

**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
CIF CONTRACT FOR PROCESSED PALM OIL PRODUCTS IN PACKED FORM**

ORIGIN:

Effective
1 July 2012

9

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	Destination	Price (CIF) 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)

.....

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 shall 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 AND CLASSIFICATION

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 recognised 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 at the port of loading.

6. DECLARATION OF SHIPMENT

Notice stating the ship's name, date of Bill(s) of Lading, and quantity shipped shall be despatched by Seller to Buyer not later than 10 calendar days from the date of the Bill(s) of Lading. The date of the "on board" Bill(s) of Lading shall be considered proof of the date of shipment in the absence of conclusive evidence to the contrary. Notice shall be deemed to be under reserve for errors and/or delays in transmission. Any slight variation in the ship's name shall not invalidate the declaration.

7. EXTENSION OF SHIPMENT

Where the shipment period does not exceed 31 calendar days, if Seller is unable to secure suitable container space, an additional of 15 calendar days, at the request of Seller, be extended provided notice is given to Buyer of the intention not later than the first business day after the end of the original shipment period. Seller shall at the same time nominate the ship he intends to load and shall provide, together with shipping documents satisfactory evidence that the ship was originally booked for shipment within the original shipment period. Should Seller not request the above extension and fails to ship within the shipment period, Seller shall be deemed to be in default.

In the event that Seller requested for the extension and fails to ship within the extended period, Seller is deemed to be in default.

8. SHIPPING INSTRUCTIONS

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

- (a) Shipping marks and numbers
- (b) Notifying party
- (c) Buyer's banker's name and address in event of payment being cash on presentation of documents.
- (d) Any other documents required for goods entitled to free entry or preferential duty at port of destination
- (e) Consignee – For non-Letter of Credit term, seller holds the ownership of the 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.

If more than one delivery is called for, each delivery is to be considered a separate contract for the purposes of furnishing complete shipping instructions by buyer.

9. INSURANCE

Seller shall insure the products 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.

10. WAR RISKS INSURANCE

War Risks Insurance shall be effected on the terms and conditions in force and approved at the time of shipment by the Institute of London Underwriters. Any expense for covering war risks insurance in excess of ½% shall be for account of Buyer. The rate of insurance shall not exceed the rate ruling in London at the time of shipment or date of ship's sailing whichever may be adopted by Underwriters. Notice of extra expenses to be borne by Buyer shall be given by Seller at the time of declaration under this contract or not later than 3 business days after the rate has been agreed with Underwriters whichever is the later. Failure to give such notice shall invalidate Seller's claim unless in the opinion of arbitrators the delay is justifiable.

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. 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 clean and prepaid 'on board' Bill(s) of Lading, to be certified by a recognized bank if required by the Buyer;
3. Policy of Insurance Certificate in the currency of contract, to be certified by a recognized bank if required by the Buyer;
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.

13. DUTIES, TAXES, ETC

All export duties, levies etc., present or future in country of origin/port of shipment shall be for Seller's account.

All import duties, taxes, levies, licenses etc., present or future in port of discharge/country of destination shall be for Buyer's responsibility and account.

Demurrages arising from Buyer's inability to discharge the cargo on time or to take delivery of the cargo, other terminal charges at discharging port, or liner's detention charges, if any shall be borne by the Buyer.

Where the goods are entitled to free or preferential duty at port of destination named in this contract, Seller shall furnish together with the shipping documents a Certificate of Origin and/or other necessary document(s) in the form valid at time of shipment as per Shipping Instruction under clause 7(d), failing which, Seller shall be responsible for any extra duty incurred by Buyer through the non-production of such certificate and/or documents.

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 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 12, 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 delivery period, either party may notify the other party of its inability to deliver or take delivery but the date of such notice shall not become the default date without the agreement of the other party. If, for any other reason, either party fails to fulfil this contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by arbitrators to have occurred, then the date of the default shall, failing amicable settlement, be decided by arbitration.

18. INSOLVENCY/BANKRUPTCY

If before the fulfilment of this 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 a 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 named 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 fulfilment 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