



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

- GTA Trade Rules
- GTA Dispute Resolution Service Rules

This fact sheet covers some of the key questions and answers about the GTA Dispute Resolution Process.

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

GTA can provide information about the dispute resolution process however is not 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 GTA Trade and Dispute Resolution Rules become part of your contract, a solicitor will 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 Grain Producers Australia, Grain Growers Limited and various State Farmer Associations with grain producers sitting on GTA's panel of Arbitrators.

Is GTA arbitration compulsory? Is it binding?

If you are party to a contract 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 must get the agreement of the other party first.

Similarly, even if there is no reference to a dispute resolution process in your contract, you may still decide to ask GTA to conduct the Arbitration however you will need the consent of the other party.

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 a 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 two or more parties, rather than a piece of paper with signatures on it. A binding contract may be wholly in writing, wholly verbal or a combination of the two.

A binding contract can (for example) be created over the telephone. In this case it is customary for the Buyer to send a document called a "Contract Confirmation" to the Seller, intending to confirm the details of the agreement reached over the 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 those agreed during the telephone conversation. If you notice any discrepancies, contact the Buyer IMMEDIATELY to resolve the issue. In the absence of notification from the Seller, the Buyer is entitled to assume the contract is as written in the Contract Confirmation. *Reference GTA Trade Rule 1. (See GTA Fact Sheet 007 – A Guide to Taking Out Grain Contracts)*

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*

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 Arbitration Awards that have been challenged.



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Do I have to “washout” 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 “washout” a contract, you should carefully consider such an offer as it may be in your interests to accept a “washout” 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 washout.

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 21

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 Arbitration Tribunal 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 Tribunal, claim recovery of legal and Arbitration costs.

Further information

Phone: +61 2 9235 2155 Email: admin@graintrade.org.au

Grain Trade Australia (GTA) is the focal point for the commercial grains industry within Australia. It facilitates trade and works to provide an efficient, equitable and open trading environment by providing leadership, advocacy and commercial services to the Australian grain value chain. GTA members are responsible for over 95% of all grain storage and freight movements made each year in Australia. Over 95% of the grain contracts executed in Australia each year refer to GTA grain standards and/or trade rules. GTA members are drawn from all sectors of the grain value chain from production to domestic end users and exporters. GTA members are involved in grain trading activities, grain storage, human and stock feed milling.