

**IN THE MATTER OF THE INTERNATIONAL ARBITRATION ACT 1974 (CTH) AND
IN THE MATTER OF AN ARBITRATION
UNDER THE RULES OF GRAIN TRADE AUSTRALIA LTD**

GTA Arbitration No. 283

**Seller: Trader
(Claimant)**

and

**Buyer: Trader
(Respondent)**

Final Award

1. INTRODUCTION

This is a Final Award in an arbitration conducted pursuant to the Dispute Resolution Rules (**DR Rules**) of Grain Trade Australia Ltd (**GTA**).

It is in the nature of a default award, made pursuant to an application by the Claimant dated 31 January 2019 and on notice to the Respondent. We are satisfied that the Claimant and GTA have taken reasonable steps to bring this proceeding to the attention of the Respondent but the Respondent has chosen not to participate in this arbitration.

We note that the Respondent appears to be entity based in Dubai. As such, we consider that this arbitration is international for the purposes of Art 1(3) of Schedule 2 of the Commonwealth *International Arbitration Act 1974 (Act)* and is accordingly governed by that Act as required by Art 13 of the DR Rules.

The dispute concerns a [REDACTED] broker contract No. [REDACTED] dated 22 November 2017 (**Contract**) for the sale and purchase of 250mt of Kabuli Chick Peas @ A\$1300 mt DCT [REDACTED], in shipping containers, for delivery in January 2018. The Contract incorporated and was on the terms of the GTA Contract No.4, DCT.

There is no issue as to our jurisdiction as the Contract clearly contains a referral of disputes to GTA Arbitration. Nor is there any question about our ability to issue a default award and we refer to Art 24.2 of the GTA Dispute Resolution Rules in this regard as well as section 23B of the *International Arbitration Act 1997 (Cth) (Act)*.

We find therefore that we are a validly constituted Tribunal under the Act and with jurisdiction to determine all issues in dispute between the parties.

This Tribunal comprises

1. Mr Michael Wood, nominated by the Claimant;
2. Mr Justen Schofield, nominated by GTA in default of the Respondent's nomination, and
3. Mr Mark Lewis, nominated by GTA to Chair this Tribunal.

2. BACKGROUND TO THE DISPUTE

The following is extracted from the Claimant's Claim Submissions dated 21 September 2018 and primary documents annexed to those submissions.

The Claimant Seller is based in Australia and is a supplier of grain.

The Respondent Buyer operates a business in Dubai.

Following the issue of the Contract, on or about 28 November 2017 the Respondent paid a 10% deposit of \$31,330 as required by the Contract. We note that payment of the deposit serves to confirm the Respondent's knowledge and acceptance of and serves as part performance of the Contract.

By agreement, the time for shipment was extended to February 2018 and then into March 2018. In addition to the contract price the Respondent Buyer agreed to pay carry charges of an additional A\$10 per tonne. This is further affirmation of the terms and existence of the Contract.

Despite repeated requests, the Respondent Buyer failed to provide shipping instructions as required under a DCT contract.

Finally, on or about 20 March 2018, the Claimant held the Respondent in default and claimed A \$92,500 (Outstanding Amount). The Claimant has produced a report from Mallon Commodity Brokering dated 20 March 2018 which establishes and confirms that the fair market value claimed by the Claimant is objectively reasonable.

3. A DEFAULT AWARD

In default of the participation of the Respondent, GTA invited the Claimant to apply for a Default Award, which the Claimant has done by an Application dated 31 January 2019.

That Application is accompanied by an affidavit sworn by Mr A on 18 January 2019, in which he deposes to the accuracy of the information contained in the Claims Submissions dated 21 December 2018.

The challenge for arbitrators on arriving at a Default Award is that we have only one party's version of events to go on. Even in the absence of a Respondent, as arbitrators we have obligations to conduct ourselves fairly and in accordance with natural justice and procedural fairness. To do otherwise would undermine the utility and reputation of the GTA arbitration process.

In arriving at our decision therefore we must have regard to the objective evidence submitted by the Claimant. But we are also entitled to infer that the Respondent has maintained silence because nothing it might say might help its case.

In making its application for a Default Award, the Claimant has produced various email exchanges between itself and the Respondent.

This correspondence provides objective evidence that there is a debt payable by the Respondent to the Claimant and in our view gives us a sufficient basis on which to find in favour of the Claimant.

AWARD

For the reasons given above, our final Award is;

- (a) The Respondent shall pay the Claimant the amount of A\$ [REDACTED] (being A\$ [REDACTED], less A\$ [REDACTED] paid as a deposit).
- (b) The Respondent shall pay interest on the principal sum at the rate of 12% from 21 March 2018 and which we fix at A\$ [REDACTED].
- (c) The Respondent shall indemnify the Claimant for the arbitration and any other fees paid by the Claimant to GTA.

This award is published at Sydney, the 22 day of March 2019.

Mr Mark Lewis, Chair Arbitrator appointed by GTA

Mr Michael Wood, Arbitrator appointed by the Claimant

Mr Justen Schofield, Arbitrator appointed by GTA for the Respondent