



CANADIAN PULSE AND SPECIAL  
CROPS TRADE ASSOCIATION

# CPSCTA TRADE AND ARBITRATION RULES EFFECTIVE SEPTEMBER 22, 2022

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## TRADE RULES

### TRADE RULES: DISCLAIMER

These trade rules are the property of the CPSCTA. Parties entering into a contract for the purchase or sale of Canadian special crops, may by mutual agreement, agree that such purchase and sale include these trade rules and the arbitration rules associated with these trade rules. The parties using these trade and arbitration rules agree that the CPSCTA, its directors, employees, agents and members shall be held harmless and absolutely no liability is assumed due to the usage of these trade and arbitration rules.

*Note: Effective the 22nd day of September, 2022, The Canadian Special Crops Association Incorporated filed Articles of Amendment to change its legal name to The Canadian Pulse and Special Crops Trade Association Incorporated. Throughout this document, where the terms 'Canadian Pulse and Special Crops Trade Association' and 'CPSCTA' are used, the terms 'Canadian Special Crops Association' and 'CSCA' can be used with the same effect as they both refer to one in the same entity.*

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# TRADE RULES DEFINITIONS - In Alphabetical Order

## 1 Definitions

### **Action**

includes counter-claim and set-off.

### **Arbitration**

means arbitration as called for under these Trade Rules.

### **Association**

means the Canadian Pulse and Special Crops Trade Association or CPSCTA.

### **Business Day**

means Monday to Friday 8:00 am to 4:00 pm excluding Statutory holidays in the Province or State of the Buyer or Seller and excluding December 24 and December 31.

### **Buyer**

means a person who buys or agrees to buy goods.

### **Calendar Day**

means any day of the month.

### **Carrier**

means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, and inland waterway or by a combination of such modes.

### **Carrying Charges**

means Storage and Interest charges as herein defined.

### **CFR**

“Cost and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination. CFR is a Rule for sea and inland waterway transport.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

### **CGC**

means Canadian Grain Commission or its successor.



**CIF**

“Cost, Insurance and Freight” means that the seller delivers the goods on board the vessel or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel. The seller must contract for and pay the costs and freight necessary to bring the goods to the named port of destination.

The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIF the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements. CIF is a Rule for sea and inland waterway transport.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

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**CIP**

“Carriage and Insurance Paid to” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

The seller also contracts for insurance cover against the buyer’s risk of loss of or damage to the goods during the carriage. The buyer should note that under CIP the seller is required to obtain insurance only on minimum cover. Should the buyer wish to have more insurance protection, it will need either to agree as much expressly with the seller or to make its own extra insurance arrangements.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

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**CPT**

“Carriage Paid To” means that the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any such place is agreed between parties) and that the seller must contract for and pay the costs of carriage necessary to bring the goods to the named place of destination.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

## DEFINITIONS - In Alphabetical Order

### **Contract of Sale/Purchase**

means an agreement to sell/purchase as well as a sale/purchase.

### **Crop Year**

means the period from August 1 to July 31 of the next year. The crop year shall be designated by the year the crop was harvested in (e.g. crop normally harvested in 2019 would be 2019 crop).

### **DAP**

“Delivered at Place” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. The seller bears all risks involved in bringing the goods to the named place.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

### **DAT**

“Delivered at Terminal” means that the seller delivers when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer at a named terminal at the named port or place of destination. “Terminal” includes a place, whether covered or not, such as a quay, warehouse, container yard or road, rail or air cargo.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

### **Delivery**

means voluntary transfer of possession from one person to another.

### **DDP**

“Delivered Duty Paid” means that the seller delivers the goods when the goods are placed at the disposal of the buyer, cleared for import on the arriving means of transport ready for unloading at the named place of destination. The seller bears all the costs and risks involved in bringing the goods to the place of destination and has an obligation to clear the goods not only for export but also for import, to pay any duty for both export and import and to carry out all customs formalities.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

**Despatch notice**

means notices called for in these rules, shall be despatched by telegram, telex, facsimile, email or other method of rapid electronic communication, or by letter if delivered by hand on the day of writing. Every such notice shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith. This applies to Notices sent/received by the Seller or Buyer which is deemed to include their Agent, Representative or Broker named in the contract.

**Document of Title to Goods**

means any negotiable bill of lading, warehouse receipt, dock receipt, certificate of title, warrant, certificate or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

**Duty Paid**

means all duties as per Incoterms® 2010 clearly specified in the contract.

**EDI**

means Electronic Data Interchange.

**EXW**

“Ex Works” means that the seller delivers when it places the goods at the disposal of the buyer at the seller’s premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

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**FAS**

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel (e.g., on a quay or a barge) nominated by the buyer at the named port of shipment. The risk of loss of or damage to the goods passes when the goods are alongside the ship, and the buyer bears all costs from that moment onwards. FAS is a Rule for sea and inland waterway transport.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

“Incoterms” is a trademark of the International Chamber of Commerce (ICC).

**Fault**

means any wrongful act or default.

**FCA**

“Free Carrier” means that the seller delivers the goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place. The parties are well advised to specify as clearly as possible the point within the named place of delivery, as the risk passes to the buyer at that point.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

Incoterms” is a trademark of the International Chamber of Commerce (ICC).

**FOB**

“Free On Board” means that the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered. The risk of loss of or damage to the goods passes when the goods are on board the vessel, and the buyer bears all costs from that moment onwards. FOB is a Rule for sea and inland waterway transport.

Source: ICC website. The full text of the 2010 edition of the Incoterms rules is available at <http://store.iccwbo.org/>.

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**Future Goods**

means goods to be acquired by the seller after the making of the contract.

**Goods**

means and includes all chattels personal other than money, securities and products which are not separable from the land. The term includes emblements, industrial growing crops and things attached to or forming part of the land which are agreed to be severed or are normally severed, before sale or under the contract of sale/purchase. This specifically includes all crops traded under these rules.

**Guaranteed Shipment**

means that the Buyer or Seller as the contractual terms may read shall be obligated to call for shipment or ship as the case may be within the specified shipment period without the benefit of going on storage.

**Immediate**

means the action required shall be undertaken within five (5) business days of reaching the agreement, excluding the day the agreement was reached.

**Instant**

means the action required shall be undertaken or performed within the next business day following the agreement on the action (e.g. Instant FCA, shall mean loading to a carrier the next business day).

**Interest**

means one (1) percent per month, or three (3) percent per annum over the Royal Bank of Canada's annual prime rate, whichever is greater, in the currency of contract, calculated on a daily basis.

**Month**

means calendar month.

**Plaintiff**

means a person claiming or a defendant counter-claiming.

**Pre-advice**

means the number of business days, including the date of issue, at the Sellers office which must be allowed prior to the last receiving/pickup date depending on the basis of delivery and the contract.

**Prompt**

means the action required shall be undertaken or performed within ten (10) business days, excluding the day the agreement was reached.

**Quality of Goods**

means their state or condition.

**Rapid Means**

means by telegram, telex, facsimile, email or other method of rapid electronic communication, or by letter if delivered by hand on the day of writing always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or Board of Appeals, that the notice was actually transmitted to the addressee.

**Receiving Period**

means the period of time in which the Buyer will accept delivery of/or agrees to pickup the goods depending on the basis of delivery and the terms of the contract. The last day of the Receiving Period is the Last Receiving Day (LRD). The Receiving Period shall be a period of three (3) days including the LRD. The earliest LRD that can be specified is the first day of the Shipment Period and the latest LRD without incurring storage and interest is the last day of the Shipment Period. Railcar demurrage prior to the Receiving Period for account of Supplier and following LRD for account of the Buyer.

**Sale**

includes a bargain and sale as well as a sale and delivery.

**Sellers Option**

means that it is for the Seller to ship and/or deliver in accordance with the contractual terms and shipment period.

**Shipment Period**

means the period of time as specified in the contract during which shipment may occur without the imposition of carrying costs. This is the expected period of shipment or arrival as specified in the contract.

**Shipping Instructions**

means the document issued/passed to the seller instructing the seller to ship in the case of a Buyer's call contract or the Buyer's instruction on where to ship goods in the case of a Seller's option contract.

**Specific goods**

means goods identified and agreed upon at the time a contract of sale is made.

## TRADE RULES

### **Storage**

means the holding of goods which have not been called for shipment by the Buyer or Delivered as applicable based on the contractual shipment period as defined in the contract. Title to the goods has not transferred unless the product has been invoiced and paid by the Buyer. Buyer to always provide pre-advice as outlined in these rules to call product for shipment whether in storage or not. The Seller stores the product insured for the contract value on behalf of the Buyer at the following storage rates unless otherwise stated in the contract:

Bagged product CDN \$0.35 per 100 pounds per month *invoiced and payable in the currency of the contract*. Charged in Y2 month increments to date of shipment ex warehouse.

Bulk product CDN \$0.25 per 100 pounds per month *invoiced and payable in the currency of the contract*. Charged in Y2 month increments to date of shipment ex warehouse.

Storage to be charged on the basis of how the product is packed for shipment either in Bulk and/or Bag if allowed in the contract. If no product is shipped against the contract, the storage to be calculated on the basis of the first written method of packing in the contract. In the case of some product having been shipped and some product washed, storage to be charged on the basis of the last shipment method of packing.

### **Transport Terminal**

means a railway terminal, grain terminal, freight station, container terminal or yard, a multi-purpose cargo terminal or any similar receiving point.

### **Warranty**

means an agreement with reference to goods, which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated.

### **Washed**

The process whereby a contract is cancelled between a Buyer and Seller as at a date, with only an exchange of funds, if any, as opposed to physical shipment of the goods.

## TRADE RULES

### 2 Interpretation

#### **Good Faith**

A thing is deemed to be done in good faith within the meaning of the rules when it is in fact done honestly, whether done negligently or not.

#### **Insolvent**

A person is deemed to be insolvent within the meaning of these rules who either has ceased to pay debts in the ordinary course of business or cannot pay debts as they become due.

#### **Deliverable State**

Goods are in a deliverable state within the meaning of these rules when they are in such a state that the buyer under the contract would be bound to take delivery of them or they have been appropriated in accordance with the rules.

## PART 1: FORMATION OF THE CONTRACT

### 3(1) **Sale/Purchase, Agreement to Sell/Purchase**

A contract of sale/purchase of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price. All contracts under these rules are absolute unless it is clearly specified otherwise. Sales and agreements to sell are treated the same under these rules. Delivery shall be as stated in the contract and in accordance with these rules. Delivery, converts an agreement to sell into a sale.

### 4(1) **Capacity to Buy and Sell**

Capacity to enter into contracts is regulated by general law. Contracts negotiated in Good Faith, shall be binding upon the employees firm. If any limits on the authority of the individual employee to contract, are placed, these shall be communicated broadly to the trade to be effective.

### 5(1) **Contract of Sale, How Made**

Confirmation of Purchase of Sale Contract:

A sale/purchase may be made in writing or by word of mouth or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.



## TRADE RULES

Buyer and Seller shall on the day of the conclusion of business or as soon thereafter as possible, communicate to each other by telegram, telex, facsimile or other method of rapid written communication, or by letter if delivered by hand on the day of writing, confirmation of said contract.

Any variations, errors or omissions disclosed by these confirmations shall be immediately communicated and a correction effected. In the event that a broker is involved, said broker shall communicate to both Buyer and Seller, by mail and/or other rapid means as noted in the definitions section:

### **Purchase of Sale Contract Must Include the Following:**

- A) Date of contract.
- B) Full name and address of both buyer and seller.
- C) Quantity stated in mutually agreed unit of measure. Tolerance at contract price and sellers option to be +/- 3% on Bulk shipments. If bagged contract or bagged option, quantity to be mean contract quantity (Min/Max).
- D) Commodity, Quality Description, and, if applicable, crop year and/or varietal name.
- E) Price per unit of measure, Currency, Basis of Delivery and Named Delivery Place.
- F) Packing, including type of packing material and units of weight. If in bulk, this to be stated.
- G) Mode of Transport (ie. Railcar, Truck, Container, Vessel).
- H) Shipment Period and Pre-advice required.
- I) Terms of Payment and Documents required. If other than Standard CPSCTA payment terms, these to be clearly stated.
- J) Any duties to be paid by the Seller. If not specified, all duties are payable by the Buyer.
- K) Any other terms or conditions which are not included in, or which are contrary to the provisions of these rules.
- L) CPSCTA Trade and Arbitration Rules of which both parties admit full knowledge of and agree to apply to this contract.

## TRADE RULES

### 6(1) Existing or Future Goods

The goods which form the subject of the contract of sale/purchase may be either existing goods, owned or possessed by the seller, or goods to be acquired, harvested, severed or grown after the making of the contract of sale/purchase (Future Goods). In this regard, product is sold/purchased based on recognized standards and the terms and conditions outlined in the contract.

If the contract depends on any contingency, this is to be clearly spelled out in the contract.

This includes a sale/purchase subject to sample approval. In the case of a sale/purchase Subject To approval of a sample, the party approving the sample and the time for approval of the sample should be clearly documented.

### 7(1) Present Sale of Future Goods

It is fully understood that the contract for sale of future goods operates as an agreement to sell/purchase. Delivery of the goods is as specified in the contract and these rules. Lack of availability of the goods does not diminish the obligation of the seller to the buyer. The buyer expects performance of the contract in accordance with the contract and these rules. In the event goods are unavailable for delivery, as stipulated in the contract and these rules, damages are payable in accordance with these rules.

### 8(1) Goods Which Have Perished

Where there is a contract for the sale of specific identified goods, and the goods without the knowledge of the seller have perished at the time when the contract was made, the contract is not void. The Seller shall deliver product with the same specifications and within the other terms as outlined in the original contract, or if not possible, shall be responsible for damages.

### 9(1) Goods Perishing Before Sale but After Agreement to Sell

Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is not avoided. The seller shall deliver product of the same specifications and within the other terms as outlined in the original contract, or if not possible, shall be responsible for damages.

### 10(1) Ascertainment of Price

The price in a contract of sale may be fixed explicitly in the contract, or may be left to be fixed in a manner thereby agreed between the parties.

## TRADE RULES

### **11(1) Valuation**

In the event of a disagreement in price, which cannot be resolved between the parties, a matter for arbitration shall be deemed to have arisen.

### **12(1) Stipulation as to Time**

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale.

### **12(2) Stipulations as to Time – Other**

Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract and the rules contained herein. Time is of the essence shall apply to the contractual condition of, shipment period and pre-advice in accordance with the exceptions and modifications of procedure provided for in these rules.

### **13(1) When Condition to be Treated as Warranty**

Where a contract of sale includes a condition to be fulfilled by the seller, the buyer may waive the condition or may elect to treat the breach of the condition as a breach of warranty. A breach of warranty is not grounds for treating a contract as repudiated.

### **13(2) Condition or Warranty**

Whether a term in a contract of sale is a condition, the breach of which may give rise to a right to treat the contract as repudiated, or a warranty, the breach of which may give rise to a claim for damages but not the right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. With the exception of the conditions of shipment period (subject to these rules), commodity, quality, packing and named place of delivery, all other terms should be treated as warranties unless this is clearly unworkable. In the event of a dispute, this may be a matter for arbitration.

### **14(1) Implied Undertaking as to Title, etc.**

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is:

- A) An implied condition on the part of the seller that, in the case of a sale, s/he has a right to sell the goods, and that, in the case of an agreement to sell, s/he will have a right to sell the goods at the time when the property is to pass.
- B) An implied warranty that the buyer shall have and enjoy quiet possession of the goods.
- C) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party.

## TRADE RULES

### **15(1) Sale by Description**

There is an implied condition that the goods shall correspond with the description. This condition is satisfied by providing the required documentation as specified in the contract and defined in these rules. If otherwise, this is to be clearly noted in the contract.

### **16(1) Implied Conditions as to Quality or Fitness**

For the purposes of these rules, goods are bought by description and there is an implied condition that the goods shall be of merchantable quality. An implied warranty or condition as to quality or fitness for a particular purpose may be included in the contract.

### **16(2) Quality/Grade Determination and Documentation**

Quality determination and the required documentation shall be as stated in the contract, subject to the following rules.

- A) All grading as to quality shall be performed by the Canadian Grain Commission in accordance with the standards published for each product at the time of sampling or analysis. The decision to utilize a recognized third party surveyor, other than the Canadian Grain Commission, in regard to quality, is to be negotiated between the Buyer and Seller.
- B) The type of document required to evidence a grade should be stated in the contract as either a submitted sample certificate, letter of analysis or official grade certificate. If the type of document is not specified in the contract, any one of the above shall be sufficient to evidence the grade.
- C) All certificates, letters of analysis or official grade certificates dated during the crop year of the goods it represents shall be deemed valid, provided the document shall not be more than 180 days old at the date of shipment of the product against the contract. In the case of product which has not shipped by the end of the contractual shipment period, the Seller may provide certificates, letters of analysis or official grade certificates which are not more than 180 days older than the last day of the contractual shipment period.
- D) In the case of goods being sold after the crop year it was grown, the Seller shall provide the Buyer with current certificates, letters of analysis or official grade certificates unless agreed otherwise between the Buyer and Seller or unless the product is already on storage. The Seller shall cooperate to assist the Buyer to obtain the proper documents.
- E) In the case of product sold for August shipment, the Seller shall have the option of supplying either crop year.

## TRADE RULES

- F) The following information shall be included on the certificates, letters of analysis or official grade certificates:
- In the case of bagged product, lot numbers on the bags must correspond with the certificate.
  - In the case of bulk lots, the container, railcar, trailer number or other identifying number associated with the mode of carriage should appear on and correspond with the document.
- G) The Buyer shall at his cost have the option of having any goods that have been unofficially sampled, reinspected to obtain an official grade certificate or letter of analysis. In the event of a difference between the unofficial sample grade and the official sample grade, the official sample grade shall prevail. All samples must be drawn from the product before leaving the country of origin and before being handled, other than by normal removal of the product from the mode of transportation such as unloading of a railcar at a terminal.
- H) Once an official grade certificate or letter of analysis has been issued, the Buyer or Seller may ask for a re-inspection of the original sample by the issuing agency in accordance with the issuing agency's regulations and that decision shall be final.

### **16(3) Packing**

Packing shall be as per contract terms bulk and/or bags as specified. If packing is in bags, it is understood that bag weight is net weight (gross for net) and the bags are evenly weighted. Bags shall be new and of suitable quality, according to industry standards. Type(s) of bags may be stated in the contract and if not so stated to be at the discretion of the Seller, always following industry standards.

On bagged product, the Buyer is entitled to request special tag marks. Buyer's tag marks are to be advised with their shipping instructions and are to be attached to the bag.

## TRADE RULES

### **17(1) Sale by Sample**

A contract of sale is a contract for sale by sample where there is a term in the contract expressly to this effect.

### **17(2) Sale by Sample – Implied Conditions**

- A) There is an implied condition that the bulk shall reasonably correspond with the sample.
- B) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample at named place, unless stated otherwise in the contract.
- C) There is an implied condition that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

### **18(1) Goods Must be Ascertained for Property to Transfer**

Where there is a contract for the sale of unascertained goods no property in the physical goods is transferred to the buyer unless and until the goods are ascertained.

### **19(1) Property Passes when Intended to Pass**

Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

### **20(1) Ascertainment of Intention as to Transfer of Property to Buyer**

Where there is a contract of sale of specific goods, the property shall pass when goods of the description and in a deliverable state are appropriated to the contract in accordance with these rules and the contractual basis of delivery (i.e. FOB, FCA, CIF, etc.).

Where there is a contract for the sale of unascertained goods or future goods by description, and goods of the contractual description and in a deliverable state are appropriated to the contract by the Seller, in accordance with these rules, the property in the goods passes to the buyer.

Where under the terms of the contract, delivery is to be made to a common carrier or other bailee, property in the goods shall pass at the later of the date of appropriation or handing over to the common carrier/bailee.

## TRADE RULES

### 21(1) Reservation of Right of Disposal

Unless a reservation is clearly stated otherwise on the contract and appropriation, the product once appropriated, is unconditionally appropriated to the contract.

If a reservation is stated, notwithstanding the delivery of the goods to the buyer, or carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.

### 22(1) Risk Prima Facie Passes with Property

Unless otherwise agreed, the goods remain at the seller's risk until the

property therein is unconditionally transferred to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer.

### 22(2) Appropriation

Appropriation is the notification process required under these rules and the primary purpose of such is to identify what may have been previously unascertained goods. The process primarily is a confirmation that the Seller has performed his obligations to ship the contractual goods within the quantity and time constraints contained in the contract. The primary practical purpose of the appropriation is to alert the receiver that the goods are on the way and to enable the receiver to make arrangements to receive the goods. This general guideline should be used in assessing the adequacy or lack thereof of any appropriation. If damages are caused by the incorrect timing or error in appropriation, the offending party shall be liable for damages in accordance with these rules. Minor breaches of this clause shall not be used to avoid fulfilment of a contract.

- A) Notices of appropriation shall be despatched by telegram, telex, facsimile or other method of rapid written communication, or by letter if delivered by hand on the day of writing. Every such notice of appropriation shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith. Notices of appropriation may be sent by the Seller which is deemed to include their Agent, Representative or Broker named in the contract. Notice of appropriation may be sent to the Buyer which is deemed to include their Agent, Representative or Broker named in the contract.
- B) Notices of appropriation specifying the contract number, method of carriage identification number, point of origin, date of bill of lading, commodity, quantity and expected grade, shall be despatched within three (3) business days from the date of the bill of lading.

Should the Seller(s) notice of appropriation be delayed through any cause beyond his control, the appropriation shall be passed as quickly as possible.

- C) Notice of appropriation shall, within the period stated in 22(2)(b) be despatched by or on behalf of subsequent Sellers to their Buyers as follows:
- On the same calendar day, if received not later than 1500 hours on a business day.
  - Not later than the close of the next business day if received after 1500 hours or on a non-business day.

## TRADE RULES

- D) Buyers, on receiving a notice of appropriation, shall on demand give a written receipt thereof, and if required, Sellers shall give to the Buyer a copy of the particulars contained in the notice received by them and the time and date of its receipt.
- E) The Bill of Lading date and the point of origin contained in the appropriation shall be for information only, and shall not be binding. The actual date of the Bill of Lading shall prevail in determining time for notices.
- F) Notice of appropriation covering shipments of Seller's option on quality, should state the expected quality, and state final quality unknown or similar wording. The actual quality to be despatched to Buyer within one (1) business day after receipt of the determination.
- G) A valid notice of appropriation may be amended to correct for details which were unknown or estimated when despatched. A valid notice of appropriation shall not be withdrawn except with the consent of the receiver of such notice.
- H) A Buyer receiving an invalid appropriation may reject such appropriation by advising the Seller of the reason for rejection within one (1) business day of receipt of the appropriation. Appropriations shall not be deemed invalid in the case of a FOB contract where the bill of lading is dated within the shipping period and if on that date the carrier is loaded and carrying goods of the contractual description and quantity. An appropriation shall not be deemed invalid in the case of a delivered contract simply because the carrier has arrived.
- I) A buyer incorrectly rejecting an appropriation shall be liable for a possible claim for damages.
- J) A Seller appropriating a quantity in part fulfilment of a contractual quantity called for shipment by the Buyer shall note on the appropriation "partial fulfilment" or similar wording. The Buyer will accept the notification as valid with the understanding that all costs incurred due to the partial appropriation and partial fulfilment of the contract are for the account of the Seller until the contractual quantity has been appropriated. The acceptance of the partial appropriation as valid in no way diminishes the Seller's obligation to provide the contractual quantity.



## TRADE RULES

### 23-27 Not Used

#### 28(1) **Payment of Brokerage Commission**

On a per tonne basis, brokerage commission is to be paid by Sellers on the mean contract quantity, goods lost or not lost, contract fulfilled or not fulfilled unless such non-fulfillment is due to cancellation of the contract under the terms of the Prevention of Shipment Clause. Brokerage shall be due on the day shipping documents are exchanged, or if the goods are not appropriated then brokerage shall be due on the 30th consecutive day after the last day for appropriation.

#### 29(1) **Duties of Seller and Buyer**

It is the duty of the Seller to deliver the goods in accordance with the contract and these rules and of the Buyer to accept and pay for them in accordance with the contract and these rules.

## TRADE RULES

### 29(2) Shipping Documents

Documents as specified in the contract shall be provided at no charge to the Buyer. If the documents required under the contract are not specifically stated, at a minimum the following shall be provided.

- Commercial Invoice.
- Document evidencing delivery to a carrier or the Buyer (e.g. Bill of Lading, Dock Receipt, etc.).
- Certificate of weight (CGC or Independent Surveyor weight determined by scales shall prevail over unofficial weights evidenced only by scaling enroute or self determined notarized or affidavit of weight).
- Grade Certificate- Submitted sample Certificate (Official Grade shall prevail over Unofficial).
- The following documents may be requested at time of issuing shipping instructions:
  - The Buyer may request a phytosanitary certificate to cover the goods being shipped, if requested by the government of the country of final destination and if requested at the time of issuing original and complete shipping instructions. The cost of obtaining the phytosanitary certificate shall be for the account of the Buyer.
  - The Buyer may request a certificate of Origin countersigned, in Seller's option, by
    1. Commissioner of Oaths
    2. Board of Trade
    3. Chamber of Commerce

The Seller shall co-operate in assisting the Buyer to obtain any other document s/he may require, but this is at Seller's discretion and Buyer's expense.

### 30(1) Payment and Delivery are Concurrent Conditions

Unless otherwise agreed in the contract, delivery shall be in accordance with the contract and these rules and payment shall be in accordance with the contract and these rules.

## TRADE RULES

### 30(2) Payment

Upon presentation of the documents called for in the contract and unless otherwise stated in the contract, payment shall be received by the Seller, at the latest, within Ten (10) business days of receipt of said documents by the buyer. Documents may be presented to the Buyer's bank/agent or other party acting on the Buyers' behalf. If the Seller wishes to present the documents in trust to the Buyer's bank, pending payment, the Seller shall notify the Buyer that they desire to do this and request that Buyer provide the address of the Bank to whom documents shall be delivered in trust. The Buyer shall notify the Seller within Two (2) business days of the Bank address to deliver the documents to for payment. The Buyer may examine the documents or copies of the documents, but shall not obtain the original documents of title until payment arrangements are made for the funds to be paid by the Bank to the Seller on or before the Ten (10) business days from receipt of the notice to provide the Bank's address for delivery or Five (5) business days after receipt by the Bank whichever is later. Documents may be presented by mail, courier, in person or by third party.

- B) If payment is not received within Ten (10) business days after receipt of contractual documentation, the Seller may charge the Buyer interest as defined in these rules until payment is made. This clause shall also apply to funds due on a wash as of an agreed date, whereby only an invoice is presented.
- C) If payment is not made within Twenty (20) business days, a matter for arbitration shall be deemed to have arisen.
- D) No obvious minor clerical error in the documents shall entitle the Buyer to reject the documents or delay the payment, but Seller shall be responsible for all loss or expense caused to Buyers by reason of such error or discrepancy in the documents. Seller shall on request provide Buyers with a corrected document and if this is not possible, a letter of indemnity/guarantee in respect of the error or discrepancy prior to the Buyer making payment.
- E) On confirmation that possession of the goods has transferred to the Buyer at the named place of delivery, and in the absence of all contractual documentation being available to the Seller, the Seller may provide a written letter of indemnity/guarantee for missing documents stating why the documents are not available and present this with his invoice and other available documents to the Buyer for payment. The Buyer after taking possession of the goods, shall not withhold payment, for the grade of product delivered, as determined in accordance with these rules, beyond the time outlined in 30(2)(a). Any charges, losses, or expenses incurred by the Buyer due to this non-presentation of documents called for in the contract or deficiencies in the contractual requirements shall be borne by the Seller in accordance with these Trade Rules. The Seller shall provide all contractual documentation as soon as possible.
- F) If payment has been made by the Buyer to the Seller on the basis of submitted samples or unofficial weights which as per the terms of these rules are subsequently determined to be incorrect, the balance shall be paid or refunded in accordance with 30(2)(b).
- G) Each contract stands on its own. It is not permissible to withhold payments to offset claims between different contracts covering the same product which may be in dispute or contracts for different products. Payment does not constitute acceptance or fulfilment of all contractual terms. If advances have been made to the Seller and these are against various contracts, these may be dealt with as a group. If a non-contractual delivery is made, the Buyer shall pay for the quality delivered in accordance with these rules and if the matter cannot be resolved between the parties, a matter for arbitration shall be deemed to have arisen.

## TRADE RULES

### 31(1) Rules as to Delivery

The contract shall specify whether it is for the Seller to send the product to the Buyer (Seller's Option) or whether it is for the Buyer to take possession of the goods (Buyer's Call). The contract shall also specify the basis of delivery and the named delivery place. Goods in possession of a third party shall be delivered upon acknowledgment to the Buyer, from the third party, that s/he holds the goods for the Buyer's account, provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods. Unless otherwise agreed, the normal and incidental costs of putting the goods into a deliverable state shall be borne by the Seller.

### 31(2) Shipment Period

A) The term Shipment Period shall mean the time period in which Buyer and Seller have agreed to take or make Delivery as the case may be.

In the case of a contract whereby the Buyer must ask for delivery (Buyer's Call Contract), always, providing contractual pre-advance has been given in accordance with 31(4) a Buyer may specify a receiving period with a LRD being the first day of the Shipment Period and the latest LRD date without incurring carry charges being the last day of the shipping period. Failure by the Buyer to call for shipment of the product, as specified in these rules, if not stated otherwise in the contract, with a LRD within the Shipment Period, shall be treated as a breach of warranty and the measure of damages for this breach shall be the imposition of carrying charges as stated in these rules.

B) Carrying charges shall be applied on the basis of the contractual quantity shipped outside of the shipment period or the mean of the contract quantity in the case of a washout or default. Carrying charges shall be calculated until the product appropriated against the contract is shipped EX warehouse the goods are physically shipped from, basis the bill of lading date or the date agreed between the parties to treat the contract as washed. If the bill of lading date is within the shipment period, no carrying charges are to be applied.

C) In the case of a contract whereby the Seller is to send the product or make the product available to the Buyer (Seller's Option Contract) the Seller shall make the product available at the named place as defined in the contract anytime within the Shipping Period. The Buyer, upon written request, shall despatch the necessary information contained in the contract and unless otherwise specified as per 31(3)(d) to allow the Seller to fulfil his obligation. Not later than the last day of the contractual shipment period, the Seller may declare an extension and be entitled up to Eight (8) additional Calendar days to deliver. The Seller, if unable to deliver by the last contractual date, shall allow the Buyer a non-cumulative discount of 1/2% for the first Four (4) days late, 3/4% for Six (6) days late and 1% for Eight (8) days late. Early arrival of the product shall not invalidate the contract, but the Seller shall be responsible for all cost incurred due to this early arrival. Non-delivery by the end of the extension period will be considered a breach of condition and Buyer may proceed in accordance with clause 45.

## TRADE RULES

- D) The Shipment Period may be further defined by the use of the words Instant, Immediate and Prompt as defined in these rules. The usage of these words shall mean delivery not later than the number of days as specified in the definition with no extension period allowed on a Seller's Option contract.
- E) If the Seller has not received Shipping Instructions by the last day of the contractual Shipment Period on Buyer's Call contact, then the Seller may on the first business day following the end of the contractual shipment period, or on any business day thereafter despatch notice to the Buyer that s/he is not willing to allow the product to remain in storage and that storage is being called to an end.
- Once notification has been sent to the Buyer that storage will not be allowed, the Buyer will have Ten (10) business days to issue shipping instructions to the Seller. If shipping instructions are not received by the Seller within Ten (10) business days, the Seller may proceed in accordance with the clause 45.
  - The Seller is always entitled to the Carrying charges and contractual pre-advice in accordance with these rules. Seller's notice to the Buyer calling storage to an end shall be despatched to subsequent Sellers/ Buyers and deemed to be in time if despatched on the same business day if received not later than 1600 hours at the receiver's office or not later than 1200 hours the next business day if received after 1600 hours or on a non-business day.
- F) It shall be permissible for a party on Carrying charges to prepay the goods in order to eliminate the charges for interest. It shall be permissible for the party storing the product to invoice for storage charges on a monthly basis and this to be paid in accordance with clause 30(2).

## TRADE RULES

### 31(3) Shipping Instructions

- A) Shipping instructions shall be despatched/issued by telegram, telex, facsimile, e-mail or other method of rapid electronic communication, or by letter if delivered by hand on the day of writing. Every such notice of shipping instructions shall be open to correction of any errors occurring in transmission, provided that the sender is not responsible for such errors, and for any previous error in transmission which has been repeated in good faith.
- B) The shipping instructions shall include the following:
- contract # being called
  - quantity to ship
  - method of packing
  - mode of transportation required
  - destination
  - documentation requirements (contractual or allowed under these rules)
  - buyer markings if required
  - receiving period based on delivery basis and last receiving date
  - other details as required.
- C) The time for issuing shipping instructions may be modified by the addition of the words, instant, immediate or prompt or other terms clearly defined in the contract.
- D) In the case of a Seller's option contract, the Buyer shall provide the necessary information upon request by the Seller to allow shipment. The Seller may ask for this information in accordance with clause 31(4)(b).

## TRADE RULES

- E) Incomplete shipping instructions shall not invalidate the shipping instructions or pre-advice required under 31(4), however the Seller shall notify the Buyer in accordance with 31(3)(a) of the deficiency within one (1) business day of receipt by the Seller. The deficiency shall be corrected by the Buyer not later than the next business day. If the deficiency is not corrected within this time frame, the pre-advice period may be extended by the Seller one day for each day the deficiency remains uncorrected.
- If Seller fails to notify the Buyer of a deficiency within One (1) business day then Seller shall have the right to notify the Buyer of the deficiency at any time. However the start of pre-advice period shall not be altered. The deficiency shall be corrected within One (1) business day.
- F) Shipping instructions which have been issued requesting shipment with inadequate pre-advice as outlined in 31(4) or stated in the contract, shall not invalidate the contract or the shipping instructions. The Seller shall within One (1) business day after receipt, despatch notice to the Buyer notification that the pre-advice is not contractual and if the notification is received by the Buyer prior to 1600 hours on a business day at the Buyer's office, the Buyer shall advise the Seller to either continue best possible to maximum pre-advice allowed, cancel the shipping instructions or provide new shipping instructions.
- G) Shipping instructions shall be despatched to subsequent Sellers/Buyers and deemed to be in time if despatched on the same business day if received not later than 1600 hours at the receiver's office or not later than 1200 hours the next business day if received after 1600 hours or on a non-business day.
- H) In the case of EXW/FCA contracts, which allow a range of points to hand over the goods, on receipt of Shipping Instructions, Seller shall notify Buyer of the hand-over points within One (1) business day. This shall also apply when an EXW/FCA option is exercised on a contract.
- I) If a Buyer requests staging or declares consignee/delivery point where mandatory staging is required by railroad, staging costs shall be for the Buyer's account. Any Shipping Instructions without SAN or LOT numbers will not be considered as incomplete nor will the lack thereof be allowed as cause for delay of shipping.

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### 31(4) Pre-Advice

In the case of a Seller's option contract, as per the contract or if not specified, in order to allow for delivery of the product within the shipment period, the Seller may ask for shipping instructions up to Ten (10) business days in advance of the first Calendar day of the contractual Shipment Period.

In the case of a Buyer's call contract the following shall apply unless the pre-advice is otherwise defined in the contract on the basis of delivery:

<b>Delivery Basis</b>	<b>Business Days of Pre-advice</b>
EXW	10
FCA (Truck/Rail)	10
FAS, FOB	20 (includes FCA vessel)
CFR, CIF	20
CPT, CIP	20
DAT, DAP	20
DDP	30

The Buyer and Seller should carefully study the correct delivery term to be used to cover the intended shipment. Irrespective of the term used, duties are not to be paid by the Seller unless this is included in the contract. Deliveries on an in-store basis shall specify in the contract how many days notice of intention to take possession are required.

### 32(1) Under-Delivery

Where the seller delivers or appropriates as per 22(2)(j) a quantity to the buyer, less than was called for delivery, the buyer is not obligated to accept the partial appropriation. The buyer is entitled to receive the contractual quantity called, presented as one appropriation. If the buyer accepts the goods partially appropriated/delivered, s/he shall pay for them at the contract rate. The balance of the contractual quantity is not cancelled. If a partial appropriation is rejected, the Buyer shall notify the Seller with One (1) business day that complete appropriation is required. The Seller may re-appropriate the contractual quantity as long as it is done within the contractual terms and these rules.



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### **33(1) Over-Delivery**

Where the Seller delivers to the Buyer a quantity larger than was contracted to sell and outside the quantity tolerance allowed, the Buyer may reject the excess portion. If the buyer accepts the excess quantity without consulting with the Seller as to the price, s/he shall pay for them at the contract price.

### **34(1) Installment Deliveries**

Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments or partial appropriations.

Unless otherwise specified Buyer may call for partial shipment of contractual goods, in accordance with 31(3). Buyer shall be responsible for any additional charges or costs over the lowest tariff rate in effect at the time of shipment that would apply to the mode of transport specified in the contract and for the full contractual quantity. All charges due to alternate modes of transportation, due to partial quantity called, on the partial quantity shipped and any remaining balances to be shipped, shall be for Buyer's account.

The Seller may provide copies of quality determination documents in the event the quantity called is less than the smallest unit of mode of transport as called for in the contract (i.e. Railcar, Truck, Container, Etc.). The Buyer may have the smaller lots resampled at his expense to obtain the documentation s/he requires, but this will not override an official sample which has already been obtained on a larger lot.

### **34(2) Defective Deliveries**

Where there is a contract for the sale of goods to be delivered by stated installments, which are to be separately delivered and paid, and the seller makes a defective delivery in respect of one or more installments, or the Buyer neglects or refuses to take delivery of or pay for one or more installments, the whole of the contract shall not be breached and in general the Seller and Buyer shall not treat the contract as being repudiated.

## TRADE RULES

### **34(3) Delivery to Carrier**

Where in pursuance of a contract of sale, the Seller is authorized or required to send the goods to the Buyer, delivery of the goods to a carrier, whether named by the Buyer or not, for the purpose of transmission to the buyer is prima facie deemed to be delivery of the goods to the Buyer. The goods are deemed to be in the carriers control once the carrier has picked-up the goods and the goods have been appropriated to the buyer in accordance with these rules.

### **34(4) Contract with Carrier**

The Seller shall order the method of transportation as authorized by the Buyer.

### **35(1) Risk Where Goods are Delivered at Distant Place**

Goods shall be delivered at the contractual delivery place at the risk of the Seller until appropriated in accordance with these rules and the goods have arrived at the contractual delivery place and are turned over to the carrier or Buyer's agent.

In the case of a DAT/DAP, Named place of delivery, Delivery shall be deemed to have taken place if the railway, through no fault of the shipper, has constructively placed the car at a staging area, as designated by the railway. After constructive placement has occurred, demurrage is to be assessed in accordance with the Receiving Period. Demurrage is to be calculated as per the demurrage tariff of the respective railway.

### **36(1) Buyer's Right of Examination of Goods**

Where goods are delivered to the Buyer, which have not already been officially sampled, s/he has the option to have the goods officially sampled, at Buyer's expense for the purpose of obtaining official Canadian Grain Commission Certificates/Letters of Analysis or Certificates/Letters of Analysis from a Canadian Grain Commission authorized third party service provider. In the event of any difference between unofficial samples and the official sample, the official sample shall apply.

The buyer having determined in advance on shipping the product and in accordance with these rules, that the quality does not meet the contractual requirements, will ask the Seller if s/he can replace the goods within the contractual shipping period. This request being made within One (1) business day of determining the deficiency. The Seller shall have the option to replace the goods prior to the last receiving date originally specified for the shipment.

## TRADE RULES

### **37(1) Acceptance**

The buyer is deemed to have accepted the goods when s/he intimates to the Seller that s/he has accepted them, or when the goods have been delivered to him or another person acting on his behalf, and s/he does any act, which would indicate that title has transferred. If the Buyer has reason to reject the goods, this must be communicated to the Seller within a reasonable time period, which shall depend on the circumstances of the matter. Goods that have been shipped outside of Canada, with the exception of mainland U.S.A., or loaded to a different mode of transportation are deemed to be accepted and the right to reject or return them is not available.

### **38(1) Buyer Not Bound to Return Rejected Goods**

If goods are delivered to the Buyer and s/he refuses to accept them, having the right to do so, s/he is not bound to pay costs to return them to the Seller. It shall be sufficient if s/he notifies the Seller that s/he refuses to accept them and that the goods are at the Seller's disposal.

### **39(1) Liability of Buyer for Neglecting or Refusing Delivery of the Goods**

The buyer shall be responsible for any loss occasioned by his wrongful neglect or refusal to take delivery within the receiving period.

### **40(1) Unpaid Seller**

Subject to the provisions of these rules, and any statutes of law which may affect the situation, notwithstanding that the property in the goods may have passed to the Buyer, the unpaid Seller of goods, as such, has by implication of law,

- A) a lien on the goods or right to retain them for the price while s/he is in possession of them.
- B) in case of insolvency of the Buyer, a right of stopping the goods in transit after s/he has parted with the possession of them
- C) a right to resale limited by these rules and law.

### **41(1) Breach of Contract – Measure of Damages**

In the matter of breach of contract by non-delivery or non-acceptance, the measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of contract. The measure of damages shall be prima facie to be ascertained between the contract price and the market price at the time when delivery should have occurred between the parties at the delivery point.

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### 42(1) Breach of Warranty – Measure of Damages

Where there is a breach of warranty by the Seller, or where the Buyer elects, or is compelled, to treat any breach of a condition of the contract on the part of the Seller as a breach of warranty (example accepting the wrong contractual grade of product), the Buyer is not by reason only of such breach of warranty entitled to reject the goods, but s/he may claim against the Seller.

In the case of breach of warranty of quality, such loss is prima facie the difference between the value of the quality of goods supplied at the time of delivery to the Buyer and the value of product answering the warranty, basis the named contractual place of delivery. Each contractual parcel is independent and the ultimate disposition of the contractual parcel of product is irrelevant in determining the measure of damages.

In exceptional circumstances, where negligence can be proven, claims for additional damages may be made, but in general the breach of warranty of quality should be limited to the difference in market value.

### 43(1) Prohibition

In the event, during the contract shipment 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) or point(s) of shipment named herein is/are situated, or of blockade or hostilities restricting shipment, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to the contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by other means whatsoever and to the extent this contract or an unfulfilled portion thereof shall be extended by thirty days.

In the event of shipment during the extended period still proving impossible by reason of any of the causes in this clause then the contract or any unfilled part thereof shall be cancelled. Sellers invoking this clause shall advise Buyers in accordance with 31(3). If required, Sellers must produce suitable proof to justify their claim for extension or cancellation under this clause.

### 44(1) Strikes

Should shipment of the goods or any part thereof be prevented at any time during the last Thirty (30) Calendar days of the shipment period, or any time during the shipment period if such shipment period be less than Thirty (30) Calendar days, by reason of strikes, lockouts, riots, or civil commotion preventing the loading or transport of goods, then Seller/Buyer shall be entitled on the resumption of work after termination of the circumstances preventing such shipment/ loading from origin or port of exit from the country of origin, to as much time for shipment as was left for shipment under the contract shipment period prior to the outbreak of the strikes, lockouts, riots, or civil commotions, and in the event of the time left for shipment under the contract being fourteen (14) Calendar days or less, a minimum period of fourteen(14) Calendar days shall be allowed.

Sellers/Buyers invoking this clause shall give notice to Sellers/Buyers in accordance with 31(3), naming the named place of origin/loading or port of exit from the country of origin from which shipment is intended, not later than on the first business day following the last Calendar day of the shipment period. Shipment shall then be limited to the point(s) of origin/loading or port of exit nominated.

In the event of further strikes, lockouts, riots or civil commotions occurring during the time by which the contract shipment period has been extended by reason of the operation of the provisions of the first paragraph of this section, the additional extension allowed shall be limited to the actual duration of such further strikes, lockouts, riots, or civil commotions. Seller/Buyer shall be notified immediately, in accordance with Rule 31(3) at the outbreak of any such occurrence. Sellers/Buyers shall provide a certificate from the CPSCTA or other suitable proof certifying the existence and the date of commencement of the event(s) which caused the delay, and the resumption of work.

In case of default after extension(s) granted by this clause, the default date shall similarly be deferred. Storage and interest shall at all times be accruing if this is applicable.

## TRADE RULES

### 45(1) Default

In default of fulfilment of the contract by either party, the party claiming a default shall despatch notice to the other party in accordance with 31(3)(a). The party giving notice of default shall within the next two (2) business days, at their discretion, have the right to sell, purchase, cancel or negotiate a resolution with the defaulter without prejudice to the contract or event of default, as the case may be, and such sale purchase or cancellation shall establish the default price against which damages, if any, are to be measured. The party claiming default shall then notify the defaulting party as soon thereafter as possible, but not later than two (2) business days after taking the specified action, of the damages payable, if any, and the defaulter shall make good the loss, if any, on such purchase/sale/cancellation in accordance with

clause 30(2) or take the action agreed in writing between the parties to resolve the default.

If either party be dissatisfied with such default price, cancellation, or if the damages cannot be mutually agreed, or the action agreed upon to resolve the default is not performed, then the assessment of damages shall be settled by arbitration.

Damages, if any shall be computed on the quantity appropriated if any but if no such quantity has been appropriated then on the mean quantity.

Damages shall be calculated in accordance with these rules in relation to market values at the time of default. In no case shall damages include loss of profit on any subsequent sales.

## TRADE RULES

### 46(1) Circle

Where a Seller repurchases from his Buyer or from a subsequent Buyer the same goods or part thereof where the product would result back with the original Seller, a circle shall be considered to exist as regards the particular goods covered by that contract. The non-shipment of the product shall not be considered a default as long as monetary settlement of the contract is made and notification of the circle back to the last person issuing the shipping instructions is made within one (1) business day of receipt of the shipping instructions which result in the circle. For purposes of the circle clause, the same goods shall mean goods of the same quality and mode of transportation, named place of delivery, country of origin, and shipping period.

If documents have not been presented or the goods appropriated then the circle having been established will be settled on the basis of the mean contract quantity between each Buyer and Seller in the circle. The amounts due shall be calculated and agreed between each party. Buyers and Sellers may agree to settle directly with their contractual counterpart only.

All Sellers and Buyers shall give every assistance to the establishment of the circle and when a circle has been established, same shall be binding on all parties to the circle. Payment is due in accordance with the CPSCTA payment rules.

Should any party in the circle commit prior to the due date for payment any act comprehended in Clause 47, the invoice amount for the goods calculated at the close-out price as provided for in Clause 47 shall be taken as the basis for settlement instead of the lowest invoice price.

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### 47(1) **Bankruptcy**

If before the fulfilment of this contract either party shall suspend payment, commit an act of bankruptcy, notify any of its creditors that s/he is unable to meet his debts or that s/he has suspended payment or that s/he is about to suspend payment of his debts, convene, call or hold a meeting of his creditors, or pass a resolution to go into liquidation, except for a voluntary winding up of a solvent company for the purposes of reorganization or amalgamation or shall apply for an official moratorium, have a petition presented for winding up or shall have a receiver appointed, the contract shall forthwith be closed, either at the market price then current for similar goods, or at the option of the other party, at a price to be ascertained by repurchase or resale and the difference shall be the amount the party closing out the contract shall be entitled to claim or to account for under the contract. The party closing out the contract due to this clause shall resell or repurchase as the case may be within Ten (10) calendar days of becoming aware of the applicability of this clause. Should either party be dissatisfied with the price, the matter shall be referred to arbitration. Any storage and interest charges applicable to the contract(s) closed out shall also be recoverable up to the time of closeout.

### 48(1) **Force Majeure**

Extremely Unusual Events which affect all members of the industry on an equal basis and preclude the execution of contracts due to reasons beyond the control of the parties, excluding any event related to the actual production of the crops covered by these rules may be deemed to be an event that will allow extra time for the execution of the contracts. An example of this type of event would be a general strike by both railways which precludes the movement of product which was moving or normally moved by rail. If such an event shall be deemed to have arisen, the Board of Directors shall vote on the matter and upon a majority agreeing that the event is an Extremely Unusual Event, issue instructions to the trade that such an event has occurred and the time for execution of contracts falling within the time this event continues to exist shall be extended by the number of days until the Board determines by majority vote that the effect of the Event no longer exists.

This clause is not to be invoked to cover minor disruptions or delays, which normally occur in the industry, affect only selected members of the industry or are expected to last less than 72 hours.

**49(1) Governing Law**

Irrespective of the residence or place of entering into the contract, the laws of the Province of Manitoba and where not in conflict, the laws of the Dominion of Canada as may be applicable at the time of entering into the contract, shall be applicable to all contracts governed by these rules. The governing law may be specifically altered by the contract governing the purchase/sale but in the event of any inconsistency, the laws of the Province of Manitoba and the Dominion of Canada shall be the applicable law.

Any dispute arising out of or in connection with a contract containing these trade rules shall be dealt with in accordance with the CPSCTA Arbitration Rules which are incorporated into these Trade Rules. The initiation of a dispute shall be in accordance with the Arbitration Rules. All arbitrations shall be conducted in accordance with the Arbitration Rules established by the Association herein.



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# ARBITRATION RULES

## 1.0 DEFINITIONS

### Definitions applicable to these arbitration rules

**Appellant**

means the party requesting an appeal.

**Arbitrator**

means a CPSCTA Rules Committee endorsed employee of a CPSCTA member company or a lawyer who has been appointed by a claimant, or respondent or an individual selected by two appointed arbitrators.

**Association**

means the Canadian Pulse and Special Crops Trade Association or CPSCTA.

**Award**

means the written decision of a Committee or the Board of Appeals.

**Business day**

means Monday to Friday 8:00 a.m. to 4:00 p.m. Excluding statutory holidays in the Province/State of the Buyer or Seller and excluding December 24 and December 31.

**Calendar day**

means any day of the month.

**Claim**

means the amount or relief sought by a Claimant, Respondent or any party against any other party.

**Claimant**

means the party or parties initiating arbitration.

**Committee**

means an arbitration tribunal appointed under these rules.

**Counter Claim**

means the document which contains the case of a Respondent who also has a claim against a Claimant.

**Monies due**

means any amount payable pursuant to a contract or Award.

**Notice**

means a notice served in accordance with these rules.

**Respondent**

means a party or parties against whom an arbitration is initiated or the other party or parties named by a Claimant.

**Response**

means the document which contains the response of the Claimant to the Respondent's Statement of Defence and/or Counter Claim.

**Statement of Defence**

means the document which contains the response of the Respondent to a Statement of Claim.

**Statement of Claim**

means the document which contains the Claimant's case.

**Submission**

means the Terms of Submission to Arbitration document as prescribed in Section 6.1 A) and attached hereto as Annex "1"

**Trade Rules**

means the CPSCTA Trade Rules as in effect at the time of the contract.

# ARBITRATION RULES

## 2.0 GENERAL

Any dispute arising out of a contract between association members or between an association member and a non-member, or between two non-members, which incorporates the Association Trade Rules shall be subject to the following arbitration provisions and rules:

**2.1** The provisions of The Manitoba Arbitration Act R.S.M. 1997 A120, C.C.S.M. c.A120, and any statutory amendments, modifications, or re-enactments thereof shall apply to every arbitration and appeal hereunder unless such provisions are expressly modified by, or are inconsistent with, these Rules.

**2.2** No party to a dispute to which these Rules apply, nor any party claiming under them, shall bring any action or legal proceeding against the other in respect of any such dispute, until it has been referred to, heard and determined by arbitration hereunder except, as follows:

If all parties to a dispute shall agree, they may irrevocably, elect to proceed to a court of law or alternative dispute resolution method, without proceeding to arbitration. This shall be confirmed in writing by the parties with a copy provided to the Association.

**2.3** The matter shall be referred to the Association office in the Province of Manitoba. Manitoba shall be the jurisdiction for the matter and Manitoba law shall govern the process.

**2.4** The Association does not itself resolve disputes, it administers the resolution of disputes by arbitration tribunals in accordance with the Arbitration Rules of the Association. The Association is governed by its own internal statute.

**2.5** In the case of a non-member applying for arbitration and CPSCTA membership simultaneously, the fees will be the non-member fees. The application for membership will be considered after the arbitration, and, if applicable, the non-member has satisfied the ruling.

## 3.0 Time Limit for Submitting a Request for Arbitration

**3.1** A Statement of Claim in connection with a matter for arbitration must be filed with the Association within One hundred-eighty (180) Calendar days after the applicable contract completion, performance date or default. The contract completion date shall be deemed to be the date of final delivery under the contract, or the payment due date whichever shall be latest. This time limit will not be extended or altered in any way.

## ARBITRATION RULES

### 4.0 Arbitration Committee

- 4.1** A Committee shall be comprised of three (3) Arbitrators, the first being selected by the claimant upon submission of the Statement of Claim, and the second being selected by the Respondent upon submission of the Statement of Defence and/or Counter Claim.
- A) In cases involving claims exceeding USD \$100,000, a lawyer shall serve as chairman of the Committee. The parties may unanimously agree that a lawyer is not required to serve as Chair of the Committee. In the absence of such agreement a lawyer shall serve as Chairman of the Committee. The lawyer shall be selected by the arbitrators appointed by the Claimant and Respondent agreeable to them both within 10 Calendar Days of the Association's notification to do so from a list to be maintained by the Association. The lawyer so selected shall be the third arbitrator and when so appointed shall be Chair of the Committee.
- B) In cases where a lawyer is not required to be a member of the Committee the arbitrators appointed by the Claimant and Respondent shall select a third arbitrator agreeable to them both within 10 Calendar days of the Association's notification to do so and such third arbitrator when so appointed shall be the Chair of the Committee.
- 4.2** An Arbitrator must be commercially disinterested and prepared to act impartially with respect to the particular dispute to be arbitrated. All Arbitrators should show prominence in their field and have experience in the matters involved in the dispute. All Arbitrators appointed by the Claimant or Respondent shall be CPSCTA Rules Committee endorsed members of the Association or employees of a member of the Association. The Chair picked by the two appointed Arbitrators, need not be a member of the Association or an employee of a member of the Association, if in the sole opinion of the Arbitrators or the Association appointed this would assist in the resolution of the matter.
- 4.3** If an Arbitrator dies, refuses to act, becomes incapable of acting, or is found to be ineligible by the Association, the party appointing such Arbitrator shall within Five (5) Calendar days of receiving notification from the Association, appoint a substitute. If a substitute is not appointed within the time specified, the Association shall have the power to appoint the substitute Arbitrator and set down a date for the Arbitration to proceed.
- 4.4** In the event that the Claimant and Respondent do not or are unable to appoint an Arbitrator or the appointed Arbitrators cannot agree upon the appointment of a Chair, the Association shall have the power to appoint such Arbitrator or Chair. This shall be done within Ten (10) Calendar days of the Association being aware of the failure to so appoint. Notification of such appointment shall be forwarded by the Association to the parties.
- 4.5** If the Claimant has filed a Statement of Claim with the Association and the named Respondent fails within ten (10) Calendar days to file two signed copies of the Terms of Submission to Arbitration document (Annex 1) and the applicable fees in accordance with Section 5, then the Association shall appoint an Arbitrator to the Committee in accordance with 4.4 provided the Statement of Claim submitted provides reasonable grounds to believe that the parties had entered into a contract made subject to the Trade Rules.

The Association shall send to the last known address of the Respondent another copy of the Statement of Claim and advice that the Association has appointed an Arbitrator to the Committee.

The Arbitration shall proceed in accordance with the time frame set out in such notice and these Arbitration Rules, once the appropriate fees (in sufficient funds for both parties) has been paid. The Claimant shall be responsible to pay the Respondent's fees, subject to requesting reimbursement in the redress claimed.

# ARBITRATION RULES

## 5.0 Arbitration/Appeal Costs/Fees

**5.1** If the Claimant is a member of the Association, an Administrative fee of CAD \$1,500.00 (One Thousand Five Hundred Dollars) plus GST and a non-refundable deposit as outlined in Section 5.4 shall be forwarded with the Statement of Claim. If the Claimant is a non-member of the Association, an arbitration Administrative fee of CAD \$3,000.00 (Three Thousand Dollars) plus GST and a non-refundable deposit as outlined in Section 5.4 shall be forwarded with the Statement of Claim. Arbitration will not be initiated until the applicable fees is are received by the Association.

**5.2** The scale of Arbitrator’s Fees set forth below shall be effective as of September 22, 2022 in respect of all arbitrations commenced on or after such date.

**5.3** To calculate the Arbitrator’s Fees, the amounts calculated for each successive tranche of the amount in dispute must be added together, except where the amount in dispute is over USD \$1,000,000, a flat amount of CAD \$15,000 each shall constitute the entirety of the Arbitrator’s Fees.

**5.4** All amounts fixed by the CPSCTA are payable in Canadian dollars (CAD).

Amount in Dispute (in USD)	A. Administrative Expenses (in CAD)	B. Arbitrator’s Fees (in CAD)	C. Non Refundable Deposit (in CAD)
up to 100,000	3,000 each (Member) 5,000 each (Non-Member)	1,500	750 each
from 100,001 to 200,000	3,000 each (Member) 5,000 each (Non-Member)	2,825 + 1.431% of amt. over 100,000	1,000 each
from 200,001 to 500,000	3,000 each (Member) 5,000 each (Non-Member)	4,256 + 1.367% of amt. over 200,000	1,250 each
from 500,001 to 1,000,000	3,000 each (Member) 5,000 each (Non-Member)	8,357 + 0.954% of amt. over 500,000	1,500 each

Note: The Arbitration Committee shall detail, allocate and specify the Arbitrator’s Fees between the parties to the arbitration or appeal, in its Award.

**5.5** Where a lawyer is to be the chair of the committee, the fee schedule shall be as follows:

Amount in Dispute (in USD)	A. Administrative Expenses (in CAD)	B. Arbitrator’s Fees (in CAD)	C. Non Refundable Deposit (in CAD)
up to 100,000	3,000 each (Member) 5,000 each (Non-Member)	10,000	5,000 each
Above 100,000	3,000 each (Member) 5,000 each (Non-Member)	10,000 + 1.5% of the amount over 100,000	5,000 each

**5.6** Once the claim (and counterclaim if applicable) have been received, the parties shall submit the remainder of the arbitrators fees as noted above prior to the Arbitration Committee commencing their deliberations.

**5.7** In the event the respondent fails to pay their fees or deposit, or the balance of fees due are not paid by one party, the other party will be required to pay the outstanding fees in order for the arbitration to commence. If the balance is not paid, then the arbitration will not proceed, and any arbitrator’s

## ARBITRATION RULES

fees not in arrears shall be refunded.

- 5.8** If a Committee or Board of Appeals incurs expenses in the carrying out of their duties that exceed those anticipated in the fees outlined in Section 5, such expenses shall be detailed and allocated between the parties to the arbitration or appeal, as they shall specify in their Award. The Committee may require a deposit to cover anticipated costs as it shall deem appropriate.
- 5.9** An Arbitration Committee, where costs are outstanding at the time the decision has been rendered, may require both parties to submit payment for the full amount of costs outstanding prior to releasing the decision. Upon release of the decision, a refund of this payment shall be made in accordance with the decision.
- 5.10** The Committee or Board of Appeals shall have the power to assess Arbitration and Committee costs and expenses in its Award.
- 5.11** The Board of Directors at their sole discretion, may, in cases it considers extraordinary, alter the fee structure for arbitration or appeal.
- 5.12** An appeal of an Award by a member shall not be considered until the Appellant has paid an appeal fee of the following amounts:

Without a Lawyer as Chair (in CAD)	With a Lawyer as Chair (in CAD)	Refundable Deposit (in CAD)
\$5,000 (Member)	\$15,000 (Member)	10,000 (Member)
\$7,500 (Non- Member)	\$17,500 (Non-Member)	10,000 (Non Member)

The refundable deposit will be used to cover any additional charges arising during the Appeal. Any balance remaining once the decision has been rendered shall be refunded to the appellant.

## ARBITRATION RULES

### 6.0 Terms of Submission to Arbitration

**6.1** The Claimant in a dispute must sign and file in quadruplicate:

- A) A completed and signed Terms of Submission to Arbitration document (Annex 1) which shall include:
  - 1. Identification of Claimant and Respondent
  - 2. Agreement to be bound by a majority of the Arbitrators
  - 3. Nomination of Arbitrators
  - 4. Agreement to pay costs, fees, awards.
- B) A Statement of Claim, containing the following:
  - 1. A clear and concise statement of the question raised, with reference to the Trade Rule(s), which have given rise to the dispute.
  - 2. A clear and concise statement of the facts with all supporting documents and evidence intended to be put before the Arbitrators.
  - 3. The Claim
  - 4. The applicable fees in accordance with Section 5.

**6.2** The Association shall deliver to the Respondent within Seven (7) calendar days:

- A) One copy of the Statement of Claim.
- B) Three copies of the Terms of Submission to Arbitration document (Annex 1).

**6.3** The Respondent may then within ten (10) Calendar days, from receipt of the Submission and Statement of Claim forwarded, file the following with the Association:

- A) Two signed copies of the Terms of Submission to Arbitration document (Annex 1).
- B) The applicable fees in accordance with Section 5.

**6.4** The Respondent may then within Twenty-five (25) Calendar days, from receipt of the Submission and Statement of Claim forwarded, file the following with the Association:

- A) A Statement of Defence in quadruplicate, containing the following:
  - 1. A clear and concise statement of the facts which supports the defence of the Respondent and/or refutes the claim of the Claimant. All supporting documents and evidence intended to be entered before the Arbitrators are to be included.
- B) A Counter Claim in quadruplicate containing the following:
  - 1. A clear and concise statement of the facts which support the Claim and Counter Claim of the Respondent, which shall specifically state the nature of the complaint in sufficient detail and under which of the Trade Rules the dispute has arisen. All supporting documents and evidence intended to be entered before the Arbitrators are to be included.



## ARBITRATION RULES

2. A Counter Claim may only be filed in accordance with this section 6.3 if;
    - a. it arises out of the same contract as the Statement of Claim; and
    - b. it is filed within 180 Calendar days after the applicable contract completion, performance date or default. The contract completion date shall be deemed to be the date of final delivery under the contract, or the payment due date, whichever shall be the latest. This time limit shall not be extended or altered in any way.
  - C) Two signed copies of the Terms of Submission to Arbitration document (Annex 1).
  - D) The applicable fees in accordance with Section 5.4.
- 6.5** In the event the Respondent does file:
- A) within ten (10) days of receiving a copy of the Terms of Submission to Arbitration document and the Statement of Claim, two signed copies of the Terms of Submission to Arbitration document (Annex 1) and the applicable fees in accordance with Section 5, the Association shall appoint an Arbitrator on behalf of the Respondent.
  - B) within Twenty-five (25) Calendar Days of receiving a copy of the Terms of Submission to Arbitration document and the Statement of Claim, a Statement of Defence and/or a Statement of Counter Claim, the Respondent shall be deemed to have accepted the said Terms of Submission as specified.
- 6.6** The Association shall then promptly forward to the Claimant:
- A) A copy of the Statement of Defence and/or Statement of Counter Claim (if relevant).
  - B) A copy of the completed and signed Terms of Submission to Arbitration document (Annex 1).
- 6.7** The Claimant may then, within Seven (7) Calendar days submit to the Association a Response. The Association will forward the Respondent a copy of this Response.
- 6.8** The Association, shall within Seven (7) Calendar days or as soon thereafter as possible, of the time for filing a Response forward to each member of the Committee copies of:
- A) Statement of Claim.
  - B) Statement of Defence and/or Statement of Counter Claim (if relevant).
  - C) Response.
  - D) Any other documents relevant to the arbitration.

## ARBITRATION RULES

### **7.0 Procedures and Evidence**

- 7.1** The Committee shall review the submissions and in their sole discretion, determine if an oral hearing, requiring the attendance and testimony of the parties and/or witnesses, is necessary. The Committee will arrange a date, time and place if an oral hearing is deemed necessary. If no oral hearing is called and notified to all the parties involved, the Committee shall convene within Fifteen (15) Calendar days from receipt of the documents referred to in Section 6.7, on the basis of Documents only.
- 7.2** If an oral hearing is called, the Committee shall notify all parties within Seven (7) Calendar days after receipt of the documents referred to in 6.7, that an oral hearing will be convened and shall give not less than Seven (7) or more than Fourteen (14) Calendar days notice as to the date, time and place of the hearing.
- 7.3** It shall be the duty of the Committee to ensure the prompt progress of the Arbitration. The Committee shall adopt such procedures, as it deems suitable to the circumstances of the particular case, so as to avoid unnecessary delays or expense and to provide a fair means for the resolution of the matters being considered.
- 7.4** The Committee shall have the power to:
- A) To direct that evidence be given under oath at oral hearings (see Annex 3 attached).
  - B) To ascertain the facts and the law on their own initiative provided that in doing so the Committee shall ensure that the parties have the opportunity to address any factual or legal concerns which may be ascertained by the Committee in the exercise of its own initiative.
  - C) To conduct examinations of witnesses or allow others to conduct such examinations at oral hearings.
  - D) To require that any party, to the arbitration (or employee thereof) attend before the Committee to give evidence or be examined at any oral hearing.
  - E) To make application to any court of law if required to obtain witnesses or evidence.
  - F) To request the submission of additional information.
  - G) To alter the timetable set for the arbitration so as to permit full consideration of the matter without prejudicing its timely hearing.
- 7.5** Any documentary evidence to be presented by a party shall first be copied to the other party for their review/comment.
- 7.6** The Committee shall record verbatim any evidence given at an oral hearing and the arbitration hearing deliberations. These recordings will be kept on file with the Association.
- 7.7** Each Arbitrator shall take and subscribe the affirmation outlined in Annex 2.

## ARBITRATION RULES

### 8.0 Counsel

- 8.1** The parties may expressly agree between them, that they may engage legal or technical representatives (i.e. lawyers or other qualified advocate) to represent them at any oral hearing. This must be notified to the Association within Five (5) Calendar Days of the receipt of the Notice under Section 7.2 that oral hearings will be convened. If agreement cannot be reached, the party requesting legal representation may, upon application, be allowed representation, at the sole discretion of a majority of the Committee.
- 8.2** In the event that the Committee Chair is not a lawyer, the Committee shall at its sole discretion have the power to retain legal counsel to assist with the resolution of the matter if required and any costs associated with this shall be borne by the parties to the arbitration, as the Committee shall direct.

### 9.0 Award

- 9.1** All Awards shall be in writing and shall be signed by each member of the Committee. The Award shall be issued to the Association, within Fourteen (14) Calendar Days of the Committee concluding its deliberations. The Award shall indicate a clear position (reply) of the Committee on the Statement of Claim and shall generally follow the format described in Annex 4.
- 9.2** An Award is made by a majority decision. In the event that there is a dissenting position, a minority report may be written and signed by the dissenting arbitrator and appended to the Award.
- 9.3** Before signing any Award, if the Committee Chair is not a lawyer, the Committee shall submit the draft Award to the Association's legal counsel. The Association's legal counsel may lay down modifications as to the form of the Award and without affecting the Committee's liberty of decision, may also draw attention to points of substance. No Award of a Committee whose Chair was not a lawyer, shall be rendered without having been approved by the Association's legal counsel.
- 9.4** All final Awards shall be in writing and shall be signed by each member of the Committee. The final Award shall be issued to the Association, within Fourteen (14) Calendar Days of the Committee concluding its deliberations or the Association's legal counsel having approved the draft Award.
- 9.5** The decision of a majority of the Committee shall be binding upon the Claimant and Respondent subject only to the Right of Appeal outlined in Section 10.
- 9.6** Copies of the Award shall be provided by the Association, to the parties upon receipt of any costs and fees payable in relation to the arbitration. The Association shall have the right to waive any expense incurred by it and so assessed if, in its sole discretion, this is equitable. The Award may also specify an amount due to the Association as determined by the arbitration committee.

## ARBITRATION RULES

### 10.0 Right of Appeal

- 10.1** Any party involved in a dispute placed in arbitration under these rules, shall have the right to appeal any Award issued by a Committee upon payment of the fees outlined Section 5.5. No appeal shall be forwarded to the Board of Appeals until such fees are paid.
- 10.2** This right of appeal must be exercised and communicated to the Association office not later than Twenty-eight (28) Calendar days after receipt, by the appellant, of the Award which was forwarded by the Association. The Appeal notification should include a clear description and reason for the appeal and be accompanied by the applicable fee.
- 10.3** An appeal of an Award shall be subject to the same provisions as to costs and expenses as are outlined in Sections 5.6, 5.7 and 5.8.

### 11.0 Board of Appeals

- 11.1** If a lawyer has been a member of the Committee pursuant to section 4.1B then a lawyer shall be a member of the Board of Appeals hearing an appeal in which case the Board of Appeals shall consist of a lawyer to be appointed by the Association, after having satisfied itself that no conflict of interest exists, together with Four (4) members of the Association (or employees thereof), appointed by the Association from the CPSCTA Trade Rules Committee endorsed list of Arbitrators
- 11.2** If a lawyer has not been a member of the Committee which has heard an arbitration, then a lawyer shall not be a member of the Board of Appeals hearing the appeal. In such case the Board of Appeals shall consist of 5 members of the Association (or employees thereof) who shall appointed by the Association from the CPSCTA Trade Rules Committee endorsed list of Arbitrators
- 11.3** The Board of Appeals shall carry out its duties hereunder, and each member thereof shall hold his position until a successor shall have been appointed. No member of the Board of Appeals shall participate in an appeal where their company is involved in the arbitration in question.
- 11.4** In the event a vacancy on the Board of Appeals shall occur, its authority shall continue and be President of the Association may, with the concurrence of any Two (2) Directors of the Association, appoint a replacement to the Board.

## ARBITRATION RULES

### 12.0 Appeal Procedure

- 12.1** The Board of Appeals shall receive from the Association the Award, the summary of the arbitration, copies of all submissions, evidence, transcripts, findings, awards, dissenting opinions, and such other information from the original arbitration, as the Association considers appropriate.
- 12.2** The counter-party to the Appellant shall have the right to submit a response to the appeal within twenty-one (21) days of receipt of the appeal submission.
- 12.3** The Appellant shall have the right to submit a reply to the response noted in 12.2 within twenty-one (21) days of receipt of the response.
- 12.4** Both the response noted in 12.2, and the reply noted in 12.3 shall be limited to new information only, and shall not consist of information previously submitted in the arbitration.
- 12.5** The Board of Appeals shall review and consider all the available information put before it and shall determine if there are grounds for altering the Award as made. No new evidence will be considered by the Board of Appeals.
- 12.6** The Board of Appeals may by vote of a majority, confirm, modify, correct or reverse an Award or it may order that a new arbitration be held on the matter. Any decision made by the Board of Appeals shall be rendered under the same provisions as prescribed in the arbitration provisions covering the original arbitration. If a new arbitration is ordered no arbitration fee will be payable, but costs shall be chargeable as directed by the new arbitrators.

### 13.0 Appeal Award

- 13.1** If a lawyer has not been a member of the Committee pursuant to section 11.2, before signing any Award, the Board of Appeals shall submit the draft Award to the Association's legal counsel. The Association's legal counsel may lay down modifications as to the form of the Award and without affecting the Board of Appeals' liberty of decision, may also draw attention to points of substance. No Award of the Board of Appeals shall be rendered without having been approved by the Association's legal counsel.
- 13.2** The final Award of the Board of Appeals shall be signed by the Chair of the Board of Appeals and when so signed, shall be final, conclusive and binding.
- 13.2** The Award shall be forwarded to the parties involved no later than Twenty-eight (28) Calendar days from the date of closing the hearing.

### 14.0 Withdrawal of Arbitration/Appeal

- 14.1** Once a Statement of Claim or an Appeal from an Award has been filed, the consent of both the Respondent and Claimant shall be required to withdraw the matter from arbitration or appeal. This consent must be in writing and must be communicated to the Association.
- 14.2** Any such withdrawal shall be subject to the withholding or payment of any costs or expenses incurred as determined by the Association. Any balance held shall be returned to the withdrawing parties.

## ARBITRATION RULES

### 15.0 String Arbitrations/Consolidated Arbitrations

- 15.1** If a contract forms part of a string of contracts which contain materially identical terms (albeit that the price may vary from contract to contract) a single Arbitration determining a dispute as to quality and/or condition may be held between the first Seller and the last Buyer in the string as though they were parties who had contracted with each other. Any award made in such proceeding shall, subject only to any right or appeal pursuant to Rule 10, be binding on all parties in the string, and may be enforced by an intermediate party against his immediate contracting party as though a separate award had been made pursuant to each contract.
- 15.2** If all parties expressly agree, Arbitration may be held concurrently with other arbitrations on the same matter, but separate Awards shall be made between the contracting parties.
- 15.3** In the interest of expediency and fairness, the Association may with or without the consent of the parties order that a group of arbitrations covering a string contract or a matter that appears to be a string or substantially similar, be arbitrated as a single arbitration by the Committee initially appointed by the first Claimant and Respondent. In order to facilitate this the time limits included in these provisions, may be altered by the Association or that Committee.

### 16.0 Notices

- 16.1** Any notice to be served pursuant to these provisions may be served personally or by, courier, registered letter, telex, fax, email or other means of rapid electronic communication and the time of personal service or dispatch, as the case may be, shall be deemed the time of service.
- 16.2** If service on a party is not possible or cannot be done expediently, substitutional service may with the approval of the Association, be made upon the brokers or agents named in the contract in question and such service shall be deemed proper service under these provisions.
- 16.3** All notices, proceedings, documents, submissions, claims and other correspondence for the Committee, Appeals Board, the Association or called for under these provisions shall be served to the Association's head office. Receipt of such notice by the Association shall be deemed to be the date of service.
- 16.4** Where service (notice of action) is required upon a specified date or occurrence that specified date or occurrence shall not count as one of the days for service.
- 16.5** The time limits specified in these provisions are to be strictly adhered to by all parties to ensure a prompt resolution of the disputes

## ARBITRATION RULES

### **17.0 Refusal to Settle Award**

**17.1** In the event that any party to an arbitration or appeal held under these provisions neglects or refuses to satisfy an Award under which s/he is so required and after the period permitting an appeal therefrom has expired, the Association shall have the right to publish that fact and, if such party is a member of the Association, to suspend or expel the member without further investigation or notice.

**17.2** If no appeal is filed, an Award shall be settled within Twenty-one (28) Calendar days of release of the Award. If an appeal is filed, settlement shall be made not later than Fifteen (15) Calendar days after release of the Board of Appeals's Award.

**17.3** If a party fails to satisfy an award of costs to the Association as determined under an arbitration or appeal, and the period permitting an appeal or payment of an award has expired, The Association may declare the party in default of an award, and publish that fact and, if such party is a member of the Association, to suspend or expel the member without further investigation or notice.

**17.4** Any arbitration Award which is unsettled after the expiry of the dates set forth in 17.2 may be made an Order of The Court upon application of the party who was to have received a benefit under the Award.

### **18.0 Precedents – Published Findings**

**18.1** The Association's Rules Committee shall review each Arbitration and Award to consider whether any modification or clarification of the rules is desirable. The Rules Committee shall summarize the facts and findings of each arbitration with the deletion of the parties' names and distribute these on a regular basis to the membership.

**18.2** If a Committee or the Board of Appeals knowingly departs from precedents, the reasoning for such departure should be clearly detailed in the Award.

# ARBITRATION RULES - Annex 1

## TERMS OF SUBMISSION TO ARBITRATION

Know that

WE: \_\_\_\_\_

OF \_\_\_\_\_

and having nominated \_\_\_\_\_

from the CPSCTA Trade Rules Committee endorsed list of Arbitrators as our Arbitrator in accordance with the Constitution of the Canadian Pulse and Special Crops Trade Association, AND

WE: \_\_\_\_\_

OF \_\_\_\_\_

and having nominated \_\_\_\_\_

from the CPSCTA Trade Rules Committee endorsed list of Arbitrators as our Arbitrator in accordance with the Constitution of the Canadian Pulse and Special Crops Trade Association.

As per 4.1(A), in cases involving claims exceeding USD \$100,000, a lawyer shall serve as the chair of the Arbitration Committee (note: the Arbitration Committee shall detail, allocate and specify the Arbitrator's fees between the parties to the Arbitration in its award). The parties may unanimously agree that a lawyer is not required to serve as Chair of the Committee.

We further  Retain  Waive our right to have a lawyer serve as Chair of the Arbitration Committee.

Having a difference as to our rights in a case touching: (give a brief outline)

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## ARBITRATION RULES - Annex 1

HAVE agreed and bound ourselves to abide by and perform the award to be made under the Canadian Pulse and Special Crops Trade Association Trade and Arbitration Rules. And having each paid the administrative fee in the sum of CDN \$3,000.00 + GST and a non-refundable deposit as outlined in Section 5.4, \$5,000.00 + GST and

a non-refundable deposit as outlined in Section 5.4 in case of a non-member of the Association, we hereby agree to submit our said differences, and all matters connected therewith, to the Arbitrators appointed in accordance with the constitution of the said Association.

AND we agree that the said award of the said Arbitrators, or of a majority of them, shall be final and conclusive to all intents and purposes between us; and we agree to pay such costs, fees and expenses as may be directed by such award.

We further  RETAIN  WAIVE our RIGHT TO APPEAL hereunder (check one)

\_\_\_\_\_  
(claimant signature)

\_\_\_\_\_  
(respondent signature)

IN witness whereof we have hereto set our hands and seals,

at \_\_\_\_\_

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

SIGNED, sealed and delivered in presence of:

\_\_\_\_\_  
(for claimant)

\_\_\_\_\_  
(for respondent)

# ARBITRATION RULES - Annex

## FORM OF OATH

do solemnly and conscientiously declare:

THAT I will faithfully, diligently and impartially arbitrate the matter for hearing before me, and I will in the case touching upon the dispute between

\_\_\_\_\_

and \_\_\_\_\_

under the Canadian Pulse and Special Crops Trade Association Trade and Arbitration Rules give a true finding and just award to the best of my judgement and ability, without fear, favour, or affection of or for any person or party whomsoever.

\_\_\_\_\_

(signature of arbitrator)

Declared before me at Winnipeg

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_

(signature of CPSCA staff in the case)

# ARBITRATION RULES - Annex

## FORM OF OATH By WITNESS

I, \_\_\_\_\_ of \_\_\_\_\_  
(first name, surname) (complete company name)

do solemnly swear

THAT I will true answer make to all such questions as shall be asked of me as witness under examination in this matter

AND therein I will to the best of my knowledge, information and belief, speak the truth, the whole truth and nothing but the truth, so help me God.

\_\_\_\_\_  
(signature of witness)

Declared before me at Winnipeg

this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
(signature of CPSCA staff in the case)

## ARBITRATION RULES - Annex

The written decisions of a Committee, or a Board of Appeals, shall generally be written in the following format:

- Date of decision.
- Identification of parties and if applicable their counsel.
- Date of filing of Statement of Claim, and if applicable, Statement of Defense and/or Counter Claim.
- Issues to be decided.
- Evidence in respect of each issue.
- Analysis of each issue and evidence.
- Decision in respect of each issue.
- Award of interest, if any.
- Specification and allocation of costs.

It is the intent that the reasons set out sufficient facts and discussion to enable the parties to understand how the issues in dispute have been resolved.