

Member Update

Title: Review of GTA No. 4 DCT Contract

Update No.: 02 of 12

Date of Issue: 12 March 2012

Distribution

- GTA Members – primary contact list. Please circulate to all appropriate internal parties

1. Issue

GTA Commerce Committee is seeking industry submissions regarding purposed amendments to the GTA No. 4 DCT Contract. **Submissions close on Wednesday 28 March 2012**

2. Background

It is a requisite of the GTA Commerce Committee to review the GTA Trade Rules and Contracts and make recommendation to the Board in order to maintain its commercial viability. The GTA last reviewed the GTA No.4 DCT Contract in 2009.

GTA is now seeking industry submissions relating to the proposed amendments.

On receiving industry feedback the Commerce Committee will incorporate the recommendations were appropriate to the Contract for presentation to the GTA Board for final approval or otherwise.

If the amendments are approved by the Board the Contract will be Gazetted and place on the GTA webpage for industry use.

3. Industry Feedback

Members are encouraged to review the Contract and forward a submission regarding any issue that they believe requires attention.

In your submission it would be appreciated if you not only identified the issue but also included the way forward. **Submissions close on Wednesday 28 March 2012.**

**GTA Contract No 4 - Grain/Oilseeds/Birdseeds & Pulses in containers
Delivered Container Terminal (DCT)**

GTA~~NAGMA~~ Contract No. 4

**CONTRACT FOR GRAIN/OILSEEDS/BIRDSEEDS & PULSES IN
CONTAINERS DELIVERED CONTAINER TERMINAL (DCT)**

BROKER/S CONTRACT REF (if applicable) _____

DATEDate: _____

SELLERS: _____

BUYERS: _____

BROKERS:± _____

Have this day entered into a Contract on the following terms and conditions.

The Sellers have agreed to sell and the Buyers have agreed to buy:

1) **(A) COMMODITY** _____

(B) GRADE AND SPECIFICATION _____ [final at
sealing ~~loading/packing~~ of container/s as per first class Superintendent's certificate at
Sellers' cost.]

~~(C) The Buyers are to ensure that the Sellers are advised, in writing of current AQIS export requirements, if applicable.~~

2) **DELIVERY:** Delivery to Buyers' specified container terminal gate in _____ (insert
port). Specified container terminal gate to be declared in shipping documents. All
costs/charges to terminal gate are for the account of Sellers, unless otherwise stated. All
costs/charges after terminal gate are for the account of Buyers unless otherwise stated.
Insurance up to and including terminal gate for Sellers' care and account. Insurance after
terminal gate for Buyers' account.

~~2)3)~~ **(A) QUANTITY:** _____ metric tonnes 5-% more or less in _____ 20/40 ft
(delete one) shipping containers (TEU/FEU). each container to weigh approx.
_____ metric tonnes. ~~— Total quantity not to exceed _____ metric tonnes plus/minus~~
~~_____ %.~~

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(B) TOLERANCE: The Buyers shall have the option of calling for 5% more or less than the contractual quantity at the Contract price. In the event of more than one delivery being made each delivery to be considered a separate contract and the tolerance on the mean contract quantity not to be affected thereby.

~~3) PACKAGING: In clean, seaworthy, cargoworthy food grade shipping containers in bulk with bulkheads at Sellers' cost, or new bags. If bags, state type of bag, printing/bag markings if required and weight. The Sellers are to provide a one colour, one side standard brand. Additional cost for 2 or more colours or non-standard artwork is to be for the Buyer's account; _____~~

~~4) TOLERANCE: The Sellers shall have the option of delivering five percent [5.0%] more or less than the contractual quantity at the Contract price. In the event of more than one delivery being made each delivery to be considered a separate contract and the tolerance on the mean contract quantity not to be affected thereby.~~

~~5)4) WEIGHTS:~~

~~a) **Bagged cargo** – net bagged weights as certified by Seller's packing list~~

~~b) **Bulk cargo** – as certified by registered weighbridge certificate.~~

~~6)5) PRICE: A\$_____ (Australian dollars) per metric tonne, Delivered Container Terminal (DCT). _____ (specify port).~~

~~7)6) INSPECTIONS~~

~~a) **Government AQIS** – To be arranged by the Sellers at the Buyers'/Sellers' cost, ~~(delete which not applicable)~~. Cost of securing certificate(s) ~~or phytosanitary certificate(s)~~ from government authorities AQIS for Buyers' account to be strictly for account of Buyers.~~

~~b) **Buyers' Independent Surveyor** – Buyers may appoint a Superintendent/Surveyor ~~At the~~ Buyers' care cost and account and such details to be provided to Sellers at time of packing instruction being issued as per Clause ~~10~~14 of this Contract.~~

7) DELIVERY PERIOD:

a) Delivery [at Buyers' call] shall be between _____ both dates inclusive.

~~8) Where the delivery period spans more than one calendar month, Buyers to nominate which calendar month delivery to take place no later than 15 calendar days before the beginning of the first specified delivery month. Extensions to delivery dates subject to mutual written agreement by both parties. Any extension to delivery dates is subject to payment of all reasonable charges which shall be for the account of the party requesting extension.~~

~~a) b)~~

~~9) ANALYSIS: If required by Buyers at time of packing, certificate to be issued by a recognised independent Surveyor/Superintendence Company of Buyers' choice and at Buyers' cost, such certificate to be final and binding evidence in respect of quality and condition.~~

~~10) FUMIGATION †Standard fumigation (phosphine) and certification for Sellers' account. Buyers' to advise Sellers of any special fumigation requirements at time of contract. Any special fumigation or certification to be for Buyers' account. f fumigation certificate by Licenced Fumigator is requested by the Buyers, cost is strictly for Buyers' account.~~

~~If fumigation certificate is required and Sellers' standard fumigation certificate (if applicable) is not acceptable to Buyers, then cost to provide same shall be for Buyers' account.~~

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~~If special fumigation is required by Buyers, Sellers to be informed at time of packing instructions being issued as per Clause 14 of this Contract.~~

~~11)~~**8) DOCUMENTATION** Sellers are to provide, by fax initially, the following documentation to Buyers within three (3) working days after completion of packing of containers;

a) Packing List

b) Commercial Invoice

~~a)~~c) Pro-forma phytosanitary certificate

~~12)~~**DELIVERY:** ~~Delivery to a terminal/port as nominated by Buyers under clause 7 above, within the period specified in clause 8 above. All costs/charges to DCT are for the account of Sellers, unless otherwise stated. All costs/charges after DCT are for the account of Buyers unless otherwise stated. Insurance up to and including DCT for Sellers' care and account. Insurance after DCT for Buyers' account.~~

9) OWNERSHIP, RISK AND TITLE:

a) Risk in the goods passes from Sellers to Buyers on delivery. Property in the goods remains with Sellers until all amounts payable under this Contract have been received in cleared funds in specified bank account. In the period after DCT but before passing of property, Buyers (including servants and agents) hold the goods as bailees only. If in the ordinary course of Buyers' business, Buyers on-sell the goods prior to passing of property, Buyers sell as Sellers' agent. If Buyers fail to make full payment within the time specified in this Contract, Buyers authorise Sellers to take possession and title in the goods. Any associated costs are for Buyers' account.

b) This clause creates a *Purchase Money Security Interest* for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA").

c) Where permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA.

d) The parties agree and undertake (including for the purposes of section 275(6) of the PPSA) that the terms of this contract shall be kept confidential to the parties at all times. Neither party may disclose any information pertaining to this contract except as otherwise required by law.

~~14)~~**10) PACKING/SHIPPING INSTRUCTIONS:** Buyers to give Sellers provisional Detailed written packing/shipping instructions ~~are to be issued~~ no less than 2015 calendar days prior to last date for delivery which shall be specified in the shipping instructions. ~~last date specified in clause 8 above.~~ Buyers to use best endeavours to ensure that required number of clean, seaworthy, cargoworthy food grade shipping containers ~~empty/suitable containers~~ (AQS approved, where applicable) are available at ~~Seller's call and nominated a~~ collection point nominated by Sellers [when??].

~~15)~~**11) PAYMENT:** Three~~Two~~ (32) options*

*Tick appropriate box. Where no box selected, the first option (A) deemed selected.
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(A) Cash by electronic telegraphic transfer 48-working hours prior to DCT against faxed/ email copy of Sellers' invoice	
(B) Fourteen (14) days after delivery to nominated Terminal as per clause 8	
(c) Cash by electronic telegraphic transfer 48-working hours after DCT against faxed/email copy of Sellers' invoice.	

~~16)~~**12) LEVIES AND TAXES:** Any industry, statutory or government levies which are not included in the Contract price shall be adjusted for in any related payments. Where a Goods and Services Tax (GST) has application to a supply made under this Contract, Sellers may, subject to the issuing a valid tax invoice, recover from Buyers an amount on account of GST, such amount to be calculated by multiplying the price for the supply by the prevailing GST rate.

~~17)~~**13) LAW:** This contract shall be governed by and shall be construed to be in accordance with the law for the time being in force in New South Wales, Australia ~~and in the State or Territory in which the transaction is executed (ie goods conveyed and title passed).~~ Performance of this Contract is subject to orders, rules and regulations of all government agencies, and to all causes, except as limited herein.

~~18)~~**14) RULES OF TRADE:** This contract is subject to the Trade Rules of Grain Trade Australia Ltd ~~the National Agricultural Commodity Marketing Association Ltd~~ [GTANACMA] currently in effect which Trade Rules are incorporated into this contract except to the extent the same are in conflict with the terms expressed herein.

~~19)~~**15) DISPUTE RESOLUTION/ARBITRATION:** Any dispute arising out of this contract, including any question of law arising in connection herewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of GTANACMA in force at the date of the commencement of arbitration ~~is contract~~ and of which both parties hereto shall be deemed to be cognisant.

Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration in accordance with the Dispute Resolution Rules of GTANACMA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

~~20)~~**16) OTHER TERMS AND CONDITIONS:**