



**GTA Free on Rail (FOR) Contract No 7
CONTRACT FOR GRAIN AND OILSEEDS IN BULK FREE ON RAIL TERMS**

DATE:

SELLERS:

BUYERS:

BROKERS:

Have this day entered into a Contract on the following terms and conditions:

1. **QUANTITY:** Sellers have agreed to sell and Buyers have agreed to buy _____ tonnes of 1,000 kilos. Buyers to specify if this is in one or multiple loads.
2. **PRODUCT:**

3. **GRADE AND SPECIFICATIONS:**

4. **PACKAGING:** In Bulk.
5. **WEIGHTS:** Weights to be final at Loading/Destination* (delete as applicable)
6. **TOLERANCE:** ()% more or less at Buyers' option, at contract price.
7. **PRICE:** Priced at _____ per metric tonne.
8. **LOADING FACILITY:** Delivered FREE ON RAIL, at _____ operated by _____ (**BHC**) subject to existence of a valid rail interface agreement between the BHC and rail operator.
9. **INTERFACE AGREEMENT(S):** _____ To be nominated by **Sellers** and shall apply to this contract.

10. DELIVERY PERIOD AND NOMINATION

- (a) DELIVERY PERIOD: Train to arrive in all respects clean and ready to load at the Loading Facility between _____, ("Delivery Period") both dates inclusive.
- (b) EXTENSION OF DELIVERY PERIOD: For the avoidance of doubt, any extension to or variation of the Delivery Period must be agreed by the parties and confirmed in writing.
- (c) NOMINATION: Buyers to give Sellers notice of train configuration within the time specified in any applicable storage and handling agreement but no fewer than 7 consecutive days before the first day of the Delivery Period, nomination to include estimated arrival time and configuration of rail car type and loading specifications.
- (d) LOAD REQUEST: Unless otherwise agreed in writing, Buyers to provide Sellers with at least 72 hours (delete or amend) notice of commencement of loading specifying
 - a. Number of wagons;
 - b. Wagon type and capacity;
 - c. Required loaded tonnage per wagon;
 - d. Estimated arrival time;
 - e. Estimated departure time;
 - f. Requirement for independent survey (at Buyer's cost).

11. QUALITY, SAMPLING AND ANALYSIS:

- (a) Quality and condition to be final at Loading Facility/Destination* (delete as applicable) as per Independent Superintendent Company/BHC certificates* (delete as applicable), at Sellers' option and expense. Buyers' right to appoint their own superintendent at load at their cost.
- (b) Representative samples of the Product shall be drawn during loading or discharge (as appropriate) by the relevant storage provider in accordance with standard protocols to obtain a representative sample of the entire contract/load.
- (c) Final determination of quality shall be established on the composite sample drawn on loading by the nominated surveyor/laboratory.

- 12. FREIGHT:** Buyers undertake to provide the train to permit loading in accordance with this contract. Buyers are to ensure that all rail cars are clean, easily accessible and if necessary cargo duly protected.

13. NOTICE OF READINESS TO LOAD:

After arrival at the Loading Facility the Rail Operator will give valid written notice of readiness (in all respects) to commence loading to Buyers, Sellers and BHC (**Notice of Readiness**).

The Product shall be loaded within _____ hours of Notice of Readiness (**Loading Window**).

If no Notice of Readiness is given within the Delivery Period, Sellers may at their option declare Buyers in default and claim damages for costs directly incurred as a result of Buyer's default or in their absolute discretion affirm this contract or Sellers may carry the goods for Buyers' account at the rate for storage, interest and insurance current at the time of the train's presentation pursuant to the relevant BHC Storage and Handling Agreement. Such carrying charges shall accrue from the day following the expiration of the Delivery Period until the day that goods are loaded and must be paid by Buyers upon Sellers' invoice.

14. LOADING: The Product shall be loaded within the Loading Window at a loading rate of _____, or if no rate is stated, 250 mt per hour. All weather working days of 24 consecutive hours. Any time lost on a working day owing to weather conditions shall not count provided work is actually stopped or prevented thereby.

15. DEMURRAGE: If loading has not been completed at the end of the Loading Window demurrage will accrue at the rate of _____ per running day, and pro-rata for any part of a day for the relevant cargo quantity. Demurrage to be settled within 30 days of the last day of loading.

16. PAYMENT:

(a) Unless otherwise agreed in writing, Buyers shall pay 100pct of the invoice by electronic transfer within 1 business day after presentation of following original transport documents including faxed or electronic copies of transport documents.

- (b) Payment against:
- Commercial Invoice for the Cargo
 - Weight Certificate (as per clause 5)
 - Quality Certificate (as per clause 11)
 - Load Report stating
 - o Train Arrival
 - o Readiness to load
 - o Commencement of loading
 - o Finish Loading
 - o Rail Departure

(c) If Sellers are reliant on Buyers to provide any information or documentation required under sub-clause 16(b) and such information is not provided promptly or in any event within 1 business day of written request Buyers will be liable to pay compensation under Trade Rule 19.2.

17. NOTICES: Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email or by other method of rapid written

communication, subject to the burden of proof of successful transmission to be with the sender. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours EST on a business day shall be deemed to have been received on the business day following. A notice to a party's Brokers or Agent shall be deemed a valid notice under this contract.

18. **ON-BUSINESS DAYS:** Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday the time so limited shall be extended until the first business day thereafter. The contract delivery period is not affected by this clause.

19. **PREVENTION OF DELIVERY**

"Event of Force Majeure" means:

- (a) flooding or wash-away of any below rail related infrastructure;
- (b) derailment of the train,
- (c) blockade,
- (d) acts of terrorism,
- (e) hostilities,
- (f) strike, lockout or combination of workmen,
- (g) riot or civil commotion,
- (h) breakdown of machinery,
- (i) fire,
- (j) ice,
- (k) other extreme weather events, or
- (l) act of God.

Should a party's performance of this contract be prohibited or prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that affected party shall have served a notice on the other party within 48-hours of the occurrence or not later than 24-hours before commencement of the delivery period, whichever is later, with the reasons therefor.

If the Event of Force Majeure continues for 24-hours after the end of the delivery period, then a party has the option to cancel the unfulfilled part of the contract by serving a notice on the other party not later than the first business day after expiry of the 24-hour period.

If this option to cancel is not exercised then the contract shall remain in force for an additional period of 5 business days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall be automatically cancelled.

The burden of proof lies upon affected party and the parties shall have no liability to each other for delay and/or non-fulfilment under this clause, provided that affected party shall have provided to the other, if required, satisfactory evidence justifying the delay or non-fulfilment.

20. **INSURANCE:** Product to be at Buyers' risk upon delivery into rail cars, and Buyers shall insure the Product loaded, from the commencement of loading until payment in accordance with this contract. Buyers to produce evidence of insurance cover at Seller's request.
21. **BANKRUPTCY/INSOLVENCY:** If before the fulfilment of this contract Buyers or Sellers suspend payment of debts, notify any of their creditors that they are unable to meet debts, or convene or hold a meeting of creditors, or commits an act of bankruptcy, or being a company shall be made subject to external administration or shall have a receiver appointed, or hold a meeting for the purpose of considering a resolution that the company be wound up or go into liquidation, such Buyers or Sellers shall forthwith notify by means of rapid written communication the other party within two business days of the occurrence and shall be deemed to be in Default hereunder.
- (a) Such contract shall be closed out at market price on the business day following the giving of the notice. If notice is not given as aforesaid, the other party, on learning of the occurrence of the act of insolvency, shall have the option of declaring this contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the act of insolvency or at market price ruling on the first business day after the date of the act of insolvency occurred.
 - (b) In all cases the party in Default shall have the option to ascertain the settlement price on the closing out of this contract by repurchase or resale, and the difference between the contract price and the repurchase or resale price shall be the amount payable or receivable under this Clause.

Should either party be dissatisfied with the price ascertained by re-purchase or re-sale, then the matter shall be referred to GTA for arbitration. If no re-purchase or re-sale takes place and if the parties cannot agree to a closing-out price, then on application of either party, the closing-out price shall be fixed by a sole arbitrator appointed by GTA.

22. **CIRCLE:** Where Sellers re-purchase from their Buyers or from any subsequent Buyers the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, , of the same quality, and, where applicable, of the same analysis warranty, for delivery from the same Loading Facility (as specified in Clause 8) during the same period of delivery). Different currencies will invalidate the circle.

If the circle is established before the goods are loaded, or if the goods are not loaded, invoices based on the mean contract quantity, or if the goods have been loaded invoices based on the loaded quantity, shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due 1 business day after the last date of the delivery period, or should the circle not be ascertained before the expiry of this time, then payment shall be 1 business day after the circle is ascertained.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall

have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract.

Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

- 23. DEFAULT:** If a party defaults on any of its obligations under this contract the party not in default may at its discretion and upon giving the defaulter notice of default elect to either cancel this contract, or to sell or purchase, as the case may be, against the defaulter who shall on demand make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase or if neither of the above rights is exercised the damages if any shall be determined by arbitration, failing amicable settlement. The damages awarded against the defaulter shall be limited to the difference between the contract price and the actual or estimated market price on the day of default. Damages are to be calculated on the mean contract quantity. The arbitrators may at their absolute discretion award damages on different quantity and/or award additional damages if they consider it justified by the circumstances of the default.

Prior to the last day of the contract delivery period either party may notify the other party of its inability to deliver or take delivery but the date of such notice shall not become the default date without the agreement of the other party. If, for any other reason, either party fails to fulfil this contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration. Except as otherwise specifically provided for in this contract, no party to this contract shall be liable in an event of default for the other party's indirect, consequential or special losses, loss of profits or other general damages.

- 24. CHOICE OF LAW:** This contract shall be interpreted according to and governed by the laws in force in New South Wales with specific reference to the Sale of Goods Act 1923 and the Warehouseman's Liens Act 1935. Performance of this contract is subject to orders, rules, and regulations of all government agencies.
- 25. RULES OF TRADE:** This contract is subject to and operates in accordance with GTA Trade Rules.
Time is of the essence in relation to the performance of this contract.
- 26. 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 GTA Dispute Resolution Rules in force at the commencement of the arbitration 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. Notice of appointment of an arbitrator must be given in writing by the party commencing arbitration within 6 months of the Train's departure from the first Loading Facility named in this contract, otherwise all claims shall be deemed to be waived and no proceedings whatsoever whether by way of arbitration or litigation shall be commenced.

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