

## **Member Update**

**Title: Review of GTA No. 4 DCT Contract**

**Update No.: 13 of 12**

**Date of Issue: 22 July 2012**

### **Distribution**

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

#### **1. Issue**

The GTA Commerce Committee is seeking a second round of industry submissions regarding purposed amendments to the GTA No. 4 DCT Contract.

**Submissions are due by the COB Friday 13 July 2012**

#### **2. Background**

On the 12 March 2012 the GTA Commerce Committee called on industry to review the GTA DCT Contract and submit their recommendations. **GTA Member Update No. 02 of 12 Review of the GTA No. 4 DCT Contract.**

On receiving industry recommendations GTA Commerce Committee formed a specialist industry sub-committee with a high level of expertise in DCT contracts.

The GTA DCT Review Committee consists of:

Geoff Farnsworth	Macpherson & Kelley Lawyers
John Orr	Premium Grain Handlers P/L
Matt Kelly	Rural Merchandise South Australia
Matt Tabor	Blue Ribbon Seeds
Shane Wall	Pea growers Co-Operative Ltd

The DCT Review Committee was tasked with the development of a revised GTA DCT contract with reference to the received industry submissions.

The revised GTA DCT Contract is attached below and GTA recommends Members with an interest in this contract, read and make further submissions as required.

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

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**GTA Contract No. 4**

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

BROKER/S CONTRACT REF (if applicable) \_\_\_\_\_

Date: \_\_\_\_\_

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** \_\_\_\_\_

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.

3) **(A) QUANTITY:** \_\_\_\_\_metric tonnes 5% more or less in \_\_\_\_\_ 20/40 ft  
(delete one) shipping containers (TEU/FEU).

**(B) TOLERANCE:** The Sellers shall have the option of delivering 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.

4) **PACKAGING:** In clean, seaworthy, cargoworthy shipping containers in bulk with bulkheads at Sellers' cost or new bags. If bags, state type of bag, printing/bag markings if required and

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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;

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5) **WEIGHTS:**

- a) **Bagged cargo** – net bagged weights as certified by Sellers' packing list
- b) **Bulk cargo** – as certified by registered weighbridge certificate.

- 6) **PRICE:** A\$\_\_\_\_\_ (Australian dollars) per tonne, Delivered Container Terminal (DCT) \_\_\_\_\_ (specify port).

7) **INSPECTIONS**

- a) **Government** – 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 to be strictly for account of Buyers.
- b) **Independent Surveyor** – At Buyers' care cost and account and such details to be provided to Sellers at time of packing instruction being issued as per Clause 10 of this Contract.

8) **DELIVERY PERIOD:**

- a) Delivery at Buyers' call shall be between \_\_\_\_\_ both dates inclusive.
- b) Failure by Buyers to give instructions under Clause 12 for delivery during the Delivery Period shall constitute default under this Contract and entitle the Sellers to claim damages.

- 9) **FUMIGATION** If fumigation certificate by Licensed 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.

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.

- 10) **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
  - c) Container and Product Inspection Records
  - d) Weighbridge Certificates
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11) **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

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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.

**12) PACKING/SHIPPING INSTRUCTIONS:**

- a) Buyers to give Sellers provisional written packing and shipping instructions (including last day for delivery ("Vessel "Cut-Off"")) no less than 20 calendar days prior to nominated Vessel Cut-Off date. Buyers to ensure that required number of clean, seaworthy, cargoworthy shipping containers (approved, where applicable) are available at least 5/14 days [delete which not applicable otherwise 14 days to apply] prior to Vessel Cut-Off date at a collection region nominated by Sellers.
- b) Buyers may vary Vessel Cut-Off date at any time on condition that the new date falls within the Delivery Period and all other provisions of this Contract are met. Any costs or expenses incurred by the Sellers as a result of varying the Vessel Cut-Off date are for the account of the Buyers.

**13) PAYMENT:** Three (3) options\*

(A) Cash by 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 telegraphic transfer 48-working hours after DCT against faxed/email copy of Sellers' invoice.	

- 14) 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.

- 15) 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. Performance of this Contract is subject to orders, rules and regulations of all government agencies, and to all causes, except as limited herein.

- 16) RULES OF TRADE:** This contract is subject to the Trade Rules of Grain Trade Australia Ltd [GTA] 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.

- 17) DISPUTE RESOLUTION:** 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

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\*Tick appropriate box. Where no box selected, the first option (A) deemed selected.  
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Dispute Resolution Rules of Grain Trade Australia Ltd in force at the date of this 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 NACMA, 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.

**18) OTHER TERMS AND CONDITIONS:**