

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. 398

[REDACTED]

Claimant

[REDACTED]

[REDACTED]

Respondent

First Partial Award

A. Introduction

1. This is a First Partial Award in an arbitration conducted pursuant to the Dispute Resolution Rules (**DR Rules**) of Grain Trade Australia Ltd (**GTA**).
2. This arbitration was commenced by [REDACTED] by on-line submission on 19 January 2025.
3. [REDACTED] has elected for a full arbitration. 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.
4. The parties appear to be self-represented in this arbitration.
5. This reference relates to a dispute regarding the sale of 375 tonnes of lentils to [REDACTED] as buyer ([REDACTED] and **Buyer**) by the Respondent seller ([REDACTED] and **Seller**).
6. In summary, the dispute relates to the quality of the lentils supplied by [REDACTED] and the method of testing that quality. It highlights the importance of “quality final against samples drawn at origin” terms and the unfortunate consequences of departure from such terms.
7. It appears from the papers that [REDACTED] on-sold the cargo to a third-party exporter [REDACTED] [REDACTED] Pty Ltd ([REDACTED] [REDACTED] ([REDACTED] [REDACTED]). The Respondent also identifies [REDACTED] [REDACTED] ([REDACTED] [REDACTED]) as broker. Neither are party to this arbitration. The ultimate destination of the cargo was [REDACTED] ([REDACTED] [REDACTED] [REDACTED] [REDACTED]).
8. Curiously, while [REDACTED] has initiated this arbitration, and is notionally the claimant, the dispute is in relation to a discount from the sale price withheld by [REDACTED] and justified it says because the delivered lentils were out of specification. This discount appears also to have been applied by the ultimate buyer, in [REDACTED]

Contract Documents

9. The contract is evidenced by a Mallon Commodity Brokering Broker Contract Number [REDACTED] dated 11 July 2024 (**Broker Contract**).

10. For present purposes the particulars of that Broker Contract are as follows:

Contract No.	Date	Commodity	Quality	Tonnes	Base Price	Delivery
[REDACTED]	11 July 2024	Lentils	Min#1 GTA CSP 7.2.2 23/24 crop	375.00 tonnes +/- 5.00 tonnes, 15 FCL x 25 tonnes	\$990.00 per tonne (GST excluded)	Delivered Container Terminal, Melbourne

11. The Broker Contract additionally states as follows:

“For DCT Contract, GTA DCT Contract #4 applies” (DCT Contract)

12. Both the Broker Contract and the DCT Contract also incorporate the GTA Trade Rules.

13. [REDACTED] also generated a Contract Confirmation of Purchase [REDACTED] dated 12 July 2024 (**Confirmation**) but this does not appear to have been signed or accepted by the Seller.

14. It is worth noting that the Confirmation terms stated as follows:

COMMODITY LENTILS WHOLE RED NO.1 EXPORT STD FARMER DRESSED CSP 7.2.2 23/24
 QUALITY AS PER GRAIN TRADE AUSTRALIA STANDARDS

15. Together, the Broker Contract, DCT Contract and Trade Rules are referred to as the **Contract**.

Arbitration clauses

16. The Contract documents contain the following clauses:

(a) Broker Contract:

“Any dispute, controversy, or claim arising out of, relating to or in connection with this contract, including any questions regarding its existence, validity or termination shall be resolved by arbitration in accordance with GTA Dispute Resolution Rules in force at the time of the contract”

(b) DCT Terms:

“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.”

17. The Trade Rules also contain a referral of disputes to arbitration.
18. The current version of the DR Rules (dated 19 December 2022) is applicable to this arbitration.
19. Pursuant to Article 13 of the DR Rules (headed 'Governing Legislation'), the provisions of the Commercial Arbitration Act 2010 (NSW) (**CAA**) shall apply.
20. 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.
21. We are listed on the GTA list of arbitrators under the DR Rules.
22. We have been appointed to this Tribunal as follows:
 - (a) Geoff Farnsworth – Chair, appointed by GTA
 - (b) Adrian Murphy – appointed for the Respondent
 - (c) Gerard McMullen - appointed by the Claimant
23. 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.
24. Neither party has requested a hearing so we have proceeded on documents alone. It is worth noting that neither the Claimant nor the Respondent has submitted statements of evidence other than their submissions, with documents (some relevant, some not) annexed. The Respondent Seller has tendered a short statutory declaration from the packer, [REDACTED] [REDACTED]

Procedural History

25. By way of background and procedural history:
 - (a) As observed above, this matter was commenced by way of on-line filing by [REDACTED] on 19 January 2025. In its initiating document, [REDACTED] elected a Full Arbitration.
 - (b) The Parties have exchanged the following submissions and evidence:
 - (i) [REDACTED] points of claim and its annexures, undated (**Claim Submissions**);
 - (ii) additional documents provided by Dropbox as attachments to the Claim Submissions (**Dropbox Documents**);
 - (iii) [REDACTED] points of defence and its annexures, undated (**Defence Submissions**);
 - (iv) [REDACTED] points of reply and its annexures, undated ([REDACTED] **Reply**);
 - (v) [REDACTED] points of reply, undated (**Respondent's Reply**); and
 - (vi) Statutory Declaration of [REDACTED] [REDACTED] declared on 28 July 2025 filed by [REDACTED] ([REDACTED] **Statement**).

B. Facts

26. We set out below the facts on which we make our findings and decision, on the balance of probabilities.

Quality Requirements

27. The requirements relating to the quality of the lentils (**Quality Requirements**) were set out in the Contract as follows:

(a) Broker Contract:

“Quality: Min #1 GTA CSP 7.2.2 23-24 crop SEE SC

...

Independent surveyor: ITS Specifically to be on site for packing

...

Qualities are GTA unless otherwise stated

(b) The DCT Terms state as follows in relation to sampling and quality (emphasis added):

“...5. SAMPLING AND ANALYSIS

(a) 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. This shall satisfy the sampling requirements of government agencies including Department of Agriculture and Water Resources in order to obtain a representative sample of the entire contract/shipment.

(b) Additional samples required by Buyer may be drawn at Buyer’s cost.

(c) The Seller to provide the Buyer (or nominated representative) with representative sample as soon as is practicable.

(d) Final determination of quality shall be established on the representative sample(s) drawn under sub-clause 5(a) and 5(b).

6. CERTIFICATION OF QUALITY, GRADE AND CONDITION

(a) Subject to clause 6(b) quality, grade and condition will be finally and conclusively determined by certificate issued by container packer or designated laboratory on representative sample(s) drawn under sub-clause 5(a) and 5(b).

(b) Any requirement for an independent quality inspection and/or certificate to be declared in Packing Instructions and be for the Buyer’s account unless otherwise stated. Such certificate to be final and binding evidence of quality, grade and condition.”

28. The Quality Requirements required the Respondent to supply lentils that satisfied “Min #1 GTA CSP 7.2.2 [Grade] 23-24”.

29. The independent surveyor, Intertek Testing Services (Australia) Pty Ltd (**ITS**), was required by the terms of the Broker Contract to be on site for the packing and a “representative sample” (as per DCT Terms clause 5) was to be drawn at the time of packing, in accordance with the packing site’s protocols. It appears from the documents that ITS was actually engaged by the exporter [REDACTED] to undertake the testing.

30. Pursuant to the DCT Contract terms, ITS’ determination of the representative lentil sample taken during packing would be final, conclusive and binding.

Packing

31. On 22 July 2024, [REDACTED] advised ITS by email that deliveries to the packing site would commence from 23 July 2024 and that it should attend the packing site, being [REDACTED] site located in [REDACTED] Victoria.
32. Across 23 July 2024 to 26 July 2024, [REDACTED] lentils arrived at the packing plant.
33. On 24 July 2024, packing of the shipment commenced.
34. On 24 July 2024, ITS emailed [REDACTED] noting that “our inspector is packing today”. Presumably, this was intended to convey that an ITS’ inspector was present on site during packing on 24 July 2024.
35. On 26 July 2024, packing of the shipment finished.
36. In the [REDACTED] Statement, Mr [REDACTED] [REDACTED] of [REDACTED] states among other things that ITS “missed the last 7 containers for” the shipment.

Testing

37. On 1 August 2024, ITS issued its ‘Analysis Report’ ref [REDACTED] - [REDACTED] (**ITS First Test Report**). It is addressed to [REDACTED]
38. The ITS First Test Report described the Standard as CSP 7.2.2 – EXP FD (*meaning Export Farmer Dressed*) WHOLE RED NO 1 GRADE 2023-2024” and states that the ‘Analysis Outcome’ was “FAIL”.
39. On 1 August 2024, [REDACTED] was informed of ITS’ determination. P [REDACTED] S queried whether ITS was present for the loading of all 15 containers or just for a part of the loading.
40. On 2 August 2024, ITS issued its second ‘Analysis Report’ ref [REDACTED] - [REDACTED] - [REDACTED]
41. Presumably, this is a re-test of the sample taken at packing. The document is #16 in the Dropbox Documents. The report also noted that the ‘Analysis Outcome’ was “FAIL”.
42. On 2 August 2024, ITS emailed [REDACTED] noting that its inspectors are directed by the information provided by [REDACTED] [REDACTED] about the shipment on site and so the samples are picked with reference to this information.
43. We do not otherwise have any evidence or submissions that [REDACTED] [REDACTED] had specific “protocols” in relation to the specific sample to be taken by ITS – see DCT Contract terms, clause 5(a) referring to “protocols as employed at the packing facility”.
44. On 8 August 2024, Mr [REDACTED] [REDACTED] of [REDACTED] [REDACTED] emailed [REDACTED] stating that [REDACTED] presumably ITS’ inspector, was present on packing site on 24 and 25 July 2025. During this time, 8 of the 15 containers were packed. The email also notes that [REDACTED] took a sample from a truck load on 23 July 2024 which was later rejected by the Respondent due to higher poor colour in the load.
45. Following notification of test results, the parties attempted to negotiate a resolution whereby either the Seller would take ownership of the parcel, or accept a discount on the sale price of US\$200 per tonne (**Quality Discount**). The Claimant submits that the Quality Discount represents the difference in price between No.1 grade lentils, and No.2 grade lentils. The Respondent does not accept that assessment of the difference between the grades.

Proposed Discharge Sample testing

46. In the event, and given apparent irregularities in the testing undertaken by ITS, on 9 August 2024, [REDACTED] emailed [REDACTED] stating that it considered that the ITS First Test Report was not based on a “composite sample” since ITS’ representative was not present on the last day of packing. The email then states:

“Hence, we have to get the composite sample drawn at the time of unloading in [REDACTED]

The conditions are below

- [REDACTED] associates up to 2 persons will attend the unloading in [REDACTED] along with [REDACTED] Cost to be borne [sic] by buyer and to be claimed by ITS eventually.

- once the sample is received in Australia, the sample must be opened in front of [REDACTED] associate and Amspec and to be tested by Intertek and Amspec at the same time at Intertek lab because I believe the sample cannot leave ITS lab due to the quarantine reasons.

- since this is a fault of ITS which was elected by the buyer hence the payment will be due as per the contract”

47. We find that this was an offer to vary the Contract terms by requiring a composite destination sample to be drawn when the cargo arrived in [REDACTED] for subsequent testing and analysis in Australia, subject to the following conditions (**Proposed Variation Conditions**):
- (a) 2 representatives from [REDACTED] be present at the unloading in [REDACTED] with ITS;
 - (b) the sample be opened in Australia in front of [REDACTED] representatives and another surveyor, Amspec, before being tested; and
 - (c) the sample be tested by another independent surveyor, Amspec, as well as ITS.
48. On 2 September 2024, [REDACTED] re-stated its Proposed Variation Conditions by email to [REDACTED]
49. [REDACTED] states that on 2 September 2024, the Broker, [REDACTED] [REDACTED] from [REDACTED] [REDACTED] sent a Whatsapp message to [REDACTED] which stated that the exporter, [REDACTED] was not willing to allow [REDACTED] on site at the destination. That WhatsApp message is not in evidence.
50. While it is not clear when exactly, [REDACTED] and [REDACTED] agreed (as their subsequent conduct confirmed) that a composite sample would be drawn by ITS at destination for testing in Australia but there was no agreement to the Proposed Variation Conditions.
51. That is, the Parties agreed to undertake a test of the composite sample collected at destination to determine the quality (**Variation**).
52. It also does not appear from the documents that [REDACTED] agreed to be bound by the test results issued by Amspec.

Destination Sample test

53. On 29 October 2024, the cargo arrived in [REDACTED] and by 8 November 2024 ITS had taken destination samples from the containers.
54. Around the same time the Claimant repeated the offer of the Quality Discount.
55. In or around late November 2024, ITS in Australia undertook a test of the lentils in accordance with the Variation.

56. Persons other than ITS employees were not present in ITS's lab at the time of testing. ITS and ██████ state that this was because of biosecurity reasons.
57. On 27 November 2024, ITS issued 15 reports marked 'Analysis Report', presumably of 15 individual container samples taken at ██████ (together, **ITS Second Test Reports**).
58. The ITS Second Test Reports are marked #1 - #15 of the Dropbox Documents.
59. Nine of the Reports note the outcome of the 'Analysis' as "FAIL".
60. On 7 December 2024, ██████ was provided with the ITS Second Test Reports. ██████ was also informed that no other persons were present in ITS's lab for of biosecurity reasons.
61. On 12 December 2024, 15 container samples and 1 composite sample were couriered to Amspec by ██████ ██████
62. Across 19 to 23 December 2024, Amspec issued its own 'Analysis Reports' for the samples, four of which noted a "FAIL" as an outcome.
63. On 24 December 2024, ██████ provided ██████ with Amspec's analysis of the samples.
64. On 15 July 2025, the Broker forwarded an email to ██████ the text of which is supposedly from ITS. The email sets out ITS's procedure in relation to the testing. It states:

"Initial attendance sample – outcome Failed – results issued

Retest on attendance samples- outcome Failed – results issued

Submitted sample- outcome Pass – results issued

OSI Discharge samples- outcome Failed – results issued

...

Quick Summary – Grain Sampling from Belt

1. Take 3 equal samples from the belt: near edge, middle, far edge.

2. Combine and mix in Bucket 1.

3. Fill a 500g zip lock bag, label it, and bag it.

4. Tip leftovers into Bucket 2 (composite).

5. Repeat for each container.

6. Mix Bucket 2 and take a 1kg composite sample. Discard the rest.

██████ discharge / ██████ warehouse / sampling process

Our attending inspector at unstuffing location performed sampling during unloading from containers in accordance with GAFTA 124 rules. Incremental samples were mixed thoroughly, reduced by coning and quartering and prepared composite samples.

1Kg samples for individual containers were sent back to Australia."

Conclusion on Liability

65. By default, and as set out at paragraph 27(b) above, by virtue of clause 6 of the GTA DCT Contract terms which are incorporated into the contract, quality under the Contract is final against test certificates drawn during packing.
66. The parties having conceded that the sampling during packing was unreliable, the parties agreed to vary the contract on the basis of destination samples.
67. The parties having agreed that the samples drawn during packing were unreliable, the evidence of testing by Amspec of the packing samples referred to in [REDACTED] Statement take the matter no further.
68. As evidenced by the ITS First Test Report of packing samples, and the ITS Second Test Reports of destination samples, we find that the lentils supplied by [REDACTED] under the Contract were outside the contractual specification. We also find that the Respondent is therefore in breach of the Contract and subject to appropriate proof, the Claimant may be entitled to compensation by way of damages.

Quality Discount

69. As a result of the failure of the samples, [REDACTED] has applied the Quality Discount of \$200.00 USD per tonne (\$328 AUD) on whole supply made by [REDACTED]. [REDACTED] has also withheld \$5,000.00 from payment to [REDACTED] as ITS' re-testing costs.
70. We have no evidence of the costs charged by ITS to [REDACTED] beyond this submission.
71. In total, [REDACTED] has withheld \$133,674.40 (excluding GST) from the total of \$388,377 (excluding GST) owing to [REDACTED]
72. [REDACTED] has submitted that [REDACTED] discount is excessive and the "general market discount" is of between \$30 to 40 USD for grade 2 lentils.
73. We otherwise have no evidence or submissions in relation to the quantum of this discount. We also have no evidence or submissions about the replacement value of the shipment.
74. [REDACTED] is also seeking payment of its GTA fees owing for this arbitration in the sum of \$10,008.24.

Claim

75. For the reasons given above, we have no evidence and no means of assessing whether the Claimant has suffered a loss and/or whether the Quality Discount represents appropriate compensation for any losses suffered by the Claimant.

C. Directions

76. Within 14 days of the date of this First Partial Award, the Claimant is directed to provide any submissions and evidence in relation to the quantification of its claim resulting from the Respondent's breach of the Contract.
77. Within 14 days after receipt of the Claimant's submission under [76] above, the Respondent is to provide any submissions and evidence responsive to the Claimant's submissions under [76].
78. Within 7 days after receipt of Respondent's submissions under [77] the Claimant is to provide any submissions responsive to the Respondent's submissions under [77].

79. Costs are reserved.

This First Partial Award is dated at Sydney, the twenty fourth day of September 2025

A handwritten signature in black ink, appearing to be 'G. Farnsworth', written in a cursive style.

Geoff Farnsworth, Chair

Gerard McMullen

Adrian Murphy