

**ISSUED AND APPROVED JOINTLY WITH THE PALM OIL REFINERS ASSOCIATION OF MALAYSIA (PORAM)
AND THE MALAYAN EDIBLE OIL MANUFACTURERS' ASSOCIATION (MEOMA)
CONTRACT FOR PALM AND PALM KERNEL OIL PRODUCTS IN BULK
CIF TERMS**

Revised and Effective
from 1st April 2021

SELLERS:

BUYERS:

BROKERS:

Reference No

Date:

*An asterisk denotes alternative wording, and should be matter of agreement between the parties.

Sellers have agreed to sell and Buyers have agreed to buy:

| | | | |
|--|--------------------|----------------|-----------------------|
| Sellers have agreed to sell and buyers have agreed to buy. | | | |
| Contract No: | | Date: | |
| Product: | | | |
| Origin: | | | |
| Quantity in metric tons | Shipment Period | Discharge Port | Contract Price CIF |
| | | | |

| |
|--------------------|
| Special Conditions |
| |

Payment in

- *(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)

Discharge in accordance with the provisions of the Discharge Clause and at an average rate of minimum metric tons per hour, Sundays and holidays included.

Domicile and Arbitration is as per Domicile and Arbitration Clauses.

1. TOLERANCE: Sellers have the option of shipping 5% more or less of the mean contract quantity. In the event of more than one shipment being made each shipment is to be considered as a separate contract but the tolerance on the mean contract quantity is not to be affected thereby.

2. QUALITY AND SPECIFICATIONS: Minimum flash point of 250°F (121°C).

Free Fatty Acid content shall be expressed as follows:

For Palm Oil Products - as Palmitic acid calculated on a molecular weight of 256. For Palm Kernel Oil Products - as Lauric acid calculated on a molecular weight of 200.

At time and place of shipment, the oil shall be of good merchantable quality of the agreed description and specifications.

It shall not contain substances of non oil-palm origin or materials used in its processing and not customarily found in oil of the contract description.

If the oil is loaded in more than one tank of the same ship, the analysis details of the oil in each separate tank shall conform with the above.

The specifications shall be those established by the Palm Oil Refiners Association of Malaysia (PORAM) for Palm Oil Products and by the Malayan Edible Oil Manufacturers' Association (MEOMA) for Palm Kernel Oil Products 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.

Where the specification refers to Malaysian Standards, Sellers warrant that the oil will be produced from crude palm oil complying with the relative Malaysian Standards (MS) by the Department of Standards Malaysia and will in all respects conform to the requirements and restrictions of the Malaysian Palm Oil Board (Quality) Regulations 2005 and any amendment or extension thereto and/or other relevant Malaysian Government standards/regulations in force at the date of the contract.

However, should the analysis relating to the oil in any tank/s fall outside the contract specifications -

- (a) as to palm oil/olein/stearin and/or palm kernel oil/olein/stearin by no more than one unit in respect of iodine value;

THE FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS

| | |
|---|----|
| (b) as to palm acid oil/fatty acid distillate and/or palm kernel acid oil/fatty acid distillate by no more than 2% in respect of total fatty matter and/or free fatty acids; | 30 |
| The oil is not to be rejected provided always that the analysis of the composite sample representing the full quantity loaded complies with the contract specifications and provided that the oil so loaded and analysed emanates from the same Seller and is tendered to the same Buyer. | 31 |
| Where the contract refers to bleached deodorised palm oil/olein/stearin and/or bleached deodorised Palm kernel Oil/Olein/Stearin, the quality and specifications as ascertained on samples taken from ship's tanks after loading shall be final and the provisions of the Arrival Quality-Adjustment Clause and the Sampling and Analysis Clause paragraph (d) shall not apply. | 32 |
| | 33 |
| | 34 |
| | 35 |
| | 36 |
| 3. ARRIVAL QUALITY-ADJUSTMENT: Where this contract refers to neutralised palm oil or to neutralised palm kernel oil or to crude palm liquid fraction/palm solid fraction or to palm acid oil/fatty acid distillate and/or palm kernel acid oil/fatty acid distillate the price shall be subject to adjustment based on the arrival analysis ascertained in accordance with the provisions of the Sampling and Analysis Clause paragraph (d) and specifically as follows: | 37 |
| (i) Unless otherwise stipulated, in the case of neutralised palm oil the basis shall be 0.25% FFA (as palmitic); and in the case of neutralised palm kernel oil the basis shall be 0.25% (as lauric). Should the FFA on arrival be less than 0.25% Buyers shall pay to Sellers a premium of 0.5% of the contract price for each 0.05% below 0.25%, fractions in proportion; should the FFA on arrival be greater than 0.25% Sellers shall pay to Buyers an allowance of 1% of the contract price for each 0.05% above 0.25% up to and including 0.5% and 2% of the contract price for each 0.05% above 0.5%, all fractions in proportion. | 38 |
| (ii) In the case of crude palm liquid fraction/palm solid fraction the basis shall be 5% FFA (as palmitic); should the FFA on arrival be less than 5% Buyers shall pay to Sellers a premium of 1% of the contract price for each 1% below 5% and should the FFA on arrival be greater than 5% Sellers shall pay to Buyers an allowance of 1% of the contract price for each 1% above 5%, all fractions in proportion. | 39 |
| (iii) In the case of palm acid oil/fatty acid distillate and/or palm kernel acid oil/fatty acid distillate the total fatty matter/total saponifiable matter shall be 95% minimum at time of shipment and the basis shall be 97% at time of arrival; Buyers shall pay to Sellers a premium of 1% of the contract price for each 1% above 97% and Sellers shall pay to Buyers and allowance of 1% of the contract price for each 1% below 97%, all fractions in proportion. | 40 |
| | 41 |
| | 42 |
| | 43 |
| | 44 |
| | 45 |
| | 46 |
| | 47 |
| | 48 |
| | 49 |
| 4. DECLARATION OF DESTINATION: The goods are sold for shipment to | 50 |
| but Buyers have the option to declare | 51 |
| as the port/s of destination with a minimum of metric tons to any one port. To exercise this option Buyers shall declare | 52 |
| the port/s of destination to Sellers by any means of rapid written communication, not later than 16.00 hours on | 53 |
| The Notices Clause and the Non-Business Days Clause shall not apply to such declaration. | 54 |
| | |
| 5. SHIPMENT AND CLASSIFICATION: Shipment in good condition in ship/s which comply with the FOSFA Qualifications and Operational Procedures for Ships Engaged in the Carriage of Oils and Fats in Bulk for Edible and Oleo-Chemical Use in force at the date of the Bill of Lading. The oil is to be shipped on a ship which, after loading in one or more origin ports, will proceed directly or indirectly, on a geographically normal route from the port/s of shipment to the port/s of destination. | 55 |
| For the purposes of this contract the words 'ship' or 'ships' shall mean any full-powered engine-driven ship. | 56 |
| Transshipment shall only be allowed under a through Bill of Lading and shall be restricted to the area of origin and/or customary transshipment ports in the area of destination for the goods specified in the contract, provided that transshipment at origin is completed within the original contract shipment period and/or agreed extension period. | 57 |
| In case of transshipment at origin, shipping documents shall include FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank and a FOSFA Combined Master's Certificate in respect of the ocean carrier. In the event of such transshipment at origin the Declaration of Shipment shall include the name of the ocean carrier and transshipment location. Nothing in this clause shall affect the Master's rights or Ship's obligations under Maritime Law. | 58 |
| | 59 |
| | 60 |
| | 61 |
| | 62 |
| | 63 |
| | 64 |
| | 65 |
| 6. INSURANCE: Insurance in accordance with the Institute/FOSFA Trades Clauses (A) and the Institute War and Strikes Clauses (FOSFA Trades) – including risk of contamination irrespective of percentage on each or on the whole - to be effected at Sellers' option with first class underwriters or companies but for whose solvency the Sellers shall not be responsible. Claims to be payable in the currency of the contract. Policies and/or certificates and/or Letters of Insurance required under this contract shall be for not less than 5% over the invoice amount including freight. | 66 |
| Buyers shall accept insurance including Exclusion Clauses on the FOSFA Insurance Exclusion Clause List. | 67 |
| In the event that Buyers receive an allowance under the Quality and Specifications Clause, Buyers to return the insurance policy to Sellers in order that they may make any recovery thereunder. Any benefit under the insurance in respect of loss in weight shall be for Sellers' account. | 68 |
| | 69 |
| | 70 |
| | 71 |
| | 72 |
| 7. 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 (Institute War Clauses [FOSFA Trades]). Any expense for covering war risks insurance in excess of ½ % shall be for account of Buyers. | 73 |
| The rate of such 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. | 74 |
| Notice of extra expense to be borne by Buyers shall be given by Sellers at the time of declaration under this contract or not later than 3 business days after the rate has been agreed with the underwriters whichever is the later. Failure to give such notice shall invalidate the Sellers' claim unless in the opinion of the arbitrators the delay is justifiable. | 75 |
| | 76 |
| | 77 |
| | 78 |
| 8. DECLARATION OF SHIPMENT: Notice stating ship's name, date of Bill/s of Lading and approximate quantity shipped shall be despatched by first Sellers to their Buyers not later than 10 days after the date of the Bill/s of Lading. Notices by intermediate Sellers shall be accepted by their Buyers although received by them after such time, if from the 10th day after the date of the Bill/s of Lading such notices have been passed on with due despatch. | 79 |
| 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. | 80 |
| Notices 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. A valid declaration cannot be withdrawn except with the Buyers' consent. | 81 |
| Should the ship arrive before receipt of declaration of shipment and extra expenses be incurred, such expenses are to be paid by Sellers. | 82 |
| Should extra lighterage expenses be incurred owing to Sellers tendering less than 50 tons for a contract of a greater quantity, the extra costs to be borne by Buyers and Sellers equally. The provisions of this clause to be inoperative if the goods have been sold afloat. Presentation of documents does not constitute a notice under the terms of this clause. | 83 |
| | 84 |
| | 85 |
| | 86 |
| | 87 |
| | 88 |
| 9. SUPERINTENDENTS: Reference in the contract to superintendents, surveyors or representatives shall mean member superintendents of FOSFA International. The use of member superintendents shall be mandatory except where:- | 89 |
| (i) the contract or national laws or regulations require the use of Governmental or other agencies not recognised by FOSFA International/PORAM; | 90 |
| (ii) no member superintendent/s is/are available or proximate to the port/s concerned. | 91 |
| | 92 |
| 10. ANALYSTS: Reference in the contract to analysts shall mean analysts who are members of FOSFA International and represented in the Oils and Fats Section. The use of member analysts shall be mandatory except where the contract or national laws or regulations require the use of Governmental or other analysts. | 93 |
| | 94 |
| | 95 |

THE FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS

11. PAYMENT AND SHIPPING DOCUMENTS: Payment shall be made at the above-named place as stipulated in the Preamble for 99% of Sellers' provisional invoice (or for 100% in the case where shipped weights are final) against a complete set of shipping documents:-

* (a) by irrevocable and confirmed letter of credit unrestricted for negotiation established in Sellers' favour through a recognised bank for 105% of the mean contract quantity. Unless otherwise agreed between the parties such credit shall be advised and available to Sellers not later than 10 days from date of contract or the business day prior to commencement of loading, whichever shall first arise. Should the credit be opened on terms inconsistent with the contract, Sellers may demand amendment which shall be arranged by Buyers and notified to Sellers within 7 days of the demand being received but in no case later than the business day prior to commencement of loading. The negotiating bank may claim reimbursement by telex/cable from the credit-opening bank upon confirmation that all documents conform to the credit requirements:

* (b) by cash on presentation:

* (c) as stated in the Preamble:

If Sellers choose to present documents to Buyers through the intermediary of a bank/s all bank charges incurred including those raised by Buyers bank shall be for Sellers' account unless Buyers demand presentation through a bank of their choice in which case those bank charges shall be for Buyers account.

Any charges for telegraphic remittance of funds to Sellers shall be for Buyers' account.

Shipping document shall consist of -

(1) Commercial invoice;

(2) Full set of clean "on board" Bill/s of Lading and/or Ship's Delivery Order/s and/or other Delivery Order/s in negotiable and transferable form, such other Delivery Order/s guaranteed by a recognised bank if required by Buyers;

(i) In the absence of evidence that the freight has been paid the amount of freight shall be deducted from the provisional invoice and paid by Buyers on Sellers' behalf. Buyers to send copy of the freight note to Sellers for final invoicing purposes. If freight is to be paid in a currency other than the currency of this contract, the conversion in the final invoice shall be made at the rate of exchange on the day of actual freight payment;

(ii) If the Bill/s of Lading refer/s to a Charter Party and/or any other documents relating to the freight booking, Sellers shall be responsible for any detrimental consequences from clauses of such documents being contrary to the terms of this contract. If such Bill/s of Lading is/are signed by parties other than the Master then the Bill/s of Lading shall be accompanied by photostat copy of written authority from shipowner or Master authorising the signatory to the Bill/s of Lading;

(iii) The Bill/s of Lading must identify the ship's tank/s into which the oil is loaded but should the oil be commingled with other parcels the Bill/s of Lading must indicate the total commingled quantity;

(iv) Delivery Order/s shall be accompanied by non-negotiable or photostat copy of the relative Bill/s of Lading if required by Buyers.

(3) Policy/ies and/or Insurance Certificate/s and/or Letter/s of Insurance in the currency of the contract and identifying the parcel insured. Letter/s of Insurance shall specify the insurance company/ies and/or underwriter/s and policy number/s and shall be guaranteed by a recognised bank if required by Buyers. After payment Letter/s of Insurance shall be substituted by policy/ies and/or certificate/s on request;

(4) FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank from superintendents in the form in force at the date of the Bill/s of Lading;

(5) Certificate of Analysis, based on independently sealed samples taken from the relevant ship's tank/s at time of loading, and issued by an independent certified analyst;

(6) A Certificate of Origin and/or other documents as per the Duties, Taxes, Etc., Clause of the contract where applicable;

(7) A FOSFA Combined Master's Certificate in the form in force at the date of the Bill/s of Lading;

(8) A copy of the notice to the Master instructing him to follow the PORAM Heating Instructions, and

(9) Certificate/s from superintendents certifying:

(a) the shipped weight ascertained at port of loading and specifying at what point the weight was ascertained;

(b) particulars of the time and place of loading, sampling and establishment of shipped weight;

(c) that pre-shipment and contractual loading samples were drawn in accordance with the Sampling and Analysis Clause and quoting details of the seals applied.

In relation to items (4) and (7), the immediate previous cargo in the tank/s receiving the oils or fats shall not have been a product appearing on the FOSFA List of Banned Immediate Previous Cargoes in force at the date of the Bill/s of Lading. The Restrictions beyond the Immediate Previous Cargo on the FOSFA List of Banned Immediate Previous Cargoes shall apply.

Buyers are to accept photostat or certified copy/ies of items (4), (5), (7) and (9) relating to the whole parcel/s.

Buyers agree to accept Bill/s of Lading containing the Chamber of Shipping War Risk Clause and/or any other recognised War Risk Clause.

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, such guarantee to be signed, if required by Buyers, by a first class bank. Acceptance of this guarantee shall not prejudice Buyers' rights under this contract.

Should Sellers have failed to present shipping documents on arrival of the ship at destination, Buyers shall take delivery under a guarantee acceptable to the shipowners to be provided by the Buyers, such guarantee to be signed by a first class bank if required by the shipowners. Buyers shall pay for the documents when presented. Any reasonable extra expenses, including costs of such guarantee or extra handling charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers and allowed for in the final invoice. In the event that Buyers take delivery as above and Sellers fail to provide shipping documents and if the guarantee provided by Buyers as above is encashed by the shipowners, Sellers shall be responsible for all damages, costs and consequences arising from their failure to present documents. Buyers shall inform Sellers immediately there is a claim against the guarantee and Sellers shall have the right to be joined in any legal action arising therefrom.

Payment shall not be deemed to have been effected before receipt of cleared funds by the payee or his bank. If payment is agreed to be by bank transfer, the party shall effect payment to the payee's bank on or before the due date for payment and payment instructions shall specify a value date not later than the second bank working day after the day of payment.

Any monies due by either party to the contract to the other for final invoices and/or accounts for items on shipments fulfilling this contract shall be settled by either party not later than 21 days from the date of the invoice, (except as otherwise provided under awards of arbitration or appeal as governed by the other provisions in the contract), and if not settled a dispute shall be deemed to have arisen which may be referred to arbitration.

12. INTEREST: If any payment is not paid on or before the due date for payment, interest shall be payable.

If there is no due date for payment, interest shall be payable if there has been unreasonable delay in payment. Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration in accordance with the Arbitration Clause.

Nothing in this clause shall affect a party's rights 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.

13. CHARTER PARTY: If the Bill/s of Lading refer/s to a Charter Party, then, if required by Buyers, Sellers shall provide a copy of the Charter Party.

14. WAR DEVIATION: Buyers agree to accept Bill of Lading containing the Chamber of Shipping War Deviation Clause and/or any other recognised official War Deviation Clause.

Any extra charges, duties and taxes incurred by reason of such deviation or detention are for Buyers' account and cost.

15. 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

THE FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS

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.

16. DISCHARGE: The oil shall be discharged at the port of destination at a berth suitable for the discharge of oils or, if practicable and mutually agreed, and provided the ship is willing to and can safely berth, at Buyers' own or appointed premises within harbour limits. Buyers shall take delivery with customary quick despatch after notice of readiness has been given by the shipowner or representative/s in accordance with the Bill/s of Lading, Charter Party or Contract of Affreightment. Where FOSFA International/PORAM Standard Fixture Terms apply, Buyers shall take delivery at the rate per hour stipulated in the Preamble or where no such rate is stated at an average rate of 150 metric tons per hour Sundays and Holidays included (except gazetted port holidays) or the rate stipulated in the Charter Party or Contract of Affreightment whichever is the lower. Otherwise Buyers to be liable to pay demurrage at the rate stipulated in the Charter party or Contract of Affreightment.

Sellers are responsible for all expenses for pumping out and for connecting to ship's outlet/s and for sweepings and/or puddling but discharging expenses arising after the oil has passed the ship's rail shall be for Buyers' account. Any loose collected remaining in the ship's tank/s to be discharged by the Sellers and delivered to the Buyers at the discharging berth in packages to be provided by the Buyers.

If the packages are supplied by the Buyers but the residue is not delivered, such residue or unpumpable oil shall not be included in the delivered weight.

17. WEIGHTS: At loading: The shipping weight shall be ascertained by a superintendent appointed by Sellers at their expense by gauging either in officially calibrated land tank/s or tank barge/s from which the oil is delivered or by delivery via certified weigh scales or from tank cars which, if not calibrated, shall be weighed before and after loading by single weighing only (front and back axle weighing not allowed). If none of these is possible then the shipping weight to be ascertained by the most practicable alternative means.

For goods sold for shipment to and/or discharged at USA/Canadian port/s: In the event that the oil shipped under this contract or this and other contracts with the same Buyer is loaded in separate tank/s not commingled with other parcels, Sellers shall declare Bill of Lading weights final and shall ensure that the insurance policy/certificate included with the documents covers Buyers against any difference between certified shipped and certified landed weights in excess of ½% and the provisions of the Adjustment of Outturn Clause as to price adjustment shall be based on the Bill of Lading weights.

At discharge: Buyers' superintendents shall ascertain the weight at Buyers' expense conjointly with Sellers' superintendents, if in attendance, by gauging either in officially calibrated tank/s or tank barge/s in which the oil is received or by overside delivery to certified weigh scales, or in rail/road tank cars which, if not calibrated, shall be weighed before and after loading by single weighing only (front and back axle weighing not allowed). If none of these methods is possible then the discharged weight to be ascertained by the most practicable alternative means. In the event of disagreement between Buyers' and Sellers' superintendents on the question of mass per volume (litre weight in air), sealed samples shall be submitted to an analyst whose decision shall be final.

If establishment of weights is not completed within 5 working days after discharge Sellers may submit an interim invoice which shall become due and payable based on Bill of Lading weights. Weights shall then be established as soon as it is deemed practicable by the superintendents representing the parties and a final invoice shall be issued accordingly.

18. ADJUSTMENT OF OUTTURN: Any excess over or deficit under the mean contract quantity arrived at without taking into consideration the margin of 5% more or less, and the quantity delivered, is to be settled up to and including the first 5% variation from contract quantity at contract price and the variation above 5% of the contract quantity at the market price to be mutually agreed or fixed by arbitration for the day of arrival of the last ship to arrive at the berth/place where the contracted goods are to be discharged at the port of destination.

19. COMMINGLING: Sellers may load the oil commingled with other parcel/s provided that:

(a) the oil is of the same description, origin, grade and contractual quality specifications; and

(b) the oil emanates from the same shipper (which in this contract shall be deemed to mean the party responsible for freight).

The provisions of paragraphs (a) and (b) shall not apply:-

(i) where this contract refers to palm acid oil/fatty acid distillate and/or palm kernel acid oil/fatty acid distillate;

(ii) where the oil is sold for shipment to optional ports and the final destination/s is/are not declared to Sellers within one month prior to the commencement of the shipment period.

20. SAMPLING AND ANALYSIS:

(a) General: Sampling shall be done in accordance with the method in the FOSFA International/PORAM/MPOB/Processed Palm Oil Storage, Transportation, Sampling and Survey Guide.

Should either party fail to appoint a superintendent then the samples drawn by the superintendent present shall be the valid samples for the purposes of analysis and/or arbitration.

The analyses shall be carried out in accordance with the methods laid down in the FOSFA International/PORAM Standard Contractual Methods List.

The certificate/s shall bear the FOSFA International official seal except where the contract or national laws or regulations require the use of Governmental or other analysts.

Details of seals and labels shall be given on both loading and discharge survey reports and analysis certificate/s.

All samples drawn under the terms of this contract when delivered to FOSFA International or to the analyst/s to become and be their absolute property.

(b) Pre-shipment Samples: To ensure samples are available in the event of a contamination claim not less than 5 pre-shipment samples of the oil loaded shall be taken at the ship's rail or the nearest practicable point prior to loading. These samples are to remain sealed with Sellers' superintendents at origin but be available on demand to any receiver in the event of a contamination claim. Samples to be kept for 3 months from date of Bill of Lading.

(c) At loading: Not less than 5 samples representative of the oil to be drawn from each ship's tank/s and sealed by superintendent for analysis. Two sets of these samples shall be handed to the Master with instructions to hand over to the receivers at port of discharge or their superintendents. Tests to be made from a set of sample/s by an analyst in the country of shipment (in the case of Malaysia by an independent licensed analyst registered with the Malaysian Palm Oil Board), who shall issue the appropriate certificate. The remaining sets of samples to be retained by the superintendent at the port of loading.

(d) At discharge: Buyers' and Sellers' superintendents shall conjointly draw 5 representative samples during discharge at the ship's rail or the nearest practicable point thereafter. These to be conjointly sealed for analysis and/or arbitration purposes. Any unpumpable and/or off-quality oil discharged and stored separately shall be analysed separately.

Buyers or their representatives shall retain 3 sealed samples and, if requested, with due despatch send 1 sealed sample for analysis to an analyst represented in the Oils and Fats Section. The remaining 2 sealed samples shall be retained by Sellers or their representatives. If Buyers fail to send a sample for analysis Sellers have the right to submit a sample and the results of this analysis shall stand as the first analysis. The analysis fee shall be equally divided between Sellers and Buyers.

Buyers and Sellers have the right to claim at their own expense a second and/or third analysis for any one or more individual specification. The party requesting such analysis shall, within 5 business days after receipt of the preceding analysis, notify the other party, arrange for a sealed sample to be sent to another analyst represented in the Oils and Fats Section, and give the necessary instructions to the analyst. If 2 analyses are made the mean of the 2 results, and if 3 analyses are made, the mean of the 2 results closest to each other, as the case may be, shall be binding and form the basis of final settlement. Where the results of the 3 analyses are such that the above formula does not apply, the mean of the 3 shall be taken as final.

Parties shall pass on certificates of analysis with due despatch.

THE FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS

| | |
|--|--|
| 21. DUTIES, TAXES, ETC: All export duties, taxes, levies, etc., present or future in country of origin/port of shipment shall be for Sellers' account. All import duties, taxes, levies, etc., present or future in port of discharge/country of destination shall be for Buyers' account. Where the goods are entitled to free entry into or preferential duty in the port of destination named in this contract, Sellers shall furnish together with the shipping documents a Certificate of Origin and/or necessary documents in the form valid at the time of shipment, otherwise Sellers shall be responsible for any extra duty incurred by Buyers through the non-production of such Certificate and/or document/s. | 239 240 241 242 243 |
| At Buyers' request and cost, Sellers shall endeavour to supply any alternative or additional certificate of origin and/or other documents but payment shall not be withheld for any delay incurred in complying with such request. | 244 245 |
| 22. NOTICES: Notices to be despatched by any means of rapid written communication. All notices shall be under reserve for errors in transmission. Notices shall be passed on with due despatch by intermediate Buyers and Sellers. Any notices received after 16.00 hours on a business day shall be deemed to have been received on the following business day. Notice from a broker shall be a valid notice under this contract. | 246 247 248 |
| 23. NON-BUSINESS DAYS: Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday in the country where the party required to do the act or give the notice resides or carries on business or in the country where the act has to be done or the notice has to be received or on any day which the Federation of Oils, Seeds and Fats Associations Ltd and the Palm Oil Refiners Association of Malaysia and the Malayan Edible Oil Manufacturers Association shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 16.00 hours Mondays to Fridays inclusive. The contract shipment period not to be affected by this clause. | 249 250 251 252 253 |
| 24. 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. | 254 |
| 25. FORCE MAJEURE: Should shipment of the goods or any part thereof be prevented at any time during the last 30 days of the contract shipment period by reason of Act of God, strikes, lockouts, riots, civil commotions, fires or any other cause comprehended by the term Force Majeure at port/s of loading or elsewhere preventing transport of the goods to such port/s, the time allowed for shipment shall be extended to 30 days beyond the termination of such cause, but should the contract shipment period be less than 30 days such extension shall be limited to the number of days allowed for shipment under the contract shipment period. Should such cause exist for a period of 60 days beyond the contract shipment period the contract or any unfulfilled part thereof so affected shall be cancelled. Sellers invoking this clause shall notify Buyers with due despatch. | 255 256 257 258 259 260 |
| When goods of a specific origin are sold with the option of shipment from alternative ports and shipment from all alternative ports is not prevented Sellers may only invoke this clause with regard to the specific port/s provided that the port/s has/have been notified to Buyers as the intended port/s of loading prior to or within 7 days of the occurrence but if the occurrence commences within the last 7 days of the contract shipment period the port/s of loading to be notified not later than the first business day following the contract shipment period. Shipment after the contract shipment period shall be limited to the port/s so nominated. Buyers have no claim against Sellers for delay in shipment or cancellation under this clause provided that Sellers shall have supplied to their Buyers, if required, satisfactory evidence justifying delay or non-fulfilment to establish any claim for extension or cancellation under this clause. | 261 262 263 264 265 266 |
| In case of default after extension the default date shall be similarly deferred. | 267 |
| 26. PROHIBITION: In the event, during the contract shipment 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 situate, 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 that extent this contract or any unfulfilled portion thereof shall be extended by 30 days. | 268 269 270 271 272 |
| 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. Sellers invoking this clause shall advise Buyers with due despatch. If required, Sellers must produce proof to justify their claim for extension or cancellation under this clause. | 273 274 275 |
| 27. BANKRUPTCY/INSOLVENCY: If before the fulfilment of this contract, either party shall suspend payment, notify any of his creditors that he is unable to meet his debts or that he has suspended payment or that he is about to suspend payment of his debts, convene, call or hold a meeting of his creditors, propose a voluntary arrangement, apply for an official moratorium, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for reconstruction or amalgamation), become subject to an Interim Order under Section 252 of the Insolvency Act 1986 or have a Bankruptcy Petition presented against him, the contract shall forthwith be closed, either at the actual or estimated market price then current for similar goods or, at the option of the other party, at a price to be ascertained by re-purchase or re-sale 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 ascertained by re-purchase or re-sale then the matter shall be referred to arbitration. If no re-purchase or re-sale takes place, and if the parties cannot agree to a closing-out price, then on application of either party, the closing-out price shall be fixed by a sole arbitrator appointed by the Federation subject to the right of appeal under the Federation's Rules of Arbitration and Appeal. | 276 277 278 279 280 281 282 283 284 285 |
| 28. CIRCLE: Where a Seller repurchases from his Buyer, or from any subsequent Buyer, the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so repurchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause, the same goods shall mean goods of the same description, of the same country of origin, of the same quality and where applicable, of the same analysis warranty, for shipment to the same port/s of destination during the same period of shipment.) Different currencies shall not invalidate the circle. If the goods are not declared or, having been declared, documents are not presented as a result of a circle having been established, invoices based on the mean contract quantity shall be settled between each Buyer and his Seller in the circle by payment by each Buyer to his Seller of the excess of the Seller's invoice amount over the lowest invoice amount in the circle. Where the circle includes contract/s expressed in different currencies, the lowest invoice amount shall be replaced by the market price on the first business day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the difference between the market price and the relevant contract price in the currency of the contract. Failing amicable agreement the market price shall be that declared by a Price Settlement Committee of the Federation appointed for that purpose on application of either party. | 286 287 288 289 290 291 292 293 294 295 |
| Such settlement shall be due for payment not later than 15 consecutive days after the last day for declaration or, should the circle not be established before the expiry of this time, then settlement shall be due for payment not later than 7 days after the circle is established. No circle shall be considered to exist if its existence is not established within 45 days after the last day of shipment. | 296 297 298 |
| All Sellers and Buyers shall give every assistance to the establishment of the circle and where a circle shall have been established same shall be binding on all parties to the circle. Should any party in the circle commit prior to the due date for payment any act comprehended in the Bankruptcy/Insolvency Clause, the invoice amount for the goods calculated at the closing-out price as provided for in the Bankruptcy/Insolvency Clause, shall be taken as the basis for settlement instead of the lowest invoice amount in the circle, and in this event each Buyer shall make payment to his Seller or each Seller shall make payment to his Buyer of the difference between the closing-out price and the contract price, as the case may be. | 299 300 301 302 303 |
| In the event of a claim under the Prohibition Clause or the Force Majeure Clause the date for settlement shall be deferred until the expiry of the extended shipment period. Thereafter, if the contract is cancelled under the terms of the Prohibition Clause or the Force Majeure Clause, this clause is not applicable. | 304 305 |
| 29. DEFAULT: In default of fulfilment of this 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 | 306 307 |

THE FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS

party liable to pay shall be dissatisfied with the price of such sale or purchase, or if neither of the above rights 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 difference between the contract price and the actual or estimated market price on the day of default. Damages to be computed on the mean contract quantity.

If the arbitrators consider the circumstances of the default justify it they may, at their absolute discretion, award damages on a different quantity and/or award additional damages.

Prior to the last day for making a declaration of shipment a Seller may notify his Buyer of his inability to ship but the date of such notice shall not become the default date without the agreement of the Buyer. 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 arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration.

30. INTERNATIONAL CONVENTIONS: The following shall not apply to this contract:-

(a) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967;

(b) the United Nations Convention on Contracts for the International Sale of Goods of 1980;

(c) the United Nations Convention on the Limitation Period in the International Sale of Goods of 1974 and the amending Protocol of 1980.

31. DOMICILE: Where both parties at or subsequent to the date of the contract agree, 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.

Otherwise this contract shall be deemed to have been made in England and the construction, validity and performance thereof shall be governed in all respects by English law.

32. ARBITRATION: Where both parties at or subsequent to the date of the contract agree, any dispute arising out of or in connection with this contract shall be submitted to arbitration in Malaysia in accordance with the Malaysian arbitration laws currently in force and any revision thereof and in accordance with the PORAM Rules of Arbitration and Appeal in force at the date of the contract.

In all other cases, any dispute arising out of the contract, including any question of law arising in connection therewith, shall be referred to arbitration in London (or elsewhere if so agreed) in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Associations Limited, in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant.

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 arbitrators or Board of Appeal (as the case may be), in accordance with the Rules of Arbitration and Appeal governing the dispute, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators or Board of Appeal (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 any such dispute.

SPECIAL CONDITIONS FOR PALM AND PALM KERNEL OIL PRODUCTS OF MALAYSIAN OR INDONESIAN ORIGIN:

EXTENSION OF SHIPMENT/CONTINUOUS LOADING: Where the contract shipment period does not exceed 31 days the period of shipment shall, at the request of Sellers, be extended by an additional period not exceeding 8 days provided notice is given to Buyers of their intention to invoke the continuous loading provisions or claim such extension not later than the first business day following the last day of the original contract shipment period. Successive Sellers must pass on this notification with due despatch. Sellers shall at the same time nominate the ship they intend to load and shall provide, together with shipping documents, satisfactory evidence that the ship was originally booked with lay days/cancelling within the original contract shipment period.

No allowance shall be payable provided the ship commenced loading at the loadport from which the goods appropriated under this contract are shipped during the contract shipment period and provided loading of the goods appropriated under this contract is completed within 5 days of the end of the original contract shipment period. If loading did not so commence or, having commenced, did not complete within the said 5 days, Sellers shall make an allowance to their Buyers, on the quantity not loaded, to be deducted in the invoice from the contract price, as follows:

½% for 1, 2, 3 or 4 days

1% for 5 or 6 days

1½% for 7 or 8 days.

If Sellers invoke the continuous loading provisions or claim an extension and fail to ship within the 8 days, the original contract shipment period shall be considered to have been extended by 8 days and the contract price reduced by 1½%.

Should Sellers not claim the above extension and fail to ship within the contract period any penalty whether arrived at by amicable settlement or arbitration shall not be related to the allowances of this clause.

Where the conditions of this clause are invoked Sellers undertake not to load on the same ship similar goods sold for the then current shipment period, without the prior consent of Buyers.

© FOSFA Copyright 2021