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## Notice to Members

**Title:** Grain Trade Australia (GTA) Trade Rules

**Update No.:** 2 of 09

**Date of Issue:** 30<sup>th</sup> January 2009

### **Distribution**

- NACMA Members – primary contact list. Please circulate to all appropriate internal parties.

### **Background**

As detailed in the Notice to members 1 of 09, NACMA will be changing its name to Grain Trade Australia on 1<sup>st</sup> March 2009.

### **GTA Trade & Dispute Resolution Rules**

The following has been inserted into the Preamble section of the GTA Trade Rules that will become effective on 1st March 2009.

*“All references to the NACMA (National Agricultural Commodities Marketing Association) Trade and Dispute Resolution Rules are deemed to refer to the GTA (Grain Trade Australia) Trade and Dispute Resolution Rules. Any reference to NACMA is deemed to be a reference to GTA.”*

Apart for the above words, there has been no other changes to the Trade Rules.

### **Effective date**

The new GTA Trade Rules become effective 1<sup>st</sup> March 2009 and are attached to this Notice to Members.



## **TRADE RULES**

<b>First Issued:</b>	<b>March 1998</b>
<b>Amended:</b>	<b>November 1999</b>
<b>Amended:</b>	<b>July 2000</b>
<b>Amended:</b>	<b>September 2001</b>
<b>Amended:</b>	<b>September 2003</b>
<b>Amended:</b>	<b>October 2004</b>
<b>Amended:</b>	<b>May 2005</b>
<b>Amended:</b>	<b>September 2005</b>
<b>Amended:</b>	<b>May 2007</b>
<b>Amended:</b>	<b>March 2009</b>

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## COMMERCE COMMITTEE

The GTA Commerce Committee formulates and recommends Rule changes to the GTA Membership. Rules are proposed that reflect trade practice and facilitate trade between GTA Members specifically, as well as between all firms in the grain, feed, oilseeds and processing industry generally.

GTA Trade Rules shall govern all disputes of a mercantile, financial or commercial character connected with grain, feed, oilseeds or other agricultural commodities, as they exist now or as amended from time to time, arising between Members or Allied Members of GTA and related counter-parties, and shall be the basis of arbitration on such controversies, unless otherwise and specifically agreed to at the time of trade, or some subsequent time.

All Members of GTA and related counter-parties are free to agree upon contractual provisions that they deem appropriate. These GTA Trade Rules apply only to the extent that the parties to a contract have not altered the terms of these Rules or the contract is silent as to a matter dealt with by the pertinent Rule.

The Trade Rules may be reviewed annually and any amendments may become operative from 1st of October of each year. This annual review shall ensure that the Trade Rules continue to reflect current trade practices.

Proposed changes to GTA Trade Rules may be approved by a two-thirds majority vote of the GTA Board or of the GTA membership. Amendments to the Trade Rules become effective 30 days after the date of adoption.

The Commerce Committee consists of a minimum of three people including a Chairperson.

Such revision shall be in consultation with the industry. The GTA Trade Rules shall be the basis for the GTA Arbitration System.

# TRADE RULES

## **PREAMBLE:**

The Trade Rules shall govern all disputes of a mercantile, financial or commercial character connected with grain, feed, oilseeds or other agricultural commodities, as they exist now or as amended from time to time, arising between Members or Non Members of GTA and related counter-parties, and shall be the basis of arbitration on such controversies, unless otherwise and specifically agreed to at the time of the trade, or some subsequent time.

All Members or Non Members of GTA and related counter-parties are free to agree upon any contractual provisions that they deem appropriate. The GTA Trade Rules apply only to the extent that the parties to a contract have not altered the terms of these Rules or the contract is silent as to a matter dealt with by the pertinent Rule.

All references to the NACMA (National Agricultural Commodities Marketing Association) Trade and Dispute Resolution Rules are deemed to refer to the GTA (Grain Trade Australia) Trade and Dispute Resolution Rules.

Any reference to NACMA is deemed to be a reference to GTA.

## **Rule 1.0 TRADE:**

The term "contract" shall be construed as meaning an agreement by one party to Buy and the other party to Sell as set forth in the agreed Terms of Trade. A contract may be created either verbally or in writing and once reached shall be legally binding on both parties. A Contract Confirmation shall be issued confirming the agreement.

## **Rule 1.1 Terms of Trade:**

It shall be the duty of both Buyer and Seller to include in their original Terms of Trade, whether conducted verbally by telephone or by written facsimile, wire, email or mail, the following specifications as recorded in the Contract Confirmation.

- (a) Date of contract
- (b) Kind and Quality Grade of Commodity
- (c) Type of Quality Inspection  
*(At Origin or Destination)*
- (d) Quantity

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- (e) Type of Weights  
*(At Origin or Destination)*
- (f) Packaging
- (g) Price
- (h) Price Basing Point  
*(Delivered, Shipped, Free In Store, Free On Board, Ex-Farm, etc.)*
- (i) Transportation Specification,  
*(Road, Rail, Freight Rated Basing Point, Loading Weight Requirements, Delivered Container Terminal, etc.)*
- (j) Delivery or Shipment Period
- (k) Applicable Trade Rules
- (l) Levies and Statutory Charges
- (m) Payment Terms
- (n) Other Terms and Conditions

### **Rule 1.2 Confirmation of Trade:**

- 1) It shall be the duty of both Buyer and Seller to communicate (refer Rule 22 – Notices) with each to the other, a Contract Confirmation in writing setting forth the specifications as agreed upon in the original Terms of Trade, not later than the close of business the day following the date of trade. Upon receipt of the Contract Confirmation, the parties shall carefully check all specifications and, upon finding any differences, shall immediately notify the other party to the Contract Confirmation, by telephone or by facsimile, and confirm in writing, any discrepancies, except in the case of manifest errors and differences of minor character, in which event notice by return mail will suffice.
- 2) If either the Buyer or the Seller fail to send out Contract Confirmation, the Contract Confirmation sent out by the other party shall be binding upon both in the case of any dispute, unless the confirming party has been immediately notified by the nonconforming party, as described above, of any disagreement with the Contract Confirmation received.
- 3) When a trade is made through a Broker, it shall be the duty of the Broker to send a written Contract Confirmation to each of the principals, not later than the close of business the day following the date of trade. Upon receipt of the Contract Confirmation, the parties thereto shall carefully check the specifications and, upon finding any differences, shall immediately notify the other party to the Contract Confirmation, and confirm in writing. In the absence, conflict, or default of such notice of Contract Confirmation, the document shall be fulfilled in accordance with the terms of the Contract Confirmation issued by the Broker.

[A specimen Contract Confirmation document accompanies these Rules].

**Rule 1.3 Alteration of Contract:**

The specifications of a contract can not be altered or amended without the expressed consent of both Buyer and the Seller. Any alteration mutually agreed upon between Buyer and Seller must be immediately confirmed in writing.

**Rule 2.0 BROKERAGE:**

**Rule 2.1 Broker Defined:**

A Broker is a person, firm or electronic trading platform engaged for others, at least partially on a commission basis, in negotiating contracts relative to commodities or goods the custody of which, actual or constructive, they have no concern.

A person is not a Broker:

- (a) who has possession and absolute control of merchandise supplied to him to sell and collect the price. (Therefore, a Commission Agent to whom a commodity is consigned for sale is not a Broker.)
- (b) who receives a salary instead of commission or brokerage.
- (c) who acts for one principal to the exclusion of all others.

**Rule 2.2 Powers of a Broker:**

- 1) A Broker has the power to bind two principals only to the extent of their instructions and the principals are not liable for any acts of the Broker in excess of such instructions.
- 2) A Broker who, in good faith or otherwise, exceeds his authority is liable for resulting damages.
- 3) A Broker who, in good faith, negotiates a contract which is in accordance with instructions from both principals, who, at the time of negotiations, advises each principal the name of the other, and who completes such negotiations in accordance with the rules and customs governing such transactions, thereby fulfils all obligations and has no further liability to either of the Principals. A contract so negotiated is valid and binding between the Buyer and the Seller the same as if it had been negotiated directly between them.

**Rule 2.3 Payment of Brokerage:**

Brokerage shall be deemed to be earned on the issuance of a contract Confirmation and acceptance thereof by the contracting parties.

Brokerage shall be credited when the deliveries or shipments are invoiced or when the contract is otherwise consummated or terminated.

Brokerage shall be paid by the Seller on the mean contract quantity. Such brokerage or commission shall be due upon presentation of proper invoice.

**Rule 3.0 TIME:**

All stipulations set forth in the Terms of Trade as to "Time" are of the essence.

**Rule 4.0 QUANTITY:**

Unless otherwise agreed, all quantities shall be expressed metrically and to the nearest one/one-hundredth [1/100] of a metric tonne.

**Rule 5.0 QUANTITY TOLERANCE:**

The Seller shall have the option of delivering five percent [5.0%] or twelve [12.00] metric tonnes, whichever is the lesser quantity, more or less than the contractual quantity at the contract price. This variation of five percent [5.0%] or twelve [12.00] metric tonnes is hereinafter referred to in these Rules as the "Tolerance".

**Rule 5.1 Overfills and Underfills:**

- 1) 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. The Seller then has the following options available with agreement of the Buyer:
  - (a) Allocate the excess commodity tonnage against any other existing contract; or,
  - (b) Accept the relevant daily cash prices, for the excess commodity tonnage on the day of delivery, or,
  - (c) Accept the Buyer's rejection and any incurred removal expenses.
- 2) Any overfill on a truck commodity shall be priced by the Buyer at the current afternoon market price at the close of the day that the truck commodity is unloaded.
- 3) In the absence of a clearly stipulated applicable tolerance in the confirmation of the quantity traded, it shall be understood that any underfill or overfill on a rail commodity shall be settled at the market value at the close of the first business day following the date of load or unload, whichever weight is applicable, of the last railcar in fulfillment of the contract.

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- 4) 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 Buyer in accordance with Rule 17.1 [Default by Seller].
- 5) Calculation of damages shall be against the mean contract quantity.

### **Rule 6.0 WEIGHTS:**

Unless specifically agreed otherwise, Destination Weights, which shall be determined by qualified personnel, shall be the basis of trade. If these are not available, loading point, government or Registered Weighbridge weights shall be accepted. Errors in weighbridge tickets in all cases shall be excepted.

### **Rule 6.1 Destination Weights:**

- 1) Destination Weights shall be determined at the point of un-load on an approved weighbridge by qualified personnel.
- 2) Unless otherwise agreed, a commodity sold basis Destination Weights, Weight Certificates shall be supplied by and at the expense of the Buyer and such Weight Certificates shall be final and binding on both parties.
- 3) On a commodity sold basis Destination Weights, it shall be the duty of the Buyer to furnish billing instructions to a destination where Registered Weighbridge weights are available.
- 4) A commodity sold on specific Destination Weights may not be diverted by the Buyer to a destination where Registered Weighbridge weights are not available except with permission of the Seller and must be confirmed in writing.

### **Rule 6.2 Origination Weights:**

- 1) Origination Weights shall be determined at the point of loading on an approved weighbridge by qualified personnel.
- 2) Unless otherwise agreed, a commodity sold basis Origination Weights, Weight Certificates shall be supplied by and at the expense of the Seller and such Weight Certificates shall be final and binding on both parties.

### **Rule 7.0 QUALITY GRADES:**

Unless specifically agreed otherwise, Destination Quality Grades shall be on the basis of trade, which shall be determined by qualified personnel according to sampling and analyses procedures established by GTA. If these are not available, loading point, or Origination Quality Grades shall be accepted.

**Rule 7.1 Destination Quality Grades:**

- 1) Destination Quality Grades shall be determined at the point of un-load by qualified personnel. Where a commodity is sold basis Destination Grades, it shall be the duty of the Buyer to furnish billing instructions to a destination where qualified Quality Grades are available.
- 2) Unless otherwise agreed, a commodity sold basis Destination Grades, Grade Certificates shall be supplied by and at the expense of the Buyer and such Grade Certificates shall be final and binding on both parties.
- 3) A commodity sold on specific Destination Quality Grades may not be diverted by the Buyer to a destination where qualified Quality Grades are not available except with permission of the Seller and must be confirmed in writing.

**Rule 7.2 Origination Quality Grades:**

- 1) Origination Quality Grades shall be determined at the point of loading by qualified personnel.
- 2) Unless otherwise agreed, a commodity sold basis Origination Grades, Grade Certificates shall be supplied by and at the expense of the Seller and such Grade Certificates shall be final and binding on both parties.

**Rule 8.0 CHEMICAL AND PESTICIDE RESIDUES:**

The Seller warrants that the commodity complies with all State and Federal Laws and requirements relating to chemical and pesticide residues and specified government designated maximum residue levels.

**Rule 9.0 CERTIFICATES:**

- 1) Unless otherwise agreed, any Certificates required, other than Weight and Grade Certificates, pursuant to the Terms of the Contract Confirmation shall be supplied by and at the expense of the Seller and such Certificates shall be final and binding on both parties.
- 2) Weight Certificates shall be supplied pursuant to Rule 6 of these GTA Trade Rules
- 3) Grade Certificates shall be supplied pursuant to Rule 7 of these GTA Trade Rules

**Rule 10.0 UN-PRICED CONTRACTS:**

**Rule 10.1 Un-Priced "Basis" contracts:**

- 1) Unless otherwise agreed, all un-priced "Basis" contracts shall be priced within the day's price range at the Buyer's option, while the underlying futures markets are open and tradeable, but in no case shall the pricing go beyond the Seller's requested date of Delivery or Shipment, or the date of actual Delivery or Shipment, or beyond the First Notice Day of the contract's underlying futures month involved, which ever comes first.
- 2) The term "Basis contract" shall be construed to meaning a contract which establishes a "Basis Price", a "Basis Price" being the difference between the cash price at a specific location or basing point and the value for related underlying futures.

**Rule 10.2 Un-Priced "Hedged To Arrive" or "Futures First" contracts:**

- 1) Unless otherwise agreed, all un-priced "Hedged To Arrive" or "Futures First" contracts shall be priced at the Seller's option, at that day's Buyer's Basis price, while the underlying futures markets are open and tradable, but in no case shall the pricing go beyond the Seller's requested date of Delivery or Shipment, or the date of actual Delivery or Shipment, or beyond the First Notice Day of the contract's underlying futures month involved, which ever comes first.
- 2) The term "Hedged To Arrive" or "Futures First" contracts shall be construed as meaning a contract which establishes a value for underlying futures, while a yet to be determined "Basis" price at a specific location or basing point is left to be established at a later date.

**Rule 11.0 BUSINESS DAY DEFINED**

- 1) The term "Business Day" shall be construed as meaning any day, 0800 hours until 1700 hours local time, Monday through Friday, except all trade and gazetted public holidays for the applicable State of delivery.
- 2) Should the time for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of delivery or shipment shall not be affected by this Rule.

**Rule 12.0 TIME OF DELIVERY OR SHIPMENT:**

For the purpose of these GTA Trade Rules, Time of Delivery or Shipment shall be defined as:

- 1) The term "Loaded", "Spot", or "On-Track" shall be construed as meaning that the goods are actually loaded and ready for billing, and must be billed on the date of the trade.
- 2) The term "Immediate" shall be construed to meaning delivery within three [3] business days from the date of contract.
- 3) The term "Prompt" shall be construed to meaning delivery within five [5] business days from the date of contract.

[Where time is calculated "from" a particular day, you do not count that day]

- 4) The term "Weekly" shall be construed as meaning the:
  - 1st to the 7th day inclusive
  - 8th to the 14th day inclusive
  - 15th to the 21st day inclusive
  - 22nd to the last day inclusive (the fourth week of a month may consist of from seven to ten days)
- 5) The term "Calendar Week" shall be construed as meaning the respective weeks as shown on a calendar. A Calendar Week begins on the morning of a Monday and ends at midnight the following Sunday. The first calendar week of a month begins on the first Monday of a month. The last calendar week of a month begins on the last Monday of a month and may extend six [6] days into the following month.
- 6) The term "Even Spread" shall be construed as meaning equal spread of the total quantity divided by the number of weeks as defined by Rule 12.0(4) in the construed period.
- 7) The term "Month" shall be construed as meaning a calendar month and shall be deemed to be from the morning of the first day until midnight on the final day.
- 8) The term "First Half of the Month" shall be construed as meaning from the morning of the 1st day until midnight on the 15th day.
- 9) The term "Second Half of the Month" shall be construed as meaning from the morning of the 16th day until midnight on the last day.
- 10) The term "as it comes" or "as harvested" or "as ginned" shall be construed as meaning at the Seller's discretion within the construed period.

**Rule 13.0 CONVEYANCE AND DELIVERY INSTRUCTIONS:**

- 1) Unless otherwise agreed, the Seller shall have the right of conveyance.
- 2) For the purpose of these GTA Trade Rules;
  - (a) The term "Delivery" shall be construed as meaning that the goods have been delivered, constructively placed, or otherwise made available at the Buyers destination.
  - (b) The term "Shipment" shall be construed as meaning that shipping instructions and related documents have been filed by the shipper with the authorised agent or carrier.
  - (c) "Billing instructions" shall be construed as meaning a particularised list of delivery instructions sufficient to generate a bill of lading.

**Rule 13.1 Delivery or Shipment Instructions:**

- 1) In cases of a contract for other than "Loaded", "Immediate", or "Prompt", the Seller shall give the Buyer five [5] business days written notice of commencement of Delivery or Shipment, and, the Buyer shall within two [2] business days of receipt of such notice shall give delivery or consigning instructions to the Seller.
- 2) In cases of a contract with terms "Ex-Store", "Ex-Farm" or "Free On Board", other than "Loaded", "Immediate", or "Prompt", the Buyer shall give the Seller not less than five [5] business days written notice of intent to present appropriate transportation for the commencement of loading, and, the Seller shall within two [2] business days of receipt of such notice shall give delivery or consigning instructions to the Buyer.
- 3) Where goods are delivered or shipped in more than one lot, the contract shall be deemed a separate one in respect of each consignment.
- 4) When a scheduled delivery or shipment date or delivery or shipping period begins or ends on a gazetted holiday, Delivery or Shipment may be made on the next business day.

**Rule 13.2 Buyer's Option Defined:**

Unless otherwise agreed, "Buyer's Option" or "Buyer's Call" shall be construed as meaning that the Seller shall have fifteen [15] calendar days after receipt of instructions in which to make Delivery or Shipment.

**Rule 13.3 Delinquent Payments at Time of Conveyance:**

Should during the time fixed for Delivery or Shipment the Buyer be indebted and delinquent in payment to the Seller under this or any prior transaction, the Seller shall be entitled to withhold Delivery or Shipment until such time that delinquent indebtedness is satisfied, and, if that does not occur within three [3] business days from the beginning of the established delivery or shipment period, the Seller shall be entitled to cancel the contract, in which

event, the Buyer shall be deemed to be in default and the provisions in Rule 17.0 [Default] shall apply.

**Rule 14.0 OWNERSHIP AND PASSING OF TITLE:**

- 1) Unless otherwise agreed, Title to goods as well as risk of loss and/or damage shall remain with the Seller until the goods have been conveyed to the Buyer at the designated point of conveyance:
- 2) On "FOB Origin", "Ex-Farm", "Ex-Store", or "FOB Basing Point" contracts; at time and place of shipment and the time is the moment of acceptance of the appropriate shipping document by the carrier.
- 3) On "Delivered or "Delivered Basing Point" contracts; the time is when constructively placed, or presented for unloading, or otherwise made available at the Buyer's original destination.
- 4) On "In-Store" contracts; the time is at time of transfer and/or filing of documents (if required), unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.
- 5) On "Basis Price Basing Point" or "Basis Port" contracts; the time is when presented for unloading, constructively placed, at the time of transfer and/or filing of documents (if required) or otherwise made available to the Buyer, unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and/or damage.
- 6) On "Natural Terminal Port" or "NTP" contracts; the time is at the time of transfer and/or filing of documents (if required), or otherwise made available to the Buyer, unless and to the extent warehouse tariff, warehouse receipt, and/or storage contract assumes the risk of loss and or damage.

**Rule 14.1 Ex-Farm and Ex-Store Defined:**

The term "Ex-Farm" or "Ex-Store" shall be construed as meaning "Exiting the Farm" or "Exiting the Storage" Facility and loaded on an appropriately presented form of transportation or carrier.

**Rule 14.2 DCT Defined:**

The term "DCT" shall be construed as meaning "Delivered Container Terminal" in an appropriately presented shipping container.

**Rule 14.3 Free In-Store Defined:**

The term "FIS" or "Free In-Store" shall be construed as meaning "In-Store" an appropriate storage facility with all In-Charges and Storage Charges paid by the Seller up to the date of transfer or conveyance to the Buyer.

**Rule 14.4 FOB Defined:**

The term "FOB" shall be construed as meaning "Free On Board" an appropriately presented form of transportation.

Terms such as "Free On Truck" [FOT] and "Free On Rail" FOR shall be construed as having equivalent meanings.

**Rule 14.5 "Basis Pricing Point" or "Basis Port" Defined**

The term "Basis Price Basing Point" or "Basis Port" shall be construed as meaning 'delivered' a price basing point, less the prevailing applicable GTA Location Differential at the time of delivery to a tributary up country location. Location shall be at Seller's option at an up country warehouse, excluding the price basing point or port location(s). Conveyance shall be at Seller's option on a 'Delivered' basis.

**Rule 14.5.1 Basis Port "Rail" or "Track" Defined**

The term "Rail" or "Track" shall be construed as meaning a warehouse with direct access to rail out-loading.

**Rule 14.5.2 Basis Port "Road" Defined**

The term "Road" shall be construed as meaning a warehouse with direct access to road out-loading.

**Rule 14.6 "Natural Terminal Port" or "NTP" Defined:**

The term "Natural Terminal Port" or "NTP" shall be construed as meaning "Free-In- Store" price basing point of port zone, less the prevailing applicable location differential at time of delivery to a tributary up country location. Location shall be at Seller's' option at an up country warehouse with access to rail, excluding price basing point or port locations. Conveyance shall be at 'Seller's' option on a 'Free-In-Store' basis.

**Rule 15 REJECTION**

For the purpose of this Rule, a Buyer shall not be entitled to reject goods as not being in accordance with description or sample if those goods are of a quality superior or equal to that contracted for, provided that goods are otherwise in accord with the contract description.

**Rule 15.1 Rejection - Grades Outside of Contract Terms**

Unless otherwise agreed, where goods are sold on description or sample and are rejected on account of the goods not being in accordance with description or sample:

**Rule 15.1.2 Destination Grades**

- 1) It shall be the duty of all Buyers to exercise due diligence in seeing that deliveries are inspected on "arrival" and to ascertain by inspection or other means and report the condition of the shipment, otherwise the Seller's liability ceases at the expiration of such time.
  - (a) Rail: Arrival of a rail car shall be considered as the first 8 a.m. after the car is placed or reported to the Buyer as available for the Buyer's instructions, but excluding Saturdays, Sundays, or legal holidays.
  - (b) Trucks: Trucks shall be considered to have arrived at the time and date of unloading as evidenced by a scale ticket or dock receipt at the receiving facility. Where such evidence is not available, other routine business records may be used to show arrival time and date.

The Buyer shall immediately notify the Seller of any truck or rail car(s) which fail to grade according to the contract terms by a telephone call placed, and confirmed in writing, not later than 12 noon of the next business day after the date of official inspection. This notice shall contain the grade of grain and the Buyer's rejection of the shipment or acceptance of the shipment with a discount.

It shall then be the duty of the Seller after receiving such notice to agree upon the discount with the Buyer or to give disposition instructions for the shipment at once.

- 2) Off grade grain sold for the account of shipper shall not apply on contract.
- 3) The Seller shall be required to deliver and the Buyer to accept other lots in place of the original lots, provided such substituted deliveries are made within contract time or within five [5] business days next following the date of rejection, except in the case of Immediate Delivery when the time shall be three [3] business days.
- 4) When mechanical samplers are used for determining destination grades after the truck or rail car is unloaded, prevailing market discounts shall apply.
- 5) Where either party is dissatisfied with the applied market discounts and damages cannot be mutually agreed, then the determination of Fair Market Price may be referred by either party for determination according to the GTA Expert Opinion Rules, and which shall, for the purpose of this sub-rule only, be final and binding on both parties.
- 6) A Buyer receiving a shipment that is out of condition on arrival, and handled as outlined in preceding paragraphs, shall upon Seller's request, unload, recondition, and salvage to best advantage of the Seller whenever practical to do so. Any reasonable expense shall be at the cost of the Seller.

- 7) If the Buyer is unable to handle the shipment as requested, it shall be his duty to notify the Seller of this fact at the time he notifies the Seller of shipment's condition and the Seller shall dispose of the shipment.

**Rule 15.1.3 Origin Grades**

- 1). Grain that is sold for delivery, origin inspection, shall be covered by an inspection certificate of the grade contracted.
- 2). If the Seller wishes to apply grain that is not in accordance with the contract specifications, he shall notify the Buyer by telephone. The Buyer shall immediately notify the Seller if he will accept the grain and at what discount.
- 3). If the Seller submits an inspection certificate of a lower grade to apply on a contract for a higher grade without notifying the Buyer in accordance with the above, the Buyer shall have the authority to reject or sell the grain represented by such certificate for the account of whom it may concern. The Buyer shall notify the Seller on the same business day of such action.

**Rule 15.2 Rejection Contested:**

The Buyer shall on request of the Seller give written notice of the grounds for any rejection. Where the Seller contests rejection by the Buyer, the matter is to be subject to Rule 16 [Finality] and may be submitted to GTA Mediation as per Rule 25 [Mediation] or GTA Arbitration as per Rule 26 [Arbitration] with demurrage, any extra cartage or extra expense involved for party in default.

**Rule 16.0 FINALITY**

- 1) Subordinate to GTA Rule 15, all adjustments or compensation claimed based on defect of quality or condition or weights which shall be apparent upon reasonable inspection must be advised within five [5] business days after unloading or presentation of appropriate documents and must be formally confirmed by written notice, letter or facsimile within thirty [30] consecutive days of delivery of the consignment.
- 2) However, should a party fail to comply with these time limits and claim justification thereon which is disputed by the other party, that claim and its dispute shall be deemed to be a dispute to which the provisions of Rule 24 [Disputes], and Rule 25 [Mediation] and/or Rule 26 [Arbitration] shall apply.
- 3) In the event of failure to comply with this condition, all claims in regard to quality shall be void unless a GTA Arbitration Committee shall be of the opinion that the delay in making the claim was justified.

**Rule 17.0 DEFAULT**

**Rule 17.1 Default by the Seller**

- 1) Subject to Rule 17.5, when the Seller finds that they are or will be in default on fulfillment of contract, they shall notify the Buyer at once. Upon receipt of such notice, the Buyer shall, within twenty-four (24) hours thereafter, notify the Seller, declaring which of the following options they elect to exercise:
  - (a) agree to extend the Delivery or Shipment Period, and/or accept the quality and/or condition of the commodity tendered; or
  - (b) Repurchase of all or any part of the defaulted portion of the Delivery or Shipments; or
  - (c) cancel all or any part of the defaulted portion of the Delivery or Shipments at Fair Market Price based on the close of the market the next business day.
- 2) If the Seller fails to notify the Buyer of his default, the liability remains in force until the Buyer, by the exercise of due diligence, can determine whether the Seller has defaulted. Upon the Buyer's determination of the Seller's default, the Buyer shall notify the Seller at once of such finding, and promptly thereafter, notify the Seller which of the options (a) or (b) or (c) above they elect to exercise.
- 3) If the Seller defaults on the contract, they are liable for all reasonable costs and expenses as shall have been incurred up to and including the day the Buyer exercises one of the three options.

**Rule 17.2 Default by the Buyer**

- 1) Subject to Rule 17.5, when the Buyer finds that they are or will be in default on the fulfillment of contract, they shall notify the Seller at once. Upon receipt of such notice, the Seller shall, within twenty-four [24] hours thereafter, notify the Buyer, declaring which of the following options they elect to exercise:
  - (a) agree to extend the Delivery or Shipment Period; or
  - (b) resale of all or any part of the defaulted portion of the Delivery or Shipments; or
  - (c) cancel all or any part of the defaulted portion of the Delivery or Shipments at Fair Market Price based on the close of the market the next business day .
- 2) If the Buyer fails to notify the Seller of his default, the liability remains in force until the Seller, by the exercise of due diligence, can determine whether the Buyer has defaulted. Upon the Seller's determination of the Buyer's default, the Seller shall notify the Buyer at once of such finding,

and promptly thereafter, advise the Buyer, which of the options (a) or (b) or (c) above they elect to exercise.

- 3) If the Buyer defaults on the contract they shall be liable for all the reasonable costs and expenses as shall have been incurred up to and including the day the Seller exercises one of the three options.

**Rule 17.3 Declaration of Default**

Refusal on the part of the Buyer to accept or take up any Bill of Exchange or Draft in respect of the goods or failure on the part of the Buyer to perform any contracted obligations shall entitle the Seller, upon written notice to the Buyer, to suspend Deliveries or Shipments or to rescind the unexecuted portion of the contract without prejudice to any claim for damage that the Buyer may have.

**Rule 17.4 Failure to Perform**

Failure to perform in keeping with the Terms and Conditions of a contract shall be grounds for the refusal only of such Delivery(ies) or Shipment(s) in default, and not for the rescission of the entire contract or any other contract between the Buyer and the Seller.

**Rule 17.5 Consequences of Default**

In the case of Default, the party in Default must pay within 7 business days of demand by the non-defaulting party, by way of liquidated damages, an amount equal to the undelivered contract quantity of the commodity multiplied by the difference between the contract price and the Fair Market Price of the commodity. For the avoidance of doubt, nothing in these Rules shall be construed as requiring the party not in default to make any payment of compensation or damages to the party in default.

**Rule 17.6 Default Due To Insolvency:**

**1. Definition of Insolvency Event**

"Insolvency Event" means, in respect of a person (which shall be construed as including a corporation):

- (a) an order being made, or the person passing a resolution, for its winding up;
- (b) an application being made to a court for an order for its winding up unless the application is withdrawn or dismissed within 5 days;
- (c) an administrator being appointed to the person;

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- (d)
  - (i) the person resolving to appoint a Controller or analogous person to the person or any of the person's property;
  - (ii) an application being made to a court for an order to appoint a Controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property unless the application is withdrawn or dismissed within 5 days; or
  - (iii) an appointment of the kind referred to in subparagraph (ii) being made (whether or not following a resolution or application);
- (e) the holder of a Security Interest taking possession of any of the person's property;
- (f) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (g) the person:
  - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
  - (ii) being taken by applicable law to be (or if a court would be entitled or required to presume that the person is) unable to pay its debts or otherwise insolvent;
- (h) the process of any court or authority being invoked against the person or any of its property to enforce any judgment or order for the payment of money or the recovery of any property, unless the person is able, within 5 days, to satisfy the other party that there is no substantial basis for the judgment or order in respect of which the process was invoked;
- (i) the person dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;
- (j) the person taking any step that could result in the person becoming an insolvent under administration (as defined in Section 9 of the Corporations Act);
- (k) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or

(l) any analogous event,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

## **2. Consequences of Insolvency Event**

- a) If before the fulfillment of a contract the Buyer or the Seller commits an Insolvency Event, the Buyer or Seller shall immediately notify the other party within two business days of the occurrence.
- b) In the absence of any express written agreement to the contrary, any contracts between the parties shall be closed out at Fair Market Price on the business day following the giving of the notice. If notice is not given as required, the other party, on learning of the occurrence of the Insolvency Event, shall have the option of declaring the contract closed out at either the Fair 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 Fair Market Price ruling on the first business day after the date of the Insolvency Event occurred.

### **Rule 17.7 Fair Market Price Defined:**

For the purposes of this Rule 17, Fair Market Price shall be construed as meaning;

- a) the price per tonne ascertained by Repurchase or Resale for the commodity which is actively trading, or
- b) in the case of Seller Default the indication of the price being offered by other sellers in the market place on the business day following the giving of notice by the Buyer pursuant to clause 17.1 or 17.5, or
- c) in the case of Buyer Default the indication of the price being bid by other buyers in the market place, on the business day following the giving of notice by the Seller pursuant to clause 17.2, or 17.5.

### **Rule 17.8 Repurchase Defined**

The term "Repurchase" shall be construed as meaning an actual bona fide purchase of a commodity of like kind and quantity on the open market.

### **Rule 17.9 Resale Defined**

The term "Resale" shall be construed as meaning an actual bona fide sale of a commodity of like kind and quantity on the open market.

### **Rule 17.10 Ascertaining Fair Market Price**

Where either party is dissatisfied with the ascertained Fair Market Price and damages cannot be mutually agreed, then the determination of Fair Market

Price may be referred by either party for determination according to the GTA Expert Opinion Rules, and which shall, for the purpose of this sub-rule only, be final and binding on both parties.

**Rule 18.0 LEFT INTENTIONALLY BLANK:**

**Rule 19.0 CIRCLE TRADES:**

Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards to the particular goods so re-purchased, and the provisions of Rule 17 [Default] ] shall not apply.

**Rule 19.1 The Same Goods Defined:**

For the purpose of this Rule 19 [Circle Trades] the term "the same goods" shall be construed as meaning goods of the same description, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for delivery or shipment to the same port(s) of destination during the same period of delivery or shipment. Different currencies shall not invalidate the circle.

**Rule 19.2 Settlement of Circle Trades:**

- 1) All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this Rule, the same shall be binding on all parties to the circle.
- 2) 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.
- 3) Subject to the terms of these Trade Rules, if the goods are not appropriated, or, having been appropriated documents are not presented, settlement by all parties in the circle shall be calculated on the mean contract quantity and shall be settled over the agreed market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the agreed market price and the relative contract Price.
- 4) Payment shall be as per contract terms as if the day for appropriation was on the mean date of the established delivery or shipment period, or, should the circle not be ascertained before the expiry of this time, then payment shall be as if the day for appropriation was on the last date of the established delivery or shipment period, but not later than thirty [30] consecutive days after the circle is ascertained.

- 5) Should any party in the circle prior to the due date of payment commit any act comprehended in Rule 17.6 [Default Due To Insolvency] of these Trade Rules, settlement by all parties in the circle shall be calculated at the closing out price as provided for in Rule 17.6 [Default Due To Insolvency], which shall be taken as a basis for settlement. 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.

**Rule 20.0 PAYMENT:**

It shall be the duty of the Seller to present to the Buyer, or other such consignee as may have been previously designated by the Buyer, an Invoice, giving the road truck or railcar identification, Kind and Quality Grade of the Commodity, Actual or Estimated Weights, Price, contract Number on which the Delivery or Shipment is to apply, and the amount of invoice.

**Rule 20.1 Payment Defined:**

- 1) Unless otherwise agreed, it shall be understood that invoices are subject to payment on presentation to the Buyer *or* his designated agent, when properly documented and substantiated by a Bill of Lading, and/or Delivery Order and, if applicable, Weight and Quality Grade Documents.
- 2) The term "Cash Against Documents" [CAD], "Cash Against Invoice" [CAI], or "Cash Against Documents" and "Invoice" [CADI] or "Cash on Delivery" [COD] shall be construed as meaning payment immediately upon receipt of appropriate documents and invoices.
- 3) The term "Prompt Net Cash" or "Prompt Payment" shall be construed as meaning payment within five [5] business days of date of invoice.
- 4) The term "30 Days End of Week of Delivery" shall be construed as meaning payment by or on the 30th day after the end of the calendar week the goods are delivered.
- 5) The term "30 Days End of Month of Delivery" shall be construed as meaning payment by or on the 30th day after the end of the month the goods are delivered.
- 6) The term "Cash 30 Days" shall be construed as meaning payment on or before the last day of the month during which goods were invoiced.

**Rule 20.2 Penalty for late payment:**

The Seller is entitled to seek from the Buyer recompense for late payment by the Buyer and may request GTA Arbitration in such occurrences.

**Rule 20.3 Passing on of "Goods and Services Tax" (GST)**

- 1) "Goods and Services Tax" (GST) shall be construed as meaning the tax imposed by the "A New Tax System" (Goods and Services Tax) Act 1999 (Cth) and the related imposition Act of the Commonwealth.
- 2) If a GST has application to any supply made under these terms of trade; then the Seller may, in addition to the price or any other amount or consideration expressed as payable in the contract, recover from the Buyer an additional amount on account of a GST.
- 3) Such an amount is payable by the Buyer subject to the issuing of a valid tax invoice by the Seller and is to be calculated by multiplying the price or any other amount or consideration payable by the Buyer for the supply by the prevailing GST rate.
- 4) If it is determined on reasonable grounds that the amount of the GST paid or payable on any supply made under these terms of trade differs for any reason from the amount of the GST recovered from the Buyer including by reason of:
  - (a) an alteration in the GST law; or
  - (b) the issue of or an alteration in ruling or advice of the Commissioner of Taxation; or
  - (c) the allowance to the Seller of a refund of GST in respect of any supply made under these terms of trade; or
  - (d) a decision of the Administrative Appeals Tribunal (or its equivalent) or a court; thenthe amount of GST recovered or recoverable from the Buyer shall be adjusted accordingly.
- 5) Notwithstanding any other provision in these terms of trade if the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges ("Taxes"); then, the agreement shall be reduced by the same amount as the actual total costs of the Seller (including any Taxes but excluding any input GST paid or payable by the Seller) are reduced as a consequence of the abolition or a reduction in Taxes, whether directly by way of the abolition of or reduction in Taxes paid or payable by the Seller to its suppliers or to any government, or indirectly by way of a reduction in the prices (excluding any GST) charge by the suppliers to the Seller.

**Rule 21.0 LEFT INTENTIONALLY BLANK:**

**Rule 22.0 NOTICES:**

- 1) All notices given under these GTA Trade Rules shall be given by written letter delivered by hand on the day of writing, or by facsimile, or by telex, or by email, or by other method of rapid written communication. All notices shall be under reserve for errors in transmission.
- 2) The sender bears the burden of proving due transmission of any notice.
- 3) Any notices received after 1600 hours Sydney/Melbourne time on a business day shall be deemed to have been received on the business day following.
- 4) A notice to a party's Brokers or Agent shall be deemed a valid notice under these GTA Trade Rules.
- 5) In case of resales, all notices shall be passed on without delay by Buyers to their respective Sellers or vice versa. Should the notice be received after 1600 hours Sydney/Melbourne time on the last business day permissible under this contract, the Sellers shall pass it on as soon as practical, but no later than 1000 hours Sydney/Melbourne time on the next business day thereafter. Upon request, the Sellers shall provide the Buyers with documentary evidence of Seller's receipt of notice.

**Rule 23.0 FORCE MAJEURE:**

**Rule 23.1 Conditions of Force Majeure:**

- 1) Neither the Buyer nor the Seller shall be responsible for delay in Delivery or Shipment of goods or any part thereof occasioned by action by any act of God, fire, flood, wind, explosion, power failure, war, embargo, act of government, strike (including dock and/ or shipping strike), lock-out, combination of workers, or civil commotion which is not due to said party's own acts or negligence.
- 2) The loss of a commodity due to production risks or crop failure does not constitute a condition of Force Majeure.

**Rule 23.2 Notice and Proof of Force Majeure:**

- 1) The party invoking the Force Majeure Rule must dispatch written notice to the other party within five [5] business days of the occurrence, or not later than five [5] business days after the beginning of the contract Delivery or Shipment period, whichever is the later. Within five [5] business days of receiving such notice the latter party may request proof of the disability and evidence that the disabled party has exerted best

efforts to meet the terms of the contract. The disabled party shall have five [5] business days to respond. In the case of resale such information shall be passed on without delay.

- 2) Neither party shall have claim against the other for days or non-fulfillment under this Rule provided that the party invoking the Rule shall have supplied, if so requested by the other, satisfactory evidence justifying the delay of non-fulfillment.

**Rule 23.3 Extension of Contract due to Force Majeure:**

- 1) Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of a period equal to that of the delay caused by said act, but not more than thirty [30] consecutive days from the end of the contract period.
- 2) If delivery under this Rule is still prevented at the end of the first extension period, the party not invoking the Rule shall have the option of canceling the contract as per Rule 17 [Default] or any unfulfilled part of the contract mutually agreeing to one further extension period (the second extension) of not more than thirty [30] consecutive days.
- 3) If at the conclusion of the second extension period delivery is still prevented, the contract or an unfulfilled part thereof shall be considered in Default as per Rule 17 [Default].

**Rule 24.0 DISPUTES:**

Any party or parties who have entered into Terms of Trade subject to these GTA Trade Rules shall be entitled to refer any disputes arising out of such contract and which cannot be resolved between the parties to GTA for Arbitration as per Rule 26 [Arbitration].

**Rule 25.0 LEFT INTENTIONALLY BLANK:**

**Rule 26.0 ARBITRATION:**

- 1) The GTA Dispute Resolution Rules form an integral part of these GTA Trade Rules of which all parties subject to these GTA Trade Rules shall be deemed to be cognisant.
- 2) If any dispute arises out of or relates to any contract subject to these Trade Rules or the breach, termination or subject matter of a contract, the dispute shall be submitted to and settled by Arbitration in accordance with the GTA Dispute Resolution Rules in the edition current at the date of the establishment of the Terms of Trade in the contract,

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such rules forming an integral part of the contract and of which both parties to the contract shall be deemed to be cognisant.

- 3) Neither party to a dispute, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other in respect to any such dispute until arbitrated in accordance with the GTA Dispute Resolution Rules.
- 4) It is expressly agreed and declared within these GTA Trade Rules that the obtaining of an award through GTA Arbitration shall be a condition precedent to the right of either party or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

### **Rule 27.0 CHOICE OF LAW**

- 1) 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.
- 2) Performance of this contract is subject to orders, rules, and regulations of all government agencies, and to all causes, except as limited herein.