

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

GTA Arbitration No. 397

██████████ (ACN ██████████)
(Claimant)

and

██████████ (ACN ██████████)
(Respondent)

Final Award

INTRODUCTION

1. This is a Final Award in an arbitration conducted pursuant to the Dispute Resolution Rules of Grain Trade Australia Ltd (**DR Rules**). The proceedings were commenced by the Claimant by on-line submission on 19 August 2024 and a GTA Notice of Arbitration dated 22 August 2024 was sent to the parties.
2. In addition, the Claimant has signed the standard form GTA Contract for Full Arbitration on 26 August 2024. While the Respondent has not signed the Contract for Full Arbitration it has nevertheless participated in the process and complied with directions of the Tribunal.
3. The parties appear to be self-represented in this arbitration.

██████████ and Seller) and the Respondent Buyer ██████████ and Buyer). In summary, ██████████ contracted with ██████████ for the sale of canola oil the full contract quantity of which was ultimately not taken.

5. For present purposes the particulars of that contract are as follows:

Contract No.	Date	Contract Period	Commodity	Tonnes	Base Price	Delivery
██████████	15 November 2023	15 November 2023 to 14 th of November 2024	Premium Cold Press Canola oil	3000mt (minimum monthly offtake of 200Mts to 250Mts)	\$1850 mt plus GST for November 2023 to 31st January 2024	██████████ ██████████ ██████████

6. The contract is evidenced by a ██████████ Sales Contract document, number ██████████ dated 15 November 2023 (**Contract Document**). The Contract Document appears to have been signed by ██████████ on behalf of ██████████. While it is not signed by ██████████ there does not appear to be any dispute that the Contract Document evidenced at least the original terms of the agreement between the Parties.
7. The Contract Document contains on its face the following clause:
- Any term where in conflict with the above shall be as per the standard terms and conditions of the current Grain Trade Australia (GTA) Contract and Dispute Resolution Rules.*
8. The version of the Trade Rules current at 15 November 2022 is applicable to the contract. The current version of the Rules became effective on 1 March 2021, so it is the version applicable to this dispute.
9. Relevantly, at around the same time, the parties entered into an Exclusive Marketing Rights Agreement (signed by the Respondent on 23 November 2023 and by the Claimant on 24 November 2023) (**Exclusivity Agreement**).
10. The Exclusivity Agreement does not incorporate the GTA Trade or Dispute Resolution Rules. Nor does it expressly incorporate the terms contained in the Contract Document.
11. It does however contain at clause 8 a Dispute Resolution clause which provides that
- “In the event of any disputes arising during the agreement, the parties agree to resolve them through mediation, arbitration etc”
12. Neither party has challenged the jurisdiction of this Tribunal to consider disputes arising under the Exclusivity Agreement and both have made submissions to this Tribunal relating to the Exclusivity Agreement. In light of clause 8 of the Exclusivity Agreement we find that we also have jurisdiction (through clause 8, and submission of the parties) to deal with disputes arising under the Exclusivity Agreement.
13. 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 and we 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.
14. We are listed on the GTA list of arbitrators under the DR Rules.
15. We have been appointed to this Tribunal as follows:

- a. Geoff Farnsworth – Chair appointed by GTA (in lieu of Mr Howells, initially appointed by GTA as Chair but who has become unavailable);
 - b. Julian Fry – nominated by the Claimant; and
 - c. Michael Brittain – nominated by the Respondent.
16. For the reasons set out above, we find therefore that this is a validly constituted Tribunal under the CAA with jurisdiction to determine all issues in dispute between the Parties.
17. As neither party has requested a hearing we have proceeded on documents alone.

Procedural History

18. By way of background and procedural history:
- (a) As observed above, this matter was commenced by way of on-line filing by the Claimant on 19 August 2024.
 - (b) In accordance with GTA practice, a Notice of Dispute was mailed to the Parties dated 22 August 2024 which included, among other things, a Contract for Full Arbitration.
 - (c) The Claimant signed and returned the Contract for Full Arbitration dated 26 August 2024. No signed Contract was received from the Respondent.
 - (d) The Parties have exchanged the following submissions and evidence:
 - a. Claimant’s Points of Claim dated 4 November 2024, including supporting documents;
 - b. Respondent’s Points of Defence (undated) including supporting documents;
 - c. Claimant’s Points of Reply dated 2 December 2024, including supporting documents;
 - d. Respondent’s Points of Reply (undated).
19. Following a preliminary meeting of the Tribunal (including Mr Howells) on 10 February 2025, at the Tribunal’s direction, on 13 February 2025 GTA sent the following message to the parties.

Dear Parties,

As formerly advised the Tribunal met to consider this matter.

The Tribunal has noted that while it is imperative on the parties to produce evidence in support of their claim and defence, in this case that has not occurred.

The Tribunal has considered dismissing the Claimant’s claim for want of evidence but has decided that this would be unreasonably prejudicial, particularly given the parties do not appear to be legally represented.

In the circumstances, the Claimant is directed, within 5 business days, to produce evidence of;

1. *The dollar value of its claim with reference to the tonnes of Premium Cold Press Canola Oil delivered to and paid for by the Respondent under contract [REDACTED] dated 15 November 2023. We note that Exhibit 3 to the Claimant’s Claim Submission dated 4 November 2024*

(Claim Submission) appears to relate only to the dollar value invoiced, with no indication of tonnes actually delivered against the contracted quantity; and

2. *Independent evidence of the market value of Cold Press Canola Oil as at the date of alleged default, noting that Exhibit 10 to the Claim Submission appears to evidence a related party transaction and is not in any event sufficient evidence of the alleged default price.*

The Respondent will be allowed 7 business days from receipt of any additional evidence to make any submissions in reply.

20. In response we have received;
 - a. The Claimant's (undated) 'Response to Tribunals clarification dated 21 February 2025' (**Claimant's Additional Submissions**) and
 - b. The Respondent's Response to Claimant dated 4 March 2025 (**Respondent's Additional Submissions**).

Facts and arguments

21. The existence and initial terms of the contract are not in dispute. It is evidenced by the Contract Document.
22. The express terms of the Exclusivity Agreement are not in dispute, save that the Respondent says that it was "misguided" (mislead and deceived) in relation to both the contract and the Exclusivity Agreement.
23. According to the Claimant's Additional Submissions,
 - a. the Contract Document was signed as a 12-month agreement, effective from November 15 2023 to November 14 2024. The Claimant submits that the agreement included four scheduled delivery spreads.
 - b. The first delivery spread required the collection of 625MT of product of which the Respondent collected only 122.42MT.
 - c. Due to the Respondent's inability to perform the Claimant offered a reduced quantity of 550MT for collection over 4-5 months (**Revised Agreement**).
 - d. Under this Revised Agreement, the Respondent collected only one load of 26.44MT.
 - e. The remaining 523.56MT was never collected and forms the basis of the Claimant's claim.
24. In relation to these submissions, we observe that;
 - a. The Contract Document does not obviously provide for supply in four scheduled delivery spreads;
 - b. The Revised Agreement is evidenced by an email from the Claimant to the Respondent dated 13 February 2024 (**February Email**);
 - c. The February Email appears to us be an offer to substitute the original contract for a new contract for 550MT with a contract period of 4-5 months (minimum of 4 loads of 25 tonnes per month) at a price of \$1850 delivered.

- d. The February Email closes with the words “Could you please discuss these proposals with the team and provided feedback **by this Thursday**” (emphasis added).
25. While there is no evidence that feedback was provided or that the offer was accepted, the Claimant’s case is that the Respondent made one additional order under the Revised Agreement on 6 March 2024 (which we note could amount to acceptance of the offer contained in the February Email), leaving a remaining balance of 523.56Mt.
26. The Claimant wrote to the Respondent on 30 April 2024 holding it in default and claiming damages of \$200MT based on what it alleged was the current market price of \$1650MT.
27. For its part, the Respondent does not expressly or even implicitly deny the existence of the original or the Revised Contract.
28. The Respondent’s defence focuses on three points being;
- a. That the Claimant did not supply ‘premium’ grade oil but in fact supplied unrefined oil (**Quality Defence**);
 - b. Breach by the Claimant of the Exclusivity Agreement (**Exclusivity Defence**) by supplying packaged and branded oils to 3rd parties; and
 - c. Dispute over the quantum of the claim specifically reliance by the Claimant on a contract between it and Cootamundra Oilseeds which the Respondent says is a related entity (**Quantum Defence**).
29. In relation to the Quality Defence, the Respondent also states that it wishes to claim loss from the oils purchased (A\$46,000 as per Respondent’s Points of Defence), and also preparation work in setting up to promote the product (A\$800,000 being 10% of the \$8,000,000 forecast revenue).
30. In reply to the Quality Defence the Claimant relies on various Certificates of Analysis (exhibits ██████ to the Claimant’s Points of Reply). It also submits that the Respondent took delivery of and paid for oil from the Claimant without protest until this proceeding was commenced. The Respondent says in its submissions that complaints were lodged to the Claimant (██████) on a phone conversation as soon as complaints were received from the Respondent’s clients.
31. In reply to the Exclusivity Defence, the Claimant submits that the Exclusivity Agreement relates only to “Bulk Premium grade and 1st grade Cold Pressed Non-GMO Canola Oil” and supplying packaged oil to 3rd parties did not amount to a breach of the Exclusivity Agreement.
32. Finally, in reply to the Quantum Defence, the Claimant has now produced as part of its Additional Submissions a contract between it and ██████ dated 28 March 2024 by which it sold 200MT of Cold Pressed Premium Canola Oil at \$1660 delivered Melbourne April-May 2024.

Consideration and Conclusion

33. There is no dispute that the Claimant supplied product to the Respondent.
34. We find that the terms on which that product was supplied were initially evidenced by the Contract Document but were subsequently amended on or about 13 February 2024 by the Revised Agreement with all other terms set out in the Contract Document remaining in the same.

35. The terms of the Exclusivity Agreement are clear and apply only to bulk product. There is no evidence to support the Respondent's submissions that it was misled or misguided in relation to the terms of the Exclusivity Agreement.
36. There is similarly no persuasive evidence advanced by the Respondent that the quality of the oil supplied was below that required under the Contract Document or Revised Agreement.
37. In relation to the Respondent's Quantum Defence, this has been addressed to our satisfaction in the Claimant's Additional Submissions and particularly Exhibit 11 to those submissions being the contract dated 28 March 2024 between the Claimant and [REDACTED] [REDACTED] [REDACTED] [REDACTED] for the supply of Cold Pressed Premium Canola Oil Delivered Melbourne (April-May) at a price of \$1600MT delivered.
38. We conclude therefore that the Claimant's claim is made out, and the defences raised by the Respondent fail.
39. In relation to quantum, the Claimant has claimed damages based on default tonnage of 523.56MT at a price differential of \$200, being the difference between the contract price of \$1850MT and the default price of \$1600.

Costs and Interest

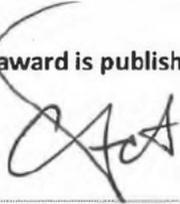
40. As observed above, the parties are self-represented. While the Claimant engage solicitors prior to the commencement of this arbitration, pre-arbitration legal expenses are not recoverable.
41. The Claimant has claimed interest but has not stipulated an amount.
42. We therefore exercise our discretion under section 33E(1) of the CAA and award interest at the rate of 7% per annum from 1 May 2024 to the date of this Award.

Final Award

For the reasons stated above, we make the following Final Award:

1. The Respondent shall pay the Claimant the sum of A\$ [REDACTED] forthwith.
2. No order as to legal costs.
3. The Respondent shall pay Interest on A\$ [REDACTED] at 7% per annum from 1 May 2024 to the date of this Award.
4. In addition, the Respondent shall indemnify the Claimant in relation to any fees paid by the Claimant to GTA in respect of this arbitration.

This award is published and dated at Sydney, the second day of April 2025.



Mr Geoff Farnsworth, Chair

Julian Fry

Mr Julian Fry



Mr Michael Brittain