

NACMA 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 of 1,000 kilos.
2. **COMMODITY GRADE AND SPECIFICATIONS:**

3. **PACKAGING:** In Bulk.
4. **WEIGHTS:** Weights to be final at port or ports of loading in Australia, as per shore based weight certificate(s) from a NACMA approved Superintendent Company nominated by the Sellers and acceptable to the Buyers acting reasonably, at Sellers' expense.
5. **TOLERANCE:** 5% more or less at Buyers' option, at contract price.
6. **PRICE:** Priced at _____ per tonne, with payment in _____ as per Payment Clause;
7. **PRICE BASING POINT:** Delivered FREE ON BOARD, spout trimmed, loaded in good condition at _____.

Sellers have the option to declare

_____ as the alternative or additional loading port(s). To exercise this option Sellers shall give Buyers notice of the alternative/additional loading port(s) and berth(s) not later than 1600 hours Sydney Time on

8. **SHIPMENT PERIOD AND NOMINATION:** Vessel to arrive and tender NOR at first loading port between _____, ("Shipment Period") both dates inclusive. Buyers will procure ocean freight for the cargo. The Buyers indemnify the Sellers for all liability or cost of any kind arising out of or in connection with any breach of the Buyers' undertaking in this clause. At least 21 consecutive days before the first day of the Shipment Period, Buyers to give Sellers notice of Vessel's laytime-cancelling range ("laycan") (which laycan must fall wholly within the Shipment Period),

together with names of Owners and charterers, Vessel capacity, approximate loading tonnage,, demurrage/despatch rate (if applicable) and flag. The said notice to be dispatched by 1000 hours Sydney Time on a business day or, in the case of resale, shall be passed on by any means of rapid written communication and as confirmed by telex or facsimile on the same day if received not later than 1600 hours Sydney Time or not later than 1000 hours Sydney Time on the next business day if received after 1600 hours Sydney Time or on a non-business day. Proof of string to be provided, if required, by either party. Buyers have liberty to re-nominate laycan so long as it falls within the Shipment Period. Buyers to indemnify Sellers in respect of any losses, costs or expenses incurred solely as a result of re-nomination of laycan.

9. QUALITY: Quality and condition to be final at port(s) of loading in Australia, as per NACMA approved Superintendent company certificates, at Sellers' expense. Buyers' right to appoint their own superintendent at load at their cost.

10. 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 AQIS and to obtain a representative sample by hatch and grade. Four individual hatch and overall shipping samples shall be drawn conjointly and sealed and made available on completion of loading to the; 1) Port Terminal, 2) the Buyers, 3) the Sellers and 4) Shipowner, and are to be retained by their agents or representatives.

(b) Determination of quality shall be established on the samples drawn on loading by a surveyor/laboratory to be nominated in accordance with clause 9.

11. 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."

12. SUBSTITUTION OF VESSEL: Buyers are allowed to substitute the nominated Vessel(s) provided that (i) the substitute Vessel is able to load the same quantity (+/- 5%, but always within original contractual tolerance) 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).

13. NOTICE OF READINESS: Notice of readiness at the first or sole loading port to be tendered at latest by 1200 hrs on the last day of the laycan otherwise to be given during office hours between 0900 hours and 1700 hours (at the port of loading) on ordinary

working days (at the port of loading), Saturdays, Sundays and holidays excepted. Laytime is to start counting (unless loading is sooner commenced) 24 hours after Sellers or their agents have received the Master's or ship agent's written or telegraphic notice that the Vessel has passed survey and is ready to load in the berth ordered by the Sellers, whether in berth or not; whether in port or not; whether customs cleared or not; whether in free pratique or not. Orders as to loading berth shall be given to the Vessel upon receipt of notice of arrival in the port. Notice shall be given at the first port or place of loading only. If the loading berth is congested on the vessel's arrival at or off the first or sole port of loading or so near thereto as she may be permitted to approach, the Vessel shall be entitled to give Notice of Readiness during ordinary office hours on arrival there, with the effect that laytime counts as if she were in berth and in all respects ready for loading provided that the Master warrants that she is in fact ready in all respects. Actual time occupied in moving from place of waiting to loading berth not to count as laytime. If after berthing the vessel is found not to be ready in all respects to load, the actual time lost between the time of this discovery to the time she is in fact ready to load shall not count as laytime. Laytime not to start counting prior to commencement of laycan. If Sellers agree to load prior to commencement of laycan then time used until that date does not count as laytime.

At the second or subsequent loading port (if any) the time for loading shall count (Saturdays, Sundays and holidays excepted) from 1200 hours on the day of arrival at the port or so near as she may be permitted to approach if the Vessel arrives before 1200 hours, and from 0900 hours on the following day, if the Vessel arrives after 1200 hours, unless loading is commenced earlier, in which case laytime to start counting from commencement of loading. Time occupied in changing loading ports shall not count as laytime.

Should the Buyers nominated Vessel(s) fail to present valid notice of readiness to load within the Shipment Period, the Sellers may at their option declare the Buyers in default and claim damages 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 Shipping Period until the receipt of a valid Notice of Readiness and must be paid by the Buyers upon the Sellers' invoice.

14. LOADING: The cargo shall be loaded within the time allowed at a loading rate of _____, or if no rate is stated, as stipulated below based on the mean cargo quantity provided that the Vessel can receive at the appropriate pro-rata rate.

- (a) For a mean cargo quantity up to 10,000 tonnes the time allowed for loading shall be **3** days;
- (b) For a mean cargo quantity above 10,000 tonnes up to 25,000 tonnes the time allowed for loading shall be **4** days;
- (c) For a mean cargo quantity above 25,000 tonnes up to 60,000 tonnes the time allowed for loading shall be **5** days;
- (d) For a mean cargo quantity above 60,000 tonnes the time allowed for loading shall be **6** days;

All weather working days of 24 consecutive hours (except Saturdays, Sundays, holidays and days on which no work is performed owing to weather conditions during normal and

customary working hours at the port) provided that Saturday shall count as a full day if work is performed on that day, subject to reduction of half a day if no work is performed after 1200 hours. 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).

- 15. DEMURRAGE / DESPATCH:** Subject to clause 16, should the cargo not be loaded within the time stipulated demurrage at loading port or ports shall be paid as per the Buyers' charterparty and be for the Sellers' account. The rate of demurrage/despatch provided shall be within the minimum and maximum rates of _____/_____ per running day, and pro-rata for any part of a day for the relevant cargo quantity. If not stipulated in any notice under Clause 8, demurrage/despatch shall be as per Buyers' charterparty, a copy of which must be presented to the Sellers. Demurrage/despatch to be settled within 30 days of the last day of loading.

For all laytime saved at port or ports of loading, despatch money shall be paid by the Buyers to the Sellers on completion of loading at the rate of one-half of the rate of demurrage.

16. MULTIPLE CONTRACTS OF CARRIAGE

- 16.1 The provisions of this clause apply whenever the cargo the subject of this contract ("Cargo") is to be loaded on board a Vessel that has loaded or is to load and carry other cargo pursuant to any separate contract of carriage.
- 16.2 The loading, discharging or carriage of other cargo must not hinder the loading, discharging or carriage of Cargo and any time spent in the Vessel positioning for loading or discharging of other cargo or loading or discharging of other cargo shall not count as laytime or demurrage even if on demurrage.
- 16.3 If any time spent waiting for berth and/or loading and/or discharging counts as time on demurrage under this contract, and (but for this clause) the same running hours (or part thereof) would also count as time on demurrage under any other contract of carriage for the same voyage or any part of it, the Buyers agree to waive any claim for demurrage for the same running hours under this contract to such extent but no further.
- 16.4 The loading of separate cargo pursuant to a separate contract of carriage shall not affect the Sellers' right to any despatch earned under this contract.
- 16.5 The Buyers:-
- (a) waive any rights to demurrage that would or may accrue to the Buyers under this contract contrary to clause 16.3 and undertake not to pursue any claim against Sellers for demurrage contrary to clause 16.3;
 - (b) warrant that they will not fail or refuse to pay any despatch otherwise due to the Sellers under this contract; and
 - (c) do not have any claim or entitlement to deadfreight.

- 16.6 If this contract is for the carriage of less than a full and complete cargo and if prior to the execution of this contract the Vessel Owners have entered into a separate contract of carriage for the use of cargo space not required for the performance of this contract, despite any other provision of this contract the Buyers shall not be entitled to recover demurrage from the Sellers nor are the Sellers liable to pay demurrage to the Buyers under this contract for any time used in the performance for such separate contract for carriage and no such time shall count in calculating time used under this contract even if already on demurrage.

17. PAYMENT:

- (a) The Buyers shall pay 100pct of the invoice by telegraphic transfer within 1 working day after presentation of following original shipping documents or faxed copies.

Invoice for the Cargo

[other documents]

- (b) If payment against faxed 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.
- (c) The Buyers must pay the Sellers interest at the Australian 90-day bank bill rate plus 5% on any outstanding amount of the commercial invoice for every day that payment is not made in accordance with these terms.

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.

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., present or future, 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. EXPORT AUTHORISATION:** 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 customs formalities necessary for the export of the cargo.
- 20. INTEREST:** 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 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.

- 21. 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 (return receipt acknowledging the message has been received is required) 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 Sydney Time 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 Sydney Time 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 Sydney Time on the next business day thereafter. Upon request, the Sellers shall provide the Buyers with documentary evidence of Sellers' receipt of notice.
- 22. 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. All business days shall be deemed to end at 1700 hours Mondays to Fridays inclusive. The contract shipment period not to be affected by this clause.
- 23. STRIKES, ETC/FORCE MAJEURE:** Should Sellers be prevented from loading goods on board Buyers' Vessel or should Buyers be prevented from taking delivery by reason of fire, strikes, lockouts, riots, differences with or between work-men, accidents to or break-down of machinery, plant or equipment, civil commotions, policies or restrictions of governments, including restrictions of export and other licenses, or any cause comprehended in the term Force Majeure, at the port or ports of loading or elsewhere preventing transport of the goods to such ports, the Sellers must use their best endeavours to remove, overcome or minimise the effects of that Force Majeure event as quickly as possible. The Sellers must give prompt notice to the Buyers of its nature, likely duration, the obligations affected by it, the extent of its effect on those obligations, and the steps taken to rectify it. Performance of the Sellers' obligations (including but not limited to laytime) is suspended to the extent to which they are affected by the Force Majeure Event and for the duration of the Force Majeure event. If a Force Majeure event continues for 30 days then the Buyers have the right to extend the Shipment Period by a further 30 days. If the Force Majeure Event continues after the expiry of these further 30 days then the contract shall be terminated automatically and neither party shall have a claim against the other for delay or non-performance provided that satisfactory evidence justifying the delay or non-performance be presented to the other party.
- 24. PROHIBITION:** In the event, during the delivery period, of prohibition of export or any other executive or legislative act by or on behalf of the Government of the state or country of origin or of the territory where the port or ports of delivery named herein is/are situate, or of blockade or hostilities, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfilment whether by delivery or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be extended by 30 days beyond the termination of the prohibition event. But should prohibition continue for more than 30 days after expiry of the delivery period, this contract or any unfulfilled part thereof shall be cancelled. Sellers invoking this clause shall advise Buyers

with due despatch. If required, Sellers must produce proof to justify their claim for extension or cancellation under this clause.

- 25. 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.
- 26. 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 NACMA 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 NACMA.

- 27. 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.

- 28. DEFAULT:** In default of fulfillment of this contract by either party, the other party at its discretion and upon giving the other party proper written notice of default requiring the defaulting party to rectify such default within 24 hrs of receipt of such notice, after which if the defaulting party has not rectified such default, the party giving notice shall have the right either to cancel this contract, or the right 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, failing amicable settlement, be determined by arbitration. 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 to be computed on the mean contract quantity. If the arbitrators consider the circumstances of the default justify it they may, at their absolute discretion, award damages on different quantity and/or award additional damages.

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 fulfill 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.

- 29. 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.

30. 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;

31. RULES OF TRADE: This contract is subject to and operates in accordance with Incoterms 2000 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.

32. 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 Dispute Resolution Rules NACMA in force at the date of this contract 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 NACMA, 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-