

CONTRACT FOR THE PURCHASE AND SALE OF GRAIN, PULSES AND OILSEEDS AND PRODUCTS DERIVED THEREFROM

(Approved by Animal Feed Manufacturers Association, Grain Silo Industry, Grain South Africa, National Chamber of Milling, SA Cereals and Oilseeds Trade Association)

and

THE DISPUTE RESOLUTION AGREEMENT

(Approved by The Arbitration Foundation of Southern Africa)



Graan Silo Industrie (Edms) Bpk
Grain Silo Industry (Pty) Ltd
Reg. No 1986/020307



National Chamber of Milling



The Arbitration Foundation of Southern Africa

Contract Date:

Buyer's Ref: _____ Seller's Ref: _____ Broker's Ref: _____

SELLER:

- _____

Acting as Broker only:

- _____

BUYER:

- _____

GENERAL PROVISIONS APPLICABLE HEREIN

- A. This document comprises the full terms of the purchase and sale contract (“the contract”) concluded between the parties, as well as the full terms of their dispute resolution agreement.
- B. The contract consists of all the general and special provisions herein, other than clause 15 of the special provisions, which is the dispute resolution agreement. The contract and the dispute resolution agreement constitute two separate and self-standing agreements. The dispute resolution agreement is unaffected by any invalidity that may attach to the contract, or by the termination, lapse or cancellation of the contract. In all instances the validity, existence or applicability of the contract shall be determined in accordance with the provisions of the dispute resolution agreement.
- C. A failure by one party or both parties to sign this document will not affect its binding nature , providing that the parties have, in fact, consented to its terms by oral agreement or by conduct .
- D. INCOTERMS 2010 or subsequent versions of INCOTERMS will apply to the contract except insofar as they may be inconsistent therewith.
- E. Any provision of the contract which is void or invalid for any reason is to be severed, leaving the balance of the contract in force. However, where such provision is material for the validity of the contract as a whole, then the parties undertake to each other that they will negotiate in good faith to agree a valid provision in place of the void or invalid provision and thereby preserve the contract in force.
- F. Written terms of this document may not be altered or varied save in writing and signed by both the parties or by their agent.
- G. Where any party is required to give notification to the other party herein, such notification shall be in writing and may be by way of letter or e-mail or other form generally utilised in the course of business, addressed to the other party at an address supplied by the other party in terms of clause 26 below (“the designated address”).

Clauses marked with an asterisk

Where any clause hereunder is marked with an asterisk, it means that the parties MUST complete that clause where indicated by any underlining. Where completion of the clause requires the parties to make a choice between options, set out in blocks, that choice must be clearly shown by ticking the appropriate block.

Special Provisions Applicable Herein

1. The SELLER and the BUYER, being the only two parties who have any rights whatsoever under this contract, have this day entered into a contract whereby the BUYER agrees to buy and the SELLER agrees to sell commodities not necessarily being the SELLER'S own produce, on the following terms and conditions:

Commodity type	
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Origin RSA Other State country of origin

2. ***Quality**

All commodities to which this contract refers shall be good, sound and merchantable, and fit in all respects for the purpose for which they were purchased. The BUYER shall have the right of rejection if the commodities do not comply with this requirement. (Refer Clause 10).

Commodities sold on Sample Description

Contractual quality and condition of commodity for each individual consignment as hereunder: Specifications as per the laws governed by the RSA Agricultural Products Standards Act 1990, or any amendments thereof or any Act replacing same, as follows:

3. ***Quantity**

3.1 _____ metric tons _____ % more or less or to the nearest full road or rail truck (whichever is the lesser quantity) at the contract price.

- 3.2 The above variation is hereinafter referred to as the "tolerance". Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the BUYER, if he so wishes, to reject the excess.. If the BUYER does not so reject, the price of any quantity in excess of the upper tolerance shall be settled by mutual agreement, or otherwise in accordance with the dispute resolution agreement herein. If the SELLER delivers less than the minimum quantity permitted by the tolerance the SELLER shall be deemed to be in default and shall compensate the BUYER in accordance with the Default clause herein. Calculation of damages shall be against the mean contract quantity. Where deliveries of individual consignments reach a tonnage within the tolerance of the contractual quantity, the contract shall be deemed to have been completed.

4. ***Price and Packing**

4.1 *Price: _____ per metric ton

4.2 *Packing:

5. **DELIVERY:**

5.1 "Delivery " in terms of this contract, takes place according to the definition of "delivery" set out in the applicable INCOTERM (2010) or subsequent versions.

5.2 Denote applicable specific place of dispatch or destination:

6. ***Shipment/ dispatch from origin / place of loading:**

Between : _____ and _____ (both dates inclusive)

7. ***Payment Terms**

Payment shall be made at _____ (PLACE), within _____ days against presentation of the following documents:

Should the BUYER make payment after the stipulated date or any written extension thereof, he shall be in default and shall be liable to pay interest at _____% per annum, from the date on which payment was due until the date on which payment is made. Such default shall not be grounds for cancellation by the SELLER of any balance of the contract for which payment is being made.

8. ***Warehouse and/or silo Storage and Handling costs**

8.1 Storage costs shall be paid by the

8.2 Handling IN until _____ shall be paid by the

8.3 Handling OUT until _____ shall be paid by the

9. *Mass Determination

9.1 Where the commodity has been sold delivered to the BUYER's nominated store (hereinafter called "the Receiver), basis DAP or DDP, and fails to meet the quantity as specified herein, the Receiver shall not unload the commodity, and shall notify the SELLER as soon as possible, but no later than 24 hours from the time of the arrival of the commodity. Failure of the Receiver to give such notice shall preclude the BUYER from claiming for deficiency against the SELLER. The SELLER has 24 hours after receipt of such notice to verify the quantity by inspection. If the SELLER does not inspect timeously, the SELLER is deemed to accept the Receiver's findings as to quantity. If after timeous inspection by the SELLER there is a dispute as to quantity, such quantity shall be determined by an independent party/surveyor forthwith. The independent party/surveyor shall be agreed by the parties, or nominated by the AFSA Secretariat, if the parties cannot agree.

The BUYER shall advise the SELLER by fax or email within 24 hours of the end of each delivery period, or at such times as may be otherwise agreed (see clause 6) between the parties, the following information:

- (a) The SELLER's contract No.
- (b) Lorry or Rail Truck Registration No's.
- (c) Gross, Tare and Nett Mass.

9.2 In the case of delivery EXW, FCA, CPT or CIP, with sender's mass final, the mass as determined at the silo/warehouse shall be final and shall be accepted by both the SELLER and the BUYER. The SELLER and the BUYER shall have the right to superintend.

9.3 In the case of delivery to a silo/warehouse, the mass taken in by the silo/warehouse shall be final and shall be binding on the parties.

9.4 Where the commodity has been sold "on-farm" the SELLER BUYER shall have the commodity weighed at the nearest assized weighbridge. Weighing costs shall be paid by the SELLER BUYER

9.5 All weighing tickets shall be mechanically or electronically printed. Weighbridges used to determine mass shall conform to the verification periods for weighing and measuring instruments used in trade, as required by the RSA laws governing trade metrology.

9.6 If the commodity being traded is in a silo/warehouse, as indicated on a Silo Certificate/ Document of Title, the mass, as indicated on the Silo Certificate/Document of Title, shall be final and shall be accepted by both the SELLER and the BUYER.

10. *Quality Determination

10.1 Where the commodity has been sold delivered to the BUYER's nominated store, basis DAP or DDP, and fails on an immediate inspection conducted by the Receiver to meet the quality as specified herein, the Receiver shall not unload the commodity, and shall notify the SELLER as soon as possible, but no later than 24 hours from arrival of the commodity. Failure of the Receiver to give such notice, as required, shall preclude the BUYER from claiming for deficiency of quality against the SELLER, where such deficiency would or should have been apparent on reasonable inspection. The SELLER shall be allowed 24 hours from time of the notice of deficiency being given to inspect the commodity to verify the quality. If the SELLER does not do so, he shall be deemed to accept the Receiver's findings as to quality.

Should the SELLER and the BUYER fail to agree on the quality of the commodity, a second sample shall be drawn in accordance with the Agricultural Products Standards Act 1990 (and any amendments thereof or replacement Acts) with a suitable double tube probe in the case of bulk deliveries, or a suitable bag-probe in the case of deliveries in bags, or by such other method and by such person or persons agreed to by the parties. Such sample shall be sealed and shall bear on the label all relevant information required for analysis. All analysis shall be done by an independent analyst/surveyor agreed to by the parties or else nominated by the AFSA Secretariat. The results so determined shall be final and binding upon the parties. If allowances resulting from this analysis cannot be mutually agreed by the parties the matter shall be submitted to arbitration for determination in terms of clause 15. All costs of sampling and analysis shall be borne by the defaulting party.

- 10.2 Where the commodity has been sold EXW, FCA, CPT or CIP, the quality shall be determined by the Silo/Warehouse Operator and the quality so determined shall, unless the parties agree otherwise in writing, be final and binding on the parties.
- 10.3 Where commodity represented by Silo Certificate/s is traded, the quality or grade determined at the time of outloading shall be final and binding on the parties.
- 10.4 Where commodity is despatched for export by sea the quality shall be determined from a sample taken by a recognised first class surveyor or inspection agency upon arrival of the commodity at the port of export. The quality so determined shall be final and binding on the parties.
- 10.5 Where commodity has been sold "on EXW" the commodity shall be graded as follows:

11. Force Majeure

- 11.1 Neither the BUYER nor the SELLER shall be responsible for delay in despatch or delivery of commodity or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within RSA or elsewhere if commodities are imported), lockout, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within five business days of the occurrence, or not later than five business days after the beginning of the contract period, whichever is the later. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 consecutive days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.

11.2 Crop failure resulting from weather conditions of any nature, or damage to or destruction of crops by any other means will NOT be considered grounds for invoking Force Majeure under the terms of this clause.

11.3 *The SELLER is advised that failure to execute the contract in part or in total by reason of shortage of the commodity herein described may render him liable to a claim for damages by the BUYER.*

12. **Pre-delivery Storage**

Commodities sold for delivery against this contract must at all times be stored in clean and hygienic conditions. The SELLER shall allow the BUYER, by prior written agreement, access to any store containing the contract commodities and, if required, shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the commodities.

13. **When notices take effect for the purposes of this document**

13.1 A business day is any day other than a Saturday, Sunday or public holiday;

13.2 Business hours are the hours between 9h00 and 17h00 on a business day;

13.3 Any notice received at a party's designated address during business hours on a business day operates with immediate effect whether or not it actually comes to the attention of the addressee;

13.4 Any notice received at a party's designated address on a non-business day or after hours on a business day shall be deemed to operate from 9h00 on the next business day unless it can be shown that such notice came to the attention of the addressee before then, in which case it will operate from the day on which it came to the attention of the addressee.

14. **Default**

14.1 In the event of the SELLER failing to complete deliveries, or to make the commodities available for despatch/collection by the BUYER (whichever is his duty under the contract) by the last day of the contract period, the quantity not delivered against the contract quantity shall be deemed in default. The BUYER may, after giving prior written notice:

(a) purchase against such default, the SELLER to make good the loss, if any, on such purchase, or

(b) claim damages to be agreed mutually or settled by arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default.

14..2 In the event of the BUYER not accepting delivery of or collecting the contract quantity by the last day of the contract period, (whichever is his duty under the contract) the SELLER may at his option after having given prior written notice by recorded delivery to the BUYER:

(a) sell the commodities at the market price, the BUYER being liable to compensate the SELLER for any resultant loss (including any reasonable expenses arising from the sale) suffered by the SELLER, or

- (b) claim damages to be settled by mutual agreement or arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default. All damages to be calculated on the mean contract quantity.

The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been either claimed as under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

- 14.3 In all cases the claim for damages may include any proved additional reasonable expenses which arise directly and naturally in the ordinary course of events from the defaulting party's breach, but it shall not include any loss of profit on any sub-contract made by the claimant party, nor shall it include the cost of any management or staff time resulting from their involvement with matters arising directly or indirectly from the default.

15. Dispute Resolution Agreement

- 15.1 Any dispute between the parties arising from or in connection with the contract shall be finally resolved by way of a dispute resolution procedure administered by the Arbitration Foundation of Southern Africa (AFSA) in accordance with its Expedited Rules and the directions of its Secretariat, which shall be binding on the parties. (AFSA can be contacted at www.arbitration.co.za, Telephone No. 011 320 0600 and Fax No. 011 320 0533; email: isabel@arbitration.co.za.)
- 15.2 The parties may agree, or the AFSA Secretariat may direct, that the dispute first be submitted to mediation in accordance with the AFSA Mediation Rules. In which case, if the dispute is not resolved within 20 business days thereafter, it shall proceed to arbitration, unless both parties agree to extend the mediation period and the AFSA Secretariat approves such extension. Where there is no agreement to mediate, and/or the AFSA Secretariat does not so direct, then the dispute shall be submitted directly to arbitration.
- 15.3 Where both parties are in agreement therewith, they may employ legal representatives to appear for them at any arbitration hearing. Where there is no such agreement, then legal representatives shall not be present at the hearing, unless the arbitrator otherwise directs in the special circumstances of the case.
- 15.4 Unless the parties otherwise expressly agree in writing, any dispute shall be resolved in accordance with the law of the Republic of South Africa and the seat of the arbitration will be in South Africa.
- 15.5 Any matter pertaining to the mediation, if applicable, or to the arbitration of any dispute herein, if not provided for by this agreement or by the AFSA Rules, shall be referred to the AFSA Secretariat, which shall issue appropriate directions which are binding on the parties.

16. Time Limits and Mandatory Procedures for Pursuing any Claim

- 16.1 The parties affirm that it is necessary that any dispute between them should be notified without delay and then pursued promptly. They therefore agree that, unless a party making a claim does so in accordance with time limits specifically relating thereto, as set out elsewhere in this document, or if no specific time limits apply,

then in accordance with the requirements of clause 16.2, such claim shall be barred and deemed to have been waived and abandoned for all purposes whatever.

16.2

16.2.1 This clause regulates the time limits for making and pursuing any claim where such time limits are not specifically set out elsewhere in this document.

16.2.2 Any claim for any failure to deliver the commodities in accordance with this contract must, if such failure was not, and would not have been, apparent from a reasonable inspection on delivery, be notified in writing to the other party within 28 consecutive days from the last day of the period of delivery and thereafter, if such claim has not been settled, then it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.

16.2.3 Any claim for any other failure to perform in terms of this contract, shall be notified in writing to the other party within 28 consecutive days from the date on which the other party could reasonably have become aware of such failure. Thereafter it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.

16.3 The arbitrator shall determine whether there has been compliance with the provisions of this clause 16, but only if, and to the extent that, any party in the arbitration proceedings raises the issue.

17. **Vehicle Cleanliness**

Acceptance or rejection of any road vehicle or rail truck for fitness to carry grain to enter the food chain shall be at the discretion of the party responsible for loading the vehicle. Any additional haulage costs arising from the rejection of any road vehicle or rail truck shall be the liability of the party responsible for the movement of the commodities. In the event of any road vehicle or rail truck being rejected as above, within three business days of the end of the delivery period, the delivery period shall be extended by three business days.

18. **Delivery**

All collections/deliveries/shipments shall be made at the BUYER's call unless otherwise agreed between the parties.

19. **Passing of Ownership and Risk**

Risk shall pass as per the specific INCOTERM selected and agreed to be applicable to this contract.

Ownership remains with the Seller until such time that the Buyer has paid in full.

20. **Claims Analysis**

20.1 When commodities are sold subject to a specification requiring analysis, the BUYER shall have the right to claim an allowance to be agreed or to reject the commodities on the basis of an analysis made by him or on his behalf. When the BUYER exercises this right a representative sample shall be drawn, sealed and, if required by the SELLER, shall be submitted to an agreed independent analyst for the justification of any claim or rejection. If required by the SELLER this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable.

Costs of independent sampling and analysis so incurred shall be for the SELLER's account if the claim or rejection is upheld, otherwise for the BUYER's account.

20.2 All such claims must be notified so as to be received by the SELLER within 60 days from the last day of the contract period.

20.3 Where the contract between the parties denotes that that the quality/ specifications will be final at load/ place of loading, and a specified certificate is to be provided in terms of this contract, denoting the quality/ specifications at place of loading (and as detailed under item 3, or item 24 of this contract), then the specifications on such a certificate will be final and binding. The Buyer will have no recourse, if upon arrival of the commodity at destination, the quality/specifications is/ are different from those stated on the applicable certificate, as provided for in this contract.

21. **Demurrage**

In cases of unreasonable delay in the arrival, loading or discharge of vehicle/trucks collecting or delivery commodities howsoever caused (including delays resulting from the non-provision of essential documentation), the SELLER or the BUYER, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

22. **Non-Payment**

The SELLER reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this Contract with him by the BUYER have been received. the SELLER reserves a lien upon – and the right to sell or otherwise dispose of – all commodities the subject of this Contract, whether appropriated to it or not, in respect of any such payments.

23. **Statutory Changes**

The price of the commodities is subject to alteration by reason of the imposition of or alteration by the Government of RSA in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon commodities of this description, whether at the time of or if the change is retrospective, at any time after the date of this contract, provided that the change is applicable to the date of delivery.

24. ***Further Terms (if applicable)**

25. ***Addresses of the parties at which all notifications may be given and all processes served:**

SELLER:

(a) Business address:

(b) email address:
