

CONTRACT FOR THE TRANSPORT OF GRAIN, PULSES AND OILSEEDS

(Approved by Animal Feed Manufacturers Association, Grain Silo Industry, Grain South Africa, National Chamber of Milling, SA Cereals and Oilseeds Trade Association)

and

THE DISPUTE RESOLUTION AGREEMENT

(Approved by The Arbitration Foundation of Southern Africa)



Graan Silo Industrie (Edms) Bpk
Grain Silo Industry (Pty) Ltd
Reg. No 1998/0253/07



National Chamber of Milling



The Arbitration Foundation of Southern Africa

CONTRACT FOR THE TRANSPORT OF GRAINS, PULSES AND OILSEEDS

This contract is for the transport of grains, pulses and oilseeds pursuant to the terms of the TRANSPORT OF GRAINS, PULSES AND OILSEEDS as follows

Contract Date: _____

This contract is between: _____ and _____

CONSIGNOR	
Contact person	
Address	
Phone	
Fax	
E-mail	
TRANSPORTER	
Contact person	
Address	
Phone	
Fax	
E-mail	

COMMODITY	
Bulk (Bulk, bags, etc.)	
Quantity	
Price (per km, per ton, etc.)	
Payment terms as per clause 9 or as agreed	
Loading point	
Delivery point	
Commencement date	
Completion date	
Notice time for load	
Time allowed to load each truck (including waiting time)	

Time allowed to unload each truck (including waiting time)	
Demurrage rate (per hour)	
Special conditions	

1. **BACKGROUND:** These terms and conditions apply to the transport contract of the specified Commodity in this contract between the "Consignor" (the party entering into this contract for the transport of the Commodity) and the "Transporter" (the party entering into contract with the Consignor to transport the specified Commodity outlined in this contract).

2. **CONTRACT:** The Transporter agrees to provide Transport Services to the Consignor for the Commodity on the terms specified in this contract. Transport Services include the collection, transport and unloading of the Commodity. The Consignor will provide specific instructions to the Transporter in the Consignment Instructions with all necessary information for the Transporter to provide the Transport Services. Weigh Bridge Dockets at destination shall be conclusive evidence of the quantity and description of the Commodity carried.

3. **SERVICES:** Transporter will provide or arrange for the provision of road haulage services requested by the Consignor including but not limited to:
 - the collection (including loading) from the loading point, transporting to the delivery point and unloading of the Commodity in accordance with the Consignment Note;
 - the loading and unloading of Vehicles;
 - the securing and unsecuring of loads including tarping and removal of tarps;
 - the provision of Vehicles to transport the Commodity;
 - the preparation and maintenance of detailed log books and other relevant documentation in relation to the performance of the Services;
 - Services which are ancillary to the above and all other services which may be reasonably required by the Consignor from time to time.

4. **VEHICLES.** All Vehicles used by Transporter must:
 - be in good working order and fit for purpose for the completion of the Consignment Note and the provision of the Services generally;
 - be registered, roadworthy, covered at all times to prevent loss from wind or weather, maintained in good operating condition
 - be totally free from all contaminants , infestation and all residues of previous cargoes;
 - be able to be "tarp" and "untarped" utilizing either ground operated equipment or by means of a purpose built safe working platform on the vehicle trailer, which device restricts a person from climbing to an unprotected edge and does not exceed the legal width of the vehicle;
 - ensure that any "tarp" used on a vehicle is maintained in a clean and sound condition and cleaned and dried prior to use;

- that the construction, axle configuration and condition of all Vehicles used do not in any way contravene any relevant law;
 - be fitted with an audible reversing device if required by Law;
 - otherwise be entirely suitable for the transport of the Commodity.
5. **AGENCY AND ASSIGNMENT:** The Transporter acknowledges that he is engaged as an independent contractor and there is no agency relationship between it and the Consignor and that the Transporter has no right or authority to assume or create any obligation or responsibility on behalf of or in the name of the Consignor. Transporter agrees to indemnify the Consignor against the consequences of any attempt to classify the relationship with Consignor as one of agency and against any purported creation of an obligation or responsibility on behalf of or in the name of Consignor.
6. **CONFIDENTIAL INFORMATION:** In the course of carrying out the obligations under this Contract and under the Consignment Note, Transporter will become aware of information relating to Consignor's business. This information may include suppliers, customers and prices. Transporter agrees to keep this information and details of this Contract confidential for the duration of this Contract and any time thereafter and shall be liable for any breach of this obligation.
7. **OBLIGATIONS:** The Transporter and the Consignor will provide all necessary information to each other to allow performance of the Transport Services in accordance with this contract. Parties will keep each other fully informed in a timely manner on issues that may affect performance of this contract. Parties must comply with all applicable laws and regulations relating to notifications, description, consigning, packaging and safety.
8. **PRICE:** The Consignor agrees to pay the Transporter for the transport at the rate specified in this contract. This price may be adjusted if there is a material variation to agreed volume and route and Transport Services provided.
9. **PAYMENT:** The transport cost is payable per metric ton on the quantity and the agreed rate outlined in the contract. Should there be a deviation of more than 0.25% between the loaded mass and the delivered mass, the Transporter will be invoiced accordingly by the Consignor. Payment is to be 100% of the agreed rate 30 calendar days from the end of the week of delivery of commodity unless otherwise agreed.
10. **CONSIGNMENT INSTRUCTION:** Unless otherwise agreed, the Consignor shall issue the Transporter with Consignment Instructions in writing. These instructions shall include;
- Commodity
 - Loading point
 - Delivery point
 - Load commencement date
 - Delivery completion date

- Quantity
- Consignor reference number

11. DEMURRAGE: In cases of unreasonable delay in the loading or discharge of a vehicle (including waiting time) collecting or delivering commodities howsoever caused (including delays resulting from the non-provision of essential documentation), the Consignee or Consignor or Transporter, whoever is responsible, shall be liable for the additional demurrage costs that result from such delay. The maximum time allowable and applicable demurrage charges will be agreed between the parties to this contract at time of finalizing this contract, which will be denoted above in the appropriate spaces provided.

12. INSURANCE: The Commodity will be at the risk of the Transporter/Consignor (strike out whichever is not applicable) in all respects during provision of the Transport Services. At all times during this contract the Transporter/Consignor (strike out whichever is not applicable) is to keep current and relevant insurance against all risks to the Commodity. All relevant insurance policies must be available for perusal by Transporter/Consignor.

13. SUBCONTRACTORS:

- All or any part of the Transport Services may be sub-contracted by the Transporter and any subcontractor with the written consent of the Consignor.
- Notwithstanding any sub-contract, the contracting Transporter remains responsible for provision of the Transport Services and liable for any breach of this Contract.
- Any clause of this contract excluding or limiting the liability of the Transporter or providing any right or exemption from liability to the Transporter shall also be available and shall extend to protect any sub-contractors and every servant or agent of the Transporter and of any sub-contractor.
- Without limiting the effect of any other clause of this contract, the Consignor or any other person or persons owning or having any interest in the Commodity or any part thereof shall not be entitled to make any claims or pursue proceedings against any person other than the Transporter by whom the Transport Services are or any part thereof are undertaken or any servant, sub-contractor or agent of any such person or of the Transporter in relation to the Commodity or arising out of the Transport Services. Nevertheless, should any such claim be made the Consignor shall indemnify the Transporter and any such person or servant or agent against the consequences of any such claim as may be made by any party other than the Consignor.

14. DELIVERY:

- The Transporter is only bound to deliver the Commodity to the destination shown on the Consignment Note.

- If the Transporter is unable to deliver the Commodity for any reason (including failure on the part of the Consignee to take delivery within a reasonable time) the Transporter shall be entitled to handle and store the Commodity in such manner as it may in its discretion determine and shall be entitled to make a reasonable charge in respect of such handling and or storage and subsequent delivery of the Commodity.
 - The Transporter shall be entitled to recover the cost of his request for instructions and any expenses entailed in carrying out such instructions.
 - The Transporter will return to the Consignor a copy of the delivery documents within 7 days of delivery.
- 15. FORCE MAJEURE:** Neither Party shall be responsible for delay in dispatch or delivery of commodity or any part thereof occasioned by any Act of God, action by any government, strike, lockout, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause dispatches written notice to the other party within 24 hours of the occurrence. If, as direct result of force majeure, a Party becomes unable to perform, wholly or in part, any of its obligations under this contract: that obligation, except an obligation to pay money, is suspended but only so far as and for so long as it is affected by the force majeure; and the party is to use due diligence to overcome or remove the force majeure concerned. The liability of the Party to comply with its obligations resumes as soon as it is no longer affected by the force majeure.
- 16. PERFORMANCE:** If Transporter is unable to comply with a Consignment Instruction it must notify Consignor immediately. In the event that Transporter is unable or is reasonably perceived by Consignor to be unable to comply with a Consignment Instruction, Consignor reserves the right to engage another Transporter to complete that Consignment Instruction and Consignor shall hold Transporter responsible for any additional costs so incurred.
- 17. LEVIES AND TAXES:** Any industry, statutory or government levies which are not included in the transport price shall be adjusted for in any related payments. Where Value Added Tax (VAT) is applicable to the Transport Services per these terms and conditions, subject to the issuing of a valid tax invoice, the Transporter will recover from the Consignor an amount on account of VAT, such amount to be calculated by multiplying the price for the supply by the prevailing VAT rate.
- 18. NOTICES:** Notices given under this contract are to be dispatched by written letter delivered by hand on the day of writing, or by facsimile, or by email (return receipt acknowledging the message has been received is required) or by other method of rapid written communication. All notices shall be under reserve for errors in transmission. Any notices received after 1600 hours on a business day shall be deemed to have been received at 0900 hours on the business day following. A notice to a party's Brokers or Agent shall be deemed a valid notice under this contract. In case of sub-contracts, all notices shall be passed on without delay.

19. DISPUTE RESOLUTION/ARBITRATION CLAUSE:

- Any dispute between the parties arising from or in connection with the contract shall be finally resolved by way of a dispute resolution procedure administered by the Arbitration Foundation of Southern Africa (AFSA) in accordance with its Expedited Rules and the directions of its Secretariat, which shall be binding on the parties. (AFSA can be contacted at www.arbitration.co.za, Telephone No. 011 320 0600 and Fax No. 011 320 0533; email: isabel@arbitration.co.za.)
- The parties may agree, or the AFSA Secretariat may direct, that the dispute first be submitted to mediation in accordance with the AFSA Mediation Rules. In which case, if the dispute is not resolved within 20 business days thereafter, it shall proceed to arbitration, unless both parties agree to extend the mediation period and the AFSA Secretariat approves such extension. Where there is no agreement to mediate, and/or the AFSA Secretariat does not so direct, then the dispute shall be submitted directly to arbitration.
- Where both parties are in agreement therewith, they may employ legal representatives to appear for them at any arbitration hearing. Where there is no such agreement, then legal representatives shall not be present at the hearing, unless the arbitrator otherwise directs in the special circumstances of the case.
- Unless the parties otherwise expressly agree in writing, any dispute shall be resolved in accordance with the law of the Republic of South Africa and the seat of the arbitration will be in South Africa.
- Any matter pertaining to the mediation, if applicable, or to the arbitration of any dispute herein, if not provided for by this contract or by the AFSA Rules, shall be referred to the AFSA Secretariat, which shall issue appropriate directions which are binding on the parties.
- Unless the parties otherwise agreed in writing and communicated to the AFSA Secretariat prior to the pre-arbitration meeting, there shall be no right of appeal applicable to the award given by the sole arbitrator/tribunal.

20. TIME LIMITS AND MANDATORY PROCEDURES FOR PURSUING ANY CLAIM

- The parties affirm that it is necessary that any dispute between them should be notified without delay and then pursued promptly. They therefore agree that, unless a party making a claim does so in accordance with time limits specifically relating thereto, as set out elsewhere in this document, or if no specific time limits apply, then in accordance with the requirements as set out below, such claim shall be barred and deemed to have been waived and abandoned for all purposes whatever.
 - Any claim for any failure to deliver the commodities in accordance with this contract must, if such failure was not, and would not have been, apparent from a reasonable inspection on delivery, be notified in writing to the other party within 28 consecutive days from the last day of the period of delivery and thereafter, if such claim has not been settled, then it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.

- Any claim for any other failure to perform in terms of this contract, shall be notified in writing to the other party within 28 consecutive days from the date on which the other party could reasonably have become aware of such failure. Thereafter it must be referred in writing to the AFSA Secretariat within 21 consecutive days from the date of such notification to the other party.
- The arbitrator/tribunal shall determine whether there has been compliance with the provisions of this clause, but only if, and to the extent that, any party in the arbitration proceedings raises the issue.

SIGNATURE: CONSIGNOR
(Duly authorized)

SIGNATURE: TRANSPORTER
(Duly authorized)

WITNESS

WITNESS

DATE

DATE