

**THE PALM OIL REFINERS ASSOCIATION OF MALAYSIA
801C/802A, BLOCK B, EXECUTIVE SUITES,
KELANA BUSINESS CENTRE, 97, JALAN SS7/2,
47301 KELANA JAYA, SELANGOR, MALAYSIA
FOB CONTRACT FOR PROCESSED PALM OIL PRODUCTS IN PACKED FORM**

ORIGIN:

Effective
1 July 2012

8

Seller :

Buyer :

Broker :

<u>Reference No.</u>

**An asterisk denotes alternative wordings and those not applicable should be deleted.*

The Seller has agreed to sell and the Buyer has agreed to buy the following products on terms and conditions as stipulated hereunder:

Contract No :		Date :	
Product :			
Quantity in metric tonnes	Shipment Period	Load Port	Price (FOB) Per metric tonne
Type of Packaging :	Size :	No. of units per 20' Container:	
Product Specifications:		Special Conditions:	
<p>The specifications shall be those established by The Palm Oil Refiners Association of Malaysia (PORAM) as standard for the export of these products and in force at the date of contract and always provided they are not in contradiction with the above.</p> <p>The FFA content shall be expressed as follows: If as palmitic acid, calculated on a molecular weight of 256; If as oleic acid, calculated on a molecular weight of 282.</p>			

Payment at Seller's Bank in Malaysia

- (i) in accordance with the provisions of paragraph (a) of the Payment Clause;
 - (ii) in accordance with the provisions of paragraph (b) of the Payment Clause;
 - (iii)
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1. DEFINITIONS

For the purposes of this contract:

- a. "Product" shall refer to processed palm oil.
- b. "Processed Palm Oil" shall include any palm oil fractions, and products made from palm oil such as cooking oil, cooking fats, shortening, margarine, soaps, cocoa butter substitute (CBS), cocoa butter equivalent (CBE), cocoa butter replacer (CBR).
- c. "Packed Form" means either drums, tins, cartons, poly lined paper bags, polypropylene (PP) woven bags, polyethylene (PE) lined bags in cartons, polyethylene terephthalate (PET), jerrycans, flexibags, box, intermediate bulk container (IBC), isotanks, plastic tubs/pails, sachets, bags, bag in box (BIB).

2. QUANTITY

Seller has the option of shipping 3% more or less of the contract quantity. Such variance to be settled at the contract price.

3. QUALITY

At time and place of sampling, the product shall be of good merchantable quality within the meaning of the description and specifications stated in the preamble. Unless so stated, or otherwise agreed between the parties and confirmed in writing, the product is not warranted to be suitable for any specific end-use or to conform to any particular analytical criteria not mentioned above.

4. PRICE

The trade term of the price in this contract is governed by INCOTERMS 2010.

5. SHIPMENT

(i) Suitable Freight Space

Shipment to be made in good condition, direct or indirect, with or without transshipment in ship(s) (tankers excluded), classified in Llyod's Register or recognized conference lines of equivalent class. For the purposes of this contract, the word 'ship' or 'ships' shall mean any full-powered engine-driven ship. In the event shipment is by container, fit and suitable containers and freight space shall be provided by buyer at the port of loading.

(ii) Nomination of Vessel

Buyer to nominate to Seller the name of the vessel (along with the name of vessel's agent at load port) and expected time of vessel's arrival not less than 14 calendar days prior to estimated time of arrival (ETA) of vessel.

(iii) Substitution of Vessel

Buyer is allowed to substitute the originally nominated vessel provided that the vessel's ETA at loading berth remains unchanged and shall provide Seller with notice of substitution at least 7 calendar days prior to the ETA. If the originally nominated vessel or the substituted vessel is delayed (but always within the original shipment period) beyond the given ETA at the loading berth by more than 3 calendar days, Buyer shall bear all the additional costs including extra storage, overtime, export duties and incidental expenses, etc as incurred.

(iv) Vessel

For the purpose of this contract, the words "vessel" or "vessels" shall mean any full-powered engine-driven vessel.

6. RELEASE OF BILLS OF LADING

Before the date of loading, Buyer shall notify ship's Agents/Owners and Seller authorizing ship's Agents/Owners to release Bills of Lading (marked freight to collect) direct to Seller immediately on completion of loading. All Bills of Lading shall be released to Seller within 48 hours or on the first working day after completion of loading whichever is later.

Only Ocean Bills of Lading issued by bona fide shipping lines are accepted. In house Bills of Lading issued by freight forwarders are not accepted.

In the event that the Bills of Lading are not released to Seller as above, Seller, without prejudice to his other rights under the contract, may also claim interest from Buyer at the rate of 1½% per month on the contract price.

If Buyer fails to pay freight or any other charges incurred, Seller reserves the right to pay freight or such other charges to secure the freight prepaid Bills of Lading and recover the cargo. The Buyer shall indemnify the Seller for all resulting losses/expenses.

7. EXTENSION OF SHIPMENT

Where the contract period does not exceed 31 calendar days the period of shipment shall, at the request of Buyer, be extended by an additional period not exceeding 15 calendar days provided notice is given to Seller of his intention to claim such extension on or before the last shipment day of the contract period. Buyer shall provide satisfactory evidence that such delayed vessel was originally booked with layday/cancelling within the original contract period. For any contract period exceeding 31 calendar days, this clause shall not apply.

For such late shipment, Buyer shall pay a penalty to Seller for late presentation of vessel as follows:

- ½% for 1, 2, 3, or 4 days
- 1% for 5 or 6 days
- 1½% for 7 or 8 days

Should Buyer claim the Extension of Shipment Clause and the vessel fails to complete loading within the extended period, the original contract period shall be deemed to have been extended by 8 calendar days and the contract price increased by 1½%. On the determination of penalty, the extended day shall be on the basis of completion of loading.

Should Buyer not claim the above extension and fails to present vessel within the contract period, any penalty whether arrived at by amicable settlement or arbitration shall not be related to the penalty of this clause.

Upon the expiry of extended period without vessel being alongside the berth, Buyer is deemed to be in default of the contract.

8. SHIPPING INSTRUCTIONS

Buyer shall provide Seller with the following shipping instructions within 7 calendar days of the date of the contract:-

- (i) Destination of cargo.
- (ii) Notifying party.
- (iii) Shipping marks and numbers.
- (iv) Buyer's banker's name and address in event of payment being cash on presentation of documents.
- (v) Consignee – For non-Letter of Credit term, seller holds the ownership of goods unless full payment has been received by seller. Seller is allowed to consign Bill of Lading to order if goods have not been fully paid-for in advance.

9. EXPORT DUTY

Seller shall be responsible for export duty as incurred.

10. WEIGHTS

That in determination of final weights, the seller's weighbridge tickets to be final for ISO tanks/flexibags.

The seller's weight based on the weighing scale at seller's premises to be final for the smaller packed products in accordance with the ISO 5555 Table 3 as mentioned below.

Table 3 - Recommendations for Number of Packages to Be Sampled **

Size of package	Number of packages in the consignment	Number of packages to be sampled
≥20 kg, up to 5 t maximum	1 to 5	all
	6 to 50	6
	51 to 75	8
	76 to 100	10
	101 to 250	15
	251 to 500	20
	501 to 1 000	25
	>1 000	30
≥5 kg and ≤ 20 kg	1 to 20	all
	21 to 200	20
	201 to 800	25
	801 to 16 00	35
	1 601 to 3 200	45
	3 201 to 8 000	60
	8 001 to 16 000	72
	16 001 to 24 000	84
	24 001 to 32 000	96
	>32 000	108
≥ 5 kg	1 to 20	all
	21 to 1 500	20
	1 501 to 5 000	25
	5 001 to 15 000	35
	15 001 to 35 000	45
	35 001 to 60 000	60
	60 001 to 90 000	72
	90 001 to 130 000	84
	130 001 to 170 000	96
>170 000	108	

** For more details, refer to ISO 5555: Animal and Vegetable Fats and Oils – Sampling. Third Edition 2001-12-15

11. SAMPLING AND ANALYSIS

Unless otherwise agreed, representative samples of the product shall be drawn from 10% of the total quantity of the packed products selected at random by independent surveyors at Seller's premises.

The sample so drawn shall be in quadruplicate (1 for contractual analysis, 1 for the shipper and 2 to be retained by the surveyors) of the product, at time of weighing.

Buyer has the right to be represented at his own cost at time of sampling at Seller's premises to draw samples jointly with Seller's representatives. If Buyer is so represented only samples drawn and sealed jointly shall be accepted as official contract samples for analysis purposes.

In the event of any dispute on quality analysis, the samples retained by the surveyors shall be referred to the Malaysian Palm Oil Board (MPOB) laboratory, whose analysis shall be final. The samples shall be retained for a duration of 3 months from the date of Bill of Lading unless otherwise agreed.

12. INSURANCE

Buyer is deemed to have covered, before arrival of vessel alongside berth at loading port, insurance as per Institute Cargo Clauses (All Risks), which shall include risks of contamination and leakage irrespective of percentage of each package or on the whole, the risk of war, strikes, riots, civil commotion and such insurance is to be effected with first class Underwriters for 110% of the value shipped.

13. PAYMENT

Payment shall be made as stipulated in the preamble for 100% of the invoice value against a complete set of shipping documents.

*(a) By irrevocable and confirmed Letter of Credit unrestricted for negotiation established in Seller's favour through a recognized bank for 103% of the mean contract quantity. Unless otherwise agreed between the parties, such credit shall be established in a good operative/negotiable order and available to Seller not later than 10 calendar days from date of contract. Should the credit be opened on terms inconsistent with the contract, Seller may demand amendments which shall be arranged by Buyer and notified to Seller through the credit opening bank within 7 calendar days of the demand being received. The Letter of Credit shall provide for the following:-

- (i) Negotiating bank is allowed to claim reimbursement by telegraphic transfer
- (ii) Partial shipment allowed
- (iii) Shipment on Deck allowed, or unless specifically stated otherwise
- (iv) Name of reimbursing bank and Letter of Credit issuing bank's account number maintains with the reimbursing bank

*(b) By cash on presentation of documents.

Seller shall present documents to Buyer through a Bank nominated by Buyer. All bank charges at Seller's bank are for Seller's account and all bank charges at Buyer's bank are for Buyer's account. Buyer shall arrange payment by telegraphic transfer (TT) at Buyer's cost.

Unless otherwise agreed, shipping documents shall consist of the following in triplicate:-

1. Commercial invoice;
2. Full set of on board' Bill(s) of Lading (marked freight to collect);
3. Certificate of quantity of packed products loaded on board ascertained at Seller's premises and issued by a recognized independent surveyor, or as per Seller's Packing List.
4. Certificate of analysis, issued by a recognised independent laboratory or Seller's laboratory;
5. Certificate of Origin.

Buyer is to accept certified photostate copies of items (3) and (4) relating to the shipment.

Should documents be presented with incomplete set(s) of Bill(s) of Lading, payment shall be made provided that delivery of such Bill(s) of Lading be guaranteed by Seller. Such guarantee is to be endorsed, if required by Buyer, by a recognized bank. Acceptance of this guarantee shall not prejudice Buyer's rights under this contract.

No clerical error in the documents shall entitle Buyer to reject or to delay payment provided Seller to furnish at the request of Buyer a guarantee, to be countersigned by a recognized bank, if required by Buyer. Seller shall be responsible for any loss or expense incurred by Buyer on account of such error.

14. NOTICES

Where the terms of the contract require notice to be given, such notice shall be despatched by cable, telegram, e-mail, facsimile, post or courier service or delivered by hand within the time limit specified in the contract. All notices shall be under reserve for errors and omissions in transmission or delivery. Any notice received after 1600 hours Malaysian time on a business day shall be deemed to have been received on the following business day.

15. NON-BUSINESS DAYS

Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any National Gazetted Public Holiday in Malaysia, the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end 1600 hours Malaysian time Monday to Friday inclusive. This clause shall however not be applicable to the contract period.

16. ODD DAYS

In any month containing an odd number of days, the middle day shall be reckoned as belonging to both halves of the month.

17. DEFAULT AND/OR NON-PERFORMANCE

If Buyer (i) fails to furnish shipping instructions within the time specified, (ii) refuses to accept any shipment properly tendered hereunder, (iii) fails to tender any payment hereunder when due, or (iv) fails to perform in any other respects according to its obligations set out in the terms herein (each of which shall be a material breach of contract), Seller may treat such default as (a) a total breach of the entire Contract, (b) partial breach of Contract (e.g. a breach only as to the individual shipment or instalment) and/or (c) shipment not made within stipulated period where all conditions have been met.

(a) Non-Fulfilment

In the event of non-compliance by either Party, the other Party at his discretion shall, after giving notice, have the right to cancel the contract on basis of the market price at the date of default. In case of any dispute over the date of default or on the market price on that day, the matter shall be referred to Arbitration. The following procedure shall be adopted:

- i. If the Seller is in default and if at the date of default the market price of the contracted product to be shipped is higher than the contract price, the Seller shall be charged with the difference between the market price and contract price.
- ii. If the Buyer is in default and if at the date of default the market price of the contracted product to be shipped is lower than the contract price, the Buyer shall be charged with the difference between market price and contract price.

(b) Non-Payment

Notwithstanding all provisions set out in clause 13, the Seller has the right to put the Buyer in default for the delivery(ies) made but not paid for.

- i. In the event of non-payment at sight by the Buyer for documents complying with conditions of the contract, the Seller may give the Buyer formal notice to effect payment within three business days.
- ii. If payment is not made within that period, the Seller shall put Buyer on notice that Seller has the right either to cancel the contract or the right to sell the goods against the defaulter who shall on demand make good the loss, if any, on such sale.
- iii. If payment is not made within that period, Seller reserves the right to refuse further shipments to Buyer, or cancel unshipped balance without prejudice to all other rights that the Seller may have.

(c) Date of Default

Prior to the last day of the contract shipment period, either party may notify the other party of its inability to ship or take shipment 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 date of the default shall, failing amicable settlement, be decided by arbitration.

18. INSOLVENCY/ BANKRUPTCY

If before the fulfilment of the contract either party shall suspend payment, commit an act of bankruptcy, notify any of his creditors that he is unable to meet his debts or that he has suspended payments or that he is about to suspend payment of his debts, convene, call or hold a meeting either of his creditors or to pass a resolution to go into liquidation (except for voluntary winding up of a solvent company for the purpose of reconstruction or amalgamation) or shall apply for an official moratorium, have a petition presented for winding up or shall have a Receiver appointed, he shall be deemed to be and shall be treated as being at default and the contract shall forthwith be closed, either at the market price then current for similar goods or, at the option of the other party, at the price to be ascertained by repurchase or resale and the difference between the contract price and such closing-out price shall be the amount which the other party shall be entitled to claim or shall be liable to account for under this contract. Should either party be dissatisfied with the price, the matter shall be referred to arbitration. Where no such resale or repurchase takes place, the closing-out price shall be determined by a Price Settlement Committee of The Palm Oil Refiners Association of Malaysia.

19. PROHIBITION

In the event, during the contract period, of prohibition of export or any other executive or legislative act by or on behalf of the Government of the country of origin or of the territory where the port(s) of shipment name herein is/are situated, or of blockade or hostilities, restricting export whether partially or otherwise, any such restriction shall be deemed by both parties to apply to the contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means whatsoever and to that extent the contract or any unfulfilled portion thereof shall be extended by 30 calendar days.

In the event of shipment during the extended period still proved impossible by reason of any of the causes in this clause, the contract or any unfulfilled part thereof shall be cancelled. Seller invoking this clause shall advise Buyer with due despatch. If required, Seller must produce proof to justify his claim for extension or cancellation under this clause.

20. FORCE MAJEURE

Should the performance of the contract be prevented by reason of fire, strikes, lockouts, riots, civil commotion, floods and/or any cause comprehended in the term force majeure, the contract period shall be extended for a period equal to the duration of the disabling event but not exceeding a period of 60 calendar days. If the force majeure event ends within 21 calendar days preceding the end of the extended period, then a further 21 calendar days shall be allowed after the termination of the force majeure event.

Should the fulfillment of the contract not be possible within the extended period, the contract or any unfulfilled part thereof shall be deemed to be null and void at the end of such extended period.

21. DOMICILE

The contract shall be deemed to have been made in Malaysia and the construction, validity and performance thereof shall be governed in all respect by Malaysian Law, which shall have exclusive jurisdiction wherever the domicile, residence or place of business of the parties to the contract may be or become.

22. ARBITRATION

Any dispute arising out of this contract, including any question of law arising in connection therewith, shall be referred to arbitration in Malaysia (at the PORAM Secretariat or elsewhere if so agreed), in accordance with the PORAM Rules of Arbitration and Appeal in force at the date of the initiation of the arbitration with the parties hereby agreeing that the arbitration shall be deemed an International Arbitration. The seat of the arbitration shall be Malaysia and the Malaysian Arbitration Act 2005 (“the Act”) or any reenactment thereof shall apply to any arbitration under this contract. The parties hereto further agree that Part III of the Act shall not apply to any arbitration under this contract.

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 Sole Arbitrator/Panel of Arbitrators/Appeal Board (as the case may be), in accordance with the PORAM Rules of Arbitration and Appeal and it is hereby expressly agreed and declared that the obtaining of an award from the Sole Arbitrator/Panel of Arbitrators/Appeal Board (as the case may be), 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 such dispute.

As Seller	As Broker	As Buyer
_____	_____	_____
(Authorized Signatory)	(Authorized Signatory)	(Authorized Signatory)
Name :	Name :	Name :
Company Seal	Company Seal	Company Seal