

NewsInGrain

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GRAIN CONTRACTS

Managing counterparty risk

Irrespective of where you operate in the grain supply chain, your grain contracts confer certain rights and responsibilities.

A key responsibility for a seller is to make delivery against the contract and a key right is to receive payment for grain delivered against the contract when due and payable as defined in the contract.

A key right for a buyer is to receive grain against a contract and a key responsibility is to make payment for grain delivered against the contract when due and payable as defined in the contract.

However, parties to a contract can never be guaranteed that their rights or responsibilities will be upheld on all occasions.

This article will highlight some of the major actions that a party can use to assist in determining a method to reduce risk when selling grain. This list is not exhaustive and not all actions can or will apply in every situation.

Irrespective of the size of your organisation, before you sell any grain, it is fundamental to consider the risk and potential impact to your business of failure of the buyer of your grain to pay.

It is important to establish some rules about how to determine who to sell to, how much to sell in a contract before payment is received and what actions you will take if payment is late.

GTA is often approached when an organisation becomes insolvent and the argument is proposed that there should some type of guarantee payment process implemented as parties do not have the time or experience to conduct their own due diligence.

Grain contracts quite often have a face value of hundreds of thousands of dollars. Ask yourself the question if you would be willing to lend that amount of money to the buyer in question. If you consider the trade in this light it will ensure that you scrutinise the counterparty and the contract that binds the parties.

Lastly, grain contracting is a voluntary undertaking. There are no legislative impediments and any grain industry participant is free to contract with whomever they deem fit. It's the industry and type of economy we live in.

Conduct due diligence before committing to a contract

The following notes are provided as an aid only. Specialist information pertinent to your commercial environment should be sourced from professional accountants and / or solicitors.



A checklist (in no particular order)

Is the organisation a member of GTA?

Whilst membership is not a guarantee of future performance, it is a good starting point as it demonstrates organisations that are prepared to adhere to the requirements of the Australian Grain Industry Code of Practice. Check out GTA members on the website.

Do you know anything about the organisation?

Do they have a strong payment record? Is it possible to find out anything about their financial situation. Are they well organised?

Peer / adviser / agent review

Check the organisation out with your peers or a grain marketing adviser/agent who is prepared to give you an impartial opinion. Understanding how an organisation has paid other creditors may provide insight into potential payment behavior.

Australian Securities & Investment Commission report

Do a check with the Australian Securities & Investment Commission to determine the legal status of the organisation. This search will reveal details such as:

- A listing of the directors and office holders.
- Address of the Registered Office
- When the organisation was established
- Any changes to company structure, i.e. resignation and/ or appointment of directors

Confidential report from your bank

Ask your bank for a confidential report on your counterparty. Fees will apply.

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Irrespective of where you are in the grain supply chain it is incumbent on you to understand the risks associated with entering into a contract, including counterparty risk, and the terms and conditions of the contract.

Credit report from a commercial provider

Once you have satisfied yourself regarding the structure and status of the organisation a credit report should be obtained. The credit report will enable you to see if there are any defaults registered against the business you have selected. There are a number of organisations that provide credit reports.

Credit insurance

Consider credit insurance to cover bad and doubtful debts.

Writing a Contract

The price is suitable and you have conducted a due diligence that satisfies the credit worthiness of your counter party. The next step is to commit to the contract.

The vast majority of trade negotiations occur via telephone communication directly with

>>> *Continued on page 2*

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counterparties or through specialist advisers, agents or brokers. A trade is concluded when one party agrees to sell (the offer) and the other party agrees to purchase (the acceptance or bid) goods for an agreed value (the financial consideration). This agreement is otherwise known as the contract and has been negotiated on a telephone call.

Ensure the negotiations cover all aspects of the terms and conditions that could impact the trade. If required, request a copy of a contract proforma prior to agreement to ensure you are across the issues to be negotiated.

Reconfirm all aspects of the contract negotiations at the conclusion of the telephone conversation.

Check that the contract confirmations accurately reflect the contract and revert to your counterparty with any amendments/changes IMMEDIATELY.

Keep on top of payments

If payments are late, make sure action is taken or, at the very minimum do not sell more grain to that buyer until payment is made. If you are using an Agent or Broker notify them if payment is late so they can pass this information onto other sellers.

Storage Agreement

A storage provider could also be a counterparty. Issues can arise where there is no storage agreement, the grain is co-mingled and the storage provider becomes insolvent.

GTA has developed a Storage & Handling Agreement which references the ability to claim title in co-mingled grain.

Personal Property Securities Register

Register your interest in the contracted grain on the Personal Property & Securities Register. If you are unsure how this applies seek professional advice.

You cannot completely manage out all risks associated with contracting, but the risks can be mitigated.

Conclusion

1. Entering into a grain contract is not an action to be taken lightly. Parties quite often focus solely on price and give insufficient regard to the contract or who the counterparty is. In many cases these issues are more important than the price.
2. Consider the dollar value of risk to the buyer in question.
3. You have a responsibility to yourself and your organisation to conduct a due diligence of your counterparty.
4. During contract negotiations, cover all the relevant points listed on the contract. Ask for a copy of a contract proforma to ensure you are across the issues to be negotiated.
5. Re-confirm the contract details at the end of the telephone conversation to ensure there is agreement by both parties that all details and the corresponding obligations are fully understood.
6. Forward a Contract Confirmation to your counterparty.
7. Check Contract Confirmations that you may receive.
8. Where there is a discrepancy between a Confirmation and the original contract, contact your counterparty immediately to clarify the exact terms and conditions and if required amend the confirmation.
9. If there is an amendment to the contract, ensure that a written confirmation of any changes or amendment is exchanged between the parties.
10. Monitor payments and take action if they are late including notifying your Agent or Broker.

Further information

General reference on the GTA website

1. A Guide to Taking Out Contracts to Supply Grain – GTA publication for Australian grain growers

GTA contracts and agreements

1. Contract confirmation & associated GTA Trade Rules
2. GTA Storage & Handling Agreement

Industry briefing papers

Available on the Grain Trade Australia website

1. Brokers and Agents in the Australia Grain Industry
2. Personal Property Securities Question & Answer Sheet for the Grain Industry
3. What is the Personal Property Securities Act?
4. Managing Insolvency
5. Australian Personal Property Securities Reform

GTA Professional Development Courses

1. Understanding Grain Markets
2. Grain Merchandising
3. Grain Accounting

GTA TECHNICAL COMMITTEE OUTCOMES

TRADING STANDARDS

The 2014/15 Grain Trading Standards will be available from the GTA website from 1 August 2014. Following two rounds of industry consultation, final recommendations were tabled and approved by the GTA Board at their June meeting.

There will be no material changes, with amendments as reflected in the industry briefing documents that accompanied each call for submissions.

All Standards will be available with the exception of Sorghum which will be made available at the beginning of October 2014. These are currently under review by the GTA Standards Committee, following a number of recent submission surrounding issues during the past season.



GRAINMatters

GTA have launched a new electronic newsletter called GRAIN Matters. Members will have already seen the first issue arrive in your inboxes. GRAIN Matters won't replace NewsInGrain but will allow us to deliver more timely information to you between editions.

Members will continue to receive both publications but we will also be circulating GRAIN Matters more widely and encouraging subscriptions from the GTA home page in an effort to better engage with industry stakeholders including the production sector about the activities of GTA and our members.

Also keep an eye out for our new look Member Updates and a new series of fact sheets covering all manner of topics ranging from Understanding Location Differentials (LDs) to Storage and Handling and Contracting Considerations. The fact sheets will also be available from the GTA website.



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GTA GRAIN TRANSPORT CODE OF PRACTICE

GTA have just released an updated version of our Grain Transport Code of Practice (formerly known as the Bulk Freight of Goods Code of Practice).

Amendments to the Code from the previous version include:

- Updated reference to applicable laws and regulations relating to the transport industry including the Federal Road Safety Remuneration Order and National Heavy Vehicle Accreditation Scheme
- Additional instructions added to Section 7. Cleanliness to reflect minimum industry standards and reference to treatment following the transport of stored grain pests
- Unprocessed animal matter moved to Class 1 prohibited products
- Reference to the GTA Dispute Resolution Process as a means of resolving commercial disputes
- Definitions added and consistency of terminology as required

This Grain Transport Code of Practice is a Technical Guideline Document referenced in the Australian Grains Industry Code of Practice which became mandatory for GTA Members on 1 July 2014.

The GTA Transport, Storage and Ports Committee commenced a review in late 2013 and called for submissions from GTA Members and industry in March of this year. The amended Code was subsequently signed off by the GTA Board in June for release.

The Code was originally developed in 2009 and had not been reviewed since.

A copy of the Code is available on the GTA website at <http://www.graintrade.org.au/grain-industry-codes>

LOCATION DIFFERENTIALS

The review for the 2014/15 season Location Differentials (LD's) has recently concluded following three rounds of consultation with GTA members. The final list will be tabled at the August meeting of the GTA Board for approval.

A third round of consultation was undertaken this year to reflect the significant changes for the coming season with the rationalisation of GrainCorp sites along the East Coast and the desire to inform the trade about this as early as possible.

GTA sets the LD's for Qld, NSW and VIC and once approved, will be made available on the GTA website by early September.

The industry has agreed to continue to use the rates produced by Viterro for SA and CBH Group for WA for the coming season. They have indicated that these will be available in September and October respectively.

GTA AGENT'S NOTE

Members are invited to download and commence using the new GTA Agent's Note developed for your use.

With the growth in recent years of Agents operating with producers, representations were made to the GTA Commerce Committee on the need to develop a pro forma Agent Note.

The role of a Broker and an Agent within the Australian grain industry is defined in the GTA Trade Rules and GTA has also released an Industry Briefing Paper on the issue which is published on our website.

Their roles differ and each is defined in the GTA Trade Rules as:

Agent means a person who is not a Broker and who is authorised to act on behalf of a Principal

Broker means an independent person, firm or electronic trading platform engaged or used by others, at least partially on a commission basis, to facilitate contracts under instructions from Buyers and Sellers, relative to goods to which it does not have actual or constructive possession.

A person is not a Broker:

- a. who has possession and absolute control of goods supplied to him or her to sell and collect the price. (Therefore, a commission agent to whom a commodity is consigned for sale is not a Broker.)

- b. who only acts for one Principal to the exclusion of all others.

A Broker's Note takes precedence in the event of a dispute over contract terms between the parties to the contract. An Agent's Note does not take precedence in the event of a dispute, due to the fact that an Agent is working exclusively for the benefit of one of the Parties.

No changes will be made to the GTA Trade Rules in line with the release of this Agent's Note.

The Agent's Note can be downloaded from the GTA website <http://www.graintrade.org.au/contracts>

The Industry Briefing Paper can be downloaded from the GTA website http://www.graintrade.org.au/news/industry_briefing_Documents

GTA and GM Grain: *Policies and action*

GTA has developed a policy to provide guidance to the Australian grains industry and Australian Government in regards to the facilitation in the trade of Genetically Modified Grain.

Grain Trade Australia (GTA):

1. Supports research utilising emerging technologies (GM and Non GM) to enhance the productive capacity of Australian grain producers;
2. Supports the commercial release and trade of genetically modified (GM) technology in grain that has been approved and licensed for commercial release by the Office of Gene Technology Regulator (OGTR) and other relevant Federal, State and Territory regulators;
3. Will develop commercial resources (grain standards, contracts etc) to support the supply chain management and trade in approved GM grain;
4. Will be an industry advocate in domestic and international forums in relation to trade and market access issues in the domestic and global trade in GM and Non grain, and
5. Will be aligned with current Federal, State and Territory legislation relating to GM technology and its application to the grains industry.

The GTA policy and aligned processes are necessary to deliver confidence to the industry, governments and the community that market access will be maintained or enhanced and that, if required there is market choice for the domestic and global grain trade supply chains.

All parties recognise that the process should be focused on GM derived technologies that have been approved for commercial release and on market choice and market access facilitation issues only. GTA therefore supports national regulatory systems that have legislative responsibility for human health, safety and environmental issues (e.g. OGTR, FSANZ, and APVMA) and grain trade (e.g. Bio Security Australia, AQIS, DFAT).

GTA will work with all Australian grain supply chain stakeholders to develop an industry agreed and managed framework encapsulating the principles contained in this policy.

Formation of a GM Grain-Industry Consultative Committee

The identification last year of volunteer GM wheat plants in the US state of Oregon and the subsequent trade embargo of US soft wheat into Japan and Korea prompted the GTA Trade & Market Access Committee to recommend to the GTA Board for the formation of a cross sector GM Grain – Industry Consultative Committee

The Committee will have its inaugural meeting on 21 August 2014 and it is proposed they will be tasked with:

1. Detailing processes:
 - 1.1 which key stakeholders within the grain supply chain (i.e. from planting seed to end users) need to consider in advance of any regulatory approval for commercial release and cultivation of a GM event is granted.
 - 1.2 to ensure market access issues related to maintaining market choice following the introduction of GM grain are identified and resolved.
 - 1.3 that seek to deliver confidence to customers and consumers, while providing certainty to the grains industry supply chain participants.
2. Acting as a point of contact within the grain industry to coordinate activities at an industry/government level on issues relating to GM grain related issues.

Cartagena Protocol on Biosafety

- Coming under the aegis of the United Nations, the Cartagena Protocol on Biosafety (BSP) is an international agreement which aims to ensure the safe handling, transport and use of living modified organisms (LMOs) resulting from modern biotechnology that may have adverse effects on biological diversity, taking also into account risks to human health.
- GM grain falls under the definition of LMO's. Although Australia has limited GM grain production, over the next decade this could increase substantially. Trading policies/procedures that are being developed now, will apply in 10 years.
- Australia:
 - has a strong and proud history of following through on UN Protocols to which it is a signatory.
 - is not a Party to the Protocol because if we were we would be bound to its, as yet, undefined, provisions which may or may not be enhancing to our global trade in grain in the future.
- Once a Protocol is agreed in all aspects, they are not easily changed.

Major elements of the BSP still to be finalised include.

- Documentation requirements for cargoes that "may contain" GM grain.
- Liability and redress issues, i.e. which organisation is responsible for the financial loss attributed to the trade of an approved GM event that is subsequently found to have had an adverse effect on human health or the environment. The trade maintains that they are only moving grain that has been approved for commercial release in the country of export and the country of import. The trade have no involvement in the risk assessment/authorisation process.
- the protocol proposes standards with regards to handling, transport and packaging. The current processes reflect the contemporary needs for the global grains industry.

International Grain Trade Coalition (IGTC)

GTA is a member of the IGTC which is a global coalition of grain trade organisations in exporting and importing countries. It has 22 national and international not for profit trade associations and councils as members.

IGTC works to bring significant expertise and representation to provide advice to governments from a global perspective on the commercial requirements and economics of the world's food, feed and processing industries.

In that context, the IGTC represents the global grain trade at BSP meetings to ensure that policies being developed are being done in the knowledge of how the current system operates.

Next meeting of the BSP

The next meeting of the BSP will be held in Korea from 29 September 2014 to 3 October 2014. The IGTC delegation is drawn from members from North and South America, Europe and Australia. The GTA CEO, Geoff Honey has been appointed to lead the delegation.

Pre conference activities include:

1. developing policies that enhance global grain trade
2. advocating those policies to all members
3. encouraging members to advocate the policies to the governments of the respective countries; and
4. conducting outreach programs in countries that are Parties to the BSP to ensure they understand the consequences of adopting policies that disrupt trade.

Global Low Level Presence (LLP) Initiative

Low level presence is defined as the presence of a GM event approved in the country of production but not in the country of import. Detection of LLP can result in distressed bulk cargoes as was witnessed last year with US corn destined for China and which was found to contain trace amounts of a GM event approved in the US but not in China.

The National Grain & Feed Association, GTA's sister organisation in the US, estimated that the loss to the US corn industry due to the disruption with China over detection of the unapproved (in China) Syngenta Agrisure Viptera™ MIR 162 corn was estimated at \$US2.9 Billion.

The Australian Government through the Department of Agriculture is working on a global initiative to develop policies that enable trade to occur when there are instances of GM events approved in the country of export but not in the country of import.

GTA is supporting the Government on this initiative with provision of trade related information.

Managing Maximum Residue Limits (MRLs) in export grain

All Australian grain, whether destined for the domestic or export market, is tested for pesticide residues. While residue testing over the past decade has indicated a very high level of compliance – 99.7 per cent – violations of Australian and importing countries' Maximum Residue Limits (MRLs) have been detected.

Key points:

- A single violation of an importing country's MRL can lead to punitive measures on all Australian grain exported to that country and the consequences may include costs awarded against the exporter and/or grower. If repeated violations are detected with the same chemical, that chemical may be banned.
- It is essential that growers and storage operators ensure both pre-harvest and post-harvest chemical applications adhere to the Australian Grain Industry Code of Practice.
- Use only registered products and observe all label recommendations including label rates and withholding periods.
- Trucks or augers that have been used to transport treated seed or fertiliser can be a source of contamination. Pay particular attention to storage and transport hygiene.
- Silos that have held treated fertiliser or pickled grain will have dust remnants that require particular attention. These silos either need to be cleaned or designated as non-food grade storage.
- For exporters, compliance with Australian MRLs does not guarantee the grain will meet an importing country's MRL (which may be nil). You need to know the destination of your grain. When signing contracts, check the importing countries' MRLs to determine what pesticides are permitted on that crop.

Further information: GRDC Fact Sheet – *Managing Maximum Residue Limits (MRLs) in export grain*

Why should Australia be involved? Due to shared supply chains on a global basis, i.e. bulk ships and zero tolerance adopted by many countries, Australian wheat shipments could also be affected should a prior cargo have been a GM event not approved in the country of import and residues are detected.

AUSTRALIAN GRAIN INDUSTRY CODE OF PRACTICE



Detailing the quality systems embedded into the Australian grain industry

To market quality grain is complex and diverse with continually evolving processes being developed to ensure compliance with regulatory and customer requirements.

As market requirements continue to evolve it is critical that quality assurance systems are developed across the industry.

To evidence the activities occurring across the supply chain from pre breeding activities to the supply of the grain to an end user, Grain Trade Australia has released the Australian Grain Industry Code of Practice.

The Code details all the quality practices that the industry uses to ensure Australian grain meet domestic or export end user requirements.

As a demonstration of the desire of the industry to adopt a culture of continual improvement and to demonstrate to customers the cross sector quality processes embedded in the industry, adherence to the Code became a requirement for membership of Grain Trade Australia from 1 July 2014.

The Code can be downloaded from the GTA website <http://www.graintrade.org.au/grain-industry-codes>. Hard copies are available from GTA.



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DA BIOSECURITY REFUNDS & REDUCTIONS IN FEES & CHARGES

An outcome of the Grain Export Certification Reform Program completed in 2012 was that the Department was able to accurately develop detailed financial models that demonstrated exactly where costs were borne.

As a result a new set of targeted fees and charges were introduced which coincided with substantial export shipping programs. The implementation of other activities such as the introduction of Authorised Officers as part of the Grain Export Certification Reform Program kept a downward pressure on DA Biosecurity inspection and certification costs.

It followed that there was an over recovery in funds which must, by legislation, be used in the conduct of phytosanitary inspection and certification and cannot be used for any other purpose.

As a result of the financial position of the Grain Export Program the Department, working with industry through the Grain & Plant Products Export Industry Consultative Committee was able to

1. refund all tonnage and establishment registration charges paid in 2012/2013. This refund, amounting to \$4.7 million, was planned to be processed by 30 June 2014.
2. This refund was on top of the reduction of 25% in fees that became effective on 1 May 2014.



*Photo courtesy of
Department of Agriculture*

TOLERANCES AND TRADING GRAIN – *Some thoughts*

- A Court case in WA recently highlighted the need for tolerances to be adopted in standards.
- One grower planted GM Canola and his neighbour (the Claimant) claimed damages as he lost his Organic Certification as a GM canola plant was purportedly discovered on his property. The Claimant lost.
- Only GM canola approved by the Office of the Gene Technology Regulator (OGTR) can be grown in Australia. OGTR is an agency of the Federal Government Department of Health.
- The Australian Standard for Organic and Biodynamic Produce (AS6000:2009) and the National Standard for Organic and Bio-dynamic Produce in Australia do not permit any level of GM material in a product that meets its certification criteria, i.e. zero tolerance. This position contrasts with that in the EU (0.9%) and with the US Department of Agriculture National Organic Program (USDA NOP), which does not specify an exact threshold for the presence of GM material.
- This is another example of the need for tolerances to be adopted, not just on this issue in Australia but also in the global grain trade on a range of measured criteria of standards.
- To put it into another perspective, CODEX, the UN organisation responsible for setting maximum residue level of toxins in food has tolerances for heavy metals such as arsenic, cadmium, lead and mercury. If CODEX adopted a zero tolerance level we would be pretty hungry all of the time.
- In the global trade in food with shared supply chains, zero on many parameters of Trading Standards is unattainable. Zero, in these circumstances, has the potential to bring trade to a screaming halt.

GTA CALENDAR OF UPCOMING EVENTS

Date	Program	Event	Venue
Monday 28 to Tuesday 29 July 2014	Two days	AGIC	Vic – Melbourne
Tuesday 28 October 2014	One day	GTA AGM	Vic – Melbourne

2014/2015 MEMBERSHIP FEES NOW DUE

Membership fees for the new financial year have been sent to all current GTA members.

A copy of each Member's details on file have been included. Please notify the office immediately if you have not received your invoice in the post or if any of your details are incorrect.

FEES ARE DUE AND PAYABLE BY 31 JULY 2014

NEW GTA MEMBERS

GTA WELCOMES THE FOLLOWING ORGANISATIONS TO THE MEMBERSHIP RANKS FOR THE 2013/2014 FINANCIAL YEAR

Applicant Name	Membership Category
Direct Commodities Pty Ltd	Corporate – Small
Flexi Grain Pty Ltd	Corporate – Small
PGS (SA) Pty Ltd	Ordinary (Trading) – Level C
Hay Plains Grain Storage Pty Ltd	Corporate – Small
Thallon Grains Pty Ltd	Ordinary (Trading) – Level C



Bill Murray – Chair, NWPGP. Photo courtesy of GRDC Ground Cover magazine.

NWPGP ANNUAL CONFERENCE

The National Working Party on Grain Protection (NWPGP) Annual Conference was run in Melbourne on 17-18 July 2014. There were over 130 delegates this year with more than 25% attending for the first time. The increase in number also saw a broadening of attendees from across the supply chain including strong attendance from the production sector which was pleasing.

A quality two day program was developed across a range of current issues and those for consideration moving forward. Some of the topics covered in the program and resolutions agreed by the delegates at the Conference included:

- Continued role of the NWPGP including the Stakeholder Working Group (SWG) to operate and oversee the NWPGP Annual Conference with administration support from GTA
- Communication and extension activities and research requirements to be documented and forwarding to the key bodies. It was emphasised that planning beyond the current 2018 deadline of the Plant Biosecurity CRC needed to be a consideration.
- Regulatory updates including dealing with CODEX and those on a domestic and international level. This included the full endorsement of the Conference for GRDC to continue funding for Bill Murray to act on behalf of the Australian grains industry engaging with CODEX, APVMA and the NRS with a focus on establishment or maintenance of MRL's as requested by industry.
- Issues relating to insect infestation trends, resistance and grain treatments
- The increased focus on building and maintaining suitable storage facility's plus issues that occur in treatment in unsealed silos
- An update on the On-Farm Stewardship Program being developed by Grain Producers Australia (GPA)
- Improving industry practices in the transport of grain and discussion around appropriate disinfection strategies and clean-out facilities

- The uptake and development of Commodity Vendor Declarations (CVD) for industry
- The National Residue Survey (NRS) results and compliance remain steady but violation of pre-harvest chemicals remain a significant concern in so much as the risk to exceeding MRL's in major markets
- The continuation of the Market Trends Survey with refinement as required
- Updates on specific chemical issues relating to use and development
- The need to address issues with Phosphine labels. A Working Group was formed to consider the issue and recommend a way forward before the 2015 Conference.

There was good discussion from the floor during the two days, with issues concerning transport sparking considerable conversation. This year was the first time the transport industry had engaged with NWPGP and many attendees asked for there to be ongoing engagement and further presentations at future events.

Feedback from the conference was very good with positive comments across the board. Dates for the 2015 Conference are to be confirmed but it will continue to be held in Melbourne at a similar time of year.

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The full outcomes of the Conference will be distributed directly to delegates and will be available on the GTA website
<http://www.graintrade.org.au/nwpgp>

GTA 2014 SEMESTER TWO Professional Development Course Dates & Locations

Understanding Grain Markets – Trade	
Date	Location
7 Aug	NSW – Tamworth – Joblink Plus Training, 11 Byrnes Ave
24 Sep	WA – Perth – Cliftons, Parmelia House, Ground Floor, 190 St George's Tce

GTA Trade Rules & Contracts	
Date	Location
29 Aug	QLD – Brisbane – Cliftons, 288 Edward Street

GTA Grain Standards	
Date	Location
12 & 13 Aug	QLD – Toowoomba – Cedar Centre, 36 Baker Street
25 & 26 Aug	NSW – Tamworth – Joblink Plus Training, 11 Byrnes Ave
2 & 3 Sep	VIC – Melbourne – Cliftons, Level 1, 440 Collins Street
9 & 10 Sep	SA – Adelaide – Cliftons, Level 1, 80 King William St
16 & 17 Sep	WA – Perth – Cliftons, Parmelia House, Ground Floor, 190 St George's Tce

Grain Merchandising	
Date	Location
20 & 21 Aug	WA – Perth – Cliftons, Parmelia House, Ground Floor, 190 St George's Tce
03 & 04 Sep	QLD – Toowoomba – Cedar Centre, 36 Baker Street
17 & 18 Sep	VIC – Melbourne – Cliftons, Level 1, 440 Collins Street

Grain Accounting	
Date	Location
28 Aug	NSW – Sydney – Cliftons, Level 13, 60 Margaret Street

In-house training

GTA also offers customised In-house training, where we come to you. Whether you have a specific need, find it difficult to attend the scheduled sessions or looking to provide team training within the company we can offer a customised solution. Conditions apply so please contact the GTA Office to discuss the options that are available.



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RECENT AWARDS AT ARBITRATION

Arbitration number: 187

Date of Issue: January 2014

Claimant: Export FOB seller

Respondent: Export FOB buyer

ARBITRATION COMMITTEE (AC)

- Mr John Orr, nominated by the Claimant;
- Mr Robert Dickie, nominated by the Respondent; and
- Mr Stephen Thompson, Chairman appointed by GTA.

CLAIM

At issue in this dispute are the terms of a GTA FOB Contract No. 1 dated 7 March 2013 for the sale of 51,700 tonnes of Australian canola ("Contract"), whether the Respondent breached that Contract and if so, whether the Claimant suffered loss that is recoverable from the Respondent, ("Dispute").

The Claimant seeks recovery from the Respondent of port storage charges in the amount of USD156,473.58, which it says were incurred by reason of the Respondent's breach of the Contract. The Claimant seeks:

- an order that the Respondent pay to the Claimant damages for breach of Contract in the amount of USD156,473.58; and
- interest.

AWARD

1. The Claim is allowed.
2. The Respondent shall pay the Claimant USD156,473.58 by way of damages.
3. The Respondent shall pay the Claimant interest on USD156,473.58 from 22 May 2013 to the date of this Award in the amount of USD6,684.42 (6.75% pa).
4. The Respondent shall indemnify the Claimant in respect of any fees paid by the Claimant to GTA in relation to this arbitration.
5. The Respondent shall pay the Claimant's legal costs on a party and party basis. The parties are directed to attempt to settle costs between them within the next 14 days, failing which the costs shall be assessed by the Federal Court of Australia in accordance with section 27(3) of the International Arbitration Act 1974 (Cth).

DETAILS

Delivery Period

A central issue between the parties is the proper construction of the "Delivery Period" clause of the Broker's Note. The Tribunal found that the Contract:

- conferred on the Claimant an express obligation to nominate an amended Delivery Period of its choosing and that the Claimant complied with that obligation.
- and indeed, like many traders, the parties in their correspondence, used the phrases "Delivery Period", "Arrival Window", "Shipment Period", "Laycan" and "Load Window" interchangeably.

Notice of Readiness

The Claimant alleges it suffered loss and damage as a result of the Respondent's failure to tender a valid Notice of Readiness within the narrowed Delivery Period. The Tribunal was satisfied that the losses for which the Claimant seeks to recover were of a type such as to be within the reasonable contemplation of the parties at the time of contracting.

Mitigation of loss

The Respondent submitted that if the Claimant was

entitled to recover damages from the Respondent, such damages should be reduced, since the Claimant did not comply with its obligation to mitigate its loss by challenging the amount charged by CBH Operations as being inapplicable and/or being an unenforceable penalty. The Tribunal found that the Claimant took reasonable steps to mitigate its loss.

Arbitration number: 188

Date of Issue: October 2013

Claimant: Grain Buyer

Respondent: Grain Seller

ARBITRATION TRIBUNAL (AC)

- Mr Andrew Goyder, GrainLink, Western Australia.

CLAIM

The dispute between the parties concerns a contract for the sale of 24 tonnes (1 Trailer load) of Chana Dhal in 25kg bags on Chep pallets for delivery Ex Store (Respondents Warehouse) FH September 2012. The price was \$1000 Ex Store (ex GST) and the quality was described as Min MD as per GTA CSP 4.2, and oil polished. The total value of the claim amount in issue A\$9,512.11.

Issues for determination:

- The Claimant alleged goods supplied by the Respondent, in or around August 2012, did not comply with the description of specifications expressly provided for in the contract.

AWARD

- The Claim was denied and the Claimant was responsible to pay the Respondent's Arbitration fees.

DETAILS

On or about 29th August 2012 the goods were transferred by road from the Respondent's warehouse, in Queensland, to the Claimant's warehouse in Victoria. According to the Claimant, it subsequently sold and supplied the product supplied by the Respondent to 3rd parties.

On or about 26th September 2012, the Claimant received a complaint from a third parties alleging that the product was not of the required specification. That third party rejected tender of the product and it was returned to the Claimant. The Claimant now brings the same claim against the Respondent.

Award findings

For the Claimant to succeed it must prove that the product delivered was not of the contractual specification. No such evidence was tendered. The Claimant must also satisfy the requirements of Rule 15.1.2(1) of the GTA Trade Rules.

Rule 16 then provides that subordinate to Rule 15, "all adjustments or compensation claimed based on defect of quality or condition ... which shall be apparent upon reasonable inspection must be advised within five [5] business days after unloading... and must be formally confirmed by written notice within thirty [30] consecutive days of the consignment".

The Claimant has not complied with Trade Rules 15 and 16 and for these reasons, the claim must fail.

Arbitration number: 190

Date of Issue: 20 May 2014

Claimant: Commodity Seller

Respondent: Commodity Buyer

ARBITRATION COMMITTEE (AC)

- Mr Chris Heinjus, appointed by GTA.

CLAIM

The Claimant commenced proceedings in the Local Court to recover the funds owing against a Contract. The Respondent successfully applied for the proceedings to be stayed and for the dispute to be referred to GTA to determine whether it had jurisdiction to determine the Claim and, if it did, to make a substantive determination of the Claim.

Issue(s) for determination:

- The issue for determination in this Arbitration is whether it was a term of the Contract that any dispute arising in relation to it be determined in accordance with the GTA Dispute Resolution Rules. If it was not a term of the Contract, then GTA does not have jurisdiction to arbitrate the Claim.

AWARD

1. The Tribunal does not have jurisdiction to arbitrate the Claim.
2. The Respondent shall indemnify the Claimant in respect of any fees paid by the Claimant to GTA in relation to this Arbitration.
3. The Respondent shall pay the Claimant's legal costs on a party and party basis. The parties are directed to attempt to settle costs between them within the next 14 days, failing which the costs shall be assessed by the Supreme Court of New South Wales in accordance with section 33B(5) of the Commercial Arbitration Act 2010 (NSW).

Details

The Claimant (seller) and Respondent (buyer) agreed to contract approximately 120-150 tonnes of APW grade wheat following a series of telephone conversations on either 10 or 11 January 2013.

There is no evidence that the parties discussed the application of the GTA Trade Rules and/or Dispute Resolution Rules to the Contract during those telephone conversations.

The Respondent's submitted that on 11 January 2013, they generated a document entitled "Purchase Contract" which incorporated the terms discussed on the telephone. Critically this document, detailed the exact tonnage delivered, i.e. 131.46 tonnes.

Between 11 and 15 January 2013, the Claimant made three separate deliveries of wheat under the Contract, which totalled 131.46 tonnes of wheat.

Summary

The Tribunal ruled that:

- the Respondent was not able to demonstrate that there was any discussion/agreement that the GTA Trade Rules and Dispute Resolution Rules had been expressly incorporated in the contract in the telephone discussions.
- The contract confirmation relied on as evidence that the GTA Trade Rules and Dispute Resolution Rules had been expressly incorporated could only have been generated after delivery as it reflected the exact tonnage delivered rather than the agreed range.
- Therefore, there was no evidence that the Claimant had agreed to the incorporation of the GTA Dispute Resolution Rules; and it therefore follows that
- the Tribunal had no jurisdiction to hear the matter.