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Member Update

Title: Insertion of retention of title clause into NACMA contracts

Update No.: 21 of 08

Date of Issue: 4th July 2008

Distribution

- NACMA Members – primary contact list. Please circulate to all appropriate internal parties

Background

Following submissions from members, the NACMA Commerce Committee has agreed to include a retention of title (ROT) clause in the

- NACMA Contract No 2 - Grain and Oilseeds in Bulk Basis Track; and
- NACMA Contract No 3 - Grower Contract Confirmation.

The Committee believes this clause will add clarity to title in situations where payment terms have not been met. The caveat is that this clause has not been tested at law so the operability of this clause can't be guaranteed, however Sellers will be even worse off if they don't include it.

Wording

The clause reads:

"Risk in any goods supplied by the Seller to the Buyer shall pass to the Buyer when they leave the possession of the Seller however title shall not pass until payment in full has been received by the Seller. Until full payment is received the Buyer and/or its agents and 3rd parties hold the goods as bailees only. On breach of any payment terms, the Buyer on its own behalf and on behalf of its agents and 3rd parties authorises the Seller to enter any premises and retake possession of the goods without notice to the Buyer, its agents and 3rd parties.

Where the goods have been comingled with other goods, the Buyer becomes an owner in common of the bulk goods and the undivided share of the Seller shall be such share as the quantity of Seller's goods bears to the quantity of the goods in the bulk.

Until such time as the Seller has received payment in full, any on-sale by the Buyer is made as the Seller's agent and the Buyer holds the proceeds of any on-sale of the Goods as trustee for and on behalf of the Seller and must account to the Seller for those proceeds, on demand. Where at the time of default in any payment terms to the Seller the Buyer has not received proceeds of any onsale the Seller is expressly authorised to receive proceeds of on-sale direct from the Buyer's customer. "

Effective

30 days from the date of this Member Update.