

**IN THE MATTER OF THE COMMERCIAL ARBITRATION ACT 2010 (NSW) AND
IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF GRAIN TRADE
AUSTRALIA LTD**

GTA Arbitration No. 214

GRAIN SELLER (Trader)
(Claimant)

and

GRAIN BUYER (Trader)
(Respondent)

Final Award

A. Introduction

1. This is a Final Award in an arbitration conducted pursuant to the Dispute Resolution Rules of Grain Trade Australia Ltd (“GTA”). The claim is for the balance of the purchase price said to be owing under a contract No XXX between the Claimant and the Respondent dated 22 December 2015 for the sale and purchase of 240mt of mung beans (“the Contract”),
2. The Contract incorporates the GTA Trade Rules. As is well understood in the grain and pulse trade, the GTA Trade Rules incorporate a referral of disputes to GTA Arbitration under the GTA Dispute Resolution Rules.
3. We find therefore that we are a validly constituted Tribunal under the *Commercial Arbitration Act 2010* (NSW) and with jurisdiction to determine all issues in dispute between the parties.
4. This Tribunal comprises:
 - (a) Mr Ervin Leong, nominated by the Claimant;
 - (b) Mr Charles Coventry, nominated by GTA for the Respondent, and
 - (c) Mr Mark Lewis, nominated by GTA to Chair this Tribunal.
5. The arbitration has proceeded on written submissions and documents alone and neither party has asked for an oral hearing.
6. The Claimant has relied on Points of Claim dated 16 March 2017. Annexed to these submissions is a copy of the Contract as well as correspondence passing between the parties and other relevant documents.

7. The Respondent has not filed a response to the Points of Claim. There has been some correspondence between the Respondent and GTA including the following email on 12 April 2017

Subject: GRAIN SELLER v GRAIN BUYER, Grain Trade Australia Arbitration (sic) No. 214

Our customers and we paid more attention on the big different surface colour of Mug beans.(sic) As our mung bean industrial everyone supplier knew the first quality request was surface have to same colour at least 95% in Asian , They required cargo inspection when they noticed the colour inconsistency last year. Unfortunately, the market price for Mung bean was dropped 40% in the last year and we lost a lot.

Please note, we have never denied the outstanding invoices, and we will solve it but it might take some time.

B. Background to the dispute

8. The Claimant and Respondent trade in agricultural commodities.
9. A copy of the Contract the subject of this referral is annexure AM2 to the Points of Claim. There does not appear to be any dispute about the existence of the Contract or that the said Annexure AM2 is copy of it. The document at Annexure AM2 appears to be signed by both parties.
10. It is a relatively standard and simple form of contract on the Claimant's form. It is written on a "delivered container terminal" (**DCT**) Gladstone basis, with the Delivery Period expressed to be "Jan 28 2015". It relates to 10 FCL (Full Container Loads) of Jade Mung beans, "good processing" quality.
11. It does not appear to be in doubt that Claimant met its obligations to deliver the containers at Gladstone as and when required.
12. It does not appear to be in doubt that \$248,000 of the total invoiced sale price of \$372,055 remains outstanding.
13. The Respondent's position as stated above on 12 April appears to be that the amount is not denied but "solving it (sic) may take some time".
14. This is entirely unacceptable and contrary to the standards required by participants in the Australian grain trade. Payment terms are final as per contract. They should not be delayed, withheld or discounted without a legitimate reason and/or agreement of both parties. Any alleged right to reject and/or to pursue a claim for compensation must be pursued in a timely fashion and supported by relevant evidence.
15. The only suggestion of a dispute relates to the quality or condition evidenced in a report from Panapoli (Far East) International Ltd dated at Hong Kong on 15 March 2016. This did not relate to the quality at destination (that is, at the Gladstone terminal) as required under the GTA Trade Rules.
16. Document AM9 to the Points of Claim consists of nine (9) Statements of Analysis issued by AgEtal dated 21 April 2016. These Statement evidence that the average quality appears to have been of Processing quality. While we note that Statement T61237 indicates that in respect of one sample (JSSU 1534480) the "Overall Appearance" was "Manufacturing" (rather than "Processing") we find, based on the Statements of Analysis, that the average contract quality and condition was within the required contractual specification of "Good Processing".

17. In the absence of any defence or justification for non-payment, and in light of the Respondent's acknowledgment that it does not deny the outstanding invoices, we award the Claimant the balance of the purchase price of \$248,000 to be paid by the Respondent forthwith.
18. We do not award costs or interest as neither were claimed in the Points of Claim.

C. Final Award

19. For the reasons above, our Final Award is;

- (i) The Respondent is to pay the Claimant \$248,000 forthwith;
- (ii) The Respondent will further indemnify the Claimant for arbitration fees paid to GTA on its own behalf and on behalf of the Respondent.
- (iii) No order as to costs.

This award is dated at Sydney the day of May 2017.

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Mark Lewis, Chair Arbitrator appointed by GTA.

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Ervin Leong, Arbitrator appointed by the Claimant.

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Charles Coventry, Arbitrator appointed by GTA for the Respondent.