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Arbitration Award

Date of Issue: **Interim Award published on 26 June 2006**
Final Award published on 24 November 2006

Arbitration number: 10

Claimant: **Grain Buyer (Buyer)**
&
Respondent: **Grain Seller (Seller)**

ARBITRATORS

- Peter Howard, arbitrator nominated by Claimant
- Tony Larkman, arbitrator nominated by Respondent
- Lloyd George, arbitrator nominated by NACMA and Committee Chairman

CLAIM

The Claimant (Seller) alleged that the Respondent (Buyer) caused the loss of the contract it had entered into with third party. It claimed the value of that contract.

AWARD

The Claim is denied on the basis that by signing the title transfer, without reservation, the Claimant (Seller) has extended the time for performance and accepted title to the goods.

DETAILS

- The Claimant (Seller) entered into a contract with a third party to supply grain. The Claimant (Seller) entered into a contract to purchase grain from the Respondent (Buyer).
- To deliver the grain the Respondent (Buyer) had to title transfer the grain no later than 31 January 2005. The title transfer was not sent until 1002 hours on 1 February 2005.
- The Claimant (Seller) signed the transfer and returned it to the Respondent (Buyer), without reservation.
- The Claimant (Seller) then transferred the grain to the third party. The third party claimed the transfer was out of time and called the Claimant (Seller) in default.

MAJOR FINDINGS

The Committee:

- Agreed that time was of the essence and the contract granted a time extension until 1000 hours the following day. If the documents were not delivered by this time the Respondent (Buyer) would be in breach of the contract providing the Claimant (Seller) with a right to terminate the contract.
- Concludes that that by signing the title transfer, without reservation, the Claimant (Seller) has extended the time for performance and accepted title to the goods, thereby electing to extend the delivery period and affirming the continuing performance of the contract.

IMPORTANT POINTS

- When entering into back to back contracts it may be prudent to ensure that the delivery periods do not end at the same time. If they do, you may only wish to reserve your rights when accepting the goods.

AWARD IN DETAIL
This award has been stripped of any detail that may identify the parties to this arbitration.

INTERIM ARBITRATION AWARD

1. INTRODUCTION

The Claimant (Seller) in this arbitration is a company incorporated under the laws of Australia.

The Respondent (Buyer) is a company incorporated under the laws of Australia. It contracted to supply the Claimant (Seller) with canola. The Claimant (Seller) alleges that by its acts or omissions the Respondent (Buyer) caused the loss of the contract it had entered into with third party.

The contracts between the Claimant (Seller) and the Respondent (Buyer), Contract No. XXXX, incorporates the National Agricultural Commodities Marketing Association Ltd ("NACMA") Trade Rules ("Trade Rules") and NACMA Track Contract No.2 – "Grain and Oilseeds in Bulk – Basis Track" ("Track Contract") which requires disputes to be referred to Arbitration under the NACMA Dispute Resolution Rules.

The Arbitration Committee duly comprised:

- Mr Peter Howard, nominated by the Claimant (Seller)
- Mr Tony Larkman, nominated by the Respondent (Buyer)
- Mr Lloyd George, Arbitration Committee Chairman, appointed by NACMA

The following submissions were received from both parties and have been considered by the Committee:

1. Claimant (Seller)'s Submission ("CS"), dated 20 January 2006
2. Respondent (Buyer)'s Defence Submissions ("RD"), dated 16 March 2006
3. Claimant (Seller)'s Rebuttal of Defence ("CR"), dated 4 April 2006
4. Respondent (Buyer)'s Surrebuttal ("RS"), dated 27 April 2006

References in this award in square brackets are references to the parties' submissions and to documents annexed to those submissions.

The parties waived their right to oral submissions and the Committee has deliberated solely upon the information provided in the above submissions and attached annexures.

The Committee was asked by the Claimant (Seller) to determine the following issues:

1. Was there a breach of the contract by the Respondent (Buyer)?
2. If so, was the Claimant (Seller) entitled to terminate the contract?
3. If so, what damages is the Claimant (Seller) entitled to?

The Claimant (Seller) seeks the following relief [CS:2]:

A. Damages in the amount of $297,500.00 or in such other amount as the Committee thinks fit;

B. Damages in the amount of $8,694.50;

C. Interest at 9% per annum on any amounts found to be due to the Claimant (Seller); and

D. Costs.

The Respondent (Buyer) seeks the following relief [RD:5.1]:

A. Interest at 9% per annum on any amounts found to be due to the Respondent (Buyer); and

B. Costs.

2. AGREEMENT ON THE FACTS

2.1 Jurisdiction

The Track Contract states that the contract is to be governed by and shall be construed to be in accordance with the laws of Victoria. The Trade Rules state the Trade Rules are governed by and construed in accordance with the laws of Australia and in the State or Territory in which the transaction is executed. As there have been no submissions regarding this matter as the Track Contract specifically states a domicile, and while nothing turns upon it, the Committee has taken Victorian law to be the relevant law of the contract and for this arbitration.

2.2 Contract Specifications, terms and conditions

The parties agree as to the terms of the relevant contracts. The parties evidenced the contract via a Broker's Notes [CSA:1] as to the following terms:

Contract No. XXXX – Buyer No. 1280010, Seller No. 7379 ("Buyer Contract")

- Contract Date: 1/10/03
- Commodity: Canola 04/05 Vic or SA Origin
- Quality: AOF, oil content 42%, determined on date of title transfer
- Quantity/Packing: 1000 tonnes in bulk
- Delivery Period: By title transfer in Ausbulk Depots in Port Adelaide 1st and 31st January 2005 at Seller's Option
- Destination: Buyer's Care After Completion of title transfers
- Freight: Seller's Account until title transfer thereafter for buyers account
- Price: $402/tonne AUD delivered Port Adelaide
- Payment Terms: Net Cash Payable upon completion of conveyance
- Other Terms: All terms and conditions not conflicting with above shall be in accordance with the Terms and Conditions of the Track Contract

The Respondent (Buyer) claims that it entered into the above contract without knowledge of the following sales contract between the Claimant (Seller) and the third party. The following contract was evidenced by a Claimant (Seller) Sales Contract [CSA:5].

Contract No. YYYY-01 – issued by the Claimant (Seller) ("Sales Contract")

- Contract Date: 21/6/04
- Commodity: Canola
- Quality: As per BHC Stack average at time of conveyance
- Quantity: 5000mt *(2500mt already settled)*
- Shipment Period: Dec/Jan 2005; 1/12/04 – 31/01/05
- Ship Mode: Ausbulk Storage / Title Transfer
- Del Basis/FOB Point: Adelaide
- Price: $401/tonne AUD
- Payment Terms: Cash against Documents
- Note: At Seller's Risk until conveyed to the Buyer
- Other Terms: All terms and conditions not conflicting with above shall be in accordance with the Terms and Conditions of the Track Contract

The Committee notes that the shipment period ended 31/1/05 and per the contract, subject to Clause 18 of the Track Contract, the last business day for delivery of documents was at 1600hrs 31/1/05.

2.3 Timeline of Events

A summary of agreed facts is as follows:

1. On 31/1/05 the Respondent (Buyer) telephoned the Claimant (Seller) and stated that it was waiting on the canola from its seller [RSA:26].

2. At 0950 on 1/2/05 the Respondent (Buyer) attempted to fax title transfer to the Claimant (Seller). The fax number was engaged. The Arbitrators note that the Claimant (Seller) does not dispute the Respondent (Buyer)'s contention that the fax machine was engaged but claims that the machines were functioning.

3. At 0955 on 1/2/05 the Respondent (Buyer) telephoned the Claimant (Seller)'s receptionist who provided alternative fax numbers [RD:3.1].

4. At 1002 on 1/2/05 the Respondent (Buyer) faxed a title transfer successfully to the Claimant (Seller) [RD:3.2].

5. At 1006 on 1/2/05 the Claimant (Seller) received the title from the Respondent (Buyer). The title transfer was signed, without reservation, and returned to the Respondent (Buyer) [CS:13].

6. At 1129hrs on 1/2/05 the Claimant (Seller) faxed a title transfer to the third party for the goods pursuant to the third party Sales Contract. At 1140hrs the Claimant (Seller) telephoned the third party during which it stated its intention to call the Claimant (Seller) in default because of the alleged late delivery [CS:16].

7. At 1823hrs on 3/2/05 the Claimant (Seller) emailed the Respondent (Buyer) advising the third party had held the Claimant (Seller) in default on the Sales Contract by reason of late transfer and for the purposes of arbitration against the third party requested the Respondent (Buyer) prove that passed the title in a timely manner so the claim could be passed down the string [CSA:20].

8. At 0922hrs on 4/2/05 the Respondent (Buyer) emailed the Claimant (Seller) advising that the transfer of canola had been accepted and it accepts no liability for it. The default can not be passed up the chain once it is accepted.

3. SUBMISSIONS

Timing of Notices

The Claimant (Seller) submits that pursuant to the Track Contract transfer is to be effected no later than 1000hrs on the next business day following the last day for delivery and as time is of the essence, failure to transfer title by 1000hrs is breach of the contract. As the term was a condition of the contract, any breach will give a right to terminate and sue for damages. As the Respondent (Buyer) transmitted the documents after 1000hrs the Respondent (Buyer) is in breach of the contract. Even though the Claimant (Seller) elected to affirm the contract by accepting the conveyance tendered by the Respondent (Buyer), the Claimant (Seller) is entitled to maintain its claim for damages for the Respondent (Buyer)'s breach per *Hain SS Co Ltd v Tate & Lyle* [1936] 2 All ER 597.

The Respondent (Buyer) denies breach of contract on the basis of co-operation, prevention, force majeure and implied term.

<u>Cooperation:</u> The Respondent (Buyer) submits that the ability to perform a contract depends upon both parties. Where cooperation is essential to performance, a promisor who fails to perform because of the other party's failure to cooperate will have a valid excuse for not performing. The Respondent (Buyer) could not perform its obligations to provide transfer documents by fax unless

the Claimant (Seller) had an open and operative fax connection. The Respondent (Buyer) was only aware of one fax number.

The Claimant (Seller) submits that it cooperated with the Respondent (Buyer) at all material times. The Claimant (Seller) had several fax lines available for use and the Respondent (Buyer) was aware of broker's fax number.

<u>Prevention:</u> The Respondent (Buyer) submits that a party's ability to perform may depend on the other not preventing that performance. The Respondent (Buyer) submits that the Respondent (Buyer)'s performance depended on the Claimant (Seller) maintaining an open fax connection that the Respondent (Buyer) could access.

The Claimant (Seller) denies that it prevented the Respondent (Buyer) from performing its obligations. The Claimant (Seller) took no steps to prevent the proper operation of its fax machines.

<u>Force Majeure:</u> The Respondent (Buyer) submits that the Respondent (Buyer) is not liable because the non-performance was not due to the Respondent (Buyer)'s "own actions or negligence." The Respondent (Buyer) was willing to fax the documents at 0950hrs 31/1/05 but the Claimant (Seller) did not have an accessible fax line at that time.

The Claimant (Seller) submits that the Respondent (Buyer) did not submit a force majeure notice. The Claimant (Seller) submits that the Respondent (Buyer) has not proved that the event falls into the ambit of the contractual terms.

<u>Implied Term:</u> The Respondent (Buyer) submits that the acceptance of transfer documents without reservation barred the Claimant (Seller) from taking action against the Respondent (Buyer) for breach of contract. The Respondent (Buyer) submits that an implied term exists in the contract that if a trader accepts a transfer without reservation the contract is taken to have been performed and no further action can be taken.

The Claimant (Seller) submits there is no evidence to support the implication of the alleged term.

Damages: Causation, Remoteness

The Claimant (Seller) submits that the Respondent (Buyer)'s breach of the contract caused the loss of the third party Sales Contract for as a matter of common sense and experience the breach was a sufficient cause of the loss. As a matter of common sense if the Respondent (Buyer) had delivered by 1000hrs the Claimant (Seller) would have been in a position to deliver to the third party. The modern test of causation requires only that the Respondent (Buyer)'s breach was a cause of the Claimant (Seller)'s loss or damage. The Claimant (Seller) submits that the contractual breach was causative of the loss of the bargain with the Respondent (Buyer) and the third party.

The Respondent (Buyer) submits that the Claimant (Seller) has to prove that the third party would have terminated the contract on a 2-3 minutes delay. The third party did not cancel the contract until 1140hrs. The Respondent (Buyer) submits that its delay was *de minimis*. The actual cause of the Claimant (Seller)'s default lies with the fact that the Claimant (Seller) entered into contracts that required delivery and on-supply by the same time. This arrangement, as a matter of common sense and experience, is the cause of the Claimant (Seller)'s inability to perform the third party contract. Even if the Respondent (Buyer) has faxed the documents through by 1000hrs the Claimant (Seller) would still not have been able to transfer title to the third party by 1000hrs.

Damages: Measure

The Claimant (Seller) claims $297,500 in damages (the third party Contract price minus the market value multiplied by 2500mt: 401-282x2500) or $59,500.00 from the Respondent (Buyer) if severally liable. The Claimant (Seller) submits that Clause 24 is not an exclusive code for calculation of damages and common law should be applied. If Clause 24 is an exclusive code then the Committee should award additional damages.

The Respondent (Buyer) submits that the maximum measure of loss provided by the contract is the difference between the contract price of $303 and the market price of $282, that is $21/mt x 500mt, is the correct measure of loss. The Respondent (Buyer) submits that a circle contract existed of which some canola had been washed out. Contract No. 35995 had only 500mt left to supply at $303/mt, equals $10,500.00. The Respondent (Buyer) submits that the price of $303 was the contractual price of the grain not $402 as the Broker's Note states.

Damages: Mitigation

The Respondent (Buyer) submits that the Claimant (Seller) has not reasonably mitigated its losses. There is no evidence that the Claimant (Seller) did not have sufficient stock to supply the third party contract. Furthermore the canola the Claimant (Seller) purported to transfer at 1129hrs includes grain from sources other than the Respondent (Buyer), ZZZ or YYY, amounting to a total of 1717.69mt or 68.70% of the canola.

The Claimant (Seller) submits that the onus of proving failure to mitigate rests on the Respondent (Buyer). Furthermore there were no reasonable steps available to mitigate its losses other than commence the arbitration to enforce the contract. Further the 555mt surplus arose due to an earlier delivery and on-sale of 5000mt from YYY contracts. There was no grain at hand in the Port Adelaide zone on 31/1/05 and 1/2/05.

Claims for Costs of Third Party Arbitration

The Claimant (Seller) claims costs of the unsuccessful third party Arbitration on the basis that in mitigation of its losses and acting reasonably sought to enforce the Sales Contract. The argument of *force majeure* were reasonable, the construction of which hinged on the Tribunal's decision. Nor can it be said that the Claimant (Seller) was obliged to consult with the Respondent (Buyer) prior commencement of the arbitration.

The Respondent (Buyer) submits this is not a situation where the seller in a string trade ultimately caused the Claimant (Seller)'s loss and therefore all middle parties were unable to pass on title because of another seller's fault up the line of trade. The Respondent (Buyer) submits that the Claimant (Seller) alone is responsible for the loss of the third party contract. The Claimant (Seller) brought those proceedings of its own volition and without consultation with the Respondent (Buyer) and therefore at its own risk.

4. DECISION

Applicable Rules

This dispute is governed by the Track Contract and Trade Rules, where they are silent the law of Victoria (notably *Goods Act 1958 (Vic))* and common law will apply.

The relevant Trade Rules are as follows:

Rule 1.0: "...A contract may be created either verbally or in writing and once reached shall be legally binding on both parties..."

Rule 1.3: "The specifications of a contract can not be altered or amended without the expressed consent of both Buyer and Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed in writing."

Rule 3: "All stipulations set forth in the Terms of Trade as to "Time" are of the essence."

Rule 14.0(1): "Title to goods as well as risk of loss and/or damage remain with the Seller until the goods have been conveyed to the Buyer at the designated point of conveyance."

Rule 17.1(1): "When the Seller finds that they are or will be in default on fulfilment of contract, they shall notify the Buyer at once. Upon receipt of such notice, the Buyer shall, within 24 hours thereafter, notify the Seller, declaring which of the following options they elect to exercise:

(a) Agree to extend the Delivery Period, and/or accept the quality and/or condition of the commodity tendered; or

(b) Repurchase of all or any part of the defaulted portion of the delivery;

(c) Cancel all or any part of the defaulted portion of the delivery at Fair Market Price based on the close of business of the market next business day."

Rule 17.5: "In the case of default, the party in default must pay within 7 business days of demand by the non-defaulting party, by way of liquidated damages, and amount equal to the undelivered contract quantity of the commodity multiplied by the difference between the contract price and the Fair Market Price of the Commodity."

The relevant clauses of the Track Contract are as follows:

Clause 13: "The Sellers have the right of conveyance. Conveyance shall be by … Title Transfer(s) "In-Store" an applicable Australian bulk handling facility. The time of conveyance is when goods are presented to the Buyers by means of … Title Transfer, or when goods are otherwise made available to the Buyers by the Sellers."

Clause 18: "…Should the notice be received after 1600hrs EST on the last business day permissible under this contract, the Sellers shall pass it on as soon as practical, but no later than 1000hrs EST on the next business day thereafter. Upon request, the Sellers shall provide the Buyers with documentary evidence of Seller's receipt of notice."

Clause 24: "In default of fulfilment of this contract by either party, the other party at his discretion … shall, after giving proper notice, have the right either to cancel the contract, or the right to sell or purchase as the case may be, against the defaulter who shall make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase, or if neither of the above rights is exercised, the damages, if any, shall, failing amicable settlement, be determined by arbitration. The damages awarded against the defaulter shall be limited to the difference between the contract price and the actual or estimated market price on the day of default. Damages to be computed on the mean contract quantity. If the arbitrators consider the circumstances of the default justify it they may, at their absolute discretion, award damages on difference quantity and/or award additional damages."

Timing of Notices

In submissions the parties agreed that Clause 18 of the Track Contract applied in this instance.

Clause 18 provides that where notices are received 'after 1600hrs' on the last day of business the Seller shall pass it on 'as soon as practicable' but not later 'than 1000hrs'. A seller is not automatically entitled to the 1000hrs extension. First it must prove that the relevant notice was received after 1600hrs, that the same notice was "passed on" and that it was passed on as soon as practicable, that being as soon as it was received back from the bulk handler. Then the 1000hrs is a permissible extension but also the absolute deadline for the documents to be delivered.

In this instance the delivery period ended at 1600hrs 31/1/05. The Respondent (Buyer) adduced evidence that after 1600hrs 31/1/05 it had not yet received the transfer from its supplier. The title transfer appears to have been passed on as soon as it was received and thus *prima facie* the Respondent (Buyer) was entitled to the 1000hrs deadline.

Time of the Essence

The *Goods Act (Vic) 1958* provides that unless the contract specifically provides a time stipulation, time is not of the essence. As the NACMA Trade Rules were incorporated into the Contract and Rule 3 specifically provides time of being of the essence, the time for delivery of the goods under the Track Contract is of the essence. The common law provides that in a contract where time is of the essence, terms to which it attaches are conditions of the contract, any breach of which gives rise to a right to terminate the contract (See *Legione v Hateley* (1983) 152 CLR 406). This is particularly pertinent in contracts for sale of goods (See *Bunge Corp. New York v Tradax Export S.A. Panama* [1981] 1 WLR 711). Thus at 1600hrs 31/1/05 unless the Respondent (Buyer) had otherwise been provided an extension to deliver on 1/2/05, it was in breach of the contract. Under the contract the Respondent (Buyer) qualified for an extension of an absolute deadline of 1000hrs 1/2/05. If the documents were not delivered by this time, and in the absence of other relevant factors, the Respondent (Buyer) would be in breach of the contract providing the Claimant (Seller) with a right to terminate the contract and claim damages.

Acceptance of the Documents

The Respondent (Buyer) submitted that notwithstanding the express terms of the contract, the acceptance of the transfer documents, without reservation of one's rights, prevents the party from taking any action for breach of contract. The Respondent (Buyer) submitted that this is a term that should be implied into the contract. In considering the existence of such a term, the Committee will first examine the written agreement between the parties which incorporates the NACMA Trade Rules.

Rule 17 governs default by the buyer or seller. Rule 17.1 provides three specific options open to the buyer if the seller has defaulted. The buyer may agree to extend the delivery period, repurchase the defaulted portion or cancel the contract. These options are expressed to be in the alternative and they remain the same whether the seller notified the buyer or not.

The choice permitted to the innocent party under these contractual options is one of election. The doctrine of election requires unequivocal words or conduct, with knowledge of the alternative rights, to evince an intention to continue with performance or terminate the contract (*Sargent v ASL Developments* (1947) 131 CLR 634). Once the election has been made the right is permanently forfeited and cannot be revived unless by a subsequent breach of the contract (*Wendt v Bruce* (1931) 45 CLR 245, *Stocznia Gdanska SA v Latvian Shipping Co [No 2]* [2002] 2 LR 436 (CA)).

On the facts of this case a conversation between the Claimant (Seller) and the Respondent (Buyer) took place on 31/1/05. The following morning the Respondent (Buyer) faxed the Claimant (Seller) the title transfers at 1002hrs, at which time they were signed [CS: 15] and forwarded to the bulk handler for processing. These documents were signed and accepted by the Claimant (Seller) without reservation.

Therefore by notification of the late delivery on 31/1/05, the Claimant (Seller) was faced with the options that arose under Rule 17.1, or to alter the contract per Rule 1.3. The latter requires that both parties had expressly consented and that the contract was 'immediately confirmed in writing'.

The Claimant (Seller) submits that it affirmed the contract, that is, it elected not to exercise its right to terminate the contract for the breach. Whilst the Claimant (Seller) does not state on what basis this election was made, the Committee concludes it is in accordance with the contract and made under Rule 17.1.

The Committee concludes that by signing the title transfer, without reservation, the Claimant (Seller) has extended the time for performance and accepted title to the goods. The Committee considers such acceptance to be an unequivocal act constituting an election of Rule 17.1(1)(a) to agree to extend the delivery period and thus affirming the continuing performance of the contract.

The election under Rule 17.1(1)(a) is an agreement to extend the delivery period. The Claimant (Seller)'s action of accepting and signing the title transfer documents, without reservation, extends the time for delivery. To the extent that the Respondent (Buyer) may have been in breach or default, that breach is cured by the extension. Thus the Claimant (Seller) is barred from taking action against the Respondent (Buyer) for breach of contract. It is unnecessary for the Committee to consider the common law regarding implied terms as such a term exists within the written contractual terms.

Mitigation

The Respondent (Buyer) alleged that the Claimant (Seller) had a large amount of grain available prior to the transfer deadline which could have been passed onto ACTI thus mitigating the Claimant (Seller)'s losses [RS:9.1-9.10, 9.19-9.23]. Although discovery was requested, the Claimant (Seller) has not provided sufficient information to refute this claim [RS:9.11-9.18]. Thus the Committee is entitled to infer, per the rule in *Jones v Dunkel*, that such evidence would not have assisted the Claimant (Seller)'s case.

Damages

Whilst the Committee does not think it appropriate to award damages in this case, it is opportune to comment upon the appropriate construction of damages under contracts incorporating the NACMA Trade Rules. Where the NACMA incorporated terms consider the type of default that has occurred, such as to breach of terms or insolvency, the NACMA terms will govern the calculation of damages per Clause 24 and Rule 17.5. Where the contract is silent as to the type of default that has occurred the calculation of damages should then consider the application of the common law. Pursuant to a NACMA contract the incorporated contractual terms should *prima facie* govern the resolution of the dispute and the calculation of damages if appropriate.

5. INTERIM FINAL AWARD

Having considered the Submissions and for the reasons stated above, we make the following Interim Final Award:

That the Claimant (Seller) is unsuccessful and is instructed to pay the Respondent (Buyer) forthwith, the Respondent (Buyer)'s:

1. NACMA Arbitration fees of AUD$3,700;

2. Any legal expenses, such expenses to be fair and reasonable. The Committee requests the parties to negotiate as to costs. Failing which the Committee requests the parties to make submissions to the Committee (with Copy to the Claimant (Seller)) in support of any claim for legal fees. The Committee will make an award in relation to costs as part of its Final Award.

The Claimant (Seller) is also directed to pay NACMA's legal costs. Supporting invoices will be provided by NACMA and the amount will form part of the Final Award.

FINAL ARBITRATION AWARD

We refer to the reasons outlined in our interim award dated 26 June 2006 and make the following final award:

1. The claim is dismissed;

2. The Claimant (Seller) shall pay the Respondent (Buyer)'s legal costs as per the confidential agreement reached between the parties;

3. The Claimant (Seller) shall pay the NACMA Arbitration fees of the Respondent (Buyer) of AUD$3,700.