

Member Update

UPDATE 28 of 18 • 02 October 2018

TOPIC: No 4 – Delivered Container Terminal (DCT) Contract Review - ROUND 2

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

The purpose of this Member Update is to provide an update on the review of the GTA Contract No 4 - Delivered Container Terminal (DCT) and **to seek further input and submissions** from Members on proposed changes to the contract.

2. Background

Following submissions from Members, the GTA Commerce Committee resolved to appoint a Sub-Committee to review the GTA Contract No 4 – DCT.

The Sub-Committee members are representative of DCT buyers and sellers, container packers, exporters and independent brokers. A first round of industry submissions was conducted via [GTA Member Update 19 of 18](#).

3. Issues Considered and Proposed Amendments

The Sub-Committee and the Commerce Committee have considered changes to the GTA Contract No 4 – DCT proposed in the Round 1 Submissions ([from Member Update 19 of 18](#)). In addition, several other issues and modifications have been discussed by the Committee's and included as Round 2 proposed changes.

The existing proposed changes (from Round 1) were either accepted (and noted in Table 2) or deemed to require further consideration. Those requiring further consideration are outlined in Table 1.

Also included in Table 1 are additional proposed changes that were not recorded in Round 1.

Members are requested to:

- a) Note the decisions and accepted changes in Table 2. While the Committees have resolved their deliberations on these issues, further submission on these issues may be considered should a Member consider it important.
- b) Provide feedback via Industry Submission on the issues contained in Table 1.

GTA is seeking further comment and submission from GTA Members on these as follows:

Table 1. DCT Review – Round 1 Submission Issues for Further Industry Submission

The following issues have either been discussed by the Committees and are either unresolved from Round 1 or are additional proposed changes. The Committee is seeking further input from Members.

Issue	Clause	Proposed Change for Consideration	Matters Discussed and Proposed by Committee
Weight Tolerance	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed amendment to the tolerance, to be similar to: <i>[insert weight]MT, +/-5% or [insert number] full container/s whichever is the lesser at Seller's option</i> 	<ul style="list-style-type: none"> The issue of Tolerance was discussed at length by the Sub-Committee and the Commerce Committee. It is acknowledged it can be a point of contention between Sellers and Buyers. Discussion lead to a decision to seek a change in the Tolerance Clause. This was on the basis the Buyer, being responsible for the freight booking with the shipping lines will incur a financial dead freight loss if the Seller (on a relatively large contract) reduces the number of containers loaded by the tonnage tolerance. Given the primary purpose of the tolerance is for operational and logistic convenience it is proposed to further consider change in the clause and to bring it in line with other delivered contracts.
Inspection of Container	3.(b)	<ul style="list-style-type: none"> Proposed to revert to pre-existing wording. 	<ul style="list-style-type: none"> Two submissions noted that the amended clause included reference to Shipping Australia's Standards for loading grain and noted this may not be consistent with the DAWR certification process. Issue is around whether a full door or a half door false bulkhead is required.
Late Payment	10.(e)	No Change required as the consequence on other Contracts is already dealt with in GTA Trade Rule 13.3.	<ul style="list-style-type: none"> Discussion raised introducing a clause allowing the delaying of delivery of subsequent contracts until any late payment is made. It was noted this is already covered in the GTA Trade Rules (13.3) and therefore no change is required.
Sampling and Analysis	5. (d)	<p>Proposed change</p> <p>Final determination of quality shall be established on the representative sample(s) drawn under sub-clause 5(a) and 5(b).</p>	<ul style="list-style-type: none"> Review of the previous suggested change resulted in some further change for consideration. Proposed it should state as per Cl 5 (a) and 5 (b) rather than the new wording on within Cl5 (d).

Issue	Clause	Proposed Change for Consideration	Matters Discussed and Proposed by Committee
Payment (Round 2)	10.(a)	<p>Proposed changes</p> <p>(i) Buyer shall pay 100% of the invoice by telegraphic or electronic funds transfer within one working day after presentation of emailed copy of the following original commercial documents:</p> <ul style="list-style-type: none"> • Packing Certificate List • Invoice • Fumigation and/or Weight Certificates • Other relevant Government documents (as required) 	<ul style="list-style-type: none"> • Changes should be included including changing the Packing 'Certificate' to the 'Packing List' and reference to government documents.
Payment (Round 2)	10.(d)(i)	<p>Proposed change is to remove the 'by courier'</p> <ul style="list-style-type: none"> • Seller to send complete set of documents by courier to the Buyer. 	<ul style="list-style-type: none"> • Removed the requirement to courier documents, noting that general practice is to use email
Sampling and Analysis (Round 2)	5.(c)	<p>Small amendments made</p> <p>The Seller to provide the Buyer (or nominated representative) with representative sample as soon as is practicable.</p>	<ul style="list-style-type: none"> • Include in the text after the word Buyer – (or nominated representative)
Packing Instructions (Round 2)	2.(c)	<p>Proposed to add the word 'requirements' after Import Permit in Clause 2. (c)</p> <p>printing details; Import Permit requirements; vessel name</p>	<ul style="list-style-type: none"> • It is proposed to clarify the contractual requirement to pertaining to the provision of the Import Permit in the 'Packing Instructions'. It was noted that there is commercially sensitive information included on the Import Permit. • Clause 12. (b) indicates the requirement is to provide 'Import Permit Requirements' • This change has been included in the 2nd re-draft.

Issue	Clause	Proposed Change for Consideration	Matters Discussed and Proposed by Committee
Commercial Documents (Round 2)	9.	<p>Proposed change:</p> <ul style="list-style-type: none"> The Seller will provide the Buyer with the Commercial Documents (initially by email) as soon as practicable but no later than the Delivery Date date of vessel sailing. 	<ul style="list-style-type: none"> It was noted that Commercial Documents are required at the Delivery Date not at Vessel Sailing Documents are required for loading to vessel

Table 2. DCT Review – Round 1 Accepted Changes

The following changes were proposed and accepted as part of the Round 1 Submission process (Member Update 19 of 18)

Issue	Clause	Agreed Change	Matters Discussed and Agreed by Committee
Order of Precedence	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed the DCT contract should clearly state order of precedence, i.e. <ul style="list-style-type: none"> Broker/Contract Note and specific notes, DCT #4 Contract, then GTA Trade Rules 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18) (see notes in Packing Instructions section)
Pre-Advice Period	2.(a)	<ul style="list-style-type: none"> Proposed to amend DCT contract to 15 days (from 14 days) pre-advice period in-line with Buyers Call as defined in the Trade Rules. 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)

Issue	Clause	Agreed Change	Matters Discussed and Agreed by Committee
Clarity on Buyers Call	2.(a) & Sale Confirmation Page	<ul style="list-style-type: none"> Proposed to include specific reference to Buyers Call. This is to assist with general understanding of the rights under this contract. 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Variation to Delivery Date	Sale Confirmation Page	<ul style="list-style-type: none"> Proposed not to alter the existing position as outlined in the contract (to a position in line with the GAFTA contract). 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Force Majeure	17	<ul style="list-style-type: none"> Proposed to make changes to the Force Majeure clause to ensure balance between Buyer and Seller. Proposed to be explicit that GTA Trade Rule 21 (Force Majeure) will not apply to the DCT contract 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Default Provisions	GTA Trade Rule 17	<ul style="list-style-type: none"> Proposed for no change to existing Contract or Trade Rule 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Determining Fair Market Value	GTA Trade Rule	<ul style="list-style-type: none"> Proposed for no change to existing Contract or definition in Trade Rules 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Collection of Containers	2.(d)	<ul style="list-style-type: none"> Proposed to include an express obligation on the seller to collect the boxes from the CT as soon as possible 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
Non – Business Days	16.	<ul style="list-style-type: none"> Proposed to capture issues around weekends and public holidays, potentially <u>bring forward (rather than extending)</u> obligations within the contract and clarify not applicable to CI 2a (delivery period) 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)

Issue	Clause	Agreed Change	Matters Discussed and Agreed by Committee
Container Issues in the Port terminal	8.(a)	<ul style="list-style-type: none"> Proposed to include amendments to clarify who is in charge of the container during the transport and gating process 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)
VGM	7.(c)	<ul style="list-style-type: none"> Proposed to include a VGM clause 	<ul style="list-style-type: none"> No further Change to the Draft provided in the 1st Member Update (19 of 18)

A marked-up version (that includes Round 1 and Round 2 variations) of the proposed GTA No 4 – DCT Contract is attached **below** for review.

As with all GTA standard form contracts it is noted parties are free to agree to changes to suit their own needs and circumstances.

4. Calling for Industry Submissions:

Comments and submissions are sought from GTA Members and other interested parties.

Submissions should be lodged by emailing submissions@graintrade.org.au and title your email – **DCT Contract Review 2018 Round 2**.

Submissions should be received by COB Friday 12th October 2018.

A proforma for lodging submissions can be accessed [here](#), noting that submissions do not need to be supported by other GTA Members, however, if they are supported, please indicate on the form.

Unless marked “confidential” and appropriate supporting reasons are provided, all submissions may be placed on the GTA website for industry review.

5. Further Details

Visit the GTA website for full details. <http://www.graintrade.org.au>



GRAIN TRADE AUSTRALIA CONTRACT No 4.
GRAIN IN CONTAINERS DELIVERED CONTAINER TERMINAL (DCT-CONTRACT)
SALE CONFIRMATION

Sale Contract Number: [insert number]

Date:

SELLER: [insert Seller's full name and address and company number, if known] ("Seller")

BUYER: [insert Buyer's full name and address and company number, if known] ("Buyer")

BROKER: [insert Broker's full name and address and company number, if known] ("Broker")

GOODS: [insert eg Australian Origin Wheat]

QUANTITY: [insert weight]MT, +/-5% at Seller's option in [insert number] containers (20/40ft); [insert weight]MT, +/-5% or [insert no. of containers] full container/s whichever is the lesser at Seller's option.

QUALITY/SPECIFICATION: [insert grade eg APH; % moisture, protein, screenings]

PACKING: In bulk, in containers (20/40ft)/in bags, in containers (20/40ft).

PRICE: \$[insert price and currency]MT, DCT (insert load port(s))

DELIVERY PERIOD: [insert date range and load port(s)], both dates inclusive. Buyer's Call (as defined in GTA Trade Rules).

COMMERCIAL DOCUMENTS: [list Commercial Documents and any documents specified in Import Permit, required for export compliance and to facilitate import at port of destination]

OTHER TERMS

AND PRECEDENCE: This contract consists of and incorporates (in order of precedence, to the extent of any conflict) this Sale Confirmation (including the terms of any Broker's Note), incorporates the Grain Trade Australia Trade and Dispute Resolution Rules (including arbitration).

This Sale Confirmation and the accompanying GTA Standard DCT Terms for Grain Delivered Container Terminal, the Grain Trade Australia Trade Rules and Dispute Resolution Rules (inc arbitration), which both the Seller and the Buyer acknowledge that

they have read, understood and agreed, constitute the entire contract between the Buyer and Seller.

.....
Signed by Seller

.....
Signed by Buyer

Date:

Date:

GTA STANDARD TERMS FOR GRAIN IN CONTAINERS DELIVERED CONTAINER TERMINAL (DCT)

1. BROKERAGE (if applicable):

- (a) Brokerage shall be deemed to be earned on the issuance of a Broker's Note.
- (b) Brokerage shall be credited when the deliveries or shipments are invoiced or when the contract is otherwise performed or terminated.
- (c) Brokerage commission shall be paid by the Seller on the mean contract quantity. Such brokerage or commission shall be due upon presentation of proper invoice.

2. PACKING INSTRUCTIONS

- (a) **"Buyer's Call":** The Buyer warrants that it will give the Seller written Packing Instructions (including last permissible day for delivery to terminal gate ("Delivery Date")) as soon as practicable but no later than at least 15 calendar days prior to the Delivery Date.
- (b) For the avoidance of doubt, the Delivery Date must fall within the Delivery Period.
- (c) Unless otherwise agreed, Packing Instructions must specify: Terminal Gate; container yard and empty container release number; Customs and Quarantine clearance details inc RFP and EDN; bag weights and printing details; Import Permit requirements; vessel name, voyage no, and ETD; port(s) of destination. Packing instructions may be provided progressively [and may be amended/supplemented any time up to 15 calendar days prior to Delivery Date].
- (d) Unless otherwise agreed, the Buyer warrants that the required number of shipping containers will be made available at least 15 calendar days prior to the Delivery Date at a collection region nominated by the Seller. The Seller undertakes to collect containers as soon as practicable. The Buyer warrants that the containers will comply with current State and Federal Government regulations including the Commonwealth Department of Agriculture and Water Resources Plant Export Operations Manual (Vol 11) or any amendment.
- (e) The Buyer may vary the Delivery Date at any time prior to the Delivery Date provided that the new date falls within the Delivery Period and all other provisions of this Contract are met. All reasonably unavoidable costs or expenses incurred by the Seller as a result of the variation of the Delivery Date are for the account of the Buyer.

3. PACKING

- (a) In shipping containers in bulk with bulkheads at the Seller's cost or new bags. If bags, state type of bag, printing/bag markings if required, and weight. The Seller is to provide a one colour, one side standard brand. Additional cost of 2 or more colours or non-standard artwork for the Buyer's account.
- (b) Unless otherwise agreed, shipping container condition standards as per applicable industry and regulatory guidelines including Department of Agriculture and Water Resources Plant Export Operations Manual, and the Shipping Australia Industry Standard for Packing of Grain in Containers, as amended from time to time. ~~and regulatory guidelines.~~

4. FUMIGATION

Where required for by the Import Permit and /or Department of Agriculture and Water Resources DAWR quarantine pre-shipment treatment. The goods will be fumigated by the Seller (at the Seller's cost) and the Seller will certify same. Independent fumigation and/or certification are for Buyer's account. Any specific fumigation requirements to be declared in Packing Instructions (see Clause 2) and (unless mutually agreed otherwise) shall be at the Buyer's expense.

5. SAMPLING AND ANALYSIS

- ~~(a)~~ Unless mutually agreed otherwise, rRepresentative samples of the Goods shall be drawn during packing by the container packer in accordance with standard protocols as employed at the packing facility to satisfy the sampling requirements of government agencies including Department of Agriculture and Water Resources in order and to obtain a representative sample of the entire contract/shipment.
- (b) Additional samples required by Buyer may be drawn at Buyer's cost.
- ~~(a)~~(c) The Seller to provide the Buyer (or nominated representative) with representative sample as soon as is practicable.
- (d) Final determination of quality shall be established on the representative composite sample(s) drawn under sub-clause 5(a) and 5(b). sample drawn on packing according to Department of Agriculture and Water Resources sampling requirements.

~~(b)~~—

6. CERTIFICATION OF QUALITY, GRADE AND CONDITION

- (a) Subject to clause 6(b) quality, grade and condition will be finally and conclusively determined by certificate issued by container packer or designated laboratory on representative sample(s) drawn under sub-clause 5(a) and 5(b).
- (b) Any requirement for an independent quality inspection and/or certificate to be declared in Packing Instructions and be for the Buyer's account unless otherwise stated. Such certificate to be final and binding evidence of quality, grade and condition.

7. CERTIFICATION OF WEIGHT OF CONTAINER AND CONTENTS

- (a) Bulk weights and net bagged weights shall be certified as accurate by the Seller by the Seller's packing list.

- (b) Any requirement for an independent weight certificate will be declared in Packing Instructions and be for the Buyer's account unless otherwise stated.
- (c) The Seller will also certify (for the Seller's account) in writing for the purposes of Marine Order 42 the Verified Gross Mass (**VGM**) of each container stating whether the VGM has been obtained by weighing the packed container (**Method 1**) or by weighing all packages and cargo items including the mass of pallets, dunnage and other packaging and securing material to be packed in the container (**Method 2**).
- (d) The Seller will indemnify and keep the Buyer indemnified against the consequences of any intentional or unintentional inaccuracy or error in the certificates referred to in clauses 7(a) or 7(c) above.

8. DELIVERY

- (a) Containers are to be delivered to terminal gate as declared by the Buyer in the Packing Instructions. All costs/charges to terminal gate are for the account of the Seller, unless otherwise stated. All costs/charges after terminal gate are for the account of the Buyer unless otherwise stated. Insurance up to and including terminal gate for Seller's care and account. Insurance after terminal gate for the Buyer's account.
- (b) Buyer and Seller acknowledge their obligations under the Heavy Vehicle National Law (HVNL). The parties acknowledge that nothing in the Delivery Notice or Packing Instructions will be construed as an inducement or instruction which may have the effect of resulting in a breach of the provisions of the HVNL.

9. COMMERCIAL DOCUMENTS

The Seller will provide the Buyer with the Commercial Documents (initially by email) as soon as practicable but no later than the Delivery Date. date of Vessel sailing.

10. PAYMENT

This contract is specified on page 1 to be one of TT/EFT; Prepayment, Open Account or CAD. The payment terms for each contract are:

- (a) T/T
 - (i) Buyer shall pay 100% of the invoice by telegraphic or electronic funds transfer within one working day after presentation of emailed copy of the following original commercial documents:
 - Packing Certificate List
 - Invoice
 - Fumigation (if applicable) and/or Weight Certificates
 - Other relevant Government documents (as required)
 - (ii) ~~Buyer must pay Seller interest at the Australian 90-day bank bill rate/LIBOR* plus 5% on any outstanding amount of the commercial invoice for every day that payment is not made in accordance with these terms. No obvious clerical error in the shipping documents shall entitle Buyer to reject or delay them or delay payment.~~
- (b) Pre-Payment

Full Payment must be received by Seller prior to Commodity being delivered.

(c) Cash Against Documents (CAD)

(i) Buyer to provide name and address of bank to which collection is to be sent.

(d) Open Account

(i) Seller to send complete set of documents ~~by courier~~ to the Buyer.

(ii) Payment 14 days from delivery at container terminal, unless expressly agreed otherwise.

(iii) Seller to indicate on their invoice banking details so that Buyer can arrange remittance direct to that account.

(e) Late Payments

(iii) If any payment is not made on or before the due date for payment, interest shall be payable at the rate selected. If there is no due date for payment, interest shall be payable if there has been an unreasonable delay in payment. Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, interest will be payable at a rate of 1.5% per calendar month, calculated daily

11. RISK, OWNERSHIP AND PASSING OF TITLE:

(a) Risk in the Goods passes from the Seller to the Buyer on delivery.

(b) Title to the Goods will remain with the Seller until full payment received by the Seller.

(c) In the period after delivery but before payment, the Buyer (including its servants and agents) hold the Goods as bailee only.

(d) If in the ordinary course of the Buyer's business the Buyer on-sells the goods to a 3rd party prior to payment to the Seller, it does so as agent only for the Seller. If the Buyer fails to make payment within the time stipulated in this contract, the Buyer authorises the Seller to take possession and title in the Goods. Any associated costs are for the Buyer's account.

(e) This clause creates a Purchase Money Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA").

(f) To the extent permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times other than as required by law.

12. IMPORT PERMITS:

(a) The Buyer is to obtain at its own risk and expense any import licence or other official authorisation and carry out all customs formalities for the import of the Commodity and for their transport through any country.

(b) The Buyer is to declare any requirements relating to import certification in the Packing Instructions (see Clause 2.). These may be amended/supplemented any time up to 15 calendar days prior to Delivery Date.

- (c) The Buyer may advise the Seller of any additional requirements (at Buyer's cost) relating to import certification (including providing a substitute copy of an appropriate Import Permit for the total contract quantity including tolerance) up to 4 days prior to the Delivery Date but no later. If the Seller cannot comply with Buyer's additional import requirements the Seller must notify the Buyer as soon as practicable that unless the additional requirement is abandoned, the Seller will terminate the contract and claim damages for any losses incurred as a result of the termination.

13. DUTIES, TAXES, LEVIES, ETC:

All taxes, levies, licences, imposts of any nature on freight and cargo outside Australia (including but not limited to Terminal Handling Charges, container demurrage and detention) are for Buyer's account.

14. ADDITIONAL CERTIFICATES:

~~Unless otherwise agreed, aA~~ Any Certificates required pursuant to the Terms of the Contract, other than Phytosanitary, Origin, and Weight and Quality, Grade and Condition Certificates, and other certificates as mutually agreed, shall be supplied by and at the expense of the Buyer.

15. NOTICES:

Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email (return receipt acknowledging the message has been received is required) or by other method of rapid written communication, subject to the burden of proof of successful transmission to be with the sender. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours Sydney time on a business day shall be deemed to have been received on the business day following. In case of resale, all notices shall be passed on without delay by the Buyer to Seller. Should the notice be received after 1600 hours Sydney time on the last business day permissible under this contract, Seller shall pass it on as soon as practical, but no later than 1000 hours Sydney Time on the next business day thereafter. Upon request, Seller shall provide the Buyer with documentary evidence of Seller's receipt of notice.

16. NON-BUSINESS DAYS:

Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 16700 hours Mondays to Fridays inclusive. This clause does not apply to clause 2(a), the Delivery Period or Delivery Date.

17. PREVENTION OF DELIVERY

"Event of Force Majeure" means:

- (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the load port or ports named herein is/are situate, restricting export, whether partially or otherwise, or
- (b) blockade, or
- (c) acts of terrorism, or

- (d) hostilities, or
- (e) strike, lockout or combination of workmen, or
- (f) riot or civil commotion, or
- (g) breakdown of machinery, or
- (h) fire, or
- (i) ice, or
- (j) extreme weather event, or
- (k) act of God, or
- (l) unforeseeable and unavoidable impediments to transportation or navigation (including but not limited to congestion at the export container terminal), or
- (m) any other event comprehended in the term "force majeure".

Should either parties' Sellers' (Effected Party) performance of this contract be prohibited or prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that the Effected Party Sellers shall have served a notice on the other party buyers within 37 consecutive days of the occurrence or not later than 721 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 1421 consecutive days after the end of the period of delivery, then the other party Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on the Effected Party Sellers not later than the first business day after expiry of the 1421 day period.

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

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

The burden of proof lies upon the Effected Party Sellers and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that the Effected Party Sellers shall have provided to the other party Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

For the avoidance of doubt, GTA Trade Rule 21 (Force Majeure) does not apply to this contract.

18. CHOICE OF LAW:

This contract shall be interpreted according to and governed by the laws in force in New South Wales, Australia.

19. TIME

Time is of the essence in relation to the performance of this contract.

20. ARBITRATION:

Any dispute arising out of this contract, including any question of law arising in connection therewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of Grain Trade Australia ("GTA") in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant except that this contract prevails to the extent of any inconsistency but no further. Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration in accordance with the Dispute Resolution Rules of GTA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

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