



AIC CONTRACT NOTE FOR MOIST & LIQUID FEED MATERIALS

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:

The Seller:

The Buyer:

have this day entered into a contract on the following terms and conditions:

- 1. **Description of Goods** 2. **Quantity** (tonnes/litres*)
- 3. **Period of Delivery:**
Subject to the terms of Clause 18: Force Majeure, Goods are to be available within the UK from the beginning of the delivery period
- 4. **Origin/Port of Shipment*:**
- 5. **Quality:**
- 6. **Delivery Details**

Month	Monthly Quantity (tonnes/litres*)	Load Size (min/max*)	Price (ex-works/delivered*)	Other Details
August				
September				
October				
November				
December				
January				
February				
March				
April				
May				
June				
July				

- 7. **Payment/Credit Terms:**
- 8. **Special Terms:**
- 9. These goods are sold solely for the purpose of feeding livestock or in the preparation of feed for livestock. No warranty is given or is to be implied as to their usage for any other purpose which is at the Buyer's sole risk.

THIS CONTRACT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES SO FAR AS THEY ARE CONSISTENT WITH THE TERMS SET OUT ABOVE.

Signature

*Delete words which do not apply

10. **Weights:** Payment shall be made against received/sellers' ex-works* weights, which shall be final.
11. **Ownership, Rent And Risk:**
 - a. Ownership shall pass when the goods are paid for by the Buyer
 - b. Risk shall pass to the Buyer on delivery of the goods at the point goods are transferred from Seller's vehicle to Buyer's storage tank or from Seller's storage tank to Buyer's vehicle as appropriate.
12. **Analysis:**
 - a. Total sugars as invert (TSAI) shall be determined in accordance with the Lane Eynon constant volume method. Moisture content shall be determined in accordance with the vacuum sand drying method.
 - b. Sugar and moisture content of the goods shall be determined as the mean of the results of analysis by the Buyer and the Seller where the respective results do not differ by more than two percentage points.
 - c. Where the variance in analysis result between Buyer and Seller is more than two percentage points a third sample shall be submitted to a mutually agreed independent laboratory for referee analysis. On completion of this referee analysis, the sugar and moisture content shall be deemed to be the mean of the two closest results from the three obtained.
13. **Claims:**
 - a. Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised as soon as possible and confirmed by electronic communication or letter sent by first class post within five business days from the arrival of the goods at their ultimate destination in the United Kingdom or when risk passes in accordance with clause 11 (b). In the event of this contract being one of a series of contracts, all claims shall be passed on without delay after receipt and if so passed on shall be deemed to be proper claims from Buyer to Seller as required by the provision of this clause whether within the five business days period or not.
 - b. All claims other than those in (a) above must be notified so as to be received by the Seller within 30 consecutive days from the last day of the contract period with the same proviso as to series of contracts as in (a) above.
 - c. The Statutory Statement shall contain the actual amounts and other particulars required by the Agriculture Act 1970, as at any time amended, and this shall be the only warranty given under this contract. Claims for breach of contract in respect of this warranty shall be admitted and settled only in accordance with the appropriate provisions of Part IV of the Agriculture Act 1970 and various regulations made under the Act. Except as specified above and subject to any United Kingdom and/or EC Statutes and/or Regulations which impose specific conditions and/or warranties and provide that these cannot be excluded by the parties to a contract, all warranties and/or conditions whether express or implied by law, statute or custom of trade are hereby excluded. The goods are not warranted free from defect rendering same unmerchantable which would not be apparent upon reasonable examination, any statute or rule of law to the contrary notwithstanding.
14. **Consignment:** Each delivery or consignment shall stand as a separate contract. When more than one consignment is made, each consignment is to be considered as a separate contract and will itself be subject to the same provisions as to tolerances but the margin on the mean contract quantity is not to be affected thereby.
15. **Demurrage:** In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering the 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.
16. **Buyer's Storage Capacity:** Where the Buyer has insufficient storage capacity, based on the quantity ordered, to take the entire delivered consignment of goods then the Buyer shall indemnify Seller for all damages, claims, liability, costs and expenses suffered or incurred by the Seller as a result of the Buyer's insufficient storage capacity and inability to take the entire delivered consignment of goods.
17. **Failure of Delivery Equipment:** Where there is a failure of Sellers delivery equipment resulting in product discharge requiring clear up then the Seller shall indemnify the Buyer for all damages, claims, liabilities, costs and expenses suffered or incurred by the Buyer as a result of the Sellers delivery equipment failure.
18. **Statutory Charges:** The price of the goods is subject to alteration by reason of the imposition of or alteration by the European Community or 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.
19. **Force Majeure:**
 - a. 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, breakdown of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within 5 business days of the occurrence, or not later than 5 business days after the beginning of the contract period, whichever is the later. In the case of resales such information shall be passed on without delay. 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 contract 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.

- b. In case of shortage of goods due to or contributed to by any one or more of the above, the Seller may apportion its supply of goods among its customers (including Buyer). Seller shall not be chargeable for the breach of its obligations to deliver goods hereunder providing that during the period of such shortages the Seller exercises good faith in the apportionment of goods deliverable by it to its customers (including Buyer).
- 20. Default:** In the event of default of fulfilment of contract by either party, the other at his discretion shall, after giving notice by letter or electronic communication, have the right to sell or purchase, as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration. In the event of default by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but nothing contained in or implied under this contract shall entitle the Buyer/Seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the mean contract quantity. The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been either claimed 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.
- 21. Arbitration:** Any dispute (other than a claim for an unpaid debt and 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 www.agindustries.org.uk), 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.
- 22. Time Limits For Claiming Arbitration:** Arbitration shall be claimed in relation to quantity, quality or condition within 28 days from the date of the arrival of the goods at their ultimate destination in the United Kingdom or when risk passes in accordance with clause 10(c) and in relation to other claims within 90 consecutive days of the last day of the contract period. Where the contract giving rise to the arbitration is one of a series of contracts a reasonable extension of time to commence arbitration proceedings will be allowed to those in the 'string'. In the case of disagreement as to what constitutes 'a reasonable extension' this will be referred to the arbitrators as a preliminary issue. Subject to any special conditions relating to leave being granted to institute court proceedings contained in the arbitration rules of the Agricultural Industries Confederation Limited, the making of an award shall be a condition precedent to any right of action by either party or any person claiming under either of them, so that if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all courses of action relating to that claim, whether by way of arbitration or in any Courts of law, are deemed time barred and waived.
- 23. 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 him 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.

24. Insolvency:

- a. If either party to this contract ("the affected party")
 - i. has a Receiver, Administrative Receiver or Administrator appointed in respect of any of its property or business undertaking; or
 - ii. announces that it has ceased or will or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts):
or
 - iii. suspends payment of its debts or fails to pay, is unable to pay or admits or states its inability to pay, its debts as they fall due; or
 - iv. disposes 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
 - v. convenes, calls or holds a meeting of its creditors or makes any arrangement, voluntary arrangement or composition with its creditors: or
- b. or:
 - i. the directors of either party make or state an intention to make or give notice of a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986: or
 - ii. a petition is presented for winding-up or administration of either party: or
 - iii. a resolution (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) is passed for the voluntary winding up of either party: or
 - iv. either party is dissolved: or
 - v. a Statutory Demand in bankruptcy is served on either party: or
 - vi. an Interim Order under Part VIII of the Insolvency Act 1986 is applied for or made in respect of either party: or
 - vii. a Bankruptcy Petition is presented against either party: or
 - viii. either party suffers the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises: or
 - ix. a party being a partnership any of the above events occurs with respect to the partnership or to any partner therein:

then notwithstanding any previous arrangement with the other party for deferred payments:

- (1) the full or full remaining price for any goods delivered by the other party ("the innocent party") shall become immediately due and payable to the innocent party: and
- (2) the innocent party shall have the right upon giving written notice to the affected party without prejudice to any other rights and remedies available to the innocent party forthwith to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the contract at any time after becoming aware of the above circumstances/event

Where either party relies upon any of the circumstances/events list above ("an act of Insolvency") that party shall forthwith serve a notice of such an act of Insolvency in accordance with the Notices clause of this Contract to the other party. Where proof is available that such notice was served within two business days of the occurrence of the act of Insolvency, the Contract shall be closed out at the market price ruling on the business day following the serving of that notice. In all other circumstances the innocent party, upon learning of the occurrence of the act of Insolvency, shall have the option of closing the Contract at either the market price ruling on the first business day following it becoming aware of the act of Insolvency or at the market price ruling on the first business day after the date when the act of Insolvency occurred.

25. Salmonella:

- a. 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.
- b. The goods shall be available for delivery/collection as required during the period of delivery irrespective of salmonella sampling/monitoring/testing.
- c. In the event that an Order is issued preventing movement of the contractual goods prior to the expiry of the delivery 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 provision of the Order preventing the movement of the contractual goods during the delivery period, then any monies paid for the 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 that the contract or any part 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 shall have supplied to the Buyer, if required, satisfactory evidence justifying the delay.

In case of resales all notices shall be passed on without delay by the Sellers to their respective Buyers.

26. **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.
27. **Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.1(2)(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.
28. **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.

Copyright © 2011 AIC