

**JOINT FOB CONTRACT FOR CRUDE PALM OIL AND
CRUDE PALM KERNEL OIL FOR ALL ORIGINS IN BULK**

**ISSUED BY THE PALM OIL REFINERS ASSOCIATION OF MALAYSIA,
MALAYAN EDIBLE OIL MANUFACTURERS' ASSOCIATION
AND MALAYSIAN PALM OIL ASSOCIATION**

**Revised and Effective:
1st August 2022**

Seller :

Buyer :

Broker :

Reference No:

* An asterisk denotes alternative wording and that not applicable should be deleted.

The Seller has agreed to sell and the Buyer has agreed to buy, the following product(s) on terms and conditions as stipulated hereunder:

Contract No:		Date:	
Product:			
Quantity in MT	Shipment Period	Load Port	Price (FOB) PMT

Product Specifications	Special Conditions

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.

If as lauric acid, calculated on a molecular weight of 200.

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. **QUANTITY**

Seller shall deliver at loading port the contract quantity. However, under the following circumstances the actual quantity delivered may be varied from the contract quantity:

- i) 2% or 25mt. (whichever is lower) more or less at buyer's option to be declared at least seventy two (72) hours prior to vessel's arrival at load port.
- ii) a tolerance of 1% or 10 mt (whichever is lower) more or less from the quantity nominated for loading as per (i) above.

Such variance shall be settled at the contract price.

2. **QUALITY**

At time and place of shipment, the oil shall be of good merchantable quality within the meaning of the description and specifications stated in the preamble. Unless so stated in the preamble 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.

3. **SHIPMENT**

i) **Suitable Freight Space**

Clean and fit freight space to be provided by Buyer. In the event that the vessel is found unsuitable by an independent surveyor licensed by the Malaysian Palm Oil Board (MPOB) and appointed by Seller for the carriage of the cargo, Seller shall load cargo upon receipt of appropriate instruction to load from Buyer. Under such circumstances, Buyer to hold Seller free and harmless of all consequences.

ii) **Nomination of Vessel**

- a) Buyer shall nominate to Seller name of vessel not less than fourteen (14) calendar days prior to vessel's expected time of arrival at load port. Such expected time of arrival shall not exceed a spread of seven (7) calendar days which shall be within the contract period.
- b) If Buyer fails to give fourteen (14) calendar days advance notice of shipment, Seller is not entitled to reject but is obliged to load the oil only fourteen (14) calendar days from the date of receipt of such notice on condition that such fourteen (14) calendar days is within the contract period.
- c) If the nomination is received less than fourteen (14) calendar days prior to the last day of the contract period, Buyer is deemed to be in default and the provisions of the Default Clause shall apply.

iii) **Substitution of Vessel**

Buyer is allowed to substitute the nominated vessel provided that the vessel's expected time of arrival at load port remains unchanged. However, Buyer shall notify Seller such substitution at least forty-eight (48) hours before the arrival of the substituted vessel. If the nominated vessel or the substitute vessel is delayed (but within the contract period) beyond the expected time of arrival to load by more than seventy-two (72) hours, Buyer shall bear all the additional costs including extra storage, heating charges, overtime, interests and other incidentals as incurred. Once the nominated vessel is alongside the loading berth, no substitution of vessel shall be allowed without the consent of the Seller, unless the substitution is necessitated due to the rejection of the vessel or vessel's tanks by the Buyer's nominated surveyor or due to other factors beyond the Buyer's control. In the event of such a substitution, which shall comply with other provisions of this contract relating to substitution, the Seller shall be entitled to claim additional costs, as incurred, from the Buyer.

iv) **Optional Load Port(s)**

Where the contract is subject to optional load ports, Seller to declare load port to his Buyer at least thirty (30) calendar days prior to the commencement of the shipment period. Should the last day of declaration falls on a non-business day, Seller shall declare not later than on the day prior to the non-business day. Should Buyer not receive load port declaration in time he cannot hold his Seller in default but shall have the option to declare the load port of his choice which Seller must accept.

v) **Cargo Readiness**

The Seller shall, at least two (2) calendar days before vessel's expected time of arrival at loadport, confirm to the Buyer or to the Buyer's vessel's agent if so advised by the Buyer, that the cargo shall be ready to load in all respects on the day the vessel is expected to arrive at loadport.

vi) **Loading, Laytime and Demurrage**

Seller undertakes to load the vessel and Buyer undertakes to receive the oil on board the vessel at a minimum average rate of 150 tonnes per hour.

Laytime to commence when vessel is alongside the loading berth and is in all respects ready to receive the oil.

All waiting time (i.e., from the time vessel is alongside the loading berth until the commencement of loading of the first parcel of oil and from the time of completion of loading upto hose-off) shall be pro-rated amongst all shippers/ Sellers who are to load oil on the vessel.

Demurrage for individual shipper / Seller shall not apply until the total number of hours allowed for total cargo loaded shall have lapsed. Demurrage shall not be charged twice in the event that more than one shipper/Seller exceeds the number of hours allowed to the total shipment.

Demurrage incurred at any loadport shall be based on time allowed to total quantity loaded at that loadport irrespective of the number of shippers/Sellers and cargo types.

In the event that loading is stopped due to non-availability of the oil of some shippers/Sellers, all time from the time of the commencement of such stoppage shall be deemed to be laytime used by such shippers/Sellers only. Notwithstanding other provisions herein, only such shippers/Sellers shall be responsible for all laytime used from the time of the said stoppage onwards and be liable to demurrage if the total laytime used by them shall exceed the total laytime allowed to their parcels. As a consequence of such stoppage, if the port authorities should require the vessel to vacate berth, the relevant Sellers shall be responsible for all additional laytime used and other costs as incurred by the Buyers or the vessel for shifting of the vessel out of berth and re-berthing.

Demurrage if any shall be payable by the shippers/Sellers responsible for the delay.

Demurrage rate shall be as stipulated in the Fixture for the related voyage but shall not exceed the rate prevailing in the market on the date of the said Fixture for similar vessels.

vii) **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 account of Buyer.

For the purpose of this contract, the words "vessel" or "vessels" shall mean any full-powered engine-driven vessel classified not lower than 100 A1 in Lloyds Register or its equivalent notation by similar Classification Society.

4. **RELEASE OF
BILLS OF LADING**

Before the date of loading, Buyer shall telex ship's agents/ owners and Seller authorising ship's agents / owners to release Bill(s) of Lading direct to Seller. All Bill(s) of Lading shall be released to Seller within forty-eight (48) hours or on the first business day after completion of loading whichever is later.

In the event that the Bill(s) 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 10% per annum 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, secure the freight prepaid Bill(s) of Lading and recover the cargo. Buyer to indemnify the Seller for all resulting losses/expenses.

5. **EXTENSION OF
SHIPMENT**

At the request of Buyer, the period of shipment shall be extended by an additional period not exceeding eight (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/canceling within the original contract period.

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 such eight (8) calendar days, the original contract period shall be deemed to have been extended by eight (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 fail 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.

Should the vessel be at berth but loading has not completed within the extended period of eight (8) calendar days and loading has not been interrupted for any fault of the Buyer, then the maximum late shipment penalty that shall apply shall be 1½% as applicable for a delay of eight (8) calendar days even if the loading completes after such eight (8) calendar days. Should the vessel have arrived at the port of loading and tendered notice of readiness within the eight (8) calendar days of the extension period but is not able to berth due to port congestion or other reasons for which the Buyer is not at fault, and consequently loading has not completed within the extended period of eight (8) calendar days, then the maximum late shipment penalty that shall apply shall be 1½% as applicable for a delay of eight (8) calendar days even if the berthing and/or loading completes after such eight (8) calendar days.

6. **EXPORT DUTY** Buyer shall be responsible for any increase in export duty in the port of loading, incurred under the following circumstances:
- i) late presentation of vessel outside shipment period; and
 - ii) if vessel should complete loading outside the shipment period.
7. **SHIPPING INSTRUCTION** Buyer shall provide Seller with the following shipping instructions at least four (4) calendar days before the estimated time of arrival of the vessel:
- i) Name of vessel's agent
 - ii) Destination of cargo
 - iii) Whether or not commingling is permitted
 - iv) Notifying party
 - v) Demurrage rate as per Charter Party.
 - vi) Buyer's banker's name and address in event of payment being cash on presentation of documents.

If instructions are not given as to whether commingling is permitted, Seller to load oil into tanks as allocated by vessel. In such event, Buyer shall be responsible for all consequences.

8. **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.

9. **INSURANCE**

Buyer is deemed to have covered, before arrival of the vessel at the load port, Marine Insurance on All Risks (warehouse to warehouse basis), including War Risks, to cover the respective rights and interests of both Seller and Buyer.

10. **WEIGHTS**

Weights as ascertained from calibrated shore tanks at time of shipment and duly certified by an independent surveyor appointed by Seller shall be final.

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

11. **SAMPLING ANALYSIS**

i) Representative composite samples in quadruplicate (1 for contractual analysis, 1 for the Shipper and 2 to be retained by the surveyor) of the oil shall be drawn from ship's tank(s) at time of shipment by an independent surveyor appointed by Seller, in accordance with the MPOB/FOSFA International/PORAM Processed Palm Oil Storage, Transportation, Sampling, and Survey Guide.

ii) Buyer has the right to be represented at his own cost at time of shipment, to draw and seal 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.

The samples so drawn shall be analysed by an independent laboratory licensed by MPOB and appointed by the surveyor(s), whose analysis shall be final and who shall issue the appropriate certificate. The Seller's surveyor shall hold the sealed samples for a minimum period of ninety (90) calendar days.

iii) In the event that the conditions of tanks/ pipelines/ valves or other equipment on board the vessel which come into direct contact with the cargo are not found suitable by the surveyor(s) for the carriage of the cargo, the samples as drawn from shore tanks at time of shipment shall be final and binding for the purposes of this contract.

iv) In the event the cargo is to be commingled on board the vessel, the provision for sampling and analysis in (iii) above shall apply.

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 recognised bank for 103% of the mean contract quantity. Unless otherwise agreed between the parties, such credit shall be advised and made available to Seller not later than ten (10) calendar days from date of contract. Should the Letter of 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 seven (7) calendar days of the demand being received but in no case later than the day prior to commencement of loading. The Letter of Credit shall provide for the negotiating bank to claim reimbursement by swift/telex from the credit opening bank upon confirmation that all documents conform to the credit requirements and the credit opening bank to make payment value dated on date of such claim being made. The expiration of the credit shall be at least fifteen (15) calendar days beyond the latest shipping date.

*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.

13. INTEREST

If payment is not made by due date, interest shall be payable at the rate of 10% per annum.

Nothing in this clause shall affect a party's right to invoke the provisions of the Default Clause in a case where a failure to effect timely payment could give rise to a claim under that clause.

14. UNASCERTAINED GOODS

In every instance where a parcel of goods paid for under this contract forms an unidentified part of a larger identified quantity of goods of the same description, whether in packages or in bulk, no separation or distinction shall be necessary and, until separation and identification of the parcel paid for hereby from the larger quantity has taken place, the Buyer of the parcel is a pro rata owner of the whole of the larger quantity in common with Seller/s and Buyer/s of other parts of the larger quantity.

15. SHIPPING DOCUMENTS

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

- 1) Commercial invoice;
- 2) Full set of clean "On Board" Bill(s) of Lading identifying vessels' tanks into which the goods have been loaded;
- 3) Certificate of shipped weights ascertained at port of loading and issued by an independent surveyor;
- 4) Survey report issued by an independent surveyor, certifying fitness and cleanliness of the ship's tanks and pipelines and particulars as to time and place of loading, sampling and establishment of the shipped weight;
- 5) Certificate of Analysis, issued by an independent laboratory;
- 6) Certificate of Origin.

Buyer is to accept certified photostatic copy(ies) on items (3), (4) and (5) relating to the whole parcel(s).

In the event the surveyor is unable to certify the fitness and cleanliness of the ship's tanks and pipelines due to some cargo being present in the ship's tanks before commencement of loading, the surveyor's certificate certifying fitness and cleanliness of the ship's tanks and pipelines shall not form part of the documents as required in (4) above.

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 to be endorsed, if required by Buyer, by a recognised bank. Acceptance of this guarantee shall not prejudice Buyer's rights under the contract.

16. STRINGS

Where the goods forming the basis of this contract are purchased by subsequent Buyer(s) such that end-shipper and end-receiver and each intermediate party are separate entities and once vessel nomination has been passed on within the provisions of the Shipment Clause to all parties in the string, a string shall be deemed to have been established provided all parties in the string have contracted with each other on the basis of PORAM/MEOMA/MPOA Joint FOB in Bulk Contract (Contract No. 7).

The establishment of the string shall for all intents and purposes be to facilitate the performance of the contracts and is without prejudice to the rights and obligations of the respective Buyers and Sellers to one another. For the purpose of this clause, the same goods shall mean goods of the same quantity, of the same description, of the same

country of origin, of the same contractual quality for shipment from the same port of loading during the same period of shipment.

For the avoidance of doubt, the Buyer and the Seller acknowledge and accept that where a string has been established pursuant to this clause the rights of any third party to this contract as stated in the following paragraphs of this clause shall be enforceable as against the Buyer or the Seller as though the third party was a contracting party with the Buyer or Seller as the case may be.

Unless otherwise agreed to by the end-receiver in the string, which agreement shall not be unreasonably withheld, the formation of a string shall be completed at least four (4) calendar days before the vessel's nominated expected time of arrival (ETA) at loadport. This clause does not in any way supercede the provisions of clause 3(ii) herein for Nomination of Vessel. The end-shipper as appearing in such string shall be deemed to be the party responsible for loading the goods.

The end-Buyer and the end-Seller shall then give all notices directly to each other with copies also being extended to their immediate contracting party who shall then pass the notice down or up the string accordingly. Notices so received by the end-Buyer or the end-Seller shall be deemed to have been received from their respective Buyer or Seller, as the case maybe. This procedure for passing notices is only to facilitate and expedite the giving and receipt of notices and does not absolve any party in the string from their other obligations to their respective Buyer or Seller, as the case maybe.

After the cargo is loaded, should any party in the string commit, prior to the receipt of the Shipping Documents by the end-receiver in the string, any act comprehended in the Bankruptcy Clause, or is declared to be in default by its immediate Buyer or Seller, a closing-out price as provided for in the Bankruptcy Clause shall be applied to the contracts of such party ("String-Defaulter") with its immediate Seller and Buyer. The immediate Seller to the String-Defaulter shall then present documents to the immediate Buyer from the String-Defaulter at such closing-out price. If a document by-pass had been agreed to earlier, such document by-pass shall continue to be effective and such closing-out price shall be used for price difference settlement only between the immediate Seller to and Buyer from the String-Defaulter instead of their actual contract prices with the String-Defaulter.

The immediate Seller to and Buyer from the String-Defaulter shall then claim from or pay to the String-Defaulter based upon the difference of their respective contract prices and such closing-out price. If either of the immediate Seller or immediate Buyer is required to claim from the String-Defaulter and the other is required to pay to the String-Defaulter then the immediate Seller or Buyer who is required to pay shall first pay to the other the amount payable by the String-Defaulter as herein above. If there is any surplus left after such payment, it shall then be paid to the String-Defaulter. In the event of there being more than one String-Defaulter in any string, all the provisions contained herein for settlement between the String Defaulter and its immediate Buyer and Seller shall apply to contracts of each such String-Defaulter.

When a string has been established as herein provided, a document by-pass may take place whereby the end-shipper shall present documents to end-receiver. If any party in the string does not agree to a document by-pass, then the documents shall pass down the string. Without prejudice to the rights and obligations of respective Buyers and Sellers to each other, the first Seller shall invoice the last Buyer on the basis of the selling price of the first Seller and last Buyer to pay accordingly. If the end-Buyer does not agree to accept documents at the first Seller's selling price, then the documents shall pass down the string.

Upon receipt of documents, the end-receiver shall effect immediate payment and confirm to its immediate Seller that the documents are in order, whereupon each party in the string shall immediately notify its Seller of the same.

Each Buyer shall make payment to its Seller or each Seller shall make payment to its Buyer for the difference between its buying and selling prices immediately upon receipt of confirmation that the documents are in order. Where Malaysian parties are involved, the settlement is to be in Malaysian Ringgit, the conversion to be based on the mean exchange rate established by PORAM on the date of the Bill(s) of Lading.

If any contract in the string is on the basis of any quality adjustment, payment for such quality adjustment shall also be made along with payment and settlement as above.

Where contracts in the string are on the basis of different currencies, the exchange rate applicable for the conversion into a common currency (conversion into Malaysian Ringgit where one of the contract is in Malaysian Ringgit) shall be the mean exchange rate established by PORAM on the date of Bill(s) of Lading.

For the purpose of abundant clarification, it is further stipulated that in the event of a breakdown of the string prior to the cargo being loaded, respective parties in the string shall have full recourse to and be fully responsible to their immediate Buyer or Seller as if the string had never been established.

In the event of a dispute of a common nature arising between the parties in a String, such disputes ("String Dispute/s") shall be referred to arbitration ("String Arbitration") as per the provisions of the Arbitration Clause herein. Parties hereto agree to submit to such String Arbitration.

17. CIRCLES

Where a Seller repurchases from his Buyer or from any subsequent Buyer(s) the same goods, a circle shall be deemed to have been established.

For the purpose of this contract, a circle shall be deemed to have been established prior to vessel's nomination when all parties to the circle are identified and aware of the circle's existence or when the vessel's nomination has been passed by a Buyer to a subsequent party in a string and the same nomination is received back by the Buyer, always provided that the nomination is received back by the Buyer fourteen (14) calendar days prior to the vessel's arrival at load port.

Upon the establishment of such a circle, the provisions of the Default Clause shall not apply. For the purpose of this clause, the same goods shall mean goods of the same quantity, of the same description, of the same country of origin, of the same contractual quality for shipment from the same port of loading during the same period of shipment.

If the goods are not tendered, or having tendered, documents are not presented as a result of a circle having been established, invoices based on the contract quantity shall be settled between each Buyer and his Seller in the circle by payment of each Buyer to his Seller of the excess of the Seller's invoice amount over closing-out price as provided in the Bankruptcy Clause.

Without prejudice to the rights and obligations of respective Buyer and Seller to each other, such settlement shall be due for payment on the 15th. day from the date of the establishment of the circle irrespective of the shipment month.

In the event of any party in the circle committing any act comprehended in the Bankruptcy Clause ("Circle-Defaulter") and if either of the immediate Seller or immediate Buyer is required to claim from the Circle-Defaulter and the other is required to pay to the

Circle-Defaulter then the immediate Seller or Buyer who is required to pay shall first pay to the other the amount payable by the Circle-Defaulter as herein above. If there is any surplus left after such payment, it shall then be paid to the Circle-Defaulter. In the event of there being more than one Circle- Defaulter in any circle, all the provisions contained herein for settlement between the Circle-Defaulter and its immediate Buyer and Seller shall apply to contracts of each such Circle-Defaulter

Unless otherwise agreed by the parties concerned, where the Sale and Purchase contracts involving the same party(ies) in the circle are on the basis of different currencies, the exchange rate applicable for the conversion into a common currency (conversion into Malaysian Ringgit where one of the contract is in Malaysian Ringgit) shall be the mean exchange rate established by PORAM on the date of the establishment of the circle.

18. **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.

19. **NON-BUSINESS DAY**

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 or as provided for in the Payment Clause.

All business days shall be deemed to end 1600 hours Malaysian time Monday to Friday inclusive. This clause shall not be applicable to the contract period.

20. **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.

21. **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 this 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 the extent this contract or any unfulfilled portion thereof shall be extended by thirty (30) calendar days. Seller shall advise Buyer with due despatch.

In the event of shipment during the extended period still proving 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.

22. **FORCE MAJEURE**

Should the performance of the contract be prevented by reason of fire, strikes, lock-outs, riots, civil commotion and/or any cause comprehended in the term force majeure at the ports of loading, the contract period shall be extended for a period equal to the duration of the disabling circumstances but not exceeding a period of sixty (60) calendar days. If the force majeure event ends within twenty-one (21) calendar days preceding the end of the extended period, then a further twenty-one (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 so affected shall be deemed to be null and void at the end of such extended period.

23. **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 a 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. 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/The Malayan Edible Oil Manufacturers' Association/Malaysian Palm Oil Association as the case may be. Should either party be dissatisfied with the price, the matter should be referred to arbitration.

24. **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 damages if any, shall, failing amicable settlement be determined by arbitration. The damages awarded against the defaulter shall be limited to the differences 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.

Prior to the last day of making a nomination of shipment, Seller/Buyer may notify his Buyer/Seller of his inability to ship/receive 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 his contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by Arbitrator(s) to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration.

25. **DOMICILE**

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

26. **ARBITRATION**

Any dispute or String 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.

The parties hereto agree to be bound by any Award, String Award or String Appeal Award made in the case of a String Arbitration or String Appeal held in accordance with the PORAM Rules of Arbitration and Appeal in so far as disputes of a common nature are concerned, whether or not the parties hereto have participated or otherwise made submissions in the String Arbitration as String Respondents.

If any dispute arising out of this contract raises issues which are substantially the same as or connected with issues raised within the arbitration agreement in any of the contracts in a string ("the related dispute") and if the related dispute has already been referred to arbitration in accordance with PORAM's Rules of Arbitration and Appeal, then all contracting parties in the string agree that the dispute between them shall be referred to the same arbitral tribunal appointed by PORAM to hear the related dispute.

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.

27. **PORAM/MEOMA/MPOA** Wherever PORAM/MEOMA/MPOA is indicated in the contract, it is to be construed as reference to the Palm Oil Refiners Association of Malaysia, Malayan Edible Oil Manufacturers' Association and Malaysian Palm Oil Association respectively.

As Seller:

As Broker:

As Buyer: