

APPROVED AIC CONTRACT NOTE FOR HOME GROWN GRAIN AND PULSES

Prepared by AIC in Consultation with the NFUs of England & Wales and Scotland

Suitable for Producer/First Buyer Transactions.

This Contract is valid only when issued by a Member or Licensee of the Agricultural Industries Confederation Limited

Date:

Buyer's Ref: Seller's Ref:

Sellers:

Buyers:

being the only two parties who have any rights whatsoever under this contract have this day entered into a contract whereby the Buyer agrees to buy and the Seller agrees to sell goods not necessarily being the Seller's own produce, on the terms and conditions given below. For the avoidance of doubt and subject to Clause 20, the unavailability of the Seller's own produce does not remove the obligation on the Seller to make available goods, having been produced elsewhere in the UK, which meet the following terms and conditions:

1. Goods sold on *Sample/*Description: Contractual quality for each individual consignment as under:

Type/ Variety	Max Moisture %	Min Specific Weight (kg/hl)	Min/Max Nitrogen % (basis dry matter)	Min/Max* Protein % (basis dry matter)	Min Germinative Capacity %	Min Hagberg Falling No	Max Admixture/ Impurities (by weight) %	Max Sprouted Grains (by weight) %	Max Screenings (by weight) % (enter sieve size)	Hardness Min/Max* (SKCS Value)

2. Weighing Charge: Weighing Charges of £...../tonne* / £...../load* shall be for Buyers*/Sellers* account.

3. Special Terms:

4. Drying: Undried/dried or conditioned*

5. Contract Quantity: About* tonnes OR between and tonnes*. Where the word 'about' is used in reference to quantity the Seller shall have the option of delivering 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contract quantity at the contract price. This variation of 5% or 15 tonnes is hereinafter referred to as 'the tolerance'. Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the Buyer to reject the excess if they so wish. If they do not so reject, the price of any quantity in excess of the contract quantity shall be settled by mutual agreement or otherwise by arbitration. If the Seller delivers less than the minimum quantity permitted by the tolerance they shall be deemed to be in default and shall compensate the other party in accordance with the Default clause herein. Calculation of damages in all instances shall be against the contract quantity. (Where deliveries of individual consignments reach a tonnage within the tolerance of the contract quantity, the contract shall be deemed to have been completed).

6. Contract Price:per tonne ex-farm/ex-store/delivered to*
.....(location).

7. Movement Period:

8. Payment Terms:

THIS CONTRACT IS SUBJECT TO THE CONDITIONS ON THE FOLLOWING PAGES SO FAR AS THEY ARE NOT INCONSISTENT WITH THE TERMS SET OUT ABOVE. (Whenever the words 'grain' or 'pulses' are used, these refer to goods of the contractual description).

*Delete words which do not apply.

Signature on behalf of Buyer*/ Seller*

9. **Farm Assurance:** The Seller is responsible for ensuring the goods supplied against the contract meet the requirements of a recognised crop assurance scheme and membership of such scheme remains valid through the movement period.
10. **Origin:** The Seller guarantees that Goods have been grown in the United Kingdom.
11. **Quality:** In addition to obligations arising under the Sale of Goods Act 1979 (as amended) the following conditions shall apply:
- All goods to which this contract refers shall be of satisfactory quality, sound, free from mould, heat damage, green grain, infestation or other injurious materials and from objectionable smell or taste.
 - Feed grain (as specified under Goods sold on Sample/Description above) shall not contain more than 0.001% Ergot by weight. All other goods shall be free from Ergot.
 - Where the goods have been dried after storage in a sealed silo or container, or where any chemical treatment has been used as a desiccant on the crop from which the goods are produced, these facts shall be declared in writing by the Seller at the time of sale.
 - Where wheat is sold for flour milling, gluten shall be present and elastic, and of a satisfactory colour; maximum admixture, as stated above under Contractual Quality, shall include all material passing through a 2.0mm slotted aperture sieve and non-wheat tailings retained over a 3.5mm slotted aperture sieve.
 - In the case of goods purchased on sample, the goods shall in all other respects be as per sample.
12. **Pre-delivery Storage:** The Seller must ensure that Goods sold for delivery against this contract are at all times stored in clean and hygienic conditions. Sellers shall allow Buyers, their agents or sub-buyers, access to any store containing the contract goods and, if required, shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the goods.
13. **Pesticide Residues:** The Seller guarantees that the goods, on delivery, will comply with the provisions of the Food and Environment Protection Act 1985 or any amendment thereof, the Plant Protection Products Regulations 2011 or any amendment thereof and legislation pertaining to permitted pesticide maximum residue limits applicable for the region of the UK in which the goods have been grown.
14. **Combinable Crops Passport (CCP):**
- The Seller shall ensure that an appropriately completed and signed CCP accompanies each load that is collected/delivered.
 - The Seller shall notify the Buyer on a CCP whether or not any post-harvest treatment has been applied to the goods by or on behalf of the Seller or a previous owner.
- The Buyer reserves the right to reject any load which is not accompanied by an appropriately completed CCP.
15. **Salmonella:**
- The Seller must observe the Defra published Code of Practice for the control of Salmonella during the Production, Storage and Transport of Compound Feeds, Premixtures, Feed Materials and Feed Additives, or any amendment thereof.
 - The goods shall be available for delivery/collection as required during the movement period irrespective of salmonella sampling/monitoring/testing.
 - In the event that a Statutory Order is issued preventing the movement of the contractual goods prior to the expiry of the movement period, the Force Majeure clause will apply. In the event that payment has been made for all or part of the goods, and the goods are then subject to the provisions of the Order preventing the movement of the contractual goods during the movement period, then any monies paid for goods shall be returned to the Buyer for that part of the contract so cancelled. Any monies due under this clause shall be repaid within seven consecutive days of notification by the Buyer that the contract or any portion of the contract has been cancelled.
- The Buyer shall have no claim against the Seller for delay or non-fulfilment under this clause provided that the Seller supplies to the Buyer, if required, satisfactory evidence justifying the delay.
16. **Sampling:**
- Deliveries shall be sampled by the receiver at the final consignment point in accordance with the procedure laid down in the ISO 24333 Standard or any amendment thereof.
 - Analysis of all samples shall be determined in accordance with equipment calibrated to the reference methods specified in the AIC Code of Practice for Testing Facilities of Combinable Crops, or equivalent, currently in force at the time of delivery. Samples submitted for independent testing shall be analysed using the reference methods stated in that Code and not by using rapid or other methods.
17. **Vehicle Cleanliness:** Acceptance or rejection of the vehicle for fitness to carry grain/pulses to enter the food chain shall be at the discretion of the party responsible for loading the vehicle. Any additional haulage costs arising from the rejection of the vehicle shall be the liability of the party responsible for the movement of the goods. In the event

of any vehicle being rejected as above, within three business days of the end of the movement period, the movement period shall be extended by three business days.

- 18. Delivery & Weights:** All deliveries/collections shall be made in bulk at Buyer's call within the movement period unless otherwise agreed. The Buyer's weights are final unless other satisfactory evidence is produced. The Buyer shall if required produce proof of weight received to the Seller.
- a. **Ex-farm or ex-store sales**
The Seller shall load the goods free of charge on vehicles on an accessible hard standing. The Buyer undertakes to advise the Seller of intended times of collection as far as possible and to provide vehicles suitable in all respects for the carriage of bulk grain or pulses. Where the Buyer collects unweighed goods they shall notify the Seller of the net weight as quickly as possible and will produce a copy of the weight ticket on request.
- b. **Sales on a delivered basis**
The goods shall be delivered to the nominated place of consignment on the instructions of the Buyer. The Seller undertakes to advise the Buyer of all despatches, stating the haulier's name and approximate net weight. A receipt for the weight at the time of delivery shall be given to the driver of the vehicle. The Seller shall ensure that the goods are carried on vehicles which comply with the TASCC Code of Practice for Road Haulage of Combinable Crops and Animal Feeds unless agreed otherwise in writing.
- 19. Passing of Ownership and Risk:** Ownership and risk shall remain with the Seller until the goods are delivered to the Buyer. If, however, delivery has not taken place through no fault of the Seller, and the Seller has notified the Buyer in writing that the goods are ready for delivery, then risk shall pass to the Buyer on the expiration of the movement period.
- 20. Force Majeure:** Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, break-down of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within five business days of the occurrence, or not later than five business days after the beginning of the movement period, whichever is the later. For the avoidance of doubt, neither party shall have the right to rely on, as Force Majeure, any strike which is limited to the employees of that party or its subcontractors, or any delay or default of that party's sub-contractors in the performance of their obligations. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the movement period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.
- 21. Consignment:** Each individual delivery or consignment shall meet all contract terms.
- 22. Claims:** The Buyer shall have the right to claim an allowance or to reject the goods if they do not comply with the terms of the Contract.
- a. When goods are sold subject to a specification requiring analysis, the Buyer shall have the right to claim an allowance from a pre-determined scale, or to be agreed, or to reject the goods on the basis of an analysis made by them or on their behalf. When the Buyer exercises this right a representative sealed sample shall be retained and, if required by the Seller, shall be submitted to an agreed independent analyst in accordance with Clause 16 for the justification of any claim or rejection. If required by the Seller this representative sealed sample shall be jointly or independently drawn (whichever is agreed) so far as practicable. Costs of independent sampling and analysis so incurred shall be for the Seller's account if any claim or rejection is confirmed, otherwise for the Buyer's account.
- b. Claims must be confirmed by the Buyer by fax, e-mail or other electronic means or by letter sent by first class post, within two business days following the arrival of the goods at their ultimate destination in the United Kingdom.
- c. All claims other than those based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be notified so as to be received by the Seller within 90 consecutive days from the last day of the movement period.
- 23. Notices:**
- a. All notices required to be served or information passed on under this contract shall be communicated without delay by telephone or by rapid written communication. Notices which are served or passed on by telephone shall be confirmed by rapid written communication within one business day. Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. If receipt is contested, the burden of proof shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of

the arbitrator(s) or board of appeal appointed pursuant to the Arbitration clause, that notice was actually transmitted to the addressee.

- b. Notices received after 1600 hours on any business day shall be deemed to have been received on the next business day.
- c. A notice to a broker named in this contract is a notice to a principal.

24. Demurrage: In cases of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering goods howsoever caused (including delays resulting from the non-provision of essential documentation) the Seller or the Buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay.

25. Default: In the event of the Seller failing to complete deliveries or to make the goods available for collection by the Buyer (whichever is their duty under the contract) by the last day of the movement period, the quantity not delivered against the contract quantity shall be deemed in default. The Buyer may, after giving prior written notice sent by fax, e-mail or other electronic means or by letter sent by first class post,

- (a) purchase to replace the goods in default, the Seller being liable to compensate the Buyer for any resultant loss on such purchase, or
- (b) claim damages to be agreed mutually or settled by arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default.

In the event of the Buyer not accepting delivery of, or collecting the contract quantity by, the last day of the movement period (whichever is their duty under the contract) the Seller may, at their option, after having given prior written notice by fax, e-mail or other electronic means or by letter sent by first class post, to the Buyer:

- (a) sell the goods at the market price, the Buyer being liable to compensate the Seller for any resultant loss (including any reasonable expenses arising from the sale) suffered by the Seller; or
- (b) claim damages to be settled by mutual agreement or arbitration, such damages not to exceed the difference between the contract price and the market price on the date of default. All damages to be calculated on the contract quantity.

The date of default shall be the first business day following the expiry of the movement period. When an extension of collection/delivery has been either claimed as under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

26. Arbitration: Any dispute (other than a claim for an unpaid debt or as provided under (b) below) arising out of this Contract shall be referred to arbitration as follows:

- (a) Unless otherwise agreed the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation and/or <https://www.agindustries.org.uk/legal/arbitration/>, and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.
- (b) If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed may, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within twenty eight days the party making the request shall be at liberty to commence Court proceedings leaving it to the other party, if the other party so wishes, to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

27. Time Limits for Claiming Arbitration: Arbitration shall be claimed within the following time limits: (i) in relation to any aspect of the consignment quantity, quality or condition of the goods that is discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 28 consecutive days after the date of the arrival of the goods at their ultimate destination in the United Kingdom and (ii) in relation to all other claims including without limitation claims for quantity, quality or condition not discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 90 consecutive days after the last day of the movement period. Subject to paragraph 26(b): (i) the making of an award shall be a condition precedent to any Court action, excepting that which is expressly referred to in Clause 44 (3) of the Arbitration Act 1996 (or any amendment thereof), by either party or any person claiming under either of them and (ii) in the event that arbitration is not claimed within the time limits prescribed above, all causes of action relating the subject claim whether by way of arbitration or in any Courts of Law shall be deemed waived and shall be barred absolutely unless the Arbitration Tribunal shall in its absolute discretion determine otherwise.

28. Non-Payment: The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other Contract with them by the Buyer have been received and reserves a lien upon - and the right to sell or otherwise dispose of - all goods the subject of this Contract whether appropriated to it or not in respect of any such payments.

- 29. Insolvency:** If either party to this Contract ("the Affected Party"):
- has a Receiver, Administrative Receiver or Administrator appointed in respect of any of its property or business undertakings;
 - or announces that it has ceased, or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts);
 - or suspends or is about to suspend, payment of its debts or fails to pay, or is unable to pay or admits or states its inability to pay its debts as they fall due;
 - or disposes of or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party);
 - or convenes, calls or holds a meeting of its creditors or makes or proposes any arrangement or composition with its creditors;
 - or states an intention to make or give notice of a voluntary arrangement under Part 1 of the Insolvency Act 1986;
 - or has a resolution or petition (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) passed for the winding up or voluntary winding up or liquidation;
 - or is dissolved, or applies for an Interim Order under Part VIII of the Insolvency Act 1986; or a Bankruptcy Petition or a Statutory Demand in bankruptcy is presented or served;
 - or suffers to the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises;
 - or if a party being a partnership, any of the above events occurs with respect to the partnership or to any partner therein (hereafter called "Act of Insolvency") then,
- notwithstanding any previous arrangement between the parties for deferred payments, the full or full remaining price for any goods delivered shall become immediately due and payable by the party committing an Act of Insolvency.

The party not committing an Act of Insolvency ("the Innocent Party") shall have the right, upon giving written notice to the other party, without prejudice to any other rights and remedies available to the Innocent party, to cancel and/or suspend and/or to refuse to make or accept any further deliveries and to close out and settle the Contract as detailed below.

The Affected Party shall serve written notice of the relevant Act of Insolvency by fax, e-mail or other electronic means or by letter sent by means of a recorded delivery to the Innocent Party. Where proof is available that such notice was served within two business days of the occurrence of the Act of Insolvency, the Innocent Party shall have the right to close out the Contract which shall be settled at the market price on the first business day following the occurrence of the Act of Insolvency.

In all other circumstances, the Innocent Party, upon learning of the occurrence of the Act of Insolvency shall have the right to close out and settle the Contract at either:

- (a) the market price on the first business day following the Innocent Party becoming aware of the Act of Insolvency, or
- (b) at the market price on the first business day following the occurrence of the Act of Insolvency.

In the event that the market price is lower than the contract price then the Innocent Party may add the difference between the market price and the contract price to the debt owed by the Affected Party.

In the event that the market price is higher than the contract price then the Affected Party is not entitled to claim the difference between the market price and the contract price from the Innocent Party.

- 30. Product Liability Insurance:** The Seller is advised to have insurance to cover any product liability or other claims for which they may be legally liable. This advice will be referred to at any time should it become necessary.
- 31. Statutory Charges:** The price of the goods is subject to alteration by reason of the imposition of or alteration by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.
- 32. Processors and Growers Research Organisation (PGRO):** In the case of Pulses the Buyer shall deduct the PGRO Levy from the payment to the Seller.
- 33. Business Day/Non-Business Days:** A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognised national holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation Limited may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

34. **Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.I(1)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.
35. **Domicile:** This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all aspects by English law

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