

DDG EXPORT BULK SALES TERMS AND CONDITIONS - GAFTA

1. This Contract constitutes the sole agreement between the parties. No modification of this Contract shall be binding unless such modification shall be in writing, with signed consent from both parties expressly assenting to the modification. The requirement that any modification of this Contract be by signed writing shall not be waived by Seller or limited by course of dealing or performance or usage of trade, nor shall Seller be deemed estopped to rely upon the requirement. Notwithstanding the foregoing, Buyer is hereby notified of Seller's objection to any of Buyer's terms inconsistent herewith and to any additional terms proposed by Buyer in accepting this Contract, and such inconsistent or additional terms shall not become a part of this Contract nor be binding on Seller. Neither Seller's subsequent lack of objection to any such terms, nor the delivery of goods covered hereby, shall constitute or be deemed an agreement by Seller to any such terms. The invalidity or unenforceability of any particular provision of this Contract shall not affect the remaining provisions thereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision had been omitted. Buyer warrants it has read this Contract in its entirety and understands its terms and legal effect. This Contract, including these terms and conditions, supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between Seller and Buyer concerning the subject matter hereof, and no other agreement in any way modifying any of the said terms and conditions will be binding upon Seller unless made in a writing specifically referring to this Contract and signed by Seller's authorized representative.
2. Buyer shall not assign this Contract or any right or interest herein, nor may Buyer delegate any duty or obligation hereunder without the written consent of Seller.
3. Warranties.
 - a. Seller warrants that the commodities delivered under the Contract will be free and clear, from and after time of delivery, of any security interest, lien, claim or encumbrance and that Seller has good and merchantable title thereto. Seller agrees that should any lien, security interest or encumbrance be claimed against any commodity sold hereunder, Seller will immediately cause the same to be discharged and terminated; and, further, will hold Buyer harmless therefrom and indemnify Buyer from any cost or losses incurred as a result of such claim.
 - b. Buyer represents and warrants that it is aware of all economic sanctions laws, anti-boycott laws and trade restrictions imposed by the U.S., U.N. and EU, as maybe amended from time to time, and warrants that it will comply with them as applicable in relation to the performance of this Contract. This warranty refers particularly, but not exclusively, to the nominated vessel, to whomever may own, control, operate or have chartered the vessel, to Buyer's documentary instructions, to any intervening banks, and in general to any other person, company or entity involved in the performance of this Contract. Buyer represents and warrants that Buyer has read this Contract in its entirety and understands its terms and legal effect, and that Buyer will not export the DDGS ("Product") purchased hereunder, or allow the Product to be exported, to any country with a functioning regulatory system in place that grants authorizations that has not approved the import of Product containing genetically modified organisms. Buyer shall indemnify Seller and hold Seller fully harmless in the event of loss or damage suffered by Seller, its principals or its affiliates, as a result of any breach, whether intentional or not, of the above mentioned warranties, economic sanctions laws, anti-boycott laws and/or trade restrictions by Buyer or any of the persons, companies and entities employed, hired or contracted by Buyer. Nothing in this Contract is meant to require either party to take any action which is likely to place it or its affiliates in a position of non-compliance with, or in contravention of the above mentioned laws and restrictions. In particular, but without limitation, Seller shall at any time be entitled to reject or withdraw acceptance of any vessel nomination where the acceptance of such vessel nomination would place Seller in a position of with, or in contravention of, the said laws and restrictions. Buyer shall in such cases nominate a suitable fully contractual substitute vessel.
4. Seller warrants that commodities delivered under the Contract meet Seller's specifications in accordance with the Contract description. Seller warrants that commodities delivered under the Contract are of the grade indicated. Seller does not guarantee any other specifications not set forth in this Contract. Seller's weights and measures are to govern in any dispute or settlement thereof. **THIS WARRANTY IS BUYER'S EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, COVENANTS OR REPRESENTATIONS. SELLER MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WHICH EXTEND BEYOND THOSE SPECIFICALLY STATED IN THIS PARAGRAPH. THE IMPLIED WARRANTY OR FITNESS FOR A PARTICULAR PURPOSE**

IS HEREBY DISCLAIMED. IN NO EVENT WILL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR SPECIFIC PERFORMANCE.

5. Except as otherwise provided in any other sub-section of this Section, if either party shall be in material default of any of the terms of a Contract and such default is not cured within thirty (30) days after receipt of written notice by the non-defaulting party or if a party fails to pay any amount when due and payment is not made within three (3) days after receipt of written notice by the non-defaulting party, the non-defaulting party, in addition to other rights and remedies it may have, may terminate the Contract with immediate effect upon written notice. Each party shall have the right to terminate this Contract with immediate effect upon written notice in the event any of the following occur to the other party: (a) any representation or warranty made by such party in this Contract, GAFTA 100 or 125 or the Anti-Corruption and Restricted Parties Terms and Conditions is false or misleading in any material respect when made or when deemed made or repeated; (b) such party consolidates or amalgamates with or merges with or into, or transfers all or substantially all of its assets to another entity and the transferee entity fails to assume all of the obligations of such party under all Contracts to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party; (c) if such party's obligations hereunder are guaranteed by a guarantor pursuant to a written agreement, if such guarantor fails to pay or perform any obligation under such guarantee or such guarantee ceases to be in effect with respect to any transaction entered into, contracted for or committed to, or ceases to be the legal, valid and binding obligation of such guarantor, enforceable in accordance with its terms; (d) the failure or refusal of any third party to issue, advise, confirm, negotiate, extend or reissue any letter of credit or other arrangement provided for hereunder or if a party or any third party that issues any letter of credit or other arrangement shall become impaired or unable to fulfill its financial responsibilities; (e) if a receiver, administrator or liquidator has been appointed for the other party, if the other party becomes insolvent or applies for judicial or extrajudicial settlement to its creditors, makes a general assignment for the benefit of its creditors or files a petition for bankruptcy or liquidation, if the party fails to pay its debts as they become due, or if a trustee, receiver or liquidator is appointed for any material portion of the other party's assets. Any termination of a Contract shall operate without prejudice to the rights of the parties already accrued at the time of termination and without prejudice to any other right or remedy of the non-defaulting party in respect of a breach of a Contract, if any, including the right to claim for damages arising from such breach, to the extent allowed under the terms and conditions of the Contract. Any terms which by their nature extend beyond termination of a Contract shall remain in full effect until fulfilled. Upon the occurrence of any event of default or failure to provide adequate assurances, Seller may exercise any or all rights and remedies hereunder or at law or in equity, including but not limited to withholding delivery of the product sold to Buyer. In addition, Seller may cancel all other Contracts between Buyer and Seller. If there is an event of default or a material change in Buyer's financial condition, Seller may demand adequate assurances of Seller's ability to perform.
6. In the event Buyer breaches this Contract in any manner, Buyer shall be liable to Seller for any and all damages, including consequential damages, incidental damage and any lost profit incurred as a result thereof.
7. In the event Buyer breaches this Contract in any manner, then all amounts owing by Buyer may be applied and otherwise set off by Seller against the payment of the amounts owing to Buyer, in addition to any and all other rights and remedies available hereunder.
8. Buyer represents that it is not insolvent, as that term is defined in the Uniform Commercial Code (UCC). If Buyer's financial condition is deemed unsatisfactory to Seller during the term of this Contract, Seller may terminate this Contract and all other contracts with Buyer whether or not Buyer is in default. Seller may at its discretion and without prejudice to other legal remedies treat Buyer's failure to perform under this Contract as a breach of this Contract and/or any other open contracts with Buyer and pursue all remedies.
9. Governing Trade Rules and Arbitration - If not in conflict with the terms stated herein, GAFTA 100 and 125 Rules shall apply. In the event of a conflict between the terms and conditions in this Contract and those in GAFTA 100 and 125, the terms and conditions of this Contract shall supersede and govern. All disputes shall be settled by arbitration which shall take place in London in accordance with English law as per GAFTA 125. The award given by the arbitration organization concerned shall be final and binding on both parties. The fee for arbitration shall be borne by the non-prevailing party.
10. The terms and conditions of the Anti-Corruption and Restricted Parties Terms and Conditions are fully incorporated herein by reference. A breach of the foregoing shall be deemed a material breach of this Contract.

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11. Prohibition - In the event of any prohibition of export, blockade or hostilities or in the event of any executive or legislative act done on behalf of the government of the country of origin or destination of the State or of the Territory where the port or ports of shipment named in this Contract is/are situated restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this Contract and to the extent this Contract or any unfulfilled portion thereof shall be canceled. Seller shall advise Buyer, or Buyer shall advise Seller, without delay of the reasons therefor and, if required, Seller or Buyer, as the case may be, must furnish proof to justify the cancellation.
12. Buyer is obligated to nominate a port and facility which is fully compliant with the ISPS security requirements. Any risks, including any delay, and expenses arising from the failure of the nominated port or facilities to be fully compliant with the ISPS security requirements or solely arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS security requirements, shall be borne by Buyer, unless such delays or expenses result from Seller's or its vessel's negligent acts or omissions, and Buyer shall directly pay for and indemnify Seller for any such delay or expense.
13. Demurrage and Detention - All demurrage and/or detention charges at destination shall be paid by Buyer. If Buyer's bank has not received, on or prior to the discharge of cargo at discharge port, a full set of originals of the Bill of Lading and other documents set forth in "Documents Required" section above, Seller is responsible for the share of Declaration Fee/Demurrage, if any, at the discharge port for the number of days elapsed from discharge of cargo to the date when Seller's documents arrive at Buyer's bank or actual delayed days, whichever is less.
14. Destinations in sanctioned countries are excluded.