



# Contract No.49

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THE GRAIN AND FEED TRADE ASSOCIATION

## CONTRACT FOR THE DELIVERY OF GOODS CENTRAL AND EASTERN EUROPE IN BULK OR BAGS FOB TERMS

*\*delete/specify as applicable*

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** (in bulk or in bags) .....

9 **Packing** - if in bags, to be uniform weight bags suitable to withstand ordinary wear and tear to destination, such  
10 bags to be taken and paid for as goods.

11  
12 **2. QUANTITY** .....

13 tonnes of 1000 kilograms, 5% more or less at Buyers' option, at contract price. In the event of more than one  
14 delivery being made, each delivery shall be considered a separate contract, but the margin on the mean quantity  
15 sold shall not be affected thereby. Each mark/parcel shall stand as a separate parcel.

16  
17 **3. PRICE**..... per tonne of 1000 kilograms gross weight,

18 delivered Free On Board Buyers' Vessel(s) in .....

19  
20  
21 **4. BROKERAGE**.....per tonne, to be paid by Sellers on the mean contract quantity, goods lost or

22 not lost, contract fulfilled or not fulfilled unless such non-fulfilment is due to the cancellation of the contract  
23 under the terms of the Prevention of Delivery Clause. Brokerage shall be due on the day shipping documents are  
24 exchanged, or if the goods are not delivered then brokerage shall be due on the 30th consecutive day after the  
25 last day for delivery. Any disputes arising out of this clause shall be referred to arbitration in accordance with  
26 the arbitration clause.

27  
28 **5. QUALITY** .....

29 **Condition.** Delivery shall be made in good condition.

30  
31 **6. PERIOD OF DELIVERY**

32 **Delivery during**..... at Buyers' call.

33  
34 **Nomination of Vessel.** Buyers shall serve not less than .....consecutive days' notice of the name and  
35 probable readiness date of the vessel and the estimated tonnage required. The Buyer has the right to substitute  
36 any nominated vessel. Buyer's obligations regarding pre-advice shall only apply to the original vessel nominated.  
37 No new pre-advice is required to be given in respect of any substitute vessel, provided that the substitute vessel  
38 arrives no earlier than the estimated time of arrival of the original vessel nominated and always within the  
39 delivery period. Provided the vessel is presented at the loading port in readiness to load within the delivery  
40 period, Sellers shall if necessary complete loading after the delivery period and carrying charges shall not apply.  
41 Notice of substitution to be given as soon as possible but in any event no later than one business day before the  
42 estimated time of arrival of the original vessel. In case of re-sales a provisional notice shall be passed on without  
43 delay, where possible, by telephone and confirmed on the same day in accordance with the Notices Clause.

45 In any month containing an odd number of days the middle day shall be accepted as being in both halves of the  
46 month, except for pricing purposes the middle day shall be considered to be in the first half of the month.  
47

## 48 **7. LOADING**

49 Loading port .....

50  
51 If a range is given, Sellers to declare port/berth(s)..... days prior to commencement of the delivery  
52 period.

53 Vessel(s) to be clean and fit to receive the goods and to load in accordance with the custom of the port of loading  
54 unless otherwise stipulated. Bill of lading shall be considered proof of delivery in the absence of evidence to the  
55 contrary.  
56

## 57 **8. EXTENSION OF DELIVERY**

58 The contract period of delivery shall be extended by an additional period of not more than 10 consecutive days,  
59 provided that Buyers serve notice claiming extension not later than the next business day following the last day of  
60 the delivery period. In this event Sellers shall carry the goods for Buyers' account and all charges for storage,  
61 interest, insurance and other such normal carrying expenses shall be for Buyers' account, unless the vessel  
62 presents in readiness to load within the contractual delivery period.

63 Any differences in export duties, taxes, levies etc, between those applying during the original delivery period and  
64 those applying during the period of extension, shall be for the account of Buyers. If required by Buyers, Sellers  
65 shall produce evidence of the amounts paid. In such cases the Duties, Taxes and Levies Clause shall not apply.

66 Should Buyers fail to present a vessel in readiness to load under the extension period, Sellers shall have the option  
67 of declaring Buyers to be in default, or shall be entitled to demand payment at the contract price plus such charges  
68 as stated above, less current FOB charges, against warehouse warrants and the tender of such warehouse warrants  
69 shall be considered complete delivery of the contract on the part of Sellers.  
70

## 71 **9. INSURANCE**

72 Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by Buyers  
73 with first class underwriters and/or approved companies. Buyers shall supply Sellers with confirmation thereof at  
74 least 5 consecutive days prior to expected readiness of vessel(s). If Buyers fail to provide such confirmation, Sellers  
75 shall have the right to place such insurance at Buyers' risk and expense.  
76

## 77 **10. PAYMENT**

78 (a) By cash in .....  
79 against the following documents.....

80 (b) No obvious clerical error in the documents shall entitle Buyers to reject them or delay payment, but Sellers shall  
81 be responsible for all loss or expense caused to Buyers by reason of such error, and Sellers shall on request of  
82 Buyers furnish an approved guarantee in respect thereto.

83 (c) **Interest.** If there has been unreasonable delay in any payment, interest appropriate to the currency involved  
84 shall be charged. If such charge is not mutually agreed, a dispute shall be deemed to exist which shall be settled  
85 by arbitration. Otherwise interest shall be payable only where specifically provided in the terms of the contract  
86 or by an award of arbitration. The terms of this clause do not override the parties' contractual obligation under  
87 sub-clause (a).  
88

89 **11. EC EXPORT LICENCE** if required, to be obtained by Buyers provided Buyers are an EC member otherwise, to be  
90 obtained by Sellers. For other countries export licence if required, to be obtained by Sellers.  
91

## 92 **12. DUTIES, TAXES AND LEVIES ON GOODS**

93 Any EC export duties, taxes, levies, and refunds etc present or future in the country of origin, shall be for the  
94 account of the holder of the Export Licence, otherwise national duties and taxes, present or future shall be for  
95 Sellers' account. For other countries any duties, taxes, levies, and refunds etc, present or future in the country of  
96 origin, shall be for Sellers' account.  
97

## 98 **13. PREVENTION OF DELIVERY**

99 Event of Force Majeure - "Event of Force Majeure" means (a) prohibition of export or other executive or  
100 legislative act done by or on behalf of the government of the country of origin or of the territory where the port  
101 or ports named herein is/are situate, restricting export, whether partially or otherwise, or (b) blockade, or (c)  
102 acts of terrorism, or (d) hostilities, or (e) strike, lockout or combination of workmen, or (f) riot or civil  
103 commotion, or (g) breakdown of machinery, or (h) fire, or (i) Act of God, or (j) unforeseeable and unavoidable  
104 impediments to transportation or navigation, or (k) any other event comprehended in the term "force majeure".  
105

106 Should performance of this contract be prevented, whether partially or otherwise, by an Event of Force Majeure,  
107 the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that  
108 Buyers/Sellers (the affected party) shall have served a notice on the other party within 7 consecutive days of the  
109 occurrence or not later than 21 consecutive days before commencement of the period of delivery, whichever is  
110 later, with the reasons therefor.

111  
112 If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then  
113 Sellers/Buyers (the non-affected party) have the option to cancel the unfulfilled part of the contract by serving a  
114 notice on the other party not later than the first business day after expiry of the 21 day period.

115  
116 If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14  
117 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract  
118 shall be automatically cancelled.

119  
120 If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled,  
121 Buyers/Sellers shall notify Sellers/Buyers without delay that the Event of Force Majeure has ceased. The period  
122 of delivery shall be extended, from the cessation, to as much time as was left for delivery under the contract prior  
123 to the occurrence of the Event of Force Majeure. If the time that was left for delivery under the contract is 14  
124 days or less, a period of 14 consecutive days shall be allowed.

125  
126 The burden of proof lies upon the party claiming under this clause and the parties shall have no liability to each  
127 other for delay and/or non-fulfilment under this clause, provided that the party relying on the clause shall have  
128 provided to the other party, if required, satisfactory evidence justifying the delay or non-fulfilment.

#### 129 **Ice**

130  
131 (a) If FOB at an ocean-going port, should delivery or loading of the goods or any part thereof be prevented at any  
132 time during the last 30 days of the delivery period or at any time during the delivery period if such be less than  
133 30 days, by reason of ice at port(s) of loading or elsewhere preventing the forwarding of the goods to such port  
134 or ports, then the Sellers shall be entitled, at the termination of such ice, to as much time, not exceeding 21 days,  
135 for delivery at such port(s) as was left for delivery under the contract prior to the outbreak of ice, and in the  
136 event of the time left for delivery under the contract being 14 days or less, a minimum extension of 14 days shall  
137 be allowed. In the event of further ice preventing delivery or loading of the goods during the time by which the  
138 time of delivery has been extended by reason of the operation of the provisions of the foregoing paragraph, the  
139 additional extension shall be limited to the actual duration of such ice.

140  
141 (b) If FOB at an up-river port, should delivery or loading of the goods or any part thereof be prevented at any time  
142 during the last 30 days of the delivery period or at any time during the delivery period if such be less than 30 days,  
143 by reason of ice at port(s) of loading or elsewhere preventing the arrival of the vessel at the load port, then the  
144 Buyers shall be entitled at the termination of such ice to as much time, not exceeding 21 days, for delivery at such  
145 port(s) as was left for delivery under the contract prior to the outbreak of ice, and in the event of the time left for  
146 delivery under the contract being 14 days or less, a minimum extension of 14 days shall be allowed. In the event of  
147 further ice preventing delivery or loading of the goods during the time by which the time of delivery has been  
148 extended by reason of the operation of the provisions of the foregoing paragraph, the additional extension shall be  
149 limited to the actual duration of such ice.

150  
151 (c) Buyers or Sellers, as the case may be, shall serve notice not later than 5 business days after the commencement  
152 of ice or 5 business days after the commencement of the delivery period whichever is later if they intend to claim an  
153 extension of time for delivery under this clause.

154  
155 (d) If required by either party, the other party must provide documentary evidence to establish any claim for  
156 extension under this clause.

#### 157 **14. NOTICES**

158  
159 (a) All notices required to be served on the parties pursuant to this contract shall be served in legible form by E-  
160 mail, or by other mutually recognised electronic method of rapid communication, always subject to the  
161 provision that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender  
162 who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed  
163 pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee.

164 (b) In case of resales/repurchases, all notices shall be served without delay by sellers on their respective buyers  
165 or vice versa, and any notice received after 1600 hours on a business day shall be deemed, for the purpose of  
166 passing onto their sub buyers and sub sellers, to have been received on the business day following.

167 (c) A notice to the Brokers or Agent shall be deemed a notice under this contract.

- 168 **15. NON-BUSINESS DAYS**  
169 Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days,  
170 which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time  
171 limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended  
172 until the first business day thereafter. The period of delivery shall not be affected by this Clause.  
173
- 174 **16. WEIGHING**  
175 The terms and conditions of GAFTA Weighing Rules No.123 are deemed to be incorporated into this contract.  
176 Final at time and place of loading, as per GAFTA registered superintendent certificate at Sellers' choice and  
177 expense. Buyers have the right to attend at loading.  
178
- 179 **17. SAMPLING, ANALYSIS AND CERTIFICATES OF ANALYSIS**  
180 The terms and conditions of GAFTA Sampling Rules No. 124 are deemed to be incorporated into this contract.  
181 Samples shall be taken at time and place of loading. The parties shall appoint superintendents, for the purposes  
182 of supervision and sampling of the goods, from the GAFTA Register of Superintendents. Unless otherwise agreed,  
183 analysts shall be appointed from the GAFTA Register of Analysts  
184
- 185 **18. FUMIGATION**  
186 Where fumigation has been agreed, the terms and conditions of GAFTA Fumigation Rules No. 132 shall be  
187 incorporated into this contract.  
188
- 189 **19. DEFAULT**  
190 In default of fulfilment of contract by either party, the following provisions shall apply: -  
191 (a) The party other than the defaulter shall, at their discretion have the right, after serving notice on the defaulter,  
192 to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default  
193 price.  
194 (b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages  
195 cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.  
196 (c) The damages payable shall be based on, but not limited to, the difference between the contract price and either  
197 the default price established under (a) above or upon the actual or estimated value of the goods on the date of  
198 default established under (b) above.  
199 (d) In all cases the damages shall, in addition, include any proven additional expenses which would directly and  
200 naturally result in the ordinary course of events from the defaulter's breach of contract, but shall in no case include  
201 loss of profit on any sub-contracts made by the party defaulted against or others unless the arbitrator(s) or board  
202 of appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.  
203 (e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared then  
204 on the mean contract quantity and any option available to either party shall be deemed to have been exercised  
205 accordingly in favour of the mean contract quantity.  
206
- 207 **20. CIRCLE**  
208 Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a  
209 circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the  
210 Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same  
211 description, from the same country of origin, of the same quality, and, where applicable, of the same analysis  
212 warranty, for delivery from the same port(s) of loading during the same period of delivery). Different currencies  
213 shall not invalidate the circle.  
214 Subject to the terms of the Prevention of Delivery Clause in the contract, if the circle is established before the  
215 goods are delivered, or if the goods are not delivered, invoices based on the mean contract quantity, or if the  
216 goods have been delivered invoices based on the delivered quantity, shall be settled by all Buyers and their  
217 Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the  
218 lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last date  
219 for delivery, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not  
220 later than 15 consecutive days after the circle is ascertained.  
221 Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be  
222 replaced by the market price on the first day for contractual delivery and invoices shall be settled between each  
223 Buyer and his Seller in the circle by payment of the differences between the market price and the relative  
224 contract price in the currency of the contract.  
225 All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been  
226 ascertained in accordance with this clause it shall be binding on all parties to the circle. As between Buyers and  
227 Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach  
228 of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the

229 Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price  
230 as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice  
231 amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall  
232 make payment to their Buyers if the difference between the closing out price and the contract price.  
233

## 234 **21. INSOLVENCY**

235 21.1 If before the fulfilment of this contract, either party shall:

- 236 (a) suspend payments;
- 237 (b) notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to  
238 suspend payments of his debts;
- 239 (c) convene, call or hold a meeting of creditors;
- 240 (d) propose either:
  - 241 (i) a voluntary arrangement; or
  - 242 (ii) a restructuring plan under Part 26A Companies Act 2006;
- 243 (e) be subject to a moratorium pursuant to Part A1 of the Insolvency Act 1986;
- 244 (f) be subject to either:
  - 245 (i) a notice of intention to appoint an administrator; or
  - 246 (ii) a notice of appointment of an administrator;
- 247 (g) have an administration order made;
- 248 (h) be subject to a winding up petition;
- 249 (i) have a winding up order made;
- 250 (j) have a receiver or manager appointed;
- 251 (k) convene, call or hold a meeting to go into liquidation (other than for re-construction or amalgamation);
- 252 (l) become subject to an interim order under Section 252 of the Insolvency Act 1986; or
- 253 (m) have a bankruptcy petition presented against him,

254 (any of which acts being hereinafter called an "**Act of Insolvency**")

255 then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act  
256 of Insolvency on the other party to the contract and upon proof (by either the other party to the contract or  
257 the office-holder or other person representing the party committing the Act of Insolvency) that such notice  
258 was served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out  
259 at the market price ruling on the business day following the serving of the notice.

260 21.2 If such notice has not been served, then the other party, on learning of the occurrence of the Act of  
261 Insolvency, shall have the option of declaring the contract closed out at either the market price on the first  
262 business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the  
263 market price ruling on the first business day after the date when the Act of Insolvency occurred.

264 21.3 In all cases the other party to the contract shall have the option of ascertaining the settlement price on the  
265 closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the  
266 re-purchase or re-sale price shall be the amount payable or receivable under this contract.  
267

## 268 **22. DOMICILE**

269 This contract shall be deemed to have been made in England and to be performed in England, notwithstanding  
270 any contrary provision, and this contract shall be construed and take effect in accordance with the laws of  
271 England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this  
272 contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief,  
273 (save for obtaining security only for the claim or counter-claim), the exercise of the powers of the Court in  
274 relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the  
275 jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this  
276 contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or  
277 carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party  
278 residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the  
279 English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of  
280 the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The  
281 Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside  
282 England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.  
283

## 284 **23. ARBITRATION**

285 (a) Any and all disputes arising out of or under this contract or any claim regarding the interpretation or  
286 execution of this contract shall be determined by arbitration in accordance with the GAFTA Arbitration Rules, No  
287 125, in the edition current at the date of this contract; such Rules are incorporated into and form part of this  
288 Contract and both parties hereto shall be deemed to be fully cognisant of and to have expressly agreed to the  
289 application of such Rules.

290 (b) Neither party hereto, nor any persons claiming under either of them shall bring any action or other legal  
291 proceedings against the other in respect of any such dispute, or claim until such dispute or claim shall first have  
292 been heard and determined by the arbitrator(s) or a board of appeal, as the case may be, in accordance with the  
293 Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or  
294 board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any  
295 persons claiming under either of them to bring any action or other legal proceedings against the other of them in  
296 respect of any such dispute or claim.

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

302  
303 **24. INTERNATIONAL CONVENTIONS**

304 The following shall not apply to this contract: -

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

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

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

310 (d) Incoterms.

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

313  
314 **25. PHYTOSANITARY CERTIFICATE**

315 Where the provision of a phytosanitary certificate has been agreed between the parties, Sellers shall use their  
316 reasonable endeavours to supply, at their own cost, a phytosanitary certificate in circumstances where:

317 (a) After the date on which the contract has been entered into the named country of import changes its  
318 phytosanitary requirements or

319 (b) As at the date on which the contract has been entered into Sellers are not aware of the named country of  
320 import.

321  
322 **26. METHODS OF ANALYSIS**

323 Unless otherwise agreed, the terms and conditions of GAFTA Methods of Analysis No. 130 are deemed to  
324 be incorporated into this contract.

Sellers.....Buyers .....

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**GAFTA**

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