notify the other that a dispute has arisen and serve a notice stating his intention to refer the dispute to
53 arbitration in accordance with the Arbitration Rules.

54 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency
55 involved shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which
56 shall be settled by arbitration. Otherwise interest shall be payable only where specifically provided in the
57 terms of the contract or by an award of arbitration. The terms of this clause do not override the parties'
58 contractual obligation under sub-clause (a).
59

60 **10. FORCE MAJEURE, STRIKES ETC.**

61 Should the execution of this contract or any unfulfilled portion thereof be prevented by strikes, breakdown
62 of machinery, including the late arrival of the raw material caused by force majeure, or by any cause
63 comprehended in the term "Force Majeure", provided that notice has been served by Sellers within 7
64 consecutive days from the occurrence, or not later than 30 consecutive days before the commencement of
65 the delivery period, whichever is later, the time for delivery shall be extended for a period of 30 consecutive
66 days. After the additional period of 30 consecutive days, the contract shall be void for the unfulfilled
67 portion so prevented. Buyers shall have no claim against Sellers for delay or non-fulfilment under this
68 clause, provided that Sellers shall have supplied to Buyers if required, satisfactory evidence to justify the
69 delay or non-fulfilment.
70

71 **11. CIRCLE**

72 Where Sellers re-purchase from their Buyers or from any subsequent buyer the same goods or part thereof,
73 a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of
74 the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the
75 same description, from the same country of origin, of the same quality, and, where applicable, of the same
76 analysis warranty, for shipment to the same port(s) of destination during the same period of shipment).
77 Different currencies shall not invalidate the circle.

78 Subject to the terms of the Force Majeure Clause in the contract, if the goods are not appropriated, or,
79 having been appropriated documents are not presented, invoices based on the mean contract quantity shall
80 be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess
81 of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later
82 than 15 consecutive days after the last day for appropriation, or, should the circle not be ascertained before
83 the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is
84 ascertained.

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

89 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been
90 ascertained in accordance with this clause same shall be binding on all parties to the circle. As between
91 Buyers and Sellers in the circle, the non presentation of documents by Sellers to their Buyers shall not be
92 considered a breach of contract. Should any party in the circle prior to the due date of payment commit any
93 act comprehended in the Insolvency Clause of his contract, settlement by all parties in the circle shall be
94 calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis
95 for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make
96 payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between
97 the closing out price and the contract price.
98

99 **12. NOTICES**

100 All notices required to be served on the parties pursuant to this contract shall be served rapidly in legible
101 form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised
102 as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other
103 electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof
104 of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the
105 arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually
106 transmitted to the addressee. In case of resales/repurchases all notices shall be served without delay by
107 sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day
108 shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall
109 be deemed a notice under this contract.
110

111 **13. NON BUSINESS DAYS**

112 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any
113 days, which GAFTA may declare as non business days for specific purposes, shall be non business days.
114 Should the time limit for doing any act or serving any notice expire on a non business day, the time so
115 limited shall be extended until the first business day thereafter. The period of delivery shall not be affected
116 by this clause.
117

118 **14. TAX/DUTY**

119 Any variation in tax or duty or any tax or duty hereafter imposed and assessed by the EC/EU or any member
120 national government thereof upon the import, production, processing, sale, delivery, or use of the goods
121 which are the subject of this contract or the raw materials from which the said goods are processed shall be
122 for the account of the Buyers.
123

124 **15. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**

125 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed incorporated into this contract. The
126 parties shall appoint superintendents, for the purposes of supervision and sampling of goods, from the
127 GAFTA Register of Superintendents. For quality certificates, unless otherwise agreed, analysts shall be
128 appointed from the GAFTA Register of Analysts.
129

130 **16. DEFAULT**

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

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

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

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

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

145 (e) Damages, if any, shall be computed on the mean contract quantity.
146

147 **17. INSOLVENCY**

148 If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that
149 he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts,
150 convene, call or hold a meeting of creditors, propose a voluntary arrangement, have an administration order
151 made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting
152 to go into liquidation (other than for re construction or amalgamation) become subject to an Interim Order
153 under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition presented against him (any of
154 which acts being hereinafter called an "Act of Insolvency") then the party committing such Act of Insolvency
155 shall forthwith serve a notice of the occurrence of such Act of Insolvency on the other party to the contract
156 and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other
157 person representing the party committing the Act of Insolvency) that such notice was served within 2
158 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price
159 ruling on the business day following the serving of the notice.

160 If such notice has not been served, then the other party, on learning of the occurrence of the Act of
161 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first
162 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the
163 market price ruling on the first business day after the date when the Act of Insolvency occurred.

164 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the
165 closing out of the contract by re-purchase or re sale, and the difference between the contract price and the
166 re purchase or re sale price shall be the amount payable or receivable under this contract.
167

168 **18. DOMICILE**

169 This contract shall be deemed to have been made in England and to be performed in England,
170 notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance
171 with the laws of England. Except for the purpose of enforcing any award made in pursuance of the
172 Arbitration clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any
173 application for ancillary relief, (save for obtaining security only for the claim or counter-claim), the

174 exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a
175 dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant
176 to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be
177 deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade
178 Association, England, (GAFTA) and any party residing or carrying on business in Scotland shall be held to
179 have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have
180 submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of
181 proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade
182 Association, together with the posting of a copy of such proceedings to his address outside England, shall be
183 deemed good service, any rule of law or equity to the contrary notwithstanding.
184

185 **19. ARBITRATION**

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

191 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal
192 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have
193 been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the
194 Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or
195 board of appeal, as the case may be, any action or legal proceedings
196 against the other of them in respect of any such dispute or claim.

197 (c) Nothing contained under this Arbitration Clause shall prevent the parties from seeking to obtain
198 security in respect of their claim or counterclaim via legal proceedings in any jurisdiction, provided such
199 legal proceedings shall be limited to applying for and/or obtaining security for a claim or counterclaim, it
200 being understood and agreed that the substantive merits of any dispute or claim shall be determined solely
201 by arbitration in accordance with the GAFTA Arbitration Rules, No 125.
202

203 **20. INTERNATIONAL CONVENTIONS**

204 The following shall not apply to this contract: -

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

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

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

210 (d) Incoterms.

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

Sellers..... Buyers

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