



EXPLANATORY MEMORANDUM

GTA CONTRACT NO. 5 – CFR/CIF CONTRACT FOR GRAIN IN CONTAINERS

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1. Introduction

GTA has developed GTA Contract No. 5 (CFR/CIF Contract for Grain In Containers) as a response to industry demand.

The contract was developed by a specialist drafting committee following industry consultation and has been approved for use by the GTA Commerce Committee and the GTA Board.

The contract comes about as a result of the growth in the container trade to South East and North Asia and the desire of the Trade to be able to use a more regionally oriented contract as an alternative to the well-established GAFTA contract forms.

2. CFR / CIF Contract

Contract No.5 is best suited for use in contracting between Australian-based CFR/CIF Sellers of grain in containers to end-users and is drafted in-line with and references the INCOTERMS 2010 definitions for CFR and CIF. For further information refer to INCOTERMS 2010.

CONTRACT NO.5 IS NOT “BACK TO BACK” WITH THE EQUIVALENT GAFTA FORMS AND CAUTION SHOULD BE USED WHEN IT IS POSSIBLE THAT CONTAINERS WILL BE ON-SOLD TO TRADERS USING GAFTA TERMS.

The drafting committee considered whether the Contract should reference the INCOTERMS CPT and CIP which are specifically designed for use in container trades. It was considered that these INCOTERMS were not in wide-spread usage but that aspects of these terms could be specifically incorporated into the Contract No. 5.

Contract No. 5 is well suited for use along-side GTA Contract No.4 (DCT), the principal differences between the two contracts being that the CFR/CIF Seller is responsible for procuring the freight, not just delivery to the carrier at the export terminal.

Associated with the freight aspect, the CFR / CIF destination will be the port of destination, and not the port of loading.

Unlike all other GTA Contracts, Contract No.5 does not specifically incorporate the GTA Trade Rules, those Rules being best suited to domestic contracting.

3. Extension of Shipment Period

As stated above, the GTA Contract No.5 is not intended to duplicate the equivalent GAFTA forms but to provide a regional alternative.

Significantly, unlike the GAFTA forms, the GTA contract does **NOT** include a clause allowing extension to the shipment period.

4. Retention of Title – Clause 6

The contract provides that title in the goods passes to the Buyer only when the Seller has been paid.

In circumstances where the goods have been shipped and have left the Australian jurisdiction enforcement of a retention of title clause may be problematic. Sellers should not place sole reliance on this clause when providing credit terms to Buyers; Sellers should ensure that payment has been made or that satisfactory arrangements for payment are in place before releasing original bills of lading.

5. Import Permits – Clause 8

The contract makes clear that the Buyer is responsible for obtaining clearance for import and must clearly advise the Seller of any documentary requirements.

6. Dispute Resolution – Clause 19

One of the major differences between the GTA and GAFTA forms is that the GTA form references GTA dispute resolution, that is GTA arbitration in Australia rather than GAFTA arbitration.

This will suit some parties, but CAUTION should be exercised when trading in a string with GAFTA contracts as the potential exists for some aspects of any dispute to be referred to GTA and some to GAFTA. THIS IS NOT IDEAL. As stated above, the GTA contract is best suited for use with end-users who are comfortable with the reference of potential disputes to GTA.

7. Definitions

CFR “Cost and freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered.

CIF “Cost Insurance and freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered.