

HAMBURGER GETREIDEBÖRSE

DER VORSTAND

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Ab 2. 4. 1996

Neue Telefon-Nr. 040 / 36 98 79- 0

Neue Telefax-Nr. 040 / 36 98 79-20

Hamburg Contract for Pulses

(Legally binding shall be the original German text, but not this translation.)

Issued August 1st, 1994

Seller: _____	1		
Buyer: _____	2		
Intermediary: _____	3		
Quantity, Type, Origin: _____	4		
Quality:*) a) Sound, merchantable, average quality of crop _____	5		
b) Final as per certificate of _____	6		
c) Other agreements _____	7		
Price:*) _____	8		
In bulk/gross for net including bags, transit/customs cleared without VAT			
Parity:*) a) Ex store/container terminal (EXW) _____	9		
b) Free on rail truck/truck (FCA) _____	10		
c) Carriage paid (CPT) _____	11		
d) FOB _____	12		
e) C & F (CFR)/CIF _____	13		
f) Other _____	14		
Position: Delivery/Shipment/Loading*) _____	15		
*) Delete where appropriate			
_____ Buyer	_____ Intermediary	_____ Seller	16

§1 Arbitration Clause	17
(1) All disputes relating to this contract and any further agreements connected with it shall be settled by the court of arbitration of the "Verein der Getreidehändler der Hamburger Börse e.V.", not only disputes between buyer and seller but also between the parties to the contract and intermediaries. The agreement of the court of arbitration applies also to any decision regarding the validity of the transaction if, for any reason, one party to the contract challenges this.	18 19 20 21
(2) Creditors have the option to put recognized claims, claims arising from cheques and bills of exchange as well as claims on the purchase price, which have despite reminder not been settled, before either a court of law or the court of arbitration.	22 23
(3) The arbitration rules of the "Verein der Getreidehändler der Hamburger Börse e.V." in their form current on the day the action is submitted to the court of arbitration shall govern the proceedings of the court of arbitration.	24 25
§2 Written Confirmations	26
(1) If buyer's or seller's contracts or brokers' confirmations are exchanged or given out by a party to the contract or by an intermediary, all previous agreements are deemed cancelled if they have not been included in the contract or broker's confirmation. Brokers' confirmations or contracts against which no immediate protest in written form has been made are deemed approved.	27 28
(2) If brokers' confirmations and contracts are exchanged, the seller's contract is to apply if it remains uncontested.	29
(3) If later verbal agreements are made, they are valid only if at least one party confirms them immediately in writing. If no immediate protest is made in writing against such written communications, they are deemed approved.	30 31
§3 Notices	32
(1) The term "in writing" includes communications by telex and telegraph as well as any other form of rapid written communication such as, for example, teletex or telefax. The term "by telex" includes telegraphic communication as well as any other form of rapid written communication such as, for example, teletex or telefax.	33 34 35
(2) Resellers and buyers and intermediaries in string shall forward all communications without delay.	36
§4 Business Days	37
(1) All working days shall count as business days apart from Saturdays and December 24th and 31st.	38
(2) The day on which the business is concluded as well as the day on which notification is received that a deadline has been set are not included in the calculation of deadlines.	39 40
(3) Declarations which are received on a business day after 1600 hours are deemed to have been received on the following business day.	41
(4) Differently recognised public holidays count to the benefit solely of the party which must act or make or receive a declaration on such days.	42 43
§5 Periods of Fulfilment	44
(1) "Spot" means within three business days, "prompt" means within ten business days.	45
(2) The term "beginning of a month" includes the days from the first to the tenth, the term "middle of a month" includes the eleventh to the twentieth and the term "end of the month" includes the twenty-first to the last day of the month in question.	46 47
(3) The term "first half of the month" includes the days from the first to the fifteenth of the month, the term "second half a month" includes the sixteenth to the last day of the month in question.	48 49
(4) If the last day of a fulfilment period as defined in subsection (2) and (3) falls on a Saturday, Sunday or a Public Holiday or the 31st of December, the immediately preceding business day counts as the last day of the fulfilment period.	50 51
§6 Shipment/Delivery/Loading	52
(1) If it has been agreed in a contract that shipment or delivery is to take place during a particular period, then the seller has the right to choose when during this period he will deliver.	53 54
(2) If a contract has been made on the basis of "buyer's call" or loading within a particular period, then the seller does not have the right to appropriate the goods and the buyer has the right to call for them on any day of the period of fulfilment.	55 56
(3) The parties are to agree the shipment, delivery or loading of the goods for within a suitable period of time. If the contract is not fulfilled within this time, then the dilatory party is responsible for all ensuring extra costs.	57 58
§7 Period of Grace	59
(1) If the contract is not fulfilled in time, the non-defaulting party has the right, after the period of fulfilment has expired, to grant an extension by telex, which notice must reach the dilatory party by 1600 hours on a business day if it is to take effect on the following business day as the first day of the period of grace.	60 61 62
(2) The period of grace for shipment, delivery or loading shall be at least three business days.	63
(3) If a period of grace is granted before the period of fulfilment has expired it comes into force on the first business day after the end of the period of fulfilment.	64 65
(4) A period of grace may be cancelled or prolonged only with the consent of the dilatory party.	66
(5) A period of grace need not be granted in the case of CIF, CFR and FOB contracts and in the case that the other party to the contract declares in writing its intention not to fulfill the contract.	67 68
§8 Default	69
(1) After the period of grace has expired the non-defaulting party has the right, either	70
a. to withdraw from the contract or	71
b. to sell or buy the goods within three business days for account of the defaulting party or	72
c. to have the value of the goods ascertained by the court of arbitration and to demand from the defaulting party the resulting price difference. The settlement day shall be the first business day after the expiry of the period of grace.	73 74
(2) The court of arbitration has the right and at the request of one party the duty to examine a covering transaction carried out as per subsection (1)b. If the examination shows that the covering transaction has not been correctly carried out or has led to an obviously improper result, the court of arbitration itself shall establish the price difference, giving due regard to market conditions. The same applies if the announced covering transaction has not been carried out.	75 76 77 78
(3) The non-defaulting party shall inform the defaulting party by telex at the latest on the next business day after the expiry of the period of grace of which right he intends to make use.	79 80
(4) If the non-defaulting party fails to proceed as per the preceding subsection of this paragraph, it still retains its rights as per subsection (1)c.	81 82

(5) The non-defaulting party has also the right to proceed as per subsection (1), if the other party declares in writing that it does not intend to fulfil the contract. The relevant date for the price-fixing as laid down in subsection (1)c shall be the first business day after the receipt of the notice declaring default.	83 84 85
§ 9 Force Majeure	86
(1) If, after the completion of a contract, its fulfilment is rendered impossible by a case of force majeure such as im- or export prohibition inland or abroad, government measures or other circumstances over which a party to the contract has no control, then the contract or its unfulfilled portion is cancelled. The other party to the contract is to be informed of the events in question by telex immediately they are known. If this does not take place then the contract party shall not be legally permitted to cite the impediment to fulfilment.	87 88 89 90
(2) If the fulfilment is obstructed by riot, strike, lock-out, loading prohibition or other similar circumstances, then the fulfilment period of the contract shall be extended by the duration of the obstruction, as long as the obstructed party informs the other party to the contract without delay by telex after the obstruction is known, or at the beginning of the fulfilment period. If the obstruction to fulfilment lasts more than one month after the end of the originally agreed fulfilment period, then the contract shall be cancelled without mutual allowance.	91 92 93 94
(3) The contract party which claims force majeure must, at the request of the other party, bring proof of the same.	95
§ 10 Weight	96
The weight determined at loading at the responsibility and to the charge of the seller by recognized weighers or storekeepers is final. The buyer is entitled, at his own expense, to have the weighing superintended.	97 98
§ 11 Quantity Margins/Part Fulfilment	99
(1) If in a contract the term "circa" or a similar term is agreed, the seller (in the case of a delivery contract) or the buyer (in the case of a loading contract) has the right to deliver or to load up to 5% more or less at the contract price.	100 101
(2) Each part fulfilment shall stand as a separate contract.	102
§ 12 Sampling	103
(1) Each party is entitled to require samples to be taken. The other party is to be informed in time if this right is exercised. The other party is entitled to be represented at sampling. Each party is responsible for the expenses of its own sampler.	104 105
(2) The sampling is to take place at the place where the contract is fulfilled according to the sampling terms of the Hamburg Contract for Pulses.	106 107
§ 13 Condition/Quality	108
Unless agreed otherwise the goods are to be delivered in a sound condition and merchantable quality as customary in the country (of origin). Deviation from the contractual condition/quality does not entitle the buyer not to take over and pay for the goods according to the Contract.	109 110
§ 14 Claims	111
(1) Except in the case of latent defects, the buyer must inform the seller by telex of deviation from contractual condition and/or quality within three business days of completed discharge, in the case of delivery ex quay or ex store within three business days after reception. Transfer of goods within a store and transfer by bookkeeping count as reception. Sellers in string must pass on notices without delay by telex.	112 113 114
(2) The buyer must inform the seller by telex of the discovery of latent defects immediately, but at the latest within one month of completed reception of the goods.	115 116
§ 15 Claims for inferior condition/quality	117
(1) If the goods are found to be uncontractual, then the buyer is entitled to require the payment of an allowance for inferior value.	118
(2) If the inferior value of the goods is found to be on average more than 10%, then the buyer is entitled to reject the goods delivered to him and to require the seller to reimburse the purchase price as well as costs and interest relating to the goods.	119 120
(3) Applications for the settlement of claims due to inferior condition and/or quality by a court of arbitration shall be made to the "Verein der Getreidehändler der Hamburger Börse e.V." within ten business days after the claim is made.	121 122
§ 16 Payment	123
(1) Place of fulfilment in respect of payment is the business address of the seller or the bank named by him.	124
(2) Payment of the purchase price is to be effected against invoice and customary or contractually agreed documents within one business day after presentation.	125 126
(3) The buyer is not permitted to offset or hold back the purchase price.	127
§ 17 Suspension of Payments	128
(1) If a party to the contract suspends payments or if facts exist which are equal to a suspension of payments, all claims to fulfilment of the contract lapse, inasmuch as the contract is still unfulfilled by both parties. In the place of the claim to fulfilment of the contract stands, with the suspension of payment or with the existence of the fact which is equal to the suspension of payments, the right to payment of the difference between contract price and the market price, which difference is to be mutually settled between the parties.	129 130 131 132
(2) The ascertainment of the market price is to be made by an expert to be named by the chairman of the "Verein der Getreidehändler der Hamburger Börse e.V." or his representative. The date for which the market price is to be ascertained is to be the business day following the becoming known of the suspension of payments or the fact which is equal to a suspension of payments. The cost of the price fixing are to be met by the party which is in payment difficulties.	133 134 135 136
§ 18 Reservation of Ownership	137
The goods/documents relating to the goods remain the property of the seller until full payment has been made of all liabilities arising out of the business relationship between buyer and seller.	138 139
§ 19 Applicable Legislation	140
(1) German law applies to this contract. Insofar as it is not stated otherwise in the above regulations, the INCOTERMS apply.	141
(2) The "United Nations Convention on Contracts for the International Sale of Goods" does not apply to this contract.	142
§ 20 Period of Limitation	143
All claims arising from this contract lapse within one year after the end of the agreed period of fulfilment.	144

Special Terms for FOB, CIF and CFR contracts.	145
§21 Classification of Ships	146
Shipment shall be made in first class steel sea ships with their own mechanical propulsion, which are without reserve classified according to Lloyds Register 100 A1 or BS, Germanischer Lloyd 100 A4 or comparable register.	147 148
§22 Loading Advice	149
In the case of FOB contracts the seller shall inform the buyer by telex without delay after completion of loading the ship's name, the bill of lading date and the loaded quantity. The buyer may not draw any rights from errors or omissions.	150 151
§23 Appropriation	152
(1) In the case of CIF and CFR contracts the seller shall inform the buyer by telex without delay of the completion of loading stating ship's name, the bill of lading date, the approximate loaded weight and, where appropriate, the container number.	153 154
(2) An appropriation may not be withdrawn. The seller is permitted to correct erroneous declarations by telex immediately they become known, if they were caused by the shipping line.	155 156
Special Terms for Container Shipments.	157
In the case of shipment in container the following regulations apply in addition to § 1-23.	158
§24 Bill of Lading	159
The bill of lading shall bear the date of the day on which the container comes under the control of the shipping line.	160
§25 Costs	161
Costs, such as the Terminal Handling Charge (THC), which arise after discharge, are for the account of the buyer.	162
§26 Weight/Quality	163
(1) If delivered weight has been agreed upon, the weight shall be ascertained on discharge of the container. The buyer shall, at the seller's request, provide a weighing certificate.	164 165
(2) If delivered quality has been agreed upon, the buyer shall have sampling carried out at discharge by a sworn sampler.	166
(3) The seller is entitled to be represented at weighing and/or sampling.	167
(4) Each party shall bear the costs of the weighing and quality supervision for which it is responsible.	168

Sampling Rules for the Hamburg Contract for Pulses

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§1 Seals, Number of Samples and Method of Sampling, Place of Sampling	1
(1) Samples are to be taken and sealed for arbitration and for analysis. Each party is to receive a sealed arbitration sample and, if necessary, a sealed analysis sample. The samples are to be marked "Arbitration Sample" or respectively "Analysis Sample".	2 3
(2) The bags for the sample material are to be made from a tight, porous material and contain approximately 2 kg pulses. They shall be sealed. Approximately 200g of sample material are to be filled into air-tight glass, plastic or tin containers of a suitable size for moisture analysis. The lids of these containers are to be completely sealed.	4 5 6
(3) Samples are to be taken from each vehicle or container.	7
(4) In the case of sacks, individual samples shall be taken from 10% of the sacks and carefully mixed. In the case of bulk goods or Big Bags representative average samples are to be taken.	8 9
(5) Sampling shall take place at the place of fulfilment of the contract.	10
§2 Samplers	11
Unless the parties to the contract have come to another agreement, sampling shall be carried out by a sworn sampler.	12
§3 Damage	13
Damaged goods, goods of considerably deviating quality as well as spilt goods and sweepings shall be sampled separately after they have been sorted.	14 15
§4 Labelling of Samples	16
(1) All samples must carry an inscription or label which states:	17
a) Description and quantity of sampled goods and purpose of sampling,	18
b) Place and date of sampling,	19
c) Name of supplier and recipient of the goods,	20
d) Description, name and/or number of means of transport or place of storage,	21
e) Name of sampler, insofar as this cannot be seen from the seal.	22
(2) Missing or erroneous declarations may be completed or corrected at a later date, as long as there is no doubt of the identity of the samples with the delivered goods.	23 24