



Export Contract for Pulses and Seeds 1977
version: FOB, FAS, EXW, FCA, DAF, CPT
As revised and effective as from October 12, 2001

(place) _____, _____ 20____
(date)

BUYER: _____

SELLER: _____

INTERMEDIARY: _____

Quantity or weight: _____

Commodity: _____

Quality: _____

Price: _____ (in words _____)

per unit _____ net, gross for net, including packaging

weight shipped: _____

(Please state: FOB, FAS, EXW, FCA, DAF, CPT)

Shipment: _____

Payment: Cash against Documents.

In addition this contract is subject to the terms and conditions stated overleaf.

Buyer: _____ Intermediary: _____ Seller: _____

A. SHIPMENT

1. Whenever used, "prompt" shall be deemed to mean 2 weeks on validation of the contract.
2. Date of shipment, unless negotiated otherwise, shall be the date on which the shipment is placed alongside the carrier previously designated by the Buyer.
3. Notice of shipment shall be given to the Buyer by cable, fax, telex or e-mail within one (1) day after receipt of notice from the forwarding agent. Onus of proof of notification shall lie with the Seller, who, by failing to provide the same, shall become liable to the Buyer for any damages arising therefrom.
4. Every shipment shall be deemed to constitute a separate contract.

B. NOTICE OF DELIVERY/INSTRUCTIONS

1. With the exception of transactions requiring "prompt" delivery, the Seller shall notify the Buyer of his intention to deliver on schedule by cable, telex, fax or e-mail no later than 2 weeks prior to the scheduled delivery date. Proof of notification is incumbent on the Seller. Should the Seller fail to give due notice of delivery, the Buyer shall be entitled to the remedies stated in item E §1 hereunder. However, before the Buyer can exercise such rights, he shall be required, within 2 working days of elapsed schedule, to afford the Seller 2 further working days to lodge his delivery notification.
2. a. The Buyer shall, within three working days of receipt of such delivery notice, convey all relevant shipping instructions to the Seller or to any party designated by the same.

b. Should the contract require shipment to be effected on Buyer's call, instructions for such shipment shall be provided to the Seller no later than 2 weeks prior to the latest possible shipping date.
3. Should the Buyer fail to provide timely instructions (or in the case of a non-compliance with these instructions) the Seller shall be entitled to any one of the following remedies:
 - a. ship/deliver the goods within 2 weeks subsequent to the last possible delivery date. Any costs arising from such delay shall be borne by the Buyer.
 - b. Render the consignment for storage in a public bonded warehouse for the sole account and at the sole risk of the Buyer.

However, before enforcing any one of the above remedies, the Seller shall be required to notify the Buyer of his intentions to seek such remedy by cable, fax, telex or e-mail on the first day after the period mentioned in § B section 2 & 3 has elapsed.

The Seller shall then be entitled to payment – including all costs incurred from such default – and may collect the total amount on presentation of the documents that represent the shipment. Should the Buyer fail to comply with such demand, § E, section 3 shall become applicable.

C. QUALITY INSPECTION

1. Quality inspection and/or sealing of samples shall be concurrent with the loading of the shipment. Failure to comply with this requirement shall result in forfeiture of all rights of arbitration in any subsequent quality dispute.
2. Any complaint pertaining to the consignment shall be made by, or on behalf of, the Buyer to the Seller or his authorised representative by fax, telex or e-mail during the process of delivery. Proof of notification is incumbent on the complainant. Should the Seller reject the claim and a mutually acceptable solution not be found, a bulk sample, jointly drawn and sealed by both parties, together with an application for arbitration, must be forwarded within 2 weeks of delivery to the Secretary of the Royal Dutch Grain and Feed Trade Association in Rotterdam.
3. An adjudged loss in value of 10% or more by the Arbitrators shall entitle the Buyer to reject the consignment in its entirety. Irrespective of whether the Buyer has exercised this right, the goods must still be stored at the appropriated place of delivery or alternatively stored as a separate consignment in a public bonded warehouse closest to the place of delivery. Any costs resulting therefrom shall be borne by the unsuccessful party
4. In all other aspects, the provisions of § H shall apply.

D. WEIGHT CONTROL

1. The measured weight at the time of loading or point of delivery, if these are not identical, shall apply to the sale.
2. Absence of the Buyer or his representatives at the time of weight control constitutes acceptance of the Sellers certified declaration of delivered weight.

E. NON-PERFORMANCE

1. In the event of non-performance by the Seller, the Buyer shall be entitled to exercise any one of the following options:
 - a. to cancel the contract, or, if it involves several partial consignments, to cancel the relevant partial consignment;
 - b. after having notified the Seller by cable, telex, fax or e-mail, to secure adequate replacement within 3 working days and at the best attainable price. Proof of timely notification is incumbent on the Buyer. Disputes over justification of the achieved price shall be settled by the Arbitrators and shall allow the Buyer redemption for the justified difference in price.
 - c. to cause the value of the goods to be determined by arbitration and thereupon to claim the unfavourable difference in price.
2. Should the Buyer's efforts to secure adequate replacement within the time frame specified under clause 1 b fail, the Buyer shall be entitled to the provisions under clause 1 c.
3. In the event of non-performance by the Buyer and subject to the provisions of § B clause 3, the Seller shall be entitled to exercise any one of the following options:
 - a. to cancel the contract, or, if it involves several partial consignments, to cancel the relevant partial consignment;
 - b. after having notified the Buyer by cable, telex, fax or e-mail, to sell the consignment or the documents pertaining thereto within a reasonable time, in whole or in part, either privately at the best attainable price or by a public auction governed by rules of public sales. In either case the Seller retains the right to recover the difference in price from the Buyer. Disputes over justification of the achieved price shall be settled by the Arbitrators and shall allow the Seller redemption for the justified difference in price.
 - c. to cause the value of the goods to be determined by arbitration and thereupon to claim the unfavourable difference in price.

Should any of the above become necessary, the Seller shall be entitled to recover from the Buyer all incurred costs, if any, as determined by the provisions of § B clause 3.

4. Should the Buyer or Seller, prior to commencement of delivery, no longer be in a position to discharge the obligations of the sales contract, it shall automatically be terminated by law and settlement thereof shall be made at the current market value on the day the indisposition becomes public knowledge or be brought to the attention of the prevailing party. The current market value shall, if necessary, be determined by arbitration.

F. EXTENSION OF DELIVERY PERIOD

Should the contractual delivery period be 31 days or less, the Seller shall be entitled to an extension not exceeding 8 consecutive days, provided the Seller claims extension and notifies the Buyer by cable, telex, fax or e-mail no later than one business day after expiry of the originally stipulated delivery date. Said notice, however, need not state the number of additional days claimed. Based on the number of days claimed for the extension, the Seller shall make provision for deduction from the negotiated price at the following rate: for 1, 2, 3, or 4 additional days, 1/2% of the gross contract price; for 5 or 6 additional days, 1% of the gross contract price; for 7 or 8 additional days, 1½% of the gross contract price. If, after having given notice to the Buyer, the Seller fails to ship within the extension period of 8 days, the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at the contract price less 1½%. Any other claims for default or non-compliance of contractual obligations shall be calculated on the basis of the reduced price.

G. FORCE MAJEURE

1. Should transport hindrances of any direct or indirect kind such as frost, ice-drift, strikes or abnormal water levels, either at the place of origin or in transit or at destination, render the consignment undeliverable, shipment may be effected 3 weeks after such circumstances have been cured.
2. All other aspects of Force Majeure and circumstances beyond the control of the Seller shall include blockades, embargoes, acts of war, etc. and exempt the Seller from his delivery obligations, if it can be inferred that delivery has been made impossible or that the Seller can no longer reasonably be required to make delivery.

H. ARBITRATION

1. Disputes arising out of sales contracts governed by "Export Contract Pulses & Seeds 1977 version FOB, FAS, EXW, FCA, DAF, CPT" and any terms and conditions thereto shall be settled by arbitration. Furthermore, disputes arising out of any subsequent but dependent sales contracts, or ones resulting therefrom, shall also be subjected to such arbitration.

2. Intermediaries who have rendered services for the conclusion of a sales contract as referenced in § 1, shall, as a result, become parties to arbitration proceedings resulting from disputes arising therefrom, applicable terms and conditions thereto or in connection with any services rendered by them. In as much as they are made parties to proceedings between Buyer and Seller, recourse may be taken against them.
3. In the event of any doubt as to whether a dispute as referred to in paragraphs 1 and 2 above has arisen, the text used therein must be interpreted in the widest possible sense.
A dispute shall also then be deemed to have arisen when one of the parties fails to pay a claim of the other party without challenging the authenticity of that claim.
4. Written applications for arbitration may be made to the Secretary of the Royal Dutch Grain and Feed Trade Association, by cable, telex, fax, e-mail or regular mail, whereby proof of notification is incumbent on the applicant. All applications must be made within the following time limit:
 - a. disputes relating to quality: within the time limit, referred to under item § C. clause 2 above
 - b. all other disputes: no later than 3 months after the day on which the dispute arose. Exceptions due to extraordinary circumstances may be considered at the discretion of the Arbitrators.

With the application for arbitration, the applicant shall simultaneously notify the respondent thereof in the same manner as referred to in this paragraph.

5. Along with the application for arbitration to the Secretary of the Royal Dutch Grain and Feed Trade Association, the applicant must enclose a copy of the sales contract or equivalent proof thereof and deposit the presumed arbitration fee currently applied by the Committee.
Should the applicant fail to make payment, even after a written reminder, the application shall be deemed to have been withdrawn and all costs as currently applied by the Committee shall become due. Exceptions due to extraordinary circumstances may be considered at the discretion of the Arbitrators.
6. After having received an application for arbitration, the Secretary of the Royal Dutch Grain and Feed Trade Association shall, as soon as possible, institute a panel of three arbitrators from a list of arbitrators for disputes arising out of Export Contracts for Pulses and Seeds.
7. The arbitration proceedings shall be held in Rotterdam.
8. During the course of the first arbitrators hearing, the respondent shall be entitled to institute a counter-claim against the claimant, provided the counter-claim stems from the same sales contract. Should such counter-claim stem from a sales contract other than the one for which arbitration was originally sought, a separate application for arbitration must be filed. However, such application may stipulate that the same panel of arbitrators be appointed for adjudication of the counter-claim. In either event, the arbitrators shall decide whether an award can be made with consideration of the counter-claim or whether the counter-claim has to be handled independently.
However, all the above shall be subject to the provisions of § 1 through §3
9. The arbitrators shall determine the rules by which the arbitration shall be processed and adjudicate under the principles of Good Business Practice. Awards resulting from the arbitration process shall include the cost of the same.
10. Either party shall have the right of appeal against any award made. Notification of such appeal shall be made in writing to the Secretary by cable, fax, e-mail or ordinary mail no later than one month after the award has been granted, whereby proof of punctual notification is incumbent on the appellant. Furthermore, the appellant shall be required to notify the opponent simultaneously. All arbitration awards against quality of goods are barred from appeal.
11. The appeal respondent shall, in turn, have the right of incidental appeal, even after the time limit set in clause 10 has expired, however, no later than the first hearing of the appeal arbitrators.
12. Claims made in the first instance may be adjusted in the appeal process provided the appeal arbitrators can reasonably rule that the interests of the appeal respondent are thereby not prejudiced or harmed in any way. In any case accrued interest and/or rentals that have become due and payable as well as subsequent damage and/or costs may now be additionally claimed.
13. Each party may adopt a new line of defence, provided it does not contradict the original defence brought forward in the first instance.
14. The appeal shall be heard and awards adjudicated by 5 appeal arbitrators.

15. Rules and principles applied to the arbitration hearings in the first instance shall apply to the hearings on appeal.
16. Non-compliance of any awards given shall, on maturity, cause the Royal Dutch Grain and Feed Trade Association to render public notice thereof in any manner it deems appropriate and thereupon to inform all its relevant members.
17. Parties in violation of arbitration awards as referred to in clause 16 shall be barred from arbitration in any future disputes, whenever these may arise, provided the governing contracts to such disputes were validated one week after the public notice referred to in clause 16 was given. Exclusion from subsequent arbitration shall be maintained until the violation has been cured or remedied.
18. The Royal Dutch Grain and Feed Trade Association shall, at all times, be entitled to publish the contents of any arbitration proceeding without stating the names of the involved parties thereto.

I. MISCELLANEOUS

1. Any agreements entered into on the terms and conditions of the "Export Contract for Pulses and Seeds 1977, version FOB, FAS, EXW, FCA, DAF, CPT " and any subsequent agreements that might ensue therefrom shall be subject to Dutch jurisdiction.
2. Irrespective of whether a translation of the "Export Contract for Pulses and Seeds 1977, version FOB, FAS, EXW, FCA, DAF, CPT " was issued by or on behalf of the Royal Dutch Grain and Feed Trade Association, the Dutch text shall continue to be binding.
3. The "Export Contract for Pulses and Seeds 1977, version FOB, FAS, EXW, FCA, DAF, CPT " has been filed and is on record at the Registry of the District Court, Rotterdam.