

**IN THE MATTER OF THE COMMERCIAL ARBITRATION ACT 2010 (NSW) AND
IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF GRAIN TRADE
AUSTRALIA LTD**

GTA Arbitration No. 387

[REDACTED] (ABN [REDACTED])

Claimant

and

[REDACTED] (ABN [REDACTED])

Respondent

Final Award

A. Introduction

1. This is the Final Award in an arbitration conducted pursuant to the Fast Track rules of the Dispute Resolution Rules (**DR Rules**) of Grain Trade Australia Ltd (**GTA**).
2. This arbitration was commenced on execution of a GTA Contract for Fast Track Arbitration signed by the Claimant on 19 April 2023.
3. Pursuant to the DR Rules, I have been appointed sole arbitrator by GTA.
4. Neither party appears to have external legal representation and the Respondent has elected not to make any submission.
5. The dispute concerns a contract between the parties apparently concluded on 26 October 2021. Materially it appears that the contract referenced on its face "GTA Terms and Conditions" and on the back reproduced "GTA Standard Terms and Conditions – Contract No.3", which included the following;

***DISPUTES:** Any party or parties who have entered into Terms of Trade subject to GTA Trade Rules shall be entitled to refer any disputes arising out of such contract, and which cannot be resolved between the parties, to GTA for Arbitration.*

***ARBITRATION:** If any dispute arises out of or relates to this Contract or the breach, termination or subject matter thereof, the dispute shall be submitted to and settled by Arbitration in accordance with GTA Dispute Resolution Rules in the edition current at the commencement date of arbitration.*
6. The version of the DR Rules current at 19 April 2023 is applicable to this arbitration. The version of the DR Rules in effect from July 2022 is therefore the version applicable to this arbitration.

7. Pursuant to Article 13 of the DR Rules (headed 'Governing Legislation'), the provisions of the Commercial Arbitration Act 2010 (NSW) (CAA) shall apply. The Parties having chosen the NSW legislation to govern this arbitration I find that NSW and specifically Sydney is the seat of this Arbitration as that term is defined in Article 38(1)(a) of the DR Rules.
8. I am listed on the GTA list of arbitrators under Article 6.1 of the DR Rules. My appointment by GTA was communicated to the parties on 2 August 2023 without objection or protest.
9. I have read and considered the Claimant's Points of Claim dated 30 August 2023 (**Claim Submissions**).
10. As the Respondent has not actively participated, and has not provide any Defence submissions, the Claimant has made application for a default award supported by a statutory declaration of [REDACTED], Commodity Manager of the Claimant, made 21 May 2024 in which Mr [REDACTED] [REDACTED] that he is not aware of any possible defence that the Respondent may have to this claim.

B. Facts

11. This arbitration has been conducted under the GTA Fast Track Rules, which support a quick and low cost process. There is no hearing and there are no formal statements of evidence. I establish the facts on which I make my decision on the balance of probability as appearing to me from the parties' submissions.
12. I find the following facts to be established beyond reasonable doubt based on the Claimant's submissions and supporting documents.
13. On or about 26 October 2021, the Claimant and Respondent entered into a Buyer's Call contract on the Claimant's letterhead, No. [REDACTED] for the sale by the Respondent to the Claimant of 600 tonnes of wheat, ASW grade, at A\$314 per tonne, for ex farm ("off the header") delivery between 1 December 2022 and 31 March 2023.
14. The Claimant has produced a copy of the contract document, and an email from [REDACTED] [REDACTED] of the Respondent dated 28 October 2021 in which Mr [REDACTED] wrote "I'm away in NSW at the moment and cannot sign but do agree to the contract as communicated."
15. Sporadic deliveries were made apparently due to weather delays.
16. By email dated 26 April 2022, the Claimant confirmed that the balance of the contract, being 477 tonnes, was 'rolled' to December 2022 and an updated contract note was forwarded on 28 April 2022.
17. In the event, no further deliveries were made and by email dated 9 January 2023, the Claimant formally called the Respondent in default.
18. On 13 January 2023 the Claimant issued a washout invoice in the amount of \$32,926.80, having ascertained fair market value of \$383 per tonne from Craig Perkins, a reputable and knowledgeable commodity broker, on 9 January 2023.

C. Determination

19. The Claimant's claim is for \$[REDACTED] being the washout value, plus GTA arbitration costs.
20. As observed above, the Respondent has chosen not to actively participate in this reference, despite being given reasonable notice that this proceeding was on foot.

21. On 24 May 2024 GTA wrote by email to the parties, encouraging the Respondent to respond to the Claimant's submissions before 31 May 2024.

22. [REDACTED] responded by email on 27 May 2024,

Good morning [REDACTED],

Our response is commensurate with [REDACTED] payment schedule we have experienced – late.

We have not 'elected to not participate' and will respond to you.

Kind regards,

[REDACTED]

23. Notwithstanding this reply, the Respondent has not lodged Defence submissions.

24. Again, on 5 June 2024, GTA wrote to the parties advising that the Claimant had applied for a default award. There has been no response from the Respondent.

25. Based on the material provided by the Claimant, and in the absence of any communication from the Respondent, I find that the Claimant's claim is made out. The Respondent has defaulted on performance of the Contract No. [REDACTED] by failing to deliver the full contract quantity, being short 477.2 tonnes, and the Claimant is entitled to compensation based on the difference between the contract price and fair market value for the defaulted tonnage as at the date of default being 9 January 2023.

26. The Claimant has does not appear to have been legally represented and has not made a claim for legal costs, or interest.

27. I will however order that the Respondent indemnify the Claimant in respect of arbitration fees paid by the Claimant to GTA in respect of this arbitration being \$8,602, the Claimant having paid its own as well as the Respondent's fee.

D. Final Award

28. For the reasons above, my Award is;

(a) The Respondent shall pay the Claimant [REDACTED].

(b) The Respondent shall indemnify the Claimant in relation to arbitration fees paid by the Claimant to GTA in respect of this arbitration in the sum of \$8,602.00.

This award is signed and dated at Sydney, the 5th day of July 2024.

Stefan Meyer

Mr Stefan Meyer