

FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS LIMITED FOSFA INTERNATIONAL

CONTRACT FOR VEGETABLE AND MARINE OIL IN BULK FOB TERMS

53

Revised and Effective
from 1st January 2013

SELLERS:
.....
BUYERS:
.....
BROKERS:
.....

Reference Nos

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 say metric tons 1
..... OIL, in bulk 2
at say per metric ton 3
shipped weight, free on board 4
to be loaded into ship or ships during 5
..... 6
Loading in accordance with the provisions of the Loading Clause and at an average rate of metric tons per 7
running hour, Saturdays, Sundays and holidays included/excluded*. 8
Rates for carrying in accordance with the Extension Clause per ton per day. 9
Demurrage at the rate of US\$ per day/pro rata. 10
Where Sellers have the option to deliver from alternative load ports Sellers shall declare actual load port no later than the first business day of the month prior to 11
commencement of delivery period. 12
Payment in as per Payment Clause. 13
1. QUALITY: The oil shall be of good merchantable quality of the agreed description and contractual specification at time of delivery or at the end of the 14
extension period if not shipped. If the oil is delivered to more than one tank of the same ship the analysis details of the oil delivered to each separate tank at 15
loading shall conform to the contract specifications. 16
2. SPECIFICATIONS: Minimum flash point of 250°F (121°C) 17
..... 18
..... 19
The FFA content shall be expressed as follows: — If as Lauric acid, calculated on a molecular weight of 200; if as Palmitic acid, calculated on a molecular weight 20
of 256; if as Oleic acid, calculated on a molecular weight of 282. 21
3. TOLERANCE: Buyers have the option of calling for 2% more or less, any excess or deficiency on the mean contract quantity to be settled at the contract 22
price. 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 23
not to be affected thereby. 24
4. NOMINATION OF SHIP: Buyers to give notice of nomination of ship to Sellers together with expected date of readiness to load, demurrage rate if 25
applicable, flag, quantity in time for Sellers to receive it not later than 15 consecutive days before the date of the ship's expected readiness to load. In the event 26
of a string, the first Seller shall accept the nomination provided it has been received by him not later than 10 consecutive days before the date of the ships 27
expected date of readiness to load. 28
5. DOCUMENTARY INSTRUCTIONS: Buyers to give relevant documentary instructions, name of ship's agent at loading port, port of discharge and 29
country of destination not less than 7 consecutive days prior to estimated arrival of ship at loading port. 30
6. SUBSTITUTION OF SHIP: Buyers are allowed to substitute the nominated ship provided that the substitute ship is expected to arrive no earlier than the 31
original ship and not more than 10 consecutive days later unless otherwise agreed by Sellers. Buyers shall notify their Sellers and first Sellers (if known) of such 32
substitution as soon as possible but not later than 2 business days before the expected arrival of the original ship. 33
The original delivery period and any extension thereto shall not be affected by this clause. 34
7. NOTICE OF READINESS: Notice of readiness at loading port to be given during local office hours and laytime to start counting 6 hours after such notice 35
has been tendered. Should superintendents after inspection find ship's tank/s requires further cleaning, time required to clean not to count as laytime. Laytime not 36
to commence prior to expiry of minimum number of days pre-advice for nomination of ship unless Sellers agree to load earlier in which case laytime to commence 37
when ship actually commences to load. All notices shall have been passed on with due despatch. 38
8. LOADING: Freight space to be provided by Buyers who shall be solely responsible for the cleanliness and fitness of the ship's tank/s receiving the oil. 39
All expenses relating to the ship like wharfage, dockage, pilotage, port dues, tugs, any freight or transportation levy that may be imposed by government or local 40
authority at port/s of loading shall be for Buyers' account or risk. 41
Sellers to deliver the oil at not less than the loading rate stated in the Preamble. Where no such rate is stated loading shall be at an average rate of 100 metric tons 42
per running hour provided the ship can receive at that rate. If any Seller fails to comply and demurrage is thereby incurred he shall be liable to pay demurrage at 43
the rate stipulated in the Preamble or where no such rate is stipulated at the rate of US\$25,000 per day/pro rata, or as per Charter Party whichever is the lower. 44
Should commencement of loading be delayed by more than 72 hours after acceptance of the Notice of Readiness due to ship's tank/s not being passed by the 45
appointed superintendent or for any other reason for which Sellers are not contractually responsible, any extra costs incurred by Sellers shall be for Buyers' account. 46
Each delivery to be considered a separate contract. 47
For the purpose of this contract the word "ship" or "ships" means any full powered primarily engine-driven ship classified not lower than 100 A1 in Lloyds Register 48
or of equivalent classification of a similar institute. 49
Sellers to be responsible for obtaining export licence, if required. 50
9. SUPERINTENDENTS: Reference in the contract to superintendents, surveyors or representatives shall mean member superintendents of FOSFA 51
International. The use of member superintendents shall be mandatory except where: 52
(i) the contract or national laws or regulations require the use of Governmental or other agencies not recognised by FOSFA International; 53
(ii) no member superintendent/s is/are available or proximate to the port/s concerned. 54

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.	55 56
11. SAMPLING AND ANALYSIS: General: Sampling shall be done in accordance with the method in ISO 5555. 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 and contamination. The analyses shall be carried out in accordance with the methods laid down in the FOSFA International Standard Contractual Methods List. Details of seals and labels shall be given on loading weight report(s) 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 their absolute property. The analysis certificate(s) shall bear the FOSFA International official seal.	57 58 59 60 61 62 63
Sampling: Representative sample(s) of the oil delivered to each vessel's tank shall be drawn conjointly by Buyers' and Sellers' superintendents at vessel's rail or the nearest practicable point thereto prior to loading and sealed for analysis and/or arbitration and contamination purposes. If the oil to be shipped is not to be commingled in the vessel(s) tank(s) with oil loaded by any other Seller(s), Sellers under this contract have the option that the sample(s) shall be drawn from the vessel(s) tank(s). However, if this option is exercised and to ensure that samples are available in the event of a contamination claim, Buyers' and Sellers' superintendents shall conjointly draw and seal no less than five representative pre-shipment samples of the oil delivered to each vessel's tank at the vessel's rail or the nearest practicable point thereto prior to loading. These samples are to remain sealed with Sellers' superintendents at origin but to be available on demand to any receiver in the event of a contamination claim. Samples should be kept for three months from the date of the Bill of Lading. If the oil is not loaded within 15 consecutive days of the contract period, then representative sample(s) to be drawn by Buyers' and Sellers' superintendents at the storage installation or the producing factory at or near the port of delivery at the end of the extension period allowed under the Extension Clause. Any extra expenses necessarily incurred by Sellers to facilitate drawing of samples for establishment of quality at end of extension shall be for Buyers' account.	64 65 66 67 68 69 70 71 72 73
Analysis: Sellers or their superintendents shall send sealed sample(s) for analysis on the contractual specifications to an analyst. Notwithstanding Buyers' obligation to pay on presentation of documents as laid down in the Payment Clause of this contract either party shall have the right to claim a second and/or third analysis for any one or more individual contractual specification(s). The party requesting such analysis shall, within five business days after receipt of the preceding analysis, notify the other party, arrange for a sealed sample to be sent to another analyst, and give the necessary instructions to the analyst. In the event this contract forms part of a string of contracts for the same goods on the same terms, notice(s) of second and third analysis by intermediate parties shall be accepted by the other party although received after such time, provided notices by intermediate parties have been passed on with due despatch. If two analyses are made, the mean of the two results, and if three analyses are made, the mean of the two 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 three analyses are such that the above formula does not apply, the mean of the three shall be taken as final. Should by claiming a second and/or third analysis and applying the above formula the oil exceed the agreed maximum for any one or more individual contract specifications, the oil not to be rejected but to be taken with an allowance to be agreed upon or fixed by arbitration, provided always that the result(s) of the first analysis conformed to the contract specifications. Parties shall pass on certificate(s) of analysis with due despatch. Analysis fees shall be for account of the party ordering the analysis. Analysis of sample(s) taken at time of loading or, in the event of the oil not being loaded within 15 consecutive days of the contract period, at the end of the extension period allowed under the Extension Clause, to be final.	74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89
12. EXTENSION: Buyers shall be entitled to an extension of the original contract delivery period not exceeding 15 days in which to provide suitable freight. Notice of such extension shall be given to Sellers as soon as possible but not later than the last business day of the original contract delivery period. Sellers undertake to carry the oil for Buyers' account for such an extended period at the rate stipulated in the Preamble or where no such rate is stipulated at the rate of US\$0.50 per ton per day. Buyers need not state the exact number of days they require when giving such notice. If an extension is claimed five days pre-advance shall be given to Sellers of ship's expected readiness to load. Sellers shall complete loading after the expiry of the extension period, provided Buyers present Notice of Readiness to load within the extended period. If loading is commenced within 15 days after the original contract delivery period, payment shall be made in accordance with the Payment Clause. In the event that loading is not commenced within 15 days of the original contract delivery period the provisions of the Default Clause shall apply and Buyers shall additionally pay to Sellers an amount equal to carrying charges for the total extension period. However, Buyers have the option, provided they give Sellers minimum 4 business days pre-advance, to effect payment against warrant, delivery order or similar document, in place of the Bill of Lading or Mate's Receipt, giving unencumbered title to the quantity called for, issued by an installation or the producing factory at or near the port of delivery. Sellers also to provide Certificate of Analysis and Certificate of Origin. The warrant, delivery order or similar document to be guaranteed by a Bank if requested by Buyers in the pre-advance. The expenses of such Bank guarantee to be for Buyers' account. Thereafter, all costs of whatsoever nature arising (including the cost of removing the oil to separate other storage but excluding those of putting the oil FOB ruling on the 15th day of the extension) shall be paid by Buyers. If Buyers exercise their option to take delivery in store, Sellers shall nevertheless deliver to the ship if it presents in time for loading to commence before the expiry of the extension period.	90 91 92 93 94 95 96 97 98 99 100 101 102 103 104
13. INSURANCE: Marine and War Risks insurance to be covered by Buyers for their account with first class underwriters and/or companies.	105
14. PAYMENT: Buyers shall pay on presentation of documents in the above named place the invoice amount (including carrying charges, if incurred) by cash against clean "on board" Bill/s of Lading in negotiable and transferable form or clean "on board" Mate's Receipt in negotiable and transferable form, superintendent's report on weight, Certificate of Analysis and Certificate of Origin issued by the Chamber of Commerce or other governmental institution in the country of origin unless a specific form has been agreed, declared by Buyers or other document required under the Duties, Taxes, Etc Clause. If documents are presented to Buyers through the intermediary of a bank/s then the bank charges incurred shall be for Sellers' account. If Buyers demand presentation through a bank of their choice, those bank charges shall be for Buyers' account. 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 in respect to final invoices and/or accounts for items on deliveries 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.	106 107 108 109 110 111 112 113 114 115 116 117
15. 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 rate 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 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.	118 119 120 121 122 123
16. WEIGHTS: Shipped weights, as ascertained by a recognised independent Surveyor. Buyers may appoint a representative to superintend weighing on their behalf. Sellers shall ascertain the weight at their expense under Buyers' superintendence by gauging either in officially calibrated land tank/s or tank barge/s from which the oil is delivered or by delivery via certified weight 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). In the event of disagreement between Sellers' and Buyers' superintendents on the question of litre weight in air, sealed samples shall be submitted to an analyst in membership of the Federation and represented in the Oils and Fats Section whose decision shall be final.	124 125 126 127 128
17. UNASCERTAINED GOODS: In every instance where a parcel of goods sold by 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 sold hereby from the larger quantity has taken place the unpaid Seller and/or the Buyer who has made payment is/are the pro rata owner/s of the whole of the larger quantity in common with Seller/s and Buyer/s of the other parts of the larger quantity.	129 130 131 132
18. DUTIES, TAXES ETC: All export duties, taxes, levies, etc., to be for Sellers' account but any variation after the original contract delivery period to be for Buyers' account. Where the goods are entitled to free entry into or preferential duty in the port of destination, Sellers shall furnish together with the shipping documents a Certificate of Origin and/or necessary document/s 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.	133 134 135 136 137
19. 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. Proof of string to be provided, if required, by either party.	138 139 140
20. 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.	141 142 143 144

21. ODD DAYS:	In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.	145
22. FORCE MAJEURE:	Should Sellers be prevented from loading the goods on board Buyers' ship or should buyers be prevented from taking delivery by reason of fire, strikes, lockouts, riots, civil commotion or any cause comprehended in the term Force Majeure at the port/s of loading, or elsewhere preventing transport of the goods to such port/s, the contract delivery period shall be extended by 21 days beyond the termination of the Force Majeure event. Should such cause exist for a period of 60 days beyond the contract delivery period, the contract or any unfulfilled part thereof shall be cancelled. The party invoking this clause shall advise the other with due despatch. The party claiming Force Majeure must produce proof to justify their claim if required.	146 147 148 149 150
23. PROHIBITION:	In the event, during the contract delivery 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 delivery 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 delivery or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be extended by 21 days beyond the termination of the prohibition event. But should prohibition continue for 30 days, 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.	151 152 153 154 155 156 157
24. 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.	158 159 160 161 162 163 164 165 166 167
25. 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 delivery from the same port/s of loading during the same period of delivery.) Different currencies shall not invalidate the circle. If the goods are not delivered or, having been delivered, 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 delivery 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. Such settlement shall be due for payment not later than 15 consecutive days after the last day of the delivery period 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 the delivery period. 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 or market price 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 Prohibition Clause or 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 Prohibition Clause or the Force Majeure Clause, this clause is not applicable.	168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188
26. 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 of the contract delivery period either party may notify the other party of its inability to deliver or take delivery but the date of such notice shall not become the default date without the agreement of the other party. If, for any other reason, either party fails to fulfil the contract and is declared to be in default by the other party and default is agreed between the parties or subsequently found by the arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration.	189 190 191 192 193 194 195 196 197 198
27. 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 the law or equity to the contrary notwithstanding.	199 200 201 202
28. 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.	203 204 205 206
29. 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 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, 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 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.	207 208 209 210 211 212 213 214

