

## Member Update

**Title:** Grain Trade Australia - CFR/CIF Contract

**Update No.:** 12 of 13

**Date of Issue:** 1 July 2013

### Distribution

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

#### 1. Issue

GTA has developed a draft CFR/CIF Contract for use by GTA Members and is calling for industry comment. The contract has been primarily developed with the Australian grain export container trade in mind. Industry comment on the draft CFR/CIF Contract should be received by GTA at [admin@graintrade.org.au](mailto:admin@graintrade.org.au) by the **COB Friday 12 July 2013**.

#### 2. Background

GTA has for some years published standard form contracts largely designed for use in the domestic grain trade<sup>1</sup>.

All GTA contracts incorporate the GTA Trade and Dispute Resolution Rules, which provide that the proper law of the contracts is the law of New South Wales, and that disputes will be subject to GTA arbitration.

Traditionally international and export contracts have been the domain of GAFTA who publish a wide range of contracts for particular trades.

At the request of Members, the GTA Board has agreed to the preparation of a GTA CFR/CIF Contract utilising the GTA Trade Rules and Dispute Resolution process.

#### 3. CFR/CIF Contract Development Advisory Group

The Commerce Committee agreed to engage the assistance of a specialist CFR/CIF Contract Development Advisory Group (the Group) to help development the contract. The Group comprised of:

- Geoff Farnsworth, (Chairman) Macpherson + Kelley Lawyers
- John Orr, Premium Grain Handlers
- Nathalie Dufils, GrainCorp
- Archie Wilson, GrainCorp
- Josh Taylor, Alfred C Toepfer International (Australia) Pty Ltd
- James Roberts, CBH Group
- Alister Boyd, Cargill
- Michael Walsh, Cargill
- David Werner, Cargill
- James Maw, Glencore

The Group met on 1 May and again on 5 June to discuss the specific requirements for a CFR/CIF Contract to meet the needs of the broader grain industry and in particular the export container sector. The Group chose to use the familiar contract title of CIF/CFR in accordance with the INCOTERMS 2010.

A draft copy of the contract is attached below for industry review.

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<sup>1</sup> The one exception is the GTA FOB Contract.

**GRAIN TRADE AUSTRALIA CONTRACT No 5.  
CFR/CIF CONTRACT FOR GRAIN IN CONTAINERS**

Sale Contract Number: [insert number]

Date:

**SELLER:** [insert Seller's full name and address and company number, if known] ("Seller")

**BUYER:** [insert Buyer's full name and address and company number, if known] ("Buyer")

**BROKER:** [insert Broker's full name and address and company number, if known] ("Broker")

**COMMODITY:** [insert commodity eg Australian Origin Wheat]

**QUANTITY:** [insert weight]mt, +/-5% at Seller's option

**QUALITY/SPECIFICATION:** [insert grade eg APH; % moisture, protein, screenings]

**PACKING:** In bulk, in containers (20/40ft)/in bags in containers (20/40ft) .

**PRICE:** \$[insert price]mt, CFR/CIF\* (insert destination)

**SHIPMENT PERIOD:** [insert date range and load port(s)]. The Shipped on Board date of bills of lading shall be accepted as proof of shipment in the absence of evidence to the contrary.

**DOCUMENTS:** [list commercial documents and documents required by Buyer to facilitate import]

**OTHER TERMS:** This contract incorporates the Grain Trade Australia Dispute Resolution Rules (including arbitration).

This Sale Confirmation and the accompanying GTA Standard CFR/CIF\* Terms for Grain in Containers, which both the Seller and the Buyer acknowledge that they have read, understood and agreed, constitute the entire contract between the Buyer and Seller.

\_\_\_\_\_  
Signed by Seller

Date:

\_\_\_\_\_  
Signed by Buyer

Date:

## **GTA STANDARD CFR/CIF TERMS FOR GRAIN IN CONTAINERS**

### **1. BROKERAGE:**

- (a) Brokerage shall be deemed to be earned on the issuance of a Broker's Note.
- (b) Brokerage shall be credited when the deliveries or shipments are invoiced or when the contract is otherwise performed or terminated.
- (c) 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.

### **2. CERTIFICATION OF QUALITY, GRADE AND CONDITION:**

Quality, grade and condition will be final at load port as per certificate issued by container packer/recognised independent Superintendence Company, appointed by Seller at Seller's cost.\*

### **3. SAMPLING AND ANALYSIS:**

- (a) Representative samples of the goods shall be drawn during loading by the container packer in accordance with standard protocols as employed at the loading facility to satisfy the sampling requirements of DAFF and to obtain a representative sample of the entire contract/shipment.
- (b) Final determination of quality shall be established on the composite sample drawn on packing.

### **4. FREIGHT AND CLASSIFICATION:**

Partial shipment and transshipment permitted.

### **5. PAYMENT:**

This contract is specified on page 1 to be either T/T Sight; L/C, Prepayment or CAD. The payment terms for each contract are:

- (a) T/T Sight
  - (i) Buyer shall pay 100% of the invoice by telegraphic transfer within one working day after presentation of faxed copy of the following original commercial documents:
    - Bill of lading
    - Invoice
    - Certificates
  - (ii) Seller will not release to Buyer any bill of lading issued in respect of Commodity unless Seller has received confirmation from Seller' bank that payment for such Commodity has been received into Seller' bank account in accordance with these terms.
  - (iii) Buyer must pay Seller interest at the Australian 90-day bank bill rate/LIBOR\* plus 5% on any outstanding amount of the commercial invoice for every day that payment is not made in accordance with these terms. No

obvious clerical error in the shipping documents shall entitle Buyer to reject or delay them or delay payment.

(b) Letter of Credit

(i) Irrevocable letter of credit to be open at least 14 days prior to first day of Shipment Period.

(ii) Issuing bank to be of credit standing acceptable to Seller.

(c) Prior Payment

Full Payment for Commodity must be received by Seller prior to Commodity being shipped.

(d) Cash Against Documents (CAD)

**6. OWNERSHIP AND PASSING OF TITLE:**

Title to goods will remain with Seller until full payment received by Seller.

**7. INSURANCE:**

(a) The Commodity will be at Buyer's risk from delivery into the care of the Carrier at the load port container terminal.

(b) If this is a CIF contract Seller must procure insurance in accordance with INCOTERMS 2010.

**8. IMPORT PERMITS:**

(a) Buyer to obtain at its own risk and expense, any import licence or other official authorisation and carry out all customs formalities for the import of the goods and for their transport through any country.

(b) Buyer is to advise Seller at time of contract of any requirements relating to import certification.

(c) Buyer may advise Seller of any additional requirements (at Buyer's cost) relating to import certification (including providing a copy of an appropriate Import Permit for the total contract quantity including tolerance) up to 14 days prior to the first day of the Shipment Period but no later. If Seller cannot comply with Buyer's additional import requirements Seller must notify Buyer as soon as practicable that unless the additional requirement is abandoned, Seller will terminate the contract and claim damages for any losses incurred as a result of the termination.

**9. DUTIES, TAXES, LEVIES, ETC:**

All taxes, levies, licences, imposts of any nature on freight and cargo outside Australia (including but not limited to Terminal Handling Charges, container demurrage and detention) are for Buyer's account.

**10. QUANTITY TOLERANCE:**

Seller shall have the option of delivering five percent [5.0%] more or less than the contractual quantity at the contract price, unless otherwise agreed by the Parties.

**11. WEIGHTS:**

Bill of lading/waybill weights shall be final and binding with respect to weights.

**12. ADDITIONAL CERTIFICATES:**

Any Certificates required pursuant to the Terms of the Contract, other than Phytosanitary, Origin, and Weight and Grade Certificates, shall be supplied by and at the expense of the Buyer.

**13. NOTICES:**

Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email (return receipt acknowledging the message has been received is required) or by other method of rapid written communication, subject to the burden of proof of successful transmission to be with the sender. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours Sydney time on a business day shall be deemed to have been received on the business day following. In case of resale, all notices shall be passed on without delay by the Buyer to Seller. Should the notice be received after 1600 hours Sydney time on the last business day permissible under this contract, Seller shall pass it on as soon as practical, but no later than 1000 hours Sydney Time on the next business day thereafter. Upon request, Seller shall provide the Buyer with documentary evidence of Seller's receipt of notice.

**14. NON-BUSINESS DAYS:**

Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 1700 hours Mondays to Fridays inclusive.

**15. STRIKES, ETC/FORCE MAJEURE:**

Should Seller be prevented from shipping goods by reason of fire, strikes, lockouts, riots, differences with or between work-men, accidents to or break-down of machinery, plant or equipment, civil commotions, policies or restrictions of governments, including restrictions of export and other licenses, or any cause comprehended in the term Force Majeure, at the port or ports of loading or elsewhere preventing transport of the goods to such ports, Seller must use its best endeavours to remove, overcome or minimise the effects of that Force Majeure event as quickly as possible. Seller must give prompt notice to the Buyer of its nature, likely duration, the obligations affected by it, the extent of its effect on those obligations, and the steps taken to rectify it. Performance of Seller's obligations is suspended to the extent to which it is affected by the Force Majeure Event and for the duration of the Force Majeure event. If a Force Majeure event continues for 30 days then the Buyer has the right to extend the Last Shipment Date by a further 30 days. If the Force Majeure Event continues after the expiry of these further 30 days then the contract shall be terminated automatically and neither party shall have a claim against the other for delay or non-performance provided that satisfactory evidence justifying the delay or non-performance be presented to the other party.

**16. PROHIBITION:**

This clause applies in the event of prohibition of export or any other executive or legislative act by or on behalf of the Federal Government of Australia or of a Government of a state of Australia where the port or ports of delivery named herein is/are situate, or of blockade or hostilities, restricting export, whether partially or otherwise, by the Last Shipment Date. Any total or partial restriction to prevent fulfilment whether by delivery or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be extended by 30 days beyond the termination of the prohibition event. If prohibition continues for more than 30 days after the Last Shipment Date, this contract or any unfulfilled part thereof shall be cancelled. If Seller invokes this clause, it shall advise the Buyer with due despatch.

**17. CHOICE OF LAW:**

This contract shall be interpreted according to and governed by the laws in force in New South Wales, Australia.

**18. TIME**

Time is of the essence in relation to the performance of this contract.

**19. ARBITRATION:**

Any dispute arising out of this contract, including any question of law arising in connection therewith shall be referred to arbitration in accordance with the Dispute Resolution Rules of Grain Trade Australia ("GTA") in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant except that this contract prevails to the extent of any inconsistency but no further. 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 GTA, 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. Notice of appointment of an arbitrator must be given in writing by the party commencing arbitration within 6 months of the Vessel's arrival at the first discharge port named in this contract, otherwise all claims shall be deemed to be waived and no proceedings whatsoever whether by way of arbitration or litigation shall be commenced.

**20. OTHER TERMS AND CONDITIONS:**

The terms CFR and CIF are to be construed in accordance with INCOTERMS 2010.