



7. For present purposes the terms of that Contract are as follows:

Contract No.	Broker	Date	Commodity	Tonnes	Base Price	Delivery
██████████	██████████ ██████████ ██████████	14/06/2023	Cotton Seed	500 tonnes	\$455mt plus GST	FOT ██████████ sellers option, July-Aug spread

8. In addition to the terms above there was the following Special Condition;

*As a new client, credit limit first business \$20k (1BD) on 14 days terms...so effectively paying load by load or a couple in advance. Buyer and seller to work out a system both are comfortable with.*

9. I have read and considered the;

- (a) Claimant's Points of Claim dated 15 February 2024 (**Claim**)
- (b) Respondent's Points of Defence dated 18 March 2024 (**Defence**).
- (c) Claimant's Points of Reply dated 28 March 2024 (**Reply**).

## B. Facts

10. 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 and the primary documents annexed to and forming part of those submissions.

11. As it happens, in this case the facts are relatively straightforward.

12. Having entered into the Contract, of which there is no dispute, on 26 July 2023 the Claimant emailed the Respondent (**26 July Email**) to ask;

"Can you confirm if the seeds are ready for collection?"

13. To which the Respondent replied on Friday 28 July 2023 (**28 July Email**) that;

"The cottonseed tonnage has been ready for collection from 1 July as per the Brokers and ██████████ Contract.

You have failed to pick up your July tonnage, it is now void."

14. The reference in the 28 July Email to the ██████████ Contract is a reference to a contract form issued by the Respondent to the Claimant on headed ██████████ titled "Contract Confirmation of Sales" also dated 14 June 2023. It is common in the Australian grain trade, following the issue of a Broker's note contract, for the Buyer and Seller to exchange their own contract forms generally re-stating the content of the brokers' note contract. It is also common that neither party signs and return the other's contract form.

15. This practice is recognised in GTA Trade Rule 3.1.1 which provides that

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.

16. I do not in any event accept that the Contract was varied or supplemented by the [REDACTED] Contract as there is no evidence that the Claimant accepted or agreed to the terms of the [REDACTED] Contract.
17. The effect of the 28 July Email was to hold the Respondent in default of the July portion of the Contract.
18. In the event, the parties negotiated for the delivery of the August portion in the Contract and that aspect is not now in dispute.
19. The Claimant has commenced this arbitration asserting that it was not in default as at 28 July 2023 but that the Respondent was. In summary it says that it could have taken delivery of 250mt of cotton seed over the period 27-31 July 2023 and disputes that the reference to "July-Aug Spread" in the Contract required weekly deliveries.
20. The Respondent denies the claim and says in its defence that;
  - (a) Pursuant to Trade Rule 13.2.2 the Buyer was required to provide the Seller with not less than seven business-days' notice of intent to present appropriate transportation for the commencement of loading.
  - (b) The reference in the contract to "July-Aug spread" indicated that the deliveries were to be taken approximately weekly (with reference to the definition of "Even Spread" in the GTA Trade Rules).
  - (c) Finally the effect of the Special Condition with reference to credit meant that it was unlikely to be possible to arrange multiple truckloads in the period 27-31 July without breaching credit terms.
21. I note that the Respondent also refers in its submissions to conversations on 31 July 2023 between Mr [REDACTED] of the Respondent and [REDACTED] from the Claimant during which (Mr [REDACTED] asserts) Mr [REDACTED] admitted fault on behalf of the Claimant. I need say nothing more about that submission.
22. Having considered the parties' positions, I find in favour of the Respondent, that the Claimant was in default as at 28 July 2023 and that as at that date the Respondent was entitled to 7 business days' notice of commencement of deliveries which would have pushed the first delivery into August 2023. In reaching this decision I do not need to decide expressly whether the term 'July-Aug spread' in the Contract had the equivalent effect of 'Even Spread' as appearing in the definitions of the Trade Rules. This is because no deliveries at all were taken in July 2023 so it simply cannot be said that deliveries were spread over the months of July and August 2023.
23. The Claimant's position is further complicated in this case because the Respondent had only granted it \$20,000 credit. The Claimant should have arranged a prepayment given that the value of the contract was more than \$200,000. The credit of \$20,000 would only cover a small proportion of the contract.

### **C. Award**

24. For the reasons above, my Award is;
  - (a) The claim brought by the Claimant is dismissed;

- (b) The Claimant shall indemnify the Respondent in relation to any fees paid by the Respondent to GTA in respect of this arbitration.

**This Final Award is dated at Sydney, the 18th day of April 2024.**

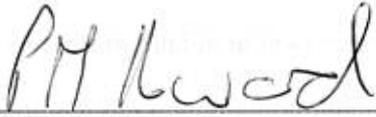
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Mr Peter Howard

- (b) The Claimant shall indemnify the Respondent in relation to any fees paid by the Respondent to GTA in respect of this arbitration.

18<sup>th</sup>

This Final Award is dated at Sydney, the day of April 2024.



Mr Peter Howard