

4. For present purposes the particulars of that contract are as follows;

Contract No.	Brokers Contract	Date	Commodity	Tonnes	Base Price	Delivery	Delivery Period
██████████	██████████ ██████████ ██████████ ██████████ ██████████	18/2/2022	Sorghum CSG-1 GTA Spec	400 tonnes +/- 12mt or 5% whichever is less	\$305 per mt.	██████████ ██████████	18 February 2022 to 28 February 2022

1. The contract is evidenced by a Respondent Purchase Contract ██████████ Confirmation dated 18 February 2022 (**Contract Document**). The Contract Document was signed on behalf of the Buyer and Seller.
2. There does not appear to be any dispute that the Contract Document evidenced the terms of the agreement between the parties, at least as at 18 February 2022.
3. The Seller has also produced a ██████████ Contract Confirmation dated 18 February 2022 with reference ██████████.
4. The Contract Document contains on its face the following clause;

This contract expressly incorporates the GTA Trade Rules [or standard GTA contract reference] and Dispute Resolution Rules in force at the time of this contract. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the GTA Dispute Resolution Rules in force at the time of contract.

5. The version of the Trade Rules current at 18 February 2022 is applicable to the contract. The version of the Rules which became effective 1 March 2021 (superseded by the current version which became effective on 1 December 2022) is the version applicable to this dispute.
6. Pursuant to Article 13 of the DR Rules (headed 'Governing Legislation') the provisions of the *Commercial Arbitration Act 2010 (NSW) (CAA)* shall apply. The parties having chosen the NSW legislation to govern this arbitration I find that NSW and specifically Sydney is the seat of this Arbitration as that term is defined in Article 38(1)(a) of the DR Rules.
7. I am listed on the GTA list of arbitrators under Article 6.1 of the DR Rules and have been appointed by GTA as the Tribunal for this reference. Notice of my appointment was given to the parties by GTA on 17 November 2022 without objection.
8. For the reasons set out above I find therefore that I am a validly constituted Tribunal under the CAA with jurisdiction to determine all issues in dispute between the parties.
9. As this arbitration is conducted pursuant to the GTA Fast Track Rules, there has been no hearing and I have proceeded on documents alone.

B. Procedural History

10. By way of background and procedural history,

- (a) As observed above, this matter was commenced by way of GTA Initiation form on 9 September 2022.
- (b) In accordance with GTA practice, a Notice of Dispute was mailed to the parties dated 21 October 2022 which included, among other things, a Contract for Fast Track Arbitration.
- (c) The Seller signed and returned the Contract for Fast Track Arbitration, and dated it 2 November 2022. While the Buyer does not appear to have signed the Contract for Fast Track Arbitration it has participated willingly.
- (d) The parties have exchanged the following submissions;
 - a. Applicant's Points of Claim dated 7 December 2022, including supporting documents at Appendix A;
 - b. Respondent's Points of Defence submitted by email dated 5 January 2023 with supporting documents.

C. Facts

1. This arbitration has been conducted under the GTA Fast Track Rules, which support a quick and low cost process. There is no hearing and no formal statements of evidence have been tendered. I establish the facts on which I make my decision on the balance of probabilities as appearing to me from the parties' submissions and the supporting documents provided.
2. Pursuant to a contract on terms of the Contract Document (First Contract), the Seller agreed to sell to the Buyer 400 tonnes of sorghum delivered at the [REDACTED] storage at [REDACTED], at \$305 per tonne.
3. On 20 February 2022 the Claimant sent the Respondent a RCTI and the signed Contract Document.
4. The Seller claims that on 22 February 2022 it entered into a separate contract (Second Contract) with "Third Party", also in respect of 400 tonnes of sorghum, for delivery at [REDACTED] March 2022 to 30 April 2022, at a price of \$310 per tonne.
5. Delivery against the First Contract was completed on 31 March 2022 with 419.60 tonnes.
6. The essence of the dispute is to be found at paragraphs 9-11 of the Points of Claim, as follows;
 - 9. *Between the 1st- 5th April 2022, Mr B called Respondent's' agent, Mr C, and noted that the 400T of Sorghum had been delivered against the Respondent's contract, and enquired about the further loads still being delivered from Claimant into [REDACTED]. During that conversation, Mr C instructed Mr B to direct the additional 400T to the Respondent, instead of allocating it to the intended recipient, being "Third Party".*
 - 10. *[REDACTED] failed to verify these instructions with the Claimant and wrongfully proceeded to allocate the secondary 400T to the Respondent.*
 - 11. *On 5 April 2022, the Respondent doctored the Initial Contract, changing the tonnage from 400T to 800T. The doctored contract was sent via email to the Claimant's office and broker, Mr E as "an extension of contract" by the Respondent's agent, Ms D.*
7. In summary, the Buyer claims that by virtue of an exchange of text messages with the Seller's broker on 22 February 2022 the Buyer contracted an additional 400 tonnes from the Seller.

8. Whether this was intended at the time to be by way of amendment to the First Contract, or an additional and separate contract is unclear. While there is some reference in the Buyer's submission to a 'Second Contract', there are also indications in the evidence (including the contract document sent by the Buyer to the Seller on 5 April 2022, and the [REDACTED] Receival dockets from 5 April 2022) that the intention was in fact to amend the First Contract by increasing the tonnage from 400 tonnes to 800 tonnes.
9. In any event, on 5 April 2022, the Buyer sent the Seller (by email) a further version of the Contract Document, the only amendment being the tonnage which was increased to 800 tonnes.
10. Between 01 April 2022 and 24 May 2022, the Respondent took delivery of an additional 390.16 tonnes of the Claimant's grain from the [REDACTED] site.

D. Determination

11. It is not in dispute that the parties entered into the First Contract, nor that 419.6 tonnes was delivered against the First Contract with delivery being completed on 31 March 2022.
12. Nor is it in dispute that the Buyer took delivery ex [REDACTED] of an additional 390.16 tonnes of sorghum belonging to the Seller between 1 April 2022 and 24 May 2022.
13. What is in dispute is whether the Seller contractually agreed to supply the Buyer with that additional tonnage either by way of amendment to the First Contract, or as a separate contract.
14. I have come to the view that there is insufficient objective evidence of either an amendment to the First Contract or a new and separate contract.
15. The evidence of the amendment is limited to;
 - (a) The exchange of text messages apparently between the Buyer and the Seller's broker on 22 February, which I find at best, ambiguous where the broker states he is "just seeing what our options are" with no explicit agreement thereafter;
 - (b) The 'updated' contract sent by the Respondent to the Claimant on 5 April 2022, which remained unsigned by the Seller. I note that Rule 2(2) of the GTA Trade Rules (which were incorporated into the First Contract) provides that "any variations to the express terms [of the contract] must be mutually agreed in writing.' In my view, neither the 22 February 2022 text messages nor the 5 April 2022 contract document evidence 'mutual agreement in writing.'
16. The Buyer also made additional payments into the Seller's bank account in respect of the additional tonnage on or about 10 April 2022. The Seller says that this was not 'picked up.'
17. In my view the onus of establishing an amendment to the First Contract under Trade Rule 2(2) rested with the Buyer. In the absence of a document signed or acknowledged by the Seller I may have expected to see some correspondence with or a statement from the broker but nothing was produced. In fact the broker said he "wasn't aware" of any increase in quantity to the contract.
18. I may also have expected to see some direction by the Seller or its broker to [REDACTED] confirming the updated tonnage and authorizing delivery to the Buyer. Again, no such evidence was produced.
19. I find therefore that there was only ever one contract, being the First Contract, for 400 tonnes, and that in taking an additional 390.16 tonnes the Buyer was in breach of that First Contract.

20. In relation to the quantum of the Seller's claim, as stated after paragraph 28 of the Points of Claim, the Seller claims \$27,600 consisting of;
- (a) \$23,400 relating to the washout of 360 tonnes of the "Third Party", and
 - (b) \$4,200 relating to 40 tonnes yet to be washed at \$415 per tonne.
21. These appear reasonable and the Buyer has not expressly denied this calculation nor proposed an alternative calculation.
22. However, the Claim calculation is to be considered on the additional 390.16 tonnes delivered.
23. The claim is accordingly allowed for \$26,566.80, being 390.16 tonnes calculated as;
- (i) \$23,400 relating to the washout of 360 tonnes of the "Third Party" Contract, and
 - (ii) \$3,166.80 relating to 30.16 tonnes yet to be washed at \$415 per tonne.
24. The Seller has also claimed interest on the principal sum, which I allow at the rate of 1.5% per month (as per GTA Standard Terms and Conditions incorporated into the First Contract) for 5 months (October 2022-February 2023).
25. Finally the Seller has claimed legal costs of \$5,272 (ex GST). Again these appear to be reasonable and I note are in line with the legal costs claimed by the Buyer.

E. Award

26. For the reasons above, my Award is;
- (a) The Respondent shall pay the Claimant \$ [REDACTED] forthwith;
 - (b) The Respondent shall pay the Claimant interest of [REDACTED] (being \$ [REDACTED] x 1.5% x 5)
 - (c) The Respondent shall pay the Claimant's claimed legal costs of \$ [REDACTED] GST exclusive.
 - (d) The Respondent shall indemnify the Claimant in relation to any fees paid by the Claimant to GTA in respect of this arbitration.

This award is dated at Sydney, the 8th day of March 2023.

Mr Sanjiv Dubey