

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 DRUMS

ORIGIN:

Revised and Effective
 1 February 2012

4

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 on terms and conditions as stipulated hereunder:-

Contract No :		Date :	
Product :			
Quantity in MT	Shipment Period	Load Port	Price (FOB) PMT
Packaging		Type of Drum :	
Product Specifications		Special Conditions	
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.			

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.

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)

2. **QUANTITY**

Seller has the option of shipping 1% 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 oil 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 oil is not warranted to be suitable for any specific end-use or to conform to any particular analytical criteria not mentioned above.

4. **SHIPMENT**

(i) **Suitable Freight Space**

In the event shipment is on break-bulk, suitable freight space to be provided alongside berth by Buyer. In the event that the vessel is unable to receive all the drums under deck, Seller shall load the remaining drums on deck at Buyer's risk. Buyer shall then accept the remaining drums on deck and a claused Bill of Lading stating the number of drums loaded on deck. Buyer shall permit partial shipment. In this event, Buyer to hold Seller free and harmless of all consequences.

In the event shipment is by containers, fit and suitable containers and freight space shall be provided 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's Dues**

All expenses relating to vessel at load port including wharfage, dockage, quay charges, pilotage, port dues, tugs, any freight or transportation levy/tax imposed by the Malaysian Government and expenses of like nature incurred at loading port(s) shall be for the account of Buyer.

(v) **Vessel**

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

5. **RELEASE OF BILLS OF LADING**

Before the date of loading, Buyer shall telex 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.

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 1 1/2% 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. Buyer to indemnify Seller for all resulting losses/expenses.

6. **EXTENSION OF SHIPMENT CLAUSE**

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 8 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 :

1/2% for 1,2,3, or 4 days
1% for 5 or 6 days
1 1/2% for 7 or 8 days

Should Buyer claim the Extension of Shipment Clause and the vessel fails to complete loading within such 8 calendar days, the original contract period shall be deemed to have been extended by 8 calendar days and the contract price increased by 1 1/2%. 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.

7. **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.

8. **EXPORT DUTY**

Seller shall be responsible for Malaysian export duty as incurred.

9. **WEIGHTS**

Gross tare and nett weight as ascertained from weighing scales at Seller's premises on 10% of the total drums selected at random and duly certified by independent surveyors appointed by Seller shall be final.

Buyer has the right to be represented, at his own costs, at time and place of weighing in which case weights shall be established conjointly.

10. **SAMPLING AND ANALYSIS**

Representative samples of the oil shall be drawn from 10% of the total quantity of the packed drums 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 oil packed, 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 conjointly with Seller's representatives. If Buyer is so represented, only samples drawn and sealed conjointly 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.

11. **DESTINATIONS EXCLUDED**

It is mutually agreed that the final destination of the cargo shipped from Malaysian ports shall not be any destinations so declared prohibitive by the Government of Malaysia from time to time.

12. **INSURANCE**

Buyer is deemed to have covered, before arrival of vessel alongside berth at loading port, insurance on all risks terms - Institute Cargo Clauses (All Risks) - including risk of contamination and leakage irrespective of percentage of each package or on the whole, including the risk of war, strikes, riots, civil commotion - effected with first class underwriters for 100% of the value to be 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 recognised bank for 101% of the mean contract quantity. Unless otherwise agreed between the parties, such credit shall be advised 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) Telegraphic Transfer reimbursement allowed
- (ii) Partial shipment allowed
- (iii) Shipment on deck allowed

*(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 drums loaded on board ascertained at port of loading and issued by a recognized independent surveyor;
4. Survey report issued by a recognized independent surveyor, certifying the weight and particulars as to time and place of weighing and sampling;
5. Certificate of analysis, issued by a recognized independent laboratory;
6. Certificate of Origin.

Buyer is to accept certified photostatic copy(ies) of (3), (4) and (5) relating to the shipment.

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

14. **NOTICE**

Where the terms of the contract require notice to be given, such notice shall be transmitted or sent by cable, telegram, telex, facsimile, email, 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. **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.

17. 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 preceeding 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.

18. DEFAULT

In default of fulfilment of the contract by either party, the other party at his discretion shall, after giving notice, have the right either to cancel the contract or the right to sell or purchase, as the case may be, against the defaulter who shall on demand make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase, or if neither of the above right is exercised, the damage if any, shall, failing amicable settlement, be determined by arbitration. The damages awarded against the defaulter shall be limited to the difference between the contract price and the market price on the day of the default but if the Arbitrator(s) consider the circumstances of the default justify it, they may at their absolute discretion, award additional damages.

19. 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.

20. 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.

21. **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.

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: