



Export Contract for Grains, Pulses and Seeds

version: FOB, FAS, EXW, FCA, CPT

As revised and effective from 1 June 2018

_____, _____ 20____
(place) (date)

BUYER: _____

SELLER: _____

INTERMEDIARY: _____

Quantity or weight: _____

Goods: _____

Quality: _____

Price: _____ (in words _____)

Per _____ net/gross for net, including packaging*

weight shipped: _____

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

Shipment/Delivery Period:

Payment: Against presentation of documents.

The terms and conditions as stated overleaf shall be deemed to be incorporated in this contract.

Buyer: _____ Intermediary: _____ Seller: _____

* Cross out as applicable

A. SHIPMENT/DELIVERY

1. Whenever used, "prompt" shall be deemed to mean shipment/delivery within 2 weeks on validation of the contract.
2. Shipment/delivery shall be deemed to have taken place once the goods have been delivered to the Buyer's designated carrier.
3. Shipment/delivery details shall be given to the Buyer in writing, e.g. by fax, or e-mail within 1 day after receipt of such details by the Seller. Onus of proof of shipment/delivery details 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/delivery 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 in writing, e.g. by 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 clause 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 3 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 provisions set out above 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, or
 - b. render the consignment for storage in a public warehouse for the sole account and at the sole risk of the Buyer.

However, before enforcing any one of the above remedies, the Seller is obliged to notify the Buyer of his intentions to seek such remedy in writing, e.g. by fax, or e-mail on the first day after the period mentioned in paragraph B sections 2 & 3 has elapsed. Proof of notification is incumbent on the Seller

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

C. QUALITY CONTROL

1. Quality control and/or sealing of samples shall be done during loading. Failure to comply with this requirement shall result in forfeiture of all rights of arbitration in any subsequent quality dispute.
2. Sampling shall be conducted in accordance with "Het Comité Sampling Protocol".
3. Any complaint pertaining to the consignment shall be made by, or on behalf of, the Buyer to the Seller or his authorised representative in writing, e.g. by fax, 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 or on behalf of both parties, together with an application for arbitration, must be forwarded within 2 weeks after the day of delivery to the Secretary of the Royal Dutch Grain and Feed Trade Association in Rotterdam
4. An adjudged loss in value of 10% of the purchase price or more by the Arbitrators shall entitle the Buyer to
 - a. Receive the goods against the adjudged loss in value;
 - b. Reject the goods;
 - c. Receive delivery of goods of the contractual quality within 2 weeks.

If Buyer exercises his right in accordance with paragraph C section 4 sub b, the goods must still be stored at the appropriated place of delivery or alternatively stored as a separate consignment in a public warehouse closest to the place of delivery. Any costs resulting therefrom shall be borne by the losing party.

D. WEIGHT CONTROL

1. Determination of weight is to be done during loading or upon delivery (in case the goods are not immediately loaded).
2. Absence of the Buyer or his representatives at the time of weight control constitutes acceptance of the Seller's weighing note of a calibrated weighing device.

E. NON-PERFORMANCE ("DEFAULT")

1. In the event of default 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 shipment/delivery in question;
 - b. after having notified the Seller in writing, by , fax or e-mail, to buy against the defaulter 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 not be able to buy against the defaulter within the time frame specified under section 1 sub b, the Buyer shall only be entitled to the provisions under section 1 sub c.
 3. In the event of non-performance by the Buyer, the Seller shall, subject to the provisions of paragraph B section 3, be entitled to exercise 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 in writing, e.g. by 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. Proof of notification is incumbent on the Seller. In either case the Seller retains the right to recover the difference in price from the Buyer. In case of a private sale, 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 and damage.
 - 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 paragraph B section 3.

4. Should the Buyer, prior to commencement of delivery, have ceased to make payments or be obviously no longer in a position to discharge his financial obligations, the contract 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.
5. Deposit:
 - a. The seller shall in any case have the right to demand that the amount of the provisional invoice to be sent by him to the buyer shall, prior to delivery of the goods, be paid by the latter free of charges to Het Comité, which in its turn undertakes to pay the seller the amount of the invoice due to the latter up to a maximum of the amount of the provisional invoice and subject to the following stipulations.
 - b. The seller shall inform Het Comité in writing of such a demand, while sending a copy of the provisional invoice.
 - c. The amount referred to in sub q shall be paid to Het Comité before the date for which the shipment was foreseen, but the buyer shall be entitled to require that he is allowed the amount of time as may be considered reasonable to effect payment.
 - d. As soon as payment has been received by Het Comité, it shall inform the seller or his representative and to the buyer or his representative thereof as soon as possible.
 - e. Het Comité shall not pay interest on the amount paid as referred to above, but the seller shall be obliged to pay the buyer interest to be calculated on the basis of the 12 month Euribor-rate, to be increased by 5% interest for the days which have lapsed between the date of payment and the delivery date.
 - f. When sending the copy of the provisional invoice referred to in sub b, the seller shall be obliged to remit to Het Comité 1% of the amount stated in the relevant invoice, to be increased by € 125,-, which amounts shall be forfeited in any case by the seller to Het Comité.
 - g. Any bank charges in connection with the finalisation of the deposit which are charged to Het Comité shall be for the seller's account.
 - h. The buyer or his representative shall notify Het Comité of the delivery not later than twenty four hours after delivery was made, stating at the same time the exact quantity he has received. Het Comité shall correspondingly pay the seller the amount due to the latter, up to a maximum of the amount shown on the provisional invoice, if possible on the same day or else on the following day.
 - i. If the buyer or his representative fails to observe the prescribed twenty four hours time limit for notifying Het Comité that delivery has taken place, settlement shall take place according to the statement submitted by the seller, supported by weight or measurement certificates.
 - j. Any disputes arising between the buyer and the seller concerning the quantity received, the condition, quality and other matters shall be settled by arbitration in accordance with the present conditions, entirely as though payment had taken place between the parties direct.
 - k. If the quantity delivered is less than the quantity which was provisionally invoiced, Het Comité shall pay back to the buyer the excess amount paid by the latter as soon as Het Comité has satisfied itself that the statement made by the buyer was correct. If no delivery takes place at all, Het Comité shall pay back the full amount to the buyer. However, Het Comité shall in neither of these cases be obliged to pay back any amount paid by the buyer as long as it has not been established that the buyer has no further obligations towards the seller under the contract, all this to be judged by the Board. Het Comité shall not be required to pay back any amounts except in the cases mentioned above.
 - l. If the buyer fails to pay the amount of the provisional invoice as described above, the seller shall be entitled not to deliver the goods or to have the goods sold by a broker or intermediary and to require compensation for any loss suffered in either of these cases.

F. EXTENSION

Should the contractual shipment/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 in writing, e.g. by fax or e-mail no later than the next business day following the last day 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, ½% 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 this basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price, less the 1½% allowance, and any other contractual differences shall be settled on the basis of the reduced price.

G. FORCE MAJEURE

1. Should transport and/or shipment of the goods directly or indirectly be impossible because of frost, ice-drift, strikes or abnormal water levels, either at the place of origin or in transit or at destination, shipment shall be effected 3 weeks after such circumstances have been cured.
2. . All other cases of Force Majeure, including blockage or hostilities for a period exceeding 28 days and furthermore every event outside of the control of the seller, if that causes delivery by the seller to become impossible or if delivery can no longer be reasonably expected of him, relieves the seller of his obligation to deliver.

H. ARBITRATION

1. Disputes arising out of or in connection with contracts governed by "Export Contract for Grains Pulses & Seeds version FOB, FAS, EXW, FCA, , CPT" or arising from or in connection with any terms and conditions thereto shall be settled by arbitration. Furthermore, disputes arising from 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 contract as referenced in section 1, shall, as a result, become parties to the arbitration agreement for disputes arising there from, applicable terms and conditions thereto or arising from 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 sections 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. Applications for arbitration shall be made to the Secretary of Het Comité in writing, e.g. by fax or e-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 2 weeks after the date of delivery as referred to under clause C. paragraph 3 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 section.

5. Along with the application for arbitration to the Secretary of Het Comité, the applicant must enclose a copy of the contract or equivalent proof thereof and deposit the presumed arbitration fee currently applied by the Board of Het Comité.
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 Board of Het Comité 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 Het Comité shall, as soon as possible, institute a panel of three arbitrators from a list of arbitrators for disputes arising out of Export Contracts for Grains, Pulses and Seeds.
In extraordinary circumstances the Secretary may appoint other competent arbitrators
7. The place of the arbitration shall be Rotterdam (The Netherlands). The arbitration proceedings shall be held at a venue to be decided by Het Comité.
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 contract. Should such counter-claim stem from a 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 sections 1 through 3.
Consolidation of an arbitration under these Arbitration Rules, whether in whole or in part, with other arbitration proceedings within the meaning of Section 1046 of the Dutch Code of Civil Procedure shall be excluded.
9. The arbitrators shall determine the rules by which the arbitration shall be processed and adjudicate under the principles of good men in equity. Awards resulting from the arbitration process shall include the cost of such process.
10. Either party shall have the right of appeal against any award made. Notification of such appeal shall be made to the Secretary in writing, e.g. by fax or e-mail, no later than 30 days 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 unless the appeal arbitrators can reasonably rule that the interests of the appeal respondent are thereby 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, after becoming due, cause Het Comité 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 section 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 section 16 was given. Exclusion from subsequent arbitration shall be maintained until the violation has been cured or remedied.
18. Het Comité shall, at all times, be entitled to publish the contents of any award 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 Grains, Pulses and Seeds, version FOB, FAS, EXW, FCA, CPT " and any subsequent agreements that might ensue therefrom shall be subject to Dutch law. The United Nations Convention on Contracts for the Sale of Goods of 1980 ("The Vienna Convention") shall not apply.
2. Irrespective of whether a translation of the "Export Contract for Grains, Pulses and Seeds, version FOB, FAS, EXW, FCA, CPT " was issued by or on behalf of Het Comité, the Dutch text shall continue to be binding.
3. Where, in this contract, reference is made to "Het Comité", this shall mean "Koninklijke Vereniging Het Comité van Graanhandelaren" (in English: "Royal Dutch Grain and Feed Trade Association") in Rotterdam.
4. The "Export Contract for Grains, Pulses and Seeds , version FOB, FAS, EXW, FCA, CPT " has been filed and is on record at the Registry of the District Court, Rotterdam.