



GRAIN TRADE AUSTRALIA

Grain Contracts & Dispute Resolution

A grain producer's Q & A

Introduction

Over 95% of all grain contracts written in Australia rely on the GTA Trade Rules. GTA contracts and Trade Rules contain agreements to refer disputes to the GTA Dispute Resolution Service. Parties to contracts that incorporate GTA Trade Rules are obliged to refer any dispute to GTA for settlement under the GTA Dispute Resolution Service.

The following publications are available from the GTA website (www.graintrade.org.au):

- A Guide to taking out contracts to supply grain – a grain producers guide
- GTA Trade Rules
- GTA Dispute Resolution Service Rules

Can GTA give me advice about my rights and obligations under the GTA Trade and Dispute Resolution Rules?

GTA isn't equipped to give advice about how the Trade Rules will be applied and what your rights might be under a GTA contract or arbitration. As the administrator, GTA must remain impartial. Because the Trade and Dispute Resolution Rules become part of your contract, your solicitor should be able to advise you.

Is GTA neutral/independent--will I get a fair go?

GTA is a non political organisation established to ensure that commercial transactions across the supply chain (be they a grain producer, merchant, end user or an exporter) occur in an efficient and fair manner to both parties to the contract. GTA members include the Grains Council of Australia and Grain Growers Association with grain producers sitting on GTA's panel of arbitrators.

Is GTA arbitration compulsory? Is it binding?

If you are party to an arbitration agreement referring disputes to GTA arbitration, then yes, it is binding. This will be the case if your contract incorporates the GTA Trade Rules. If you change your mind and you don't want to arbitrate, you have to get the agreement of the other side, first.

Similarly, even if there is no arbitration agreement in your contract, you may still decide to ask GTA to conduct arbitration but you will need the consent of the other party, first. A GTA arbitration award is binding and enforceable. It is as enforceable as a judgment by the Court. GTA arbitration awards have been upheld and enforced by the Courts.

I haven't signed anything; can I still have a contract?

If you're in doubt, you should consult your lawyer. That said, the fact that you haven't signed anything doesn't necessarily mean that you don't have a binding contract. The word "contract" refers to a legally enforceable agreement between 2 or more parties, rather than a piece of paper with signatures on it. A contract is and may be in writing, but may also be oral (or partly in writing and partly oral).

A binding contract can (for example) be created over the telephone. In this case it is customary for the Buyer to send a document (sometimes called "Confirmation of Purchase") to the Seller and/or for the Seller to send a document (sometimes called a "Confirmation of Sale") to the Buyer, intending to confirm the details of the agreement reached by phone.

The fact that such a document is not signed does not mean that a contract has not come into existence.

Any party who receives a Contract Confirmation should, as a matter of priority, check the details to ensure that they reflect the telephone conversation. Where you detect a difference, immediately contact the counterparty to resolve the difference. In the absence of notification from the other party a party is entitled to assume the contract is as written in the Confirmation. *Reference GTA Trade Rule 1.*

Where / to whom do I turn for independent advice about GTA Trade Rules etc?

Grain contracts are legal agreements; therefore professional legal advice should be sought where clarification on an issue is required. Independent grain marketing advisers may also be of assistance for issues not requiring legal advice. Please note that the GTA Secretariat and Directors are NOT able to give you advice in relation to disputes or the operation of the Trade Rules.

I have looked up the Rules and I can't find any reference to "washout"?

The term "Washout" is not defined in the GTA Trade Rules. The industry uses the term to describe the financial settlement of a contract when one of the parties cannot fulfil its obligations. Where parties are unable to agree on the values used to determine the "washout" then either party to the contract is able to refer the issue to GTA for determination under the Dispute Resolution Service (fees apply). *Reference GTA Trade Rule 17.10*



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What is the legal standing of the GTA dispute resolution process? Is a GTA award recognised by the Courts?

GTA arbitrations are subject to the provisions of the GTA Dispute Resolution Rules and the Commercial Arbitration Acts in all states of Australia and can be appealed at court.

Arbitration awards are no less enforceable than judgments of the courts. To date the courts have upheld all GTA arbitrations.

Do I have to “wash out” a contract?

A “washout” is a way of settling your obligations under a contract, without reference to a Court or arbitration, and usually before the time for performance of your obligation falls due. A washout will usually involve a payment from one party to the other.

While you cannot be forced to “wash out” a contract, you should carefully consider such an offer as it may be in your interests to accept a “wash out” before the time for performance falls due. Generally speaking, if you don’t think you will be able to perform your obligations under a contract by the due date, and you know this ahead of time, it might be worth washing-out to protect yourself against any further fluctuations in the contract price.

Please note that GTA IS NOT equipped to provide independent advice on whether you should accept an offer to wash-out.

Is force majeure a “get out” clause?

NO. Force majeure only extends the delivery period that an organisation has to meet their contractual obligations be they the seller or the buyer. Crop production failure is specifically excluded. A contract is not able to be cancelled due to the invocation of force majeure.
Reference GTA Trade Rule 23

Further information

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Grain Trade Australia Ltd, formerly the National Agricultural Commodities Marketing Association Limited (NACMA) was formed in 1991 with the aim to standardise grain standards and trade rules/contracts across the Australian grain industry. Over 95% of the Australian grain crop is stored in facilities operated by GTA members, with 90% of the grain contracts executed in Australia each year referring to GTA grain standards and/or trade rules. GTA has over 300 member organisations; from farming organisations to large national and international storage/trading companies.

Do I have to go to arbitration if I haven't signed anything?

Once again, this is really something you should discuss with your solicitor. An agreement to arbitrate disputes is binding and enforceable in a Court. As detailed above, the contract may stand even without the provision of signatures on the Contract Confirmation from one or both of the parties.

If the Contract references the GTA Trade Rules then disputes must be referred to GTA in the first instance. By not participating in arbitration your argument is not able to be heard by the arbitrators.

It is also possible to go to arbitration without admitting that you have a contract. It is possible to ask the arbitrators to dismiss any claim on the basis that you didn’t enter into a contract in the first place.

Is arbitration expensive?

There are fees associated with GTA Arbitration. GTA tries to ensure that overall cost of GTA arbitration is no more expensive than going through the Courts. We also try to make GTA arbitration reasonably quick, which can be a distinct advantage over the Court process. GTA arbitration is “peer” arbitration conducted by participants in the grain trade.

Can I recover my arbitration costs if I'm successful in an arbitration?

YES. Most parties in their submission to the arbitration panel claim recovery of legal and arbitration costs.