



EXPLANATORY MEMORANDUM

Contract No 1 Grain & Oilseeds in Bulk - FOB Terms

TABLE OF CONTENTS

Background	2
Drafting sub- committee	2
NACMA appreciation & review of contract	2
Members must seek advice	2
Contract can be amended	2
Features of the contract	2
NACMA approved Superintendence companies	3
Disclaimer	3

1. Background

NACMA has had a Contract No 1 Grain and Oilseeds in Bulk - FOB Terms for a number of years. Changes to wheat marketing arrangements necessitated a review of the contract which was started with a call to members to place submissions to a sub- committee of the Commerce Committee. This review process has been completed and the contract is available for use by members.

2 Drafting sub- committee

The drafting of this contract was undertaken by a sub- committee of the NACMA Commerce Committee and included the following NACMA members:

- Patrick Haire – (Committee chair) Woodside Rural Brokers & NACMA Deputy Chairman
- Alick Osborne & Cecilia Pryce – Louis Dreyfus Australia
- Brad Glass – Glencore
- Brendan Dart – Cargill
- Ole Houe – GrainCorp Operations
- Josh Roberts & Jason Craig – Grain Pool of WA
- Stuart Richardson & Simon Robertson – AWB
- Robert Wilson & Tim Martin - ABB
- Geoff Farnsworth – Norton White, specialist grain / marine legal counsel

3 NACMA appreciation and review of contract

NACMA is grateful for the time contributed by a sub-committee of industry experts in preparing this contract.

We would welcome any comments or feedback you may have.

4 Members must seek advice

It goes without saying that any organisation intending to use the contract should read it carefully, understand its terms, and take any necessary advice. The use of the contract will depend on a party's individual circumstances and administration and neither NACMA nor the members of the sub-committee warrant the operation of the contract.

5 Contract can be amended

In common with all NACMA contracts, the contract is a template and can of course be refined or varied by the parties to each individual transaction.

6 Features of the contract

6.1 Quality

As with many FOB Contracts, quality is expressed to be final at loadport. Samples are to be drawn in accordance with AQIS procedures and quality will be determined through analysis conducted by approved NACMA Superintendents.

6.2 Shipment Period

Central to the contract is the "Shipment Period" described in clause 8. The vessel must arrive and tender NOR within the Shipment Period. Please note that it is possible that CARGO MAY NOT BE LOADED WITHIN THE SHIPMENT PERIOD. In other words, agreeing a Shipment Period of 1-31 December will not guarantee that you will receive bills of lading dated in December.

6.3 Wheat Exports Australia accreditation

Under clause 19, the default position is that the Seller must have Wheat Exports Australia accreditation, unless otherwise agreed. In a string of FOB contracts, not all FOB Sellers will need accreditation. It is important that Buyers and Sellers in each transaction give careful consideration to whether the Seller can or needs to comply with clause 19. If not, it should be excluded.

6.4 Rules of Trade

Under clause 31 the contract is subject to and operates in accordance with Incoterms 2000 except that the contract prevails to the extent of any inconsistency therewith, but no further.

The contract is entire in itself, i.e. it does not integrate additional terms and conditions via reference to the NACMA Trade Rules apart from reference to Incoterms 2000.

6.5 Dispute Resolution process

In common with all NACMA contracts, the resolution of disputes is via the NACMA Dispute Resolution process (clause 32). The NACMA Dispute Resolution process uses arbitrators drawn from the NACMA Approved Arbitrators list, is document based and domiciled in Australia. There is a tiered charging structure with non members paying a 50% premium to members.

7 NACMA Approved Superintendence companies

The contract references (clause 9) NACMA approved Superintendence companies.

The sub – committee recognises the following organisations and would encourage other suitable organisations. At this stage the list is inclusive and other superintendence companies who are NACMA members are encouraged to apply for inclusion on the NACMA list.

Members must conduct their own due diligence in the selection of a superintendence company. Although they are for the purposes of this contract “approved” by NACMA this does not imply that NACMA recommends or has conducted an assessment and sanctioned their operations.

Australian Superintendence Company

PO Box 7003
467 Vulture Street
East Brisbane 4169
office: 07 3391 8640

Intertek – Oil, Chemical & Agri

Office: 617 3260 2311
Fax: 617 3260 1366

SGS Australia Pty Ltd

480 Princes Highway
Noble Victoria 3174
Office: +61 3 9790 3483
Fax: +61 3 9701 0988

8 Disclaimer

NACMA and the sub-committee have endeavoured to prepare a balanced contract template.

Anyone intending to use the contract does so at his or her own risk and should take their own advice. Neither NACMA nor the sub-committee will accept any responsibility or liability for any errors or omission in the document or liability of any party resulting from their use of the document.