

The role and reality of a broker

McDonald Pelz Australia

AGIC Compliance day August 2017

Stuart Richardson

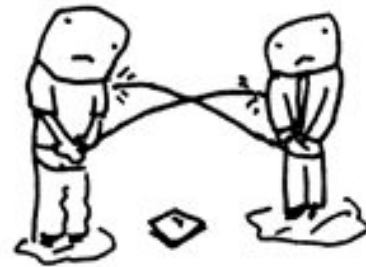
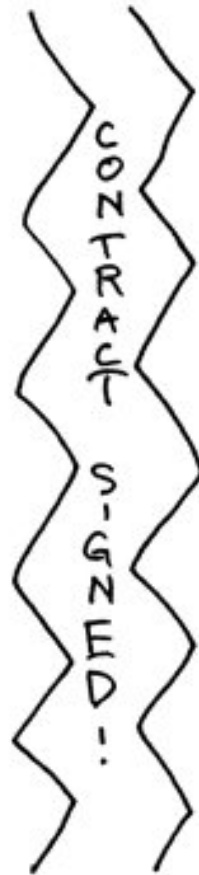


HOW BUSINESS WORKS:

First, representatives from each business meet, discuss mutual interests, and forge an agreement.



They draft a contract...



Then they try to piss all over each other without getting the contract wet.

The role of the broker

- Negotiate the deal
- Translate and confirm terms for both parties
- Issue the broker note
- Finalise contract terms and conditions
- Monitor execution
- Ensure contract parties are performing
- Issue commission invoice – the most important



Communication

- 21st century comms
- Of course voice
- Record/history of discussions
- Detail
 - Don't leave it unsaid
- Buyer and seller may use different media
- Clarity and language



Market info

- Advantage of the broker is to collect info from many buyers and sellers and present a market to clients
- Depth and quality Buyers and sellers
- Likely market trade levels
- Actual offers and bids
- Protect identity of clients
- Terms of trade

The deal

- Price
- Date
- Volume
- Parity – FOB/CFR/TRACK/DCT/Delivered
- Delivery period
- Location – FOB SA, CFR China, etc
- Load terms
- Payment term
- Any relevant other term –
 - Documents
 - Testing
 - Duties and taxes
- Base contract – GTA / GAFTA / Sellers/Charter Party



Right of rejection.....

- Before the deal is agreed
 - Counterparties have the right to reject one or the other
 - Longer term ramifications exist
 - Terms need to be agreed within commercial reason
 - No place to apply overly stringent terms to frustrate a negotiation
 - Intent to trade



Good offer.....

Please see below our offer:

Seller	XXXXX
Buyer	XXXXX
Commodity	APW and AH11.5
Packing	In Bulk in 20ft or 40ft containers at sellers option
Specifications	As per GTA's standards
Quantity	1/ 1,500mts of AH11.5 at 272USD/mt CFR Yangon, Myanmar 2/ 2,500mts of APW at 258USD/mt CFR Yangon, Myanmar
Tolerance	+/-10% at Seller's option and at contract price.
Shipment	01 July 2017 – 31 July 2017 Both dates included with GAFTA extension. Transshipment and partial shipment allowed. THC at disport to be for buyer's account and buyer is responsible for the clearing of the containers within the time allowed at the port. 14 days free detention / demurrage combined at destination port to be applied. The combination of free time shall be determined by the shipping line and any additional demurrage incurred shall be for buyer's account.
GAFTA Extension	Seller shall make an allowance to buyer, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded, in accordance with the following scale :- 1 - 4 additional days 0.50 % of the gross contract price 5 or 6 additional days 1.00 % of the gross contract price 7 or 8 additional days 1.50 % of the gross contract price 9 or 10 additional days 2.00 % of the gross contract price 11 or 14 additional days 2.50 % of the gross contract price
Weight / Quality	Final at loading and shipment as per certificate issued by independent surveyor nominated by the seller.
Insurance	For seller's care and account.
Payment	Cash against documents by telegraphic transfer within 3 banking days after presentation of original documents at Buyers nominated bank
Documents	Full set of documents to include:- Original commercial invoice from seller. Original bills of lading. Packing List Certificate of weight and quality issued by independent surveyor nominated by seller. Certificate of origin issued by official entity. Phytosanitary certificate if required issued by official entity - <i>The commodity name on this certificate reflected as "WHEAT" is acceptable and certificate showing partial name and address of Buyer is acceptable.</i> Fumigation Certificate Insurance Certificate Non GMO Certificate Crop Year Certificate Third party documents acceptable.
Import License	Any import or other taxes, duty, levy etc in country of destination for buyer's account. Import licence for buyer's account and risk. Buyer to guarantee import licence. Any consequence, cost, expense, damage etc sustained by sellers due to delay or failure by buyers to obtain import licence shall be for buyer's account. Failure to secure import licence cannot be invoked as force majeure.
Arbitration	Any claim or dispute arising out of or in connection with this contract shall be referred to and resolved by arbitration in Singapore in the English language in accordance with the International Arbitration Act of Singapore (Cap 143A).
Law	This contract is governed by the laws of Singapore.
General Conditions	All other terms, conditions and rules not in contradiction with the above, contained in Form No.88 of the Grain and Feed Trade Association (GAFTA) in force at time of shipment are applicable to this contract. The details being given above shall be taken as having been written into such Form in the appropriate place.

Stuart Richardson
McDonald Pelz Australia
Office: + 61 (0) 3 9439 4097
Mob: + 61 (0) 419 891 657
Skype: Stuart.Richardson00
srichardson@mcdonaldpelz.com



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9 or 10 additional days	2.00 % of the gross contract price
11 or 14 additional days	2.50 % of the gross contract price

Weight / Quality

Final at loading and shipment as per certificate issued by independent surveyor nominated by the seller.

Insurance

For seller's care and account.



Good offer.....

- Payment** Cash against documents by telegraphic transfer within 3 banking days after presentation of original documents at Buyers nominated bank
- Documents** Full set of documents to include:-
Original commercial invoice from seller.
Original bills of lading.
Packing List
Certificate of weight and quality issued by independent surveyor nominated by seller.
Certificate of origin issued by official entity.
Phytosanitary certificate if required issued by official entity - *The commodity name on this certificate reflected as "WHEAT" is acceptable and certificate showing partial name and address of Buyer is acceptable.*
Fumigation Certificate
Insurance Certificate
Non GMO Certificate
Crop Year Certificate
- Third party documents acceptable.
- Import License** Any import or other taxes, duty, levy etc in country of destination for buyer's account. Import licence for buyer's account and risk. Buyer to guarantee import licence. Any consequence, cost, expense, damage etc sustained by sellers due to delay or failure by buyers to obtain import licence shall be for buyer's account. Failure to secure import licence cannot be invoked as force majeure.
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But an offer could be....

- “ 2kt APH2 CFR Thailand USD280 July”
- “ Terms same as previous”
 - What if conditions changed at disport port
 - Sellers contract terms can change over time as well
- Sent by Skype / Text / Email / Whatsapp
- Indications and not firm!!
 - Know the market as a broker.
- Credit could be an issue
 - Right time to disclose contract parties



Confirmation

- Email or Verbal
 - Export better to email immediately
- Basic terms with any explicit requirement
- Contract follows
 - Final terms to be finalised
- There may be many drafts!!
- Final
 - What is an appropriate amount of time to “Settle or finalise” the contract



“Final” contract states.....

Copied straight from one of our Broker notes;

- Please communicate any discrepancies to us within one business day of receipt of this written confirmation. If no discrepancies are reported it is assumed that all parties involved accept and agree to all terms as outlined in the above business confirmation.
- Buyer and seller remain responsible for all execution issues including timely vessel nomination. Both parties are to provide McDonald and Pelz with their execution email addresses which will be exchanged



“Final” contract

- Unless otherwise agreed Broker contract/note prevails
- There are some variations
 - Some buyers agree/want copy of sellers contract
- Broker note/Contract may reference sellers terms
 - Should be provided along with Broker note
- “As per previous”care needed
 - Were there any agreed changes during execution of previous?
- “Best Endeavours”dangerous
- Reference numbers
 - BN
 - Sellers / Buyers
 - Shipment #



“Final” contract – seller or buyer

- Checking broker contracts
 - In the event of a dispute GTA Arbitrators will consider the brokers note to prevail as the agreed terms & conditions
 - Are all the major points covered – compare to your confirmation.
 - Are GTA or relevant trade rules and arbitration expressly included in the contract?
 - Check against your confirmation – Omissions
 - has something been omitted in the brokers note
 - request in writing it is added to the brokers note and that is sent to the buyer and seller.



Example – naughty broker

- Broker note issued 10th March as follows;

Goods:

Australian Prime Hard Wheat No.2 (APH2)

Quantity:

20 FCL's total, approximately 25mt per container, quantity approximately 2,000mt (+/- 5% less at Seller's option at contracted price).

- Sellers contract confirmed;

Commodity: Australian Prime Hard Wheat (APH2)

Packing: Bulk, in 20 ft containers

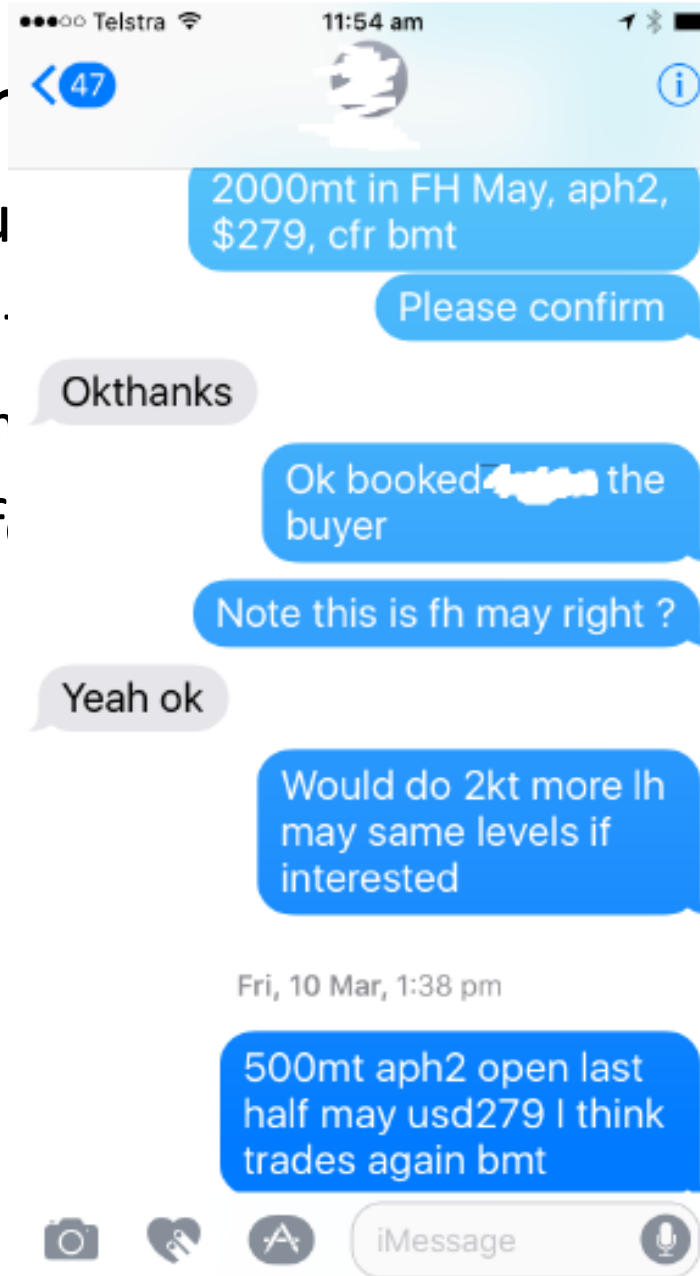
Quantity: 2000 MT (+/- 5% at Seller's option and at contract price)



Exam

roker

- Shipment issue
- Buyer checks
– Trader who h
- Whats the ref



itions volume??

e deal had resigned

out to be...



Lessons.....

- Check everything
- Don't take short cuts
- Make sure the deal is clearly laid out on confirmation
- Follow up with formal Broker Note ASAP
 - Usually within 24hrs, sooner if repeat business
- Seen this issue repeated with;
 - Disport variations
 - Delivery period
 - Documents



Contract issues – at inception

things that occur even when “agreed”

- Documents
 - Additional testing
 - Additional documents
 - Requirements not normally specified for market (MICOR)
- DEM/DES min/max or as per C/P
- Payment terms
- Vessel age
 - Older = cheaper – for some every \$ counts
 - However vessel survey failure a big problem
- Fumigation
 - Needed?
 - Possible?
 - Who pays ?
- Explaining / negotiating contract variations



Other contract issues – Port protocols and base contract forms

Then add some Charter Party forms

- Auswheat 1990 – Time counting favours buyer
- Ausgrain 2002 – better load terms for seller
- Ausgrai 2009
- Ausgrain 2015 – Costly if vessel fails

- Endless contract options

- Issues with tradability of contracts

NAT

Qld

Graincorp
Gavilon



Contract issues – Buyer confusion

- “As per relevant port protocol issued by bulk handler”
 - State by state differences
- “...where not in conflict with <sellers contract> all other terms as per <GTA FOB No.1 / GAFTA 81>”
 - + seller base FOB contract term differences
- Charter party references
 - Auswheat 2009
 - Ausgrain 2015
- Shipment Period vs Delivery date
 - GTA “DELIVERY PERIOD: Vessel to arrive and tender valid NOR at first loading port between _____, (“Delivery Period”) both dates inclusive. “
 - When does it load???
 - No GAFTA extension in Australia on bulk
 - Containers yes!!



Contract issues – Buyer confusion

- Brokers need to careful not to cross-up terms
- Real example
 - One vessel
 - 2 load ports
 - 2 sellers
 - Can the contracts operate in tandem??
 - Rarely!!!



Contract issues – Buyer confusion

- Vessel loading delayed Port #1
 - Tendered within contract term
 - Loads late – still within contract term
 - Seller #1 still in contract
- Sails to Port #2
 - Vessel tendered outside “Delivery period”
 - Seller #2 cancels!!
 - Price re-negotiation!!



Broker role – contract execution

- Introduce executing parties
 - Direct communications better
- Ensure timely conveyance of any message
 - Sometimes needs to be “screened”
- Sort out issues
 - Assuming you have a good contract in place – no issue
 - Negotiate a resolution
- “Time is of the essence”
 - Dox
 - Notices
 - Sorting out disputes
- Post execution finalisation
 - Dem/Desp



Execution issues – 2016/17

- **Pacific National/RTBU rail dispute costs GrainCorp \$10 million**

EMMA FIELD, The Weekly Times
May 12, 2017 12:52pm

- Globally “Once on demurrage, always on demurrage”
- So demurrage sellers account, or is it....
- Some sellers contracts say;
 - “Loading SATSHEX EIU if even on demurrage” or
 - “*Time shall not count in any circumstances while no work is performed owing to a Force Majeure Event even if already on demurrage*’



Execution issues – 2016/17

- Container delays
 - Shipping lines reducing equipment availability
 - Bookings cancelled
 - Contracts sold on GAFTA
 - 14 day extensions at a cost
 - Outside that – “renegotiation”
- Seller reputation
 - Better to be upfront with the issue sooner
 - Acceptance of cost.
- Brokers role
 - Get a solution
 - Equitability/Reasonable



End

