

Member Update

Title: Review of GTA Trade Rules

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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 Trade Rules.

2. Background

The Trade Rules are now approximately 15 years old, and have been subject to limited ad hoc reviews in that time.

The Rules were created by merging a generic GAFTA contract, with the US Grain and Feed Rules. They were not drafted nor settled by lawyers.

The Rules have served the Trade well over the years. From time to time, largely as a result of arbitrations, GTA has received feedback from lawyers who are often looking at the Rules for the first time. The general effect of their comments is that the rules are "loose" and not sufficiently formal, as you would expect from a contract (of which they become part). For example, the Rules contain statements of "good practice". While this is useful guidance for the Trade, it is probably not appropriate that it be incorporated into a contract. The Rules also lack a meaningful definition section.

The intention of the review is not to change the effect of the Rules nor to change the way they operate. The review is only intended to separate out those parts of the Rules which shouldn't be incorporated into a contract; take out those parts which aren't being used and probably won't be used, and add a definition section.

3 Industry Feedback

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

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.**



TRADE RULES

First Issued:	March 1998
Amended:	November 1999
Amended:	July 2000
Amended:	September 2001
Amended:	September 2003
Amended:	October 2004
Amended:	May 2005
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DEFINITIONS

These definitions apply to the Rules, the Guidelines and to the contract, unless otherwise agreed to by the parties:

30 Days End of Week of Delivery means payment by or on the 30th day after the end of the Calendar Week the goods are delivered.

30 Days End of Month of Delivery means payment by or on the 30th day after the end of the Calendar Month the goods are delivered.

Agent means a person who is authorised to act on behalf of a Principal.

Administrator has the meaning given in section 9 of the Corporations Act.

Arrival means:

- (a) By rail: At the first 8 a.m. after the rail car is placed or reported to the Buyer as available for the Buyer's instructions, but excluding Saturdays, Sundays or Public Holidays at the location of delivery .
- (b) By trucks: At the time and date of arrival of the truck, unloaded, as evidenced by a weighbridge docket. If not available, other routine business records may be used to show Arrival time and date.

As Ginned means Delivery at the Seller's discretion as and when the commodity is ginned within the Delivery period specified in the contract.

As Harvested means Delivery at the Seller's discretion as and when the commodity is harvested within the Delivery period specified in the contract.

As It Comes means delivery at the Seller's discretion within the Delivery period specified in the contract.

Basis Point Rail means a facility with rail out-loading capacity.

Basis Point Road means a facility with road out-loading capacity.

Delivery Instructions means a particularised list of delivery instructions sufficient to generate a bill of lading.

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.

Broker's Note means a contract confirmation issued by a Broker.

Buyer's Call means that the Seller shall have fifteen [15] Calendar Days or such other time specified in the contract after receipt of instructions from the Buyer in which to make Delivery or Shipment.

Business Day means any day, 0800 hours until 1700 hours local time, Monday through Friday, except Public Holidays in the location of Delivery.

Calendar Day means the respective day of 24 hours as shown on a calendar.

Calendar Month means the respective month as shown on a calendar. A Calendar Month begins from the morning of the first Calendar Day of the month until midnight on the final Calendar Day of the week or month.

Calendar Week means the respective weeks as shown on a calendar. A Calendar Week begins at 0000 hrs on the morning of a Monday and ends at 2400 hrs the following Sunday. The first Calendar Week of a Calendar Month begins on the first Monday of a month. The last Calendar Week of a Calendar Month begins on the last Monday of a Calendar Month and may extend six [6] days into the following Calendar Month.

CAD means Cash Against Documents.

COD means Cash on Delivery.

Cash 30 Days means payment on or before the last day of the month during which the goods were invoiced.

Cash Against Documents means payment in cash immediately upon receipt by the Buyer of Commercial Documents.

Cash On Delivery means payment in cash immediately upon receipt of the goods.

Cash Price means the cash price of a physical commodity at a specific location or Basing Point.

Circle Trade means a String Trade in which the Seller re-purchases the Same Goods or part thereof from their Buyer or any subsequent Buyer.

Close-Out means that the parties' physical performance obligations under a contract come to an end and the contract is cash settled by reference to the difference between the contract price and the Fair Market Price.

Commercial Documents means the documents identified in the contract or where no documents are identified those documents which are customarily necessary to facilitate delivery including any invoice.

Controller has the meaning given in Section 9 of the Corporations Act.

Conveyance means the transfer, whether physical or documentary, of goods from the Seller to the Buyer by execution of the Contract.

Corporations Act means the Corporations Act 2001 (Cth).

DCT means Delivered Container Terminal.

Delivered Container Terminal means delivered to a nominated container terminal in an appropriately presented shipping container.

Delivered and Delivery means that the goods have been or will be (as the context requires) delivered, constructively placed, or otherwise made available to the Buyer at the destination specified by the Buyer in the Contract. .

Destination Quality means the quality of the goods determined at the destination specified in the Contract, as determined by Rule 8.1[Destination Quality].

Destination Weights means the weight of the goods at determined at the destination specified in the contract, as determined by Rule 7.1 [Destination Weight].

Dispute Resolution Rules means the GTA Dispute Resolution Rules in force as at the date of contract.

Eastern Standard Time means the time in Sydney/Melbourne whether on daylight-saving, or not.

Ex-Store means that the goods are delivered when loaded upon an appropriately presented form of transportation at the Seller's nominated facility.

Even Spread means an equal spread of delivery instalments determined by the total quantity divided by the number of Calendar Weeks in the period for Delivery.

Ex-Farm means the goods are delivered when loaded upon an appropriately presented form of transportation at the Seller's nominated farm.

Fair Market Price means:

- a) the price per tonne ascertained by Repurchase or Resale for a commodity which is actively trading, or
- b) in the case of default, the market price on the Business Day following the receipt of the default notice under Rule 17 (2):
 - i) Seller default: the price being offered by other sellers;
 - ii) Buyer default: the price being offered by other buyers.

First Half of the Month means from the morning of the 1st day of a Calendar Month until midnight on the 15th day of a Calendar Month.

FIS means Free In-Store.

Force Majeure has the meaning given in Rule 21[Force Majeure].

Free In-Store means that goods are delivered when delivered "in-store" at an appropriate storage facility with all receival fees and storage fees paid by the Seller up to the date of transfer or conveyance to the Buyer.

FOB means Free on Board.

FOR means Free on Rail.

FOT means Free on Truck.

Free on Board has the meaning contained in International Chamber of Commerce Publication 715E, Incoterms 2010.

Free on Rail means:

That the Seller must Deliver the goods into an appropriately presented railcar(s); and

Ownership and title passes in accordance with Rule 14 [Ownership and Passing of Title].

Free on Truck means:

- (a) That the Seller must Deliver the goods into an appropriately presented truck(s); and
Ownership and title passes in accordance with Rule 14 [Ownership and Passing of Title].

Guidelines mean the Guidelines to the GTA Trade Rules in force at the date of contract.

GST means the tax imposed by the “A New Tax System” (Goods and Services Tax) Act 1999 (Cth) and the related imposition Act of the Commonwealth.

GTA means Grain Trade Australia.

GTA Location Differential means the location differential set by GTA in relation to a tributary up country location at the time of Delivery.

Immediate means delivery within three [3] Business Days from the date of contract.

Insolvency Event means, in respect of a person:

- a) an order being made, or the person passing a resolution, for its winding up;
- b) an application being made to a court for an order for its winding up unless the application is withdrawn or dismissed within 5 Business Days;
- c) an Administrator being appointed to;
 - i) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
 - ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property unless the application is withdrawn or dismissed within 5 Business Days; or
 - iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- d) the holder of a security interest taking possession of any of the person's property;
- e) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- f) the person:
 - i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - ii) being taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent.
- g) the process of any court or authority being invoked against the person or any of its property to enforce any judgment or order for the payment of money or the recovery of any property, unless the person is able, within five [5] Business Days, to satisfy

the other party that there is no substantial basis for the judgment or order in respect of which the process was invoked;

- h) the person dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
- i) the person becoming, or taking any step that could result in the person becoming, an Insolvent under Administration;
- j) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or
- k) any analogous event,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Insolvent Under Administration has the meaning given in Section 9 of the Corporations Act.

Mean Contract Quantity means the quantity specified in the Contract, without allowances or tolerances.

NACMA means the National Agricultural Commodities Marketing Association Ltd. unless the context suggests otherwise, any reference to NACMA is deemed to be a reference to GTA.

NACMA Trade and Dispute Resolution Rules mean the GTA Trade and Dispute Resolution Rules.

Natural Terminal Port means:

- a) Free-In-Store price basing point of port zone, less the prevailing applicable location differential at time of delivery to a tributary up country location;
- b) Location shall be at Seller's' option at an up-country warehouse with access to rail, excluding price basing point or port locations; and
- c) Conveyance shall be at 'Seller's' option on a 'Free-In-Store' basis.

NTP means Natural Terminal Port.

Origination Quality means the quality of the goods as determined at origin, as determined by Rule 8.2 [Origination Quality].

Origination Weights means the weight of the goods as determined at origin, as determined by Rule 7.2 [Origination Weights].

Person includes a corporation.

Prompt means delivery within five [5] Business Days from the date of contract.

Public Holidays mean gazetted public holidays.

Registered Weighbridge means a weighbridge that is registered with the relevant government or trade authority.

Repurchase means an actual bona fide purchase of a commodity of like kind and quantity on the open market.

Resale means an actual bona fide sale of a commodity of like kind and quantity on the open market.

Right of Conveyance means the right to give a notice requiring transfer or delivery of the goods in accordance with the terms of the contract and the notice.

Rules mean these GTA Trade Rules.

Same Goods mean goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for Delivery to the same destination during the same period of Delivery. Different currencies shall not invalidate the circle.

Second Half of the Month means from the morning of the 16th day of the Calendar Month until midnight on the last day of the Calendar Month.

String means a series of contracts where subsequent Buyers and Sellers buy and sell the Same Goods.

Tolerance means the weight tolerance or allowance as specified in the Contract.

Trade Rules means these GTA Trade Rules.

Weekly means, in the context of a delivery or shipment of goods:

- delivery on 1st to the 7th day of a Calendar Month inclusive;
- delivery on 8th to the 14th day of a Calendar Month inclusive;
- delivery on 15th to the 21st day of a Calendar Month inclusive; and
- delivery on 22nd to the last day of a Calendar Month inclusive (the fourth week of a Calendar Month may consist of from seven to ten days)

Weight Certificate means a weight certificate issued by a registered weighbridge or other appropriately qualified person.

TRADE RULES

Rule 1.0 APPLICATION OF RULES

- 1) These Rules apply in so far as they have been incorporated into the contract between the parties.
- 2) The parties may expressly vary or exclude the application of these Rules in the contract.
- 3) In the event of any conflict between these Rules and the Dispute Resolution Rules, these Rules will govern.

Rule 2.0 ENTIRE AGREEMENTS AND VARIATION

- 1) The contract terms represent the entire agreement between the parties to the exclusion of any preceding drafts, negotiations and/or representations.
- 2) Any variation to the express terms must be mutually agreed in writing.

Rule 3.0 BROKERAGE**Rule 3.2 Powers of a Broker**

- 1) A Broker's Note shall be prima facie evidence of the terms of the contract between the parties. To the extent of any inconsistency between a Broker's Note and a document generated by a party, the Broker's Note shall prevail. For the avoidance of doubt, a Broker is not a party to the contract and does not represent or act as agent for either party.
- 2) A Broker has the power to bind two Principals only to the extent of their instructions and the Principals are not liable for any acts of the Broker in excess of such instructions.
- 3) A Broker who, in good faith or otherwise, exceeds its authority is liable for resulting damages.
- 4) A Broker who, in good faith, negotiates a contract which is in accordance with instructions from both principals, who, at the time of negotiations, advises each principal the name of the other, and who completes such negotiations in accordance with the rules and customs governing such transactions, thereby fulfils all obligations and has no further liability to either of the Principals. A contract so negotiated is valid and binding between the Buyer and the Seller the same as if it had been negotiated directly between them.

Rule 3.3 Payment of Brokerage

- 1) Brokerage shall be deemed to be earned on the issuance of a Broker's Note.
- 2) Brokerage shall be credited when the deliveries or shipments are invoiced or when the contract is otherwise performed or terminated.
- 3) Brokerage commission shall be paid by the Seller on the mean contract quantity. Such brokerage or commission shall be due upon presentation of proper invoice.

Rule 4.0 TIME

Time shall be of the essence.

Rule 5.0 QUANTITY

Unless otherwise agreed, all quantities shall be expressed metrically and to the nearest one/one-hundredth [1/100] of a tonne.

Rule 6.0 QUANTITY TOLERANCE

The Seller shall have the option of delivering five percent [5.0%] or twelve [12.00] tonnes, whichever is the lesser quantity, more or less than the contractual quantity at the contract price.

Rule 6.1 Overfills and Underfills

- 1) Any quantity delivered in excess of the upper Tolerance shall be deemed a breach of contract and entitle the Buyer to reject the excess if they so wish. The Seller then has the following options available with agreement of the Buyer:
 - i) Allocate the excess commodity tonnage against any other existing contract; or,
 - ii) Accept the relevant daily cash price for the excess commodity tonnage on the day of delivery, or,
 - iii) Accept the Buyer's rejection and any incurred removal expenses.
- 2) Any overfill on a truck commodity shall be priced by the Buyer at the current afternoon market price at the close of the day that the truck commodity is unloaded.
- 3) In the absence of a clearly stipulated applicable tolerance in the confirmation of the quantity traded, it shall be understood that any underfill or overfill on a rail commodity shall be settled at the market value at the close of the first Business Day following the date of load or unload, whichever weight is applicable, of the last railcar in fulfillment of the contract.
- 4) If the Seller delivers less than the minimum quantity permitted by the Tolerance it shall be deemed to be in default and shall compensate the Buyer in accordance with Rule 17(1) [Default].
- 5) Calculation of damages shall be against the mean contract quantity.

Rule 7.0 WEIGHTS

Unless specifically agreed otherwise, Destination Weights, which shall be determined by a Registered Weighbridge, shall be final and the basis of trade. If these are not available, loading point or government weights shall be accepted. Errors in weighbridge tickets in all cases shall be excepted.

Rule 7.1 Destination Weights

- 1) Destination Weights shall be determined at the point of un-load on a Registered Weighbridge.

- 2) Unless otherwise agreed, when a commodity is sold basis Destination Weights, Weight Certificates shall be supplied by and at the expense of the Buyer and such Weight Certificates shall be final and binding on both parties.
- 3) A commodity sold on specific Destination Weights may not be diverted by the Buyer to a destination where Registered Weighbridge weights are not available, except with permission of the Seller and must be confirmed in writing.

Rule 7.2 Origination Weights

- 1) Origination Weights shall be determined at the point of loading on a Registered Weighbridge.
- 2) Unless otherwise agreed, a commodity sold basis Origination Weights, Weight Certificates shall be supplied by and at the expense of the Seller and such Weight Certificates shall be final and binding on both parties.

Rule 8.0 QUALITY

Unless specifically agreed otherwise, Destination Quality shall be the basis of trade, and shall be determined by and according to sampling and analyses procedures established by GTA. If these are not available, point of loading or Origination Quality shall be accepted.

Rule 8.1 Destination Quality

- 1) Destination Quality shall be determined at the point of un-load. Unless otherwise agreed, where a commodity is sold basis Destination Quality, Quality Certificates shall be supplied by and at the expense of the Buyer and such Certificates shall be final and binding on both parties.
- 2) A commodity sold on specific Destination Quality may not be diverted by the Buyer to a destination where qualified Quality Grades are not available except with permission of the Seller and must be confirmed in writing.

Rule 8.2 Origination Quality

- 1) Origination Quality shall be determined at the point of loading.
- 2) Unless otherwise agreed, where a commodity is sold basis Origination Quality, Quality Certificates shall be supplied by and at the expense of the Seller and such Certificates shall be final and binding on both parties.

Rule 9.0 SELLERS' WARRANTIES

The Seller warrants that the commodity complies with all State and Federal Laws and requirements relating to chemical, pesticide residues, Genetically Modified Organisms' (GMO's) and all other specified government designated maximum residue levels.

Rule 10.0 CERTIFICATES

- 1) Unless otherwise agreed, any Certificates required, other than Weight and Quality Certificates, pursuant to the Terms of the Contract Confirmation shall be supplied by and at the expense of the Seller and such Certificates shall be final and binding on both parties.

- 2) Weight Certificates shall be supplied pursuant to Rule 7 [Weights] of these GTA Trade Rules
- 3) Quality Certificates shall be supplied pursuant to Rule 8 [Quality] of these GTA Trade Rules

Rule 11.0 BUSINESS DAYS

Should the time for doing any act or giving any notice, under the contract, expire on a non-Business Day, the time so limited shall be extended until the first Business Day thereafter. The period of Delivery or Shipment shall not be affected by this Rule.

Rule 12.0 TIME OF DELIVERY OR SHIPMENT

Where time is calculated "from" a particular day, that day is not counted in the computation of time.

Rule 13.0 CONVEYANCE AND DELIVERY INSTRUCTIONS

Unless otherwise agreed, the Seller shall have the right of conveyance.

Rule 13.1 Delivery Instructions

- 1) In cases of a contract for other than Loaded, Immediate, or Prompt instructions for Delivery, the Seller shall give the Buyer five [5] Business Days written notice of commencement of Delivery, and the Buyer shall within two [2] Business Days of receipt of such notice give Delivery or consigning instructions to the Seller.
- 2) In cases of a contract with terms Ex-Store, Ex-Farm or Free on Board instructions for Delivery, other than contracts with Loaded, Immediate, or Prompt instructions, the Buyer shall give the Seller not less than five [5] Business Days written notice of intent to present appropriate transportation for the commencement of loading, and, the Seller shall, within two [2] Business Days of receipt of such notice, give delivery or consigning instructions to the Buyer.
- 3) Where goods are Delivered in more than one consignment, the contract shall be deemed to be a separate contract in respect of each consignment. The Buyer shall not be entitled to reject an entire consignment because of any default occurring in some other consignment on the same contract.

Rule 13.2 Delinquent Payments at Time of Conveyance

- 1) Should during the time fixed for Delivery the Buyer be indebted and delinquent in payment to the Seller under this or any prior transaction, the Seller shall be entitled, on the giving of notice to the Buyer, to withhold Delivery until such time that the delinquent indebtedness is satisfied; and
- 2) If the debt has not been satisfied within three [3] Business Days from the giving of such notice, the Seller shall be entitled, on the giving of a further notice to the Buyer, to cancel the contract, in which event the Buyer shall be deemed to be in default and the provisions in Rule 17.0 [Default] shall apply.

Rule 14.0 OWNERSHIP AND PASSING OF TITLE

Unless otherwise agreed, title to goods as well as risk of loss and/or damage shall remain with the Seller until the goods have been conveyed to the Buyer at the designated point of conveyance:

- 1) On FOB Origin, Ex-Farm, Ex-Store, or FOB Basing Point contracts; title passes at the time when the goods are accepted by the carrier via the appropriate shipping document.
- 2) On Delivered or Delivered Basing Point contracts; title passes at the time when goods are constructively placed, or presented for unloading, or otherwise made available at the Buyer's original destination.
- 3) On In-Store contracts; title passes at time of transfer and/or filing of documents (if required), unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.

Rule 15.0 REJECTION

For the purpose of this Rule, if goods are of a superior or equal quality to the contract specifications, the Buyer shall not be entitled to reject the goods, provided that the goods otherwise comply with the contract specifications.

Rule 15.1 Rejection - Quality Outside of Contract Terms

Unless otherwise agreed, goods sold on description or sample may be rejected on account of not being in accordance with description or sample, as provided under this Rule:

Rule 15.1.2 Destination Quality

- 1) The Buyer shall examine consignments on Arrival to ascertain by inspection or other means the quality and condition of the consignment.
- 2) The Buyer shall immediately notify the Seller of any consignment which is not of the contractual quality.
- 3) Notification shall be made by telephone and notice sent no later than 12 noon on the Business Day following the Arrival of the goods.
- 4) This notice shall describe the actual quality of the grain and state that the Buyer rejects the consignment or offers to accept the consignment with a discount.
- 5) After receipt of such notice, the Seller may agree to the discount or arrange disposal of the goods immediately.
- 6) The Seller's liability ceases if notification of rejection has not been made in accordance with (4) of Rule 15.1.2 [Destination Quality].
- 7) The Seller shall deliver and the Buyer must accept substituted deliveries for rejected goods, provided that the substituted goods arrive within the contract time or within five [5] Business Days next following the date of rejection. Where delivery is Immediate Delivery, substituted goods must arrive within three [3] Business Days.
- 8) If the Seller elects to arrange for disposal of the goods, the Buyer shall upon the Seller's request, unload, recondition and salvage the goods to the Seller's best advantage. Any reasonable expense shall be at the cost of the Seller.

- 9) If the Buyer is unable to handle the shipment as requested, it shall be the Buyer's duty to notify the Seller of this fact at the time the Buyer notifies the Seller of shipment's condition and the Seller shall dispose of the shipment.

Rule 15.1.3 Origin Quality

Grain that is sold for delivery, origin inspection, shall be covered by an inspection certificate of the quality contracted.

Rule 15.2 Rejection Contested

The Buyer shall on request of the Seller give notice of the grounds for rejection. Where the Seller contests rejection by the Buyer, the matter is subject to Rule 16 [Finality] and may be submitted to GTA Arbitration as per Rule 26 [Arbitration] with demurrage, any extra cartage or extra expense involved for party in default.

Rule 16.0 FINALITY

- 1) Subordinate to GTA Rule 15 [Rejection], all adjustments or compensation claimed based on defect of quality or condition or weights which are apparent upon reasonable inspection must be advised by notice as soon as is practicable after unloading or presentation of appropriate documents.
- 2) Should a party fail to comply with these time limits and requirements for documentation and substantiation of such a claim, the provisions of Rule 23 [Arbitration] shall apply. In the event of failure to comply with Rule 16(1), all claims in regard to quality shall be void unless a GTA Arbitration Committee determines that the delay in making the claim was justified.

Rule 17.0 DEFAULT

- 1) A party in default of any of its obligations under a contract or who anticipates that it will default must serve notice on the other party as soon as practicable.
- 2) The notice must state the date of default or anticipated default and the nature of and reasons for the default.
- 3) The party in receipt of such notice must immediately, or as soon as is reasonably practical, notify the other party of its election to either;
 - a. affirm the contract; or
 - b. buy in, or sell against the defaulter; or
 - c. cancel all or any part of the defaulted portion at Fair Market Price.
- 4) In a case of actual default where no notice has been given, the party not in default must give the defaulting party notice containing the details in (2) above and as soon as is practical thereafter advise the defaulter which of the options in 3 above it elects to pursue.
- 5) Default by either party in performance of the contract in accordance with the contract terms shall entitle the other party to damages in respect of and/or reject only the actual defaulted portion.

- 6) A party in default is liable to pay damages based on the defaulted quantity multiplied by the difference between the contract price and Fair Market Price as at the date of default, within 7 days of receipt of a demand to pay.
- 7) Where either party is dissatisfied with the ascertained Fair Market Price and damages cannot be mutually agreed, then the determination of Fair Market Price may be referred by either party for expert determination according to the Dispute Resolution Rules, and which shall, for the purpose of this sub-rule only, be final and binding on both parties.
- 8) On the happening of an Insolvency Event the solvent party must as soon as is practicable after becoming aware of the insolvency, elect by notice in writing to the insolvent party to either call for performance of the contract, or to close-out the Contract at the Fair Market Price prevailing on the date of the Insolvency Event.
- 9) This Rule 17 [Default] does not apply to Circle Trades except as provided by Rule 18 [Circle Trades].

Rule 18.0 CIRCLE TRADES

Rule 18.1 Settlement of Circle Trades

Where there has been a Circle Trade:

- 1) As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.
- 2) Subject to the terms of these Rules, if the goods are not appropriated, or, having been appropriated documents are not presented, settlement by all parties in the Circle Trade shall be calculated on the mean contract quantity and shall be settled over the (agreed market price) on the first day for contractual delivery and invoices shall be settled between each Buyer and its Seller in the circle by payment of the differences between the agreed market price and the relative contract price.
- 3) Payment shall be as per contract terms as if the day for appropriation was on the mean date of the established Delivery period, or, should the Circle Trade not be ascertained before the expiry of this time, then payment shall be as if the day for appropriation was on the last date of the established Delivery period, but not later than thirty [30] consecutive days after the circle is ascertained.
- 4) Should any party in the Circle Trade prior to the due date of payment commit any act comprehended in Rule 17.6 [Default Due To Insolvency] of these Rules, settlement by all parties in the Circle Trade shall be calculated at the closing out price as provided for in Rule 17.8 [Default Due To Insolvency], which shall be taken as a basis for settlement. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract Price.

Rule 19.0 PAYMENT

- 1) The Buyer is to make payment to the Seller upon presentation of an invoice identifying the quality, grade, weight, price, contract number, delivery vehicle identifier, amount owing and payment terms.
- 2) Invoices need to be accompanied by any Commercial Documents specified in the Contract.

Rule 19.1 Payment

Unless otherwise agreed, it shall be understood that invoices are subject to payment on presentation to the Buyer or its designated agent, when properly documented and substantiated by Commercial Documents and, if applicable, Weight and Quality Certificates.

Rule 19.2 Late payment

The Seller is entitled to seek from the Buyer recompense for late payment by the Buyer and may request GTA Arbitration in such occurrences.

Rule 19.3 Passing on of “Goods and Services Tax” (GST)

- 1) If GST applies to any supply made under the contract; then the Seller may, in addition to the price or any other amount or consideration expressed as payable in the contract, recover from the Buyer an additional amount on account of a GST.
- 2) Such an amount is payable by the Buyer subject to the issuing of a valid tax invoice by the Seller and is to be calculated by multiplying the price or any other amount or consideration payable by the Buyer for the supply by the prevailing GST rate.
- 3) If it is determined on reasonable grounds that the amount of the GST paid or payable on any supply made under the contract differs for any reason from the amount of the GST recovered from the Buyer including by reason of:
 - (a) an alteration in the GST law; or
 - (b) the issue of or an alteration in ruling or advice of the Commissioner of Taxation; or
 - (c) the allowance to the Seller of a refund of GST in respect of any supply made under the contract; or
 - (d) a decision of the Administrative Appeals Tribunal (or its equivalent) or a court; then,
the amount of GST recovered or recoverable from the Buyer shall be adjusted accordingly.
- 4) Notwithstanding any other provision in the contract if the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (“Taxes”); then, the agreement shall be reduced by the same amount as the actual total costs of the Seller (including any Taxes but excluding any input GST paid or payable by the Seller) are reduced as a consequence of the abolition or a reduction in Taxes, whether directly by way of the abolition of or reduction in Taxes paid or payable by the Seller to its suppliers or to any government, or indirectly by way of a reduction in the prices (excluding any GST) charge by the suppliers to the Seller.

Rule 20.0 NOTICES

- 1) Any notice required pursuant to these Rules shall be given in writing and delivered by hand, facsimile, telex or email.
- 2) Any notice given orally must be confirmed in writing.
- 3) The sender bears the onus of proving that the above notice was sent or received by the receiver.
- 4) Any notices issued after 1600 hours Eastern Standard Time on a Business Day shall be deemed to have been received on the next Business Day.
- 5) A notice to a Broker or Agent, as opposed to the party itself, shall be a valid notice for the purpose of these Rules.
- 6) For a resale:
 - a. Notices must be forwarded on without delay by the Buyer to the respective Seller or visa versa.
 - b. Any notice issued after 1600 hours Eastern Standard Time on a Business Day permissible under the contract must be forwarded on no later than 1000 hours Eastern Standard Time on the next Business Day.
 - c. Upon request, the Seller shall provide the Buyer with documentary evidence of Seller's receipt of notice.

Rule 21.0 FORCE MAJEURE

Rule 21.1 Conditions of Force Majeure

- 1) Neither the Buyer nor the Seller shall be responsible for delay in Delivery or Shipment of goods or any part thereof occasioned by any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/ or shipping strike), lock-out, combination of workers, or civil commotion which is not due to said party's own acts or negligence, which constitute Force Majeure.
- 2) The loss of a commodity due to production risks or crop failure does not constitute Force Majeure.

Rule 21.2 Notice and Proof of Force Majeure

- 1) The party invoking Force Majeure must notify the other party within five [5] Business Days of the commencement of the occurrence, or not later than five [5] Business Days after the beginning of the contract Delivery or Shipment period, whichever is the later. Within five [5] Business Days of receiving the notice the party may request proof of the Force Majeure event and evidence that the invoking party has exerted best efforts to meet the terms of the contract. The invoking party shall have five [5] Business Days to respond. In the case of resale such information shall be passed on without delay.
- 2) Neither party shall have claim against the other for days or non-fulfillment under this Rule provided that the party invoking the Rule shall have supplied, if so requested by the other party, satisfactory evidence justifying the delay of non-fulfillment.

Rule 21.3 Extension of Contract due to Force Majeure

- 1) Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of a period equal to that of the delay caused by said act, but not more than thirty [30] consecutive days from the end of the delivery period.
- 2) If delivery under this Rule is still prevented at the end of the first extension period, the party not invoking the Rule shall have the option of canceling the contract as per Rule 17 [Default] or any unfulfilled part of the contract mutually agreeing to one further extension period (the second extension) of not more than thirty [30] consecutive days.
- 3) If at the conclusion of the second extension period delivery is still prevented, the contract or an unfulfilled part thereof shall be considered in Default as per Rule 17 [Default].

Rule 22.0 EXPERT DETERMINATION

A party(s) to a contract may refer a question for non-binding resolution to GTA for Expert Determination pursuant to the Dispute Resolution Rules.

Rule 23.0 ARBITRATION

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 Dispute Resolution Rules in force at the commencement of the arbitration.

Rule 24.0 CHOICE OF LAW

- 1) This contract shall be interpreted according to and governed by the laws in force in New South Wales with specific reference to the Sale of Goods Act 1923 and the Warehouseman's Liens Act 1935.
- 2) Performance of this contract is subject to orders, rules, and regulations of all government agencies, and to all causes, except as limited herein.