

MemberUpdate

UPDATE 32 OF 14 • 7 November 2014

TOPIC: 2014/15 GTA Contract No. 4 Delivered Container Terminal (DCT) Review

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

1. Issue

The GTA Commerce Committee is currently seeking submissions on proposed amendments to GTA Contract No.4 Delivered Container Terminal (DCT).

2. Background

The GTA Commerce Committee is responsible for the regular review of GTA Contracts to ensure they are fit for purpose and meet the needs of the industry. Following industry review and feedback, final recommendations are tabled with the GTA Board for endorsement prior to their release.

GTA Contract No.4 Delivered Container Terminal (DCT) was last reviewed by the Commerce Committee and industry in 2012 with the current version released in September 2012. The Committee are now undertaking a further review of the DCT contract following member submissions and proposed amendments.

As per the last review, the Commerce Committee has sought input from a specialist industry sub-committee comprising of:

- | | |
|--------------------|------------------------------|
| • Geoff Farnsworth | Holding Redlich |
| • John Orr | Premium Grain Handlers P/L |
| • Matt Kelly | K M & W M Kelly & Sons |
| • Matt Tabor | Blue Ribbon Seeds |
| • Shane Wall | Pea Growers Co-Operative Ltd |

3. Submissions

An amended version of the No.4 DCT Contract can be found below. Draft amendments have been made throughout the document so we ask that members and industry review the contract in its entirety and provide feedback.

For reference, the current GTA DCT Contract can be found at:

<http://www.graintrade.org.au/sites/default/files/file/Contracts/GTA%20Contract%20No%204%20DCT%20Contract%20v1.pdf>

The Commerce Committee invite submissions by **COB Tuesday 18th November 2014.**

Submissions should be emailed to admin@graintrade.org.au and entitled "DCT Contract Review".

A proforma for lodging submissions is located on the GTA website at <http://www.graintrade.org.au/committees>

Unless marked "confidential" and appropriate supporting reasons provided, submissions may be placed on the GTA website for industry review.

**GRAIN TRADE AUSTRALIA CONTRACT No 4.
DELIVERED CONTAINER TERMINAL (DCT) CONTRACT**

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")

GOODS: [insert 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 and currency]MT, DCT (insert load port(s))

DELIVERY PERIOD: [insert date range and load port(s)], both dates inclusive.

COMMERCIAL DOCUMENTS: [list Commercial Documents and any documents specified in Import Permit, required for export compliance and to facilitate import at port of destination]

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

This Sale Confirmation and the accompanying GTA Standard DCT Terms for Grain Delivered Container Terminal, 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 TERMS FOR GRAIN DELIVERED CONTAINER TERMINAL (DCT)

1. BROKERAGE (if applicable):

- (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. PACKING INSTRUCTIONS

- (a) The Buyer will give the Seller written Packing Instructions (including last permissible day for delivery to terminal gate ("Delivery Date")) at least 14 calendar days (unless mutually agreed otherwise) prior to the Delivery Date.
- (b) For the avoidance of doubt, the Delivery Date must fall within the Delivery Period.
- (c) Unless otherwise agreed, Packing Instructions must specify: Terminal Gate; container yard and empty container release number; Customs and Quarantine clearance details inc RFP and EDN; bag weights and printing details; Import Permit; vessel name, voyage no, and ETD; port(s) of destination.
- (d) Failure by the Buyer to provide valid and complete Packing Instructions within the time specified at Clause 2(a) is a default under the contract and entitles the Seller to terminate the contract and claim damages.
- (e) Failure by the Seller to deliver the Goods in accordance with the Packing Instructions (inc any variation under Clause 2(g)) is a default under the contract and entitles the Buyer to terminate the contract and claim damages.
- (f) The Buyer warrants that the required number of clean, seaworthy, cargo-worthy shipping containers (food-grade, where specified) are available at least 15 calendar days (unless mutually agreed otherwise) prior to the Delivery Date at a collection region nominated by the Seller. Failure to provide containers within the time specified will be considered a breach of warranty sounding in damages and not a default sufficient for termination of the contract.
- (g) The Buyer may vary the Delivery Date at any time prior to the Delivery Date provided that the new date falls within the Delivery Period and all other provisions of this Contract are met. All reasonably unavoidable costs or expenses incurred by the Seller as a result of the variation of the Delivery Date are for the account of the Buyer.

3. PACKING

In clean, seaworthy, cargo-worthy shipping containers in bulk with bulkheads at Seller's cost or new bags. If bags, state type of bag, printing/bag markings if required, and weight. The Seller is to provide a one colour, one side standard brand. Additional cost of 2 or more colours or non-standard artwork for Buyer's account.

4. FUMIGATION

The goods will be fumigated by the Seller (at Seller's cost) and Seller will certify same. Independent fumigation and/or certification are for Buyer's account. Any specific

fumigation requirements to be declared in Packing Instructions (see Clause 2) and (unless mutually agreed otherwise) shall be at Buyer's expense.

5. SAMPLING AND ANALYSIS

- (a) Unless mutually agreed otherwise, representative samples of the Goods shall be drawn during packing by the container packer in accordance with standard protocols as employed at the packing facility to satisfy the sampling requirements of government agencies 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.

6. CERTIFICATION OF QUALITY, GRADE AND CONDITION

Quality, grade and condition will be finally and conclusively determined by certificate issued by container packer. Any requirement for an independent quality inspection and/or certificate to be declared in Packing Instructions and to be for the Buyer's account unless otherwise stated.

7. CERTIFICATION OF WEIGHT

Bulk weights and net bagged weights shall be certified by the Seller's packing list. Any requirement for an independent weight certificate will be declared in Packing Instructions and be for the Buyer's account unless otherwise stated.

8. DELIVERY

Containers are to be delivered to terminal gate as declared by the Buyer in the Packing Instructions. All costs/charges to terminal gate are for the account of the Seller, unless otherwise stated. All costs/charges after terminal gate are for the account of the Buyer unless otherwise stated. Insurance up to and including terminal gate for Seller's care and account. Insurance after terminal gate for the Buyer's account.

9. COMMERCIAL DOCUMENTS

The Seller will provide the Buyer with the Commercial Documents (initially by email) no later than the date of Vessel sailing.

10. PAYMENT

This contract is specified on page 1 to be one of TT/EFT; Prepayment, Open Account or CAD. The payment terms for each contract are:

- (a) T/T
 - (i) Buyer shall pay 100% of the invoice by telegraphic or electronic funds transfer within one working day after presentation of emailed copy of the following original commercial documents:
 - Packing Certificate
 - Invoice
 - Fumigation and/or Weight Certificates

- (ii) 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) Pre-Payment

Full Payment must be received by Seller prior to Commodity being delivered.
- (c) Cash Against Documents (CAD)
 - (i) Buyer to provide name and address of bank to which collection is to be sent.
- (d) Open Account
 - (i) Seller to send complete set of documents by courier to Buyer
 - (ii) Seller to indicate on their invoice banking details so that Buyer can arrange remittance direct to that account.

11. RISK, OWNERSHIP AND PASSING OF TITLE:

- (a) Risk in the Goods passes from the Seller to the Buyer on delivery.
- (b) Title to the Goods will remain with the Seller until full payment received by the Seller.
- (c) In the period after delivery but before payment, the Buyer (including its servants and agents) hold the Goods as bailee only.
- (d) If in the ordinary course of the Buyer's business the Buyer on-sells the goods to a 3rd party prior to payment to the Seller, it does so as agent only for the Seller. If the Buyer fails to make payment within the time stipulated in this contract, the Buyer authorises the Seller to take possession and title in the Goods. Any associated costs are for the Buyer's account.
- (e) This clause creates a Purchase Money Security Interest for the purposes of the *Personal Property Securities Act 2009* (Cth) ("PPSA").
- (f) To the extent permitted by the PPSA, the parties contract out of the provisions listed in sub-clauses 115(1)(a)-(r) of the PPSA. 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 other than as required by law.

12. IMPORT PERMITS:

- (a) The Buyer is 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 Commodity and for their transport through any country.
- (b) The Buyer is to declare any requirements relating to import certification in the Packing Instructions.
- (c) The Buyer may advise the 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 4 days prior to the

Delivery Date but no later. If the Seller cannot comply with Buyer's additional import requirements the Seller must notify the Buyer as soon as practicable that unless the additional requirement is abandoned, the Seller will terminate the contract and claim damages for any losses incurred as a result of the termination.

13. 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.

14. 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.

15. 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.

16. 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.

17. PREVENTION OF DELIVERY

"Event of Force Majeure" means:

- (a) prohibition of export or other executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the load port or ports named herein is/are situate, restricting export, whether partially or otherwise, or
- (b) blockade, or
- (c) acts of terrorism, or
- (d) hostilities, or
- (e) strike, lockout or combination of workmen, or

- (f) riot or civil commotion, or
- (g) breakdown of machinery, or
- (h) fire, or
- (i) ice, or
- (j) extreme weather event, or
- (k) act of God, or
- (l) unforeseeable and unavoidable impediments to transportation or navigation (including but not limited to congestion at the export container terminal), or
- (m) any other event comprehended in the term "force majeure".

Should Sellers' performance of this contract be prohibited or prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the period of delivery, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 21 consecutive days after the end of the period of delivery, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first business day after expiry of the 21 day period.

If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall be automatically cancelled.

If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. The period of delivery shall be extended, from the cessation, to as much time as was left for delivery under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for delivery under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.

The burden of proof lies upon Sellers and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that Sellers shall have provided to Buyers, if required, satisfactory evidence justifying the delay or non-fulfilment.

18. CHOICE OF LAW:

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

19. TIME

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

20. 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.