

FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS LIMITED FOSFA INTERNATIONAL

CONTRACT FOR UK LINSEED IN BULK SUITABLE FOR OIL EXPELLING AND/OR EXTRACTION EX FARM/DELIVERED

9A

Revised and Effective
from 1st September 2010

SELLERS:

BUYERS:

BROKERS:

Reference Nos
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.....
.....

Date:

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

1. Sellers have agreed to sell and Buyers have agreed to buy UK LINSEED of good merchantable quality suitable for oil expelling and/or extraction net delivered during the period 1
 Destination 2
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1. QUANTITY	2. PRICE	3. QUALITY		
* Production Acres/Hectares		ON ARRIVAL THE BASIS SHALL BE		
		OIL	MOISTURE	ADMIXTURE
* tons of 1000 kilos		38%	9%	2%

2. **TOLERANCE:** Sellers have the option of delivering 2% more or less or 5 tons more or less of the mean contract quantity, whichever is the greater. In the event of failure to deliver, damages, if any, under the Default Clause hereof shall be calculated on the mean quantity. (In the event of delivery in excess of the tolerance the Buyers shall have the right of rejecting the excess over the tolerance limit. In the event of the excess being accepted settlement shall be in terms of the Default Clause). Subject to the above on arrival at point of first discharge, any excess over the tolerance to be settled at the market price on the day of transport arriving. When the quantity is delivered in more than one consignment, settlement is to be made at market price on the date of the last consignment to arrive. Such market price to be agreed amicably or decided by arbitration. Any deficiency under the tolerance to be settled at the market price on the last day of the contract period. When more than one consignment is made, each consignment to be considered as a separate contract but the margin on the mean contract quantity shall not be affected thereby. 4
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3. **SPECIAL TERMS:** 13
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4. **ALLOWANCES, PREMIUMS, REJECTIONS:** Oil Content Basis 38%, minimum 35% — A reciprocal allowance of 1% shall be made to Buyers or Sellers for each 1% excess or deficiency of oil content. Buyers shall have the right to reject a parcel containing less than 35% oil content. If the right to reject is not exercised the allowance to be agreed amicably or settled by arbitration. 19
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 Moisture Basis 9% — Buyers shall have the right to reject a parcel containing over 10% Moisture. Buyers shall be entitled to an allowance of 1% for each 1% of moisture from 9% up to 10%. If the right to reject is not exercised where the moisture is in excess of 10% the allowance to be agreed amicably or settled by arbitration. 23
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 Admixture Basis 2% — Buyers shall have the right to reject a parcel containing over 4% admixture, Buyers shall be entitled to an allowance of 1% for each 1% of admixture, in excess of the basis up to 3% and to an allowance of 2% for each 1% of admixture in excess of 3% up to 4%. If the right to reject is not exercised where the admixture is in excess of 4% the allowance to be agreed amicably or settled by arbitration. Rapeseed to count as admixture. Unthreshed Linseed in excess of 2% to count as admixture. 26
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 On settlement of any claims under this clause all fractions to be calculated in proportion. Buyers' claim to reject shall be notified to Sellers immediately on arrival of the goods and when the option to reject is not exercised settlement of allowances to Buyers shall be agreed amicably or by arbitration. 30
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5. **PESTICIDE RESIDUE:** The Seller warrants that the goods on delivery will comply with the provisions of the Food & Environment Act 1985 and the Pesticide (Maximum Residue Levels in Crops, Food and Feedingstuffs) Regulations 1994, or any other legislation applicable. The Seller shall notify the Buyer in writing whether or not any post harvest chemical treatment has been applied to the goods by or on behalf of the Seller or a previous owner. The Seller must supply written details of that treatment on a Post Harvest Pesticide Declaration Form (Passport) and ensure that a completed form accompanies each load collected/delivered. This Pesticide Declaration must be made on an official declaration form and signed by the Seller or a person authorised by him. The Buyer reserves the right to reject any load which is not accompanied by a Post Harvest Pesticide Declaration Form. All parties involved in the transmission of information required by this clause must take all reasonable steps to avoid delays. 32
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6. DELIVERY & WEIGHTS:	39
(a) Sales on Ex Farm basis — Delivery shall be made free on vehicles on an accessible hard standing. Buyers undertake to advise the Sellers of intended times of collection as far as it is possible with a minimum of 24 hours notice. Where Buyers collect unweighed seed they shall notify Sellers of the net weight as quickly as possible. Buyers responsible for weighing shall, whenever practicable, adopt the procedure stated in the Code of Practice for bulk weighing which shall be stated in writing to the other party at the latter's request. A copy or duplicate of the weight ticket shall likewise be produced on request provided such request is within 2 months of collection/delivery.	40 41 42 43 44
(b) Sales on a delivered basis — Deliveries shall be at Buyers call unless otherwise stated.	45
(i) In the case of deliveries to UK crushing mills and inland store facilities, final Buyers shall give their Sellers notice of delivery instructions a minimum of 3 business days before date and time during the contract period when Buyers require goods to be delivered. Buyers shall give sufficient delivery instructions to allow Sellers to deliver the full contract quantity during the contract period. Should Sellers fail to deliver at the date, time and place appointed above, this shall not void the contract but Buyers, taking note of the Notices Clause and 6(b)(iv), shall give Sellers revised delivery instructions to allow Sellers to deliver the full quantity of these failed deliveries as follows: Buyers shall give Sellers a minimum of 2 business days notice of the revised date and time when Buyers require the goods to be delivered. The revised date and time of delivery shall fall within the contractual period, except where the operation of this clause makes this impossible. In this case Buyers shall give Sellers such extension to the contract period as necessary to enable them to effect deliveries in accordance with this clause. Should Sellers fail to deliver the full quantity of those failed deliveries in accordance with the revised delivery instructions, Sellers shall be in default and the provisions of the Default Clause shall apply.	46 47 48 49 50 51 52 53 54 55
(ii) In the case of deliveries to UK export facilities, final Buyers shall give to their Sellers notice of delivery instructions a minimum of 3 business days before date and time during the contract period when Buyers require the goods to be delivered. Should Sellers fail to deliver by the date, time, and place appointed, Sellers shall be in default and the Default Clause shall apply unless further delivery instructions can be mutually agreed between Buyers and Sellers.	56 57 58 59
(iii) If final Buyers do not in the first instance give their Sellers notice of delivery instructions a minimum of 3 business days before expiry of the contract period then Sellers shall, after notification in writing to the Buyers, deliver the goods to a first class store suitable for the long-term storage of linseed within 75 radial miles of the delivery point and tender the goods to Buyers. Costs of receiving into store and all charges thereafter shall be borne by Buyers.	60 61 62 63
(iv) If Buyers are not the final receivers, notice of delivery instructions shall be passed on with due despatch or by 10.00 hours on the following day if received after 16.00 hours local time (provided always that final Buyers have given a minimum of 3 business days notice to final Sellers). Goods may not be delivered into store by any Sellers in the string without first ascertaining that final Buyers failed to give notice of delivery instructions as stipulated above.	64 65 66 67
(v) A receipt for the weight accepted shall be given to the driver of the vehicle at the time of delivery. Weights of those loads delivered, and notification of loads not delivered, shall be advised to the Seller within 5 business days. Buyers' weights are final unless other satisfactory evidence is produced on arrival of the seed. Buyers shall if required produce proof of weights received.	68 69 70 71
(c) Weighbridge charges shall be for the Sellers account unless otherwise stated in Clause 3.	71
7. DEMURRAGE: In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering the goods Sellers or Buyers, whoever are responsible, shall be liable for the loss that results from the delay of that particular load only.	72 73
8. PAYMENT: Payment to be made on	74 75
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.	76 77 78
Any monies due by either party to the contract to the other for final invoices and/or accounts for items on deliveries fulfilling this contract shall be settled by either party without delay (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.	79 80 81
9. INTEREST: If any payment is not made 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 an 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.	82 83 84 85 86 87
10. ANALYSTS: Reference in the contract to analysts shall mean UK analysts who are members of FOSFA International and represented in the Oilseeds Section.	88
11. SAMPLING AND ANALYSIS: On arrival, final Buyers to arrange for sealed samples to be taken in duplicate from each delivery in accordance with the method laid down in the Federation's Standard Contractual Methods List, whether accepted or rejected, and to be analysed for oil, moisture and impurities where applicable and the original certificate of analysis for each individual consignment, passed to the last Seller within 21 consecutive days from the receipt of the goods and thereafter with due despatch to the first Seller. Should the analysis results not be passed on within the time limits stipulated in this clause, Buyers shall give Sellers an allowance of 0.25% of the contract price per week for the first two weeks and thereafter 0.5% of the contract price per ton per week. Duplicate samples to be retained as Sellers or Buyers may call for a check analysis by an analyst whose analysis shall be final (provided such a request is made by the claimants within 2 months of the date of the delivery of the goods). Following such request, Buyers shall send the sample to the analyst within 5 business days and the original certificate of retest shall be passed to the Seller within 14 consecutive days from the date of that retest certificate. Should the original retest certificate not be passed to the Seller within 14 consecutive days, Buyers shall give Sellers an allowance of 0.25% of the contract price per ton per week for the first two weeks and thereafter 0.5% of the contract price per ton per week. The cost of check analysis to be borne by the Buyers providing that the analysis varies from the original test by more than 0.4% for oil or moisture or 0.2% for impurities. If the retest is within these tolerances cost of check analysis to be for the party who called for the check. All duplicate samples to be retained by the final Buyers for 2 months from the date of delivery. The check analysis for oil, moisture, and admixture shall be carried out in accordance with the methods laid down in the Federation's Standard Contractual Methods List. Under the terms of this clause due despatch shall mean within one business day following receipt.	89 90 91 92 93 94 95 96 97 98 99 100 101 102
12. 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 notice 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.	103 104 105
13. 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 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 delivery period not to be affected by this clause.	106 107 108 109
14. 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.	110
15. FORCE MAJEURE: Should Sellers be prevented from making physical delivery of the material sold, or buyers from taking delivery by reason of Act of God, strikes, lockouts, riots, civil commotions, fires or any other cause comprehended by the term Force Majeure, the time of delivery shall be extended until 15 days after the operation of the cause of prevention has ceased. The party invoking this clause shall notify the other party within 5 business days of the occurrence or the first business day of the delivery period whichever is the later and shall furnish proof of prevention if required. Should such cause exist for a period of 60 days beyond the contract period, the contract or any unfulfilled part thereof so affected shall be cancelled. In case of default after extension, the default date shall be similarly deferred.	111 112 113 114 115 116
16. 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.	117 118 119 120 121 122 123 124 125 126
17. 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 quality and, where applicable, of the same analysis warranty.)	127 128 129

The invoices for the quantity in question shall then be settled between the Buyers and Sellers in the circle by payment by each Buyer to his Seller of the amount by which the invoice exceeds the lowest amount in the circle. The settlement shall be due not later than 15 consecutive days after the day on which the circle has been established (or the next business day if the 15th is a non-business day) but not earlier than on the first and not later than on the last business day of the period of delivery. Should the existence of a circle become apparent only from the notices of delivery, the day on which the goods should have been made available shall be taken as the day of settlement. If a circle appears to exist only after the delivery order was issued or after presentation, payment shall be made as if no circle had been established.

All Sellers and Buyers shall give every assistance to the establishment of the circle and when 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.

In the event of a claim under the Force Majeure Clause the date for settlement shall be deferred until the expiry of the extended delivery period. Thereafter, if the contract is cancelled under the terms of the Force Majeure Clause, this clause is not applicable.

18. 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 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 delivery a Seller may notify his Buyer of his inability to deliver 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.

In the event of failure of the Seller to delivery against the second delivery instruction, default shall be the first business day following the day on which default was established.

19. DOMICILE: 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. Any dispute arising out of or in connection therewith shall be submitted to arbitration in accordance with the Rules of the Federation. The serving of proceedings upon any party by sending same to their last known address together with leaving a copy of such proceedings at the offices of the Federation shall be deemed good service, rule of law or equity to the contrary notwithstanding.

20. 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 Law 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.

21. ARBITRATION: Any dispute arising out of this 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 person 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, umpire or Board of Appeal (as the case may be), in accordance with the Rules of Arbitration and Appeal of the Federation, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators, umpire 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.

In any case where the dispute involves a member of the Agricultural Industries Confederation or of the National Farmers' Union of England and Wales or of the National Farmers' Union of Scotland, a party may appoint a suitably qualified member of Agricultural Industries Confederation or a nominee of the National Farmers' Union of England and Wales or the National Farmers' Union of Scotland, subject to the Rules of Arbitration and Appeal of FOSFA International.

In the case of an appeal against an arbitration award on this contract, the National Farmers' Union of England and Wales, or the National Farmers' Union of Scotland shall have the right to appoint a member of the Board of Appeal to consider the dispute, subject to the Rules of Arbitration and Appeal of FOSFA International.