

# FEDERATION OF OILS, SEEDS AND FATS ASSOCIATIONS LIMITED FOSFA INTERNATIONAL

## CONTRACT FOR VEGETABLE AND MARINE OIL IN BULK CIF DELIVERED WEIGHTS

# 54

Revised and Effective  
from 1st September 2007

Reference Nos

SELLERS: .....

BUYERS: .....

BROKERS: .....

Date: .....

\*An asterisk denotes alternative wording, and should be matter of agreement between the parties.

Sellers have agreed to sell and Buyers have agreed to buy .....	metric tons	1
..... OIL .....		2
at .....	say	per metric ton
3		
net delivered weight, cost insurance and freight to .....		4
as per Bill/s of Lading dated or to be dated during .....		5
from .....		6
Payment in .....	as per Payment Clause	7
<b>SPECIAL CONDITIONS:</b> .....		8
.....		9
.....		10
<b>1. TOLERANCE:</b> Sellers have the option of shipping 5% more or less of the mean contract quantity. In the event of more than one shipment being made each shipment is to be considered as a separate contract but the tolerance on the mean contract quantity is not to be affected thereby.		11
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<b>2. QUALITY, CONDITION AND SPECIFICATIONS:</b> Minimum flash point of 250°F (121°C). The FFA content shall be expressed as follows: If as Lauric acid, calculated on a molecular weight of 200; if as Palmitic acid, calculated on a molecular weight of 256; if as Oleic acid, calculated on a molecular weight of 282.		13
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At time and place of shipment, the oil shall be of good merchantable quality, in good condition and of the agreed description and specifications.		20
If the oil is shipped in more than one tank of the same ship, the analysis details of the oil in each separate tank at loading shall conform to the above.		21
Should the oil on arrival not prove equal to the above, or should the oil contain sea water or other admixture, this contract not to be void, but the oil is to be taken with an allowance to be agreed upon or fixed by arbitration provided always that the oil shipped shall conform to the above.		22
Sweepings shall be accepted with a fair allowance, to be fixed by agreement or by arbitration.		23
.....		24
<b>3. DECLARATION OF DESTINATION:</b> The goods are sold for shipment to .....		25
but Buyers have the option to declare .....		26
as the port/s of destination with a minimum of .....	metric tons to any one port.	27
To exercise this option Buyers shall declare the port/s of destination to Sellers by any means of rapid written communication (E-mail excluded), not later than 16.00 hours on .....		28
The Notices Clause and the Non-Business Days Clause shall not apply to such declaration.		29
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<b>4. SHIPMENT AND CLASSIFICATION:</b> Shipment in good condition in ship/s which comply with the FOSFA Qualifications and Operational Procedures for Ships Engaged in the Carriage of Oils and Fats in Bulk for Edible and Oleo-chemical Use in force at the date of the Bill of Lading.		31
The oil is to be shipped on a ship which, after loading in one or more origin ports, will proceed directly or indirectly on a geographically normal route from the port/s of shipment to the port/s of destination.		32
For the purposes of this contract the words 'ship' or 'ships' shall mean any full-powered engine-driven ship.		33
Transhipment shall only be allowed under a through Bill of Lading and shall be restricted to the area of origin and/or customary transhipment ports in the area of destination for the goods specified in the contract, provided that transhipment at origin is completed within the original contract shipment period and/or agreed extension period.		34
In case of transhipment at origin, Shipping documents shall include FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank and a FOSFA Combined Masters Certificate in respect of the ocean carrier. In the event of such transhipment at origin the Declaration of Shipment shall include the name of the ocean carrier and transhipment location. Nothing in this clause shall affect the Master's rights or ships obligations under Maritime Law.		35
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<b>5. INSURANCE:</b> Insurance in accordance with the Institute/FOSFA Trades Clauses (A) and the Institute War and Strikes Clauses (FOSFA Trades)— including risk of contamination irrespective of percentage on each tank or on the whole—to be effected at Sellers' option with first class underwriters and/or companies who are domiciled in the UK or for the purpose of any legal proceedings accept a British domicile and provide an address for service of process in London but for whose solvency the Sellers shall not be responsible. Claims to be payable in the currency of the contract. Policies and/or Certificates and/or Letters of Insurance required under this contract shall be for not less than 5% over the invoice amount including freight.		44
Buyers shall accept insurance including Exclusion Clauses on the FOSFA Insurance Exclusion Clause List.		45
In the event that Buyers receive an allowance under the Quality, Condition and Specifications Clause, Buyers to return the insurance policy to Sellers in order that they make any recovery thereunder. Any benefit under the insurance in respect of loss in weight shall be for Sellers' account.		46
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<b>6. WAR RISKS INSURANCE:</b> War risks insurance shall be effected on the terms and conditions in force and approved at the time of shipment by the Institute of London Underwriters (Institute War Clauses [FOSFA Trades]). Any expense for covering war risks insurance in excess of 1/2 % shall be for account of Buyers. The rate of insurance shall not exceed the rate ruling in London at the time of shipment or date of ship's sailing whichever may be adopted by underwriters. Notice of extra expense to be borne by Buyers shall be given by Sellers at the time of declaration under this contract or not later than 3 business days after the rate has been agreed with underwriters whichever is the later. Failure to give such notice shall invalidate the Sellers' claim unless in the opinion of arbitrators the delay is justifiable.	52 53 54 55 56 57
<b>7. DECLARATION OF SHIPMENT:</b> Notice stating ship's name, date of Bill/s of Lading and approximate quantity shipped shall be despatched by first Sellers to their Buyers not later than 10 days after the date of the Bill/s of Lading. Notices by intermediate Sellers shall be accepted by their Buyers although received by them after such time, if from the 10th day after the date of the Bill/s of Lading such notices have been passed on with due despatch. The date of the "on board" Bill/s of Lading shall be considered proof of the date of the shipment in the absence of conclusive evidence to the contrary. Notices shall be deemed to be under reserve for errors and/or delays in transmission. Any slight variation in the ship's name shall not invalidate the declaration. A valid declaration cannot be withdrawn except with the Buyers' consent. Should the ship arrive before receipt of declaration of shipment and extra expenses be incurred, such expenses are to be paid by Sellers. Should extra lighterage expenses be incurred owing to Sellers tendering less than 50 tons for a contract of a greater quantity, the extra costs to be borne by Buyers and Sellers equally. The provisions of this clause to be inoperative if the goods have been sold afloat. Presentation of documents does not constitute a notice under the terms of this clause.	58 59 60 61 62 63 64 65 66 67 68
<b>8. SUPERINTENDENTS:</b> Reference in the contract to superintendents, surveyors or representatives shall mean member superintendents of FOSFA International. The use of member superintendents shall be mandatory except where: (i) the contract or national laws or regulations require the use of Governmental or other agencies not recognised by FOSFA International; (ii) no member superintendent/s is/are available or proximate to the port/s concerned.	69 70 71 72 73
<b>9. ANALYSTS:</b> Reference in the contract to analysts shall mean analysts who are members of FOSFA International and represented in the Oils and Fats Section. The use of member analysts shall be mandatory except where the contract or regulations require the use of Governmental or other analysts.	74 75 76
<b>10. PAYMENT AND SHIPPING DOCUMENTS:</b> Payment shall be made by Buyers in the above-named place for 98% of invoice amount by cash against complete set of shipping documents— *(a) on presentation; *(b) on (or at Buyers' option) before arrival of the ship at the port of destination but not later than 45 days from the date of the Bill of Lading, whichever is the earlier, unless documents are presented thereafter. If Buyers elect to call for documents before arrival of ship, then payment shall be made against documents as soon as presented; *(c) .....	77 78 79 80 81 82 83 84 85 86
If Sellers choose to present documents to Buyers through the intermediary of a bank/s all bank charges incurred including those raised by Buyers bank shall be for Sellers' account unless Buyers demand presentation through a bank of their choice in which case those bank charges shall be for Buyers account. Any charges for telegraphic remittance of funds to Sellers shall be for Buyers account. Shipping documents shall consist of— (1) Commercial invoice; (2) Full set of clean "on board" Bill/s of Lading and/or Ship's Delivery Order/s and/or other Delivery Order/s in negotiable and transferable form, such other Delivery Order/s guaranteed by a first class bank if required by Buyers; (i) If the Bill/s of Lading does/do not indicate that Freight has been paid, the amount of freight shall be deducted from the invoice amount and paid by Buyers on Sellers' behalf. Buyers to send copy of the freight note to Sellers for final invoicing purposes. If freight is to be paid in a currency other than the currency of this contract, the conversion in the final invoice shall be made at the rate of exchange on the day of actual freight payment; (ii) If the Bill/s of Lading refer/s to a Charter Party and/or any other documents relating to the freight booking, Sellers shall be responsible for any detrimental consequences from clauses of such documents being contrary to the terms of this contract. If such Bill/s of Lading is/are signed by parties other than the Master then the Bill/s of Lading shall be accompanied by photostat copy of written authority from shipowner or Master authorising the signatory to the Bill/s of Lading; (iii) The Bill/s of Lading must identify the ship's tank/s into which the oil is loaded but should the oil be commingled with other parcels the Bill/s of Lading must indicate the total commingled quantity; (iv) Delivery Order/s shall be accompanied by non-negotiable or photostat copy of the relative Bill/s of Lading if required by Buyers. (3) Policy/ies and/or Insurance Certificate/s and/or Letter/s of Insurance in the currency of the contract. Letter/s of Insurance shall specify the insurance company/ies and/or underwriter/s and policy number/s and shall be guaranteed by a first class bank if required by Buyers. After payment Letter/s of Insurance shall be substituted by policy/ies and/or certificate/s on request; (4) FOSFA Certificate of Compliance, Cleanliness and Suitability of Ship's Tank from superintendents in the form in force at the date of the Bill/s of Lading. (5) Certificate of Analysis, based on independently sealed samples taken from the relevant ship's tank/s at time of loading, and issued by an independent certified analyst; (6) A Certificate of Origin and/or other documents as per the Duties, Taxes, Etc., Clause of the contract where applicable; (7) A FOSFA Combined Master's Certificate in the form in force at the date of the Bill/s of Lading; (8) A copy of the notice to the Master instructing him to follow the FOSFA Heating Instructions; (9) Certificate/s from superintendents certifying: (a) the shipped weight (litre weight in air) ascertained at port of loading and specifying at what point the weight was ascertained; (b) particulars of the time and place of loading, sampling and establishment of shipped weight; (c) that pre-shipment and contractual loading samples were drawn in accordance with the Sampling and Analysis Clause and quoting details of the seals applied.	87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118
In relation to items (4) and (7), the immediate previous cargo in the tank/s receiving the oils or fats shall not have been a product appearing on the FOSFA List of Banned Immediate Previous Cargoes in force at the date of the Bill/s of Lading. The Restrictions beyond the Immediate Previous Cargo on the FOSFA List of Banned Immediate Previous Cargoes shall apply. Buyers are to accept photostat or certified copy/ies of items (4), (5), (7) and (9) relating to the whole parcel/s. Buyers agree to accept Bill/s of Lading containing the Chamber of Shipping War Risk Clause and/or any other recognised War Risk Clause. Should documents be presented with incomplete set/s of Bill/s of Lading, payment shall be made provided that delivery of such Bill/s of Lading be guaranteed, such guarantee to be signed, if required by Buyers, by a first class bank. Acceptance of this guarantee shall not prejudice Buyers' rights under this contract. Should Sellers have failed to present shipping documents on arrival of the ship at destination, Buyers shall take delivery under a guarantee acceptable to the shipowners to be provided by the Buyers, such guarantee to be signed by a first class bank if required by the shipowners. Buyers shall pay for the documents when presented. Any reasonable extra expenses, including costs of such guarantee or extra handling charges incurred by reason of the failure of Sellers to provide such documents, shall be borne by Sellers and allowed for in the final invoice. In the event that Buyers take delivery as above and Sellers fail to provide shipping documents and if the guarantee provided by Buyers as above is encashed by the shipowners, Sellers shall be responsible for all damages, costs and consequences arising from their failure to present documents. Buyers shall inform Sellers immediately there is a claim against the guarantee and Sellers shall have the right to be joined in any legal action arising therefrom. Payment shall not be deemed to have been effected before receipt of cleared funds by the payee or his bank. If payment is agreed to be by bank transfer, the party shall effect payment to the payee's bank on or before the due date for payment and payment instructions shall specify a value date not later than the second bank working day after the day of payment. Any monies due by either party to the contract to the other for final invoices and/or accounts for items on shipments fulfilling this contract shall be settled by either party not later than 21 days from the date of the invoice, (except as otherwise provided under awards of arbitration or appeal as governed by the other provisions in the contract), and if not settled a dispute shall be deemed to have arisen which may be referred to arbitration.	119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138
<b>11. INTEREST:</b> If any payment is not made on or before the due date for payment, interest shall be payable. If there is no due date for payment, interest shall be payable if there has been an unreasonable delay in payment. Interest payable shall be appropriate to the currency involved. If the amount of interest is not mutually agreed, a dispute shall be deemed to exist which shall be settled by arbitration in accordance with the Arbitration Clause. Nothing in this clause shall affect a party's rights to invoke the provisions of the Default Clause in a case where a failure to effect timely payment could give rise to a claim under that clause.	139 140 141 142 143 144



<b>12. CHARTER PARTY:</b> If the Bill/s of Lading refer/s to a Charter Party, then, if required by Buyers, Sellers shall provide a copy of the Charter Party.	145
<b>13. UNASCERTAINED GOODS:</b> In every instance where a parcel of goods sold by this contract forms an unidentified part of a larger identified quantity of goods of the same description, whether in packages or in bulk, no separation or distinction shall be necessary and, until separation and identification of the parcel sold hereby from the larger quantity has taken place, the Buyer of the parcel is a pro rata owner of the whole of the larger quantity in common with Seller/s and Buyer/s of other parts of the larger quantity.	146 147 148 149
<b>14. DISCHARGE:</b> The oil shall be discharged at the port of destination at a berth suitable for the discharge of oils or, if practicable and mutually agreed, and provided the ship is willing to and can safely berth, at Buyers' own or appointed premises within harbour limits. Buyers shall take delivery with customary quick despatch after notice of readiness has been given by the shipowner or representative/s in accordance with the Bill/s of Lading, Charter party or Contract of Affreightment. Otherwise Buyers to be liable to pay demurrage at the rate stipulated in the Charter Party or Contract of Affreightment. Sellers are responsible for all expenses for pumping out, for connecting to ship's outlet/s and for sweepings and/or puddling, but discharging expenses arising after the oil has passed the ship's rail shall be for Buyers' account. Any loose collected remaining in the ship's tank/s to be discharged by the Sellers and delivered to the Buyers at the discharging berth in packages to be provided by the Buyers. If the packages are supplied by the Buyers but the residue is not delivered such residue or unpumpable oil shall not be included in the delivered weight.	150 151 152 153 154 155 156 157
<b>15. WEIGHTS:</b> <b>At loading:</b> The shipping weight shall be ascertained by a Superintendent appointed by Sellers at their expense by gauging either in officially calibrated land tank/s or tank barge/s from which the oil is delivered or by delivery via certified weigh scales, or from tank cars which, if not calibrated, shall be weighed before and after loading by single weighing only (front and back axle weighing not allowed). If none of these methods is possible then the shipping weight to be ascertained by the most practicable alternative means. <b>At discharge:</b> Buyers' superintendents shall ascertain the weight at Buyers' expense conjointly with Sellers' superintendents, if in attendance, by gauging either in officially calibrated tank/s or tank barge/s in which the oil is received or by overside delivery to certified weigh scales, or in rail/road tank cars which, if not calibrated, shall be weighed before and after loading by single weighing only (front and back axle weighing not allowed). If none of these methods is possible then the discharged weight to be ascertained by the most practicable alternative means. In the event of disagreement between Buyers' and Sellers' superintendents on the question of mass per volume (litre weight in air), sealed samples shall be submitted to an analyst whose decision shall be final. If establishment of weights is not completed within 5 working days after discharge Sellers may submit an interim invoice which shall become due and payable based on Bill of Lading weights. Weights shall then be established as soon as it is deemed practicable by the superintendents representing the parties and a final invoice shall be issued accordingly.	158 159 160 161 162 163 164 165 166 167 168 169
<b>16. ADJUSTMENT OF OUTFURN:</b> Any excess over or deficit under the mean contract quantity arrived at without taking into consideration the margin of 5% more or less, and the quantity delivered, is to be settled at the price fixed by the appropriate Price Settlement Committee appointed by and published by the Federation, or, if no price is fixed by the Federation then at the market price to be mutually agreed or fixed by arbitration for the day of arrival of the last ship to arrive at the berth/place where the contracted goods are to be discharged at the port of destination.	170 171 172 173
<b>17. SAMPLING AND ANALYSIS: General:</b> Sampling shall be done in accordance with the method in ISO 5555. Should either party fail to appoint a superintendent then the samples drawn by the superintendent present shall be the valid samples for the purposes of analysis and/or arbitration. The analyses shall be carried out in accordance with the methods laid down in the FOSFA International Standard Contractual Methods List. The certificate/s shall bear the FOSFA International official seal. Details of seals and labels shall be given on both loading and discharge survey reports and analysis certificate/s. All samples drawn under the terms of this contract when delivered to FOSFA International or to the analyst/s to become and be their absolute property. <b>Pre-shipment Samples:</b> To ensure samples are available in the event of a contamination claim not less than five pre-shipment samples of the oil loaded shall be taken at the ship's rail or the nearest practicable point prior to loading. These samples are to remain sealed with Sellers' superintendents at origin but be available on demand to any receiver in the event of a contamination claim. Samples to be kept for three months from date of Bill of Lading. <b>At loading:</b> Not less than five samples representative of the oil to be drawn from each ship's tank/s and sealed by superintendent for analysis. Two sets of these samples shall be handed to the Master with instructions to hand over to the Receivers at port of discharge or their superintendents. Tests to be made from a set of sample/s by an analyst in the country of shipment, who shall issue the appropriate certificate. The remaining sets of samples to be retained by the superintendent at the port of loading. <b>At discharge:</b> Buyers' and Sellers' superintendents shall conjointly draw five representative samples during discharge at the ship's rail or the nearest practicable point thereafter and seal for analysis and/or arbitration purposes. Any unpumpable and/or off-quality oil discharged and stored separately shall be sampled and analysed separately. Buyers or their superintendents shall retain three sealed samples and, if required, shall send one sealed sample with due despatch for analysis to an analyst. The remaining two sealed samples shall be retained by Sellers or their superintendents. If Buyers fail to send a sample for analysis Sellers have the right to submit a sample and the results of this analysis shall stand as the first analysis. The analysis fee shall be equally divided between Sellers and Buyers. Buyers and Sellers have the right to claim at their own expense a second and/or third analysis for any one or more individual specification. The party requesting such analysis shall, within five business days after receipt of the preceding analysis, notify the other party, arrange for a sealed sample to be sent to another analyst, and give the necessary instructions to the analyst. If two analyses are made the mean of the two results, and if three analyses are made, the mean of the two results closest to each other, as the case may be, shall be binding and form the basis of final settlement. Where the results of the three analyses are such that the above formula does not apply, the mean of the three shall be taken as final. Parties shall pass on certificates of analysis with due despatch.	174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198
<b>18. DUTIES, TAXES, ETC:</b> All export duties, taxes, levies, etc., present or future in country of origin/port of shipment shall be for Sellers' account. All import duties, taxes, levies, etc., present or future in port of discharge/country of destination shall be for Buyers' account. Where the goods are entitled to free entry into or preferential duty in the port of destination named in this contract, Sellers shall furnish together with the shipping documents a Certificate of Origin and/or necessary document/s in the form valid at the time of shipment, otherwise Sellers shall be responsible for any extra duty incurred by Buyers through the non-production of such Certificate and/or document/s. If the eventual country of destination is different from that named in the contract, then Sellers, at Buyers' request, shall, if possible, supply the appropriate Certificate of Origin for the country of final destination.	199 200 201 202 203 204 205
<b>19. NOTICES:</b> Notices to be despatched by any means of rapid written communication (E-mail excluded). All notices shall be under reserve for errors in transmission. Notices shall be passed on with due despatch by intermediate Buyers and Sellers. Any notices received after 16.00 hours on a business day shall be deemed to have been received on the following business day. Notice from a broker shall be a valid notice under this contract.	206 207 208
<b>20. NON-BUSINESS DAYS:</b> Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday in the country where the party required to do the act or give the notice resides or carries on business or in the country where the act has to be done or the notice has to be received or on any day which the Federation shall declare to be a non-business day the time so limited shall be extended until the first business day thereafter. All business days shall be deemed to end at 16.00 hours Mondays to Fridays inclusive. The contract shipment period not to be affected by this clause.	209 210 211 212
<b>21. ODD DAYS:</b> In any month containing an odd number of days the middle day shall be reckoned as belonging to both halves of the month.	213
<b>22. FORCE MAJEURE:</b> Should shipment of the goods or any part thereof be prevented at any time during the last 30 days of the contract shipment period by reason of Act of God, strikes, lockouts, riots, civil commotions, fires or any other cause comprehended by the term Force Majeure at port/s of loading or elsewhere preventing transport of the goods to such port/s, the time allowed for shipment shall be extended to 30 days beyond the termination of such cause, but should the contract shipment period be less than 30 days such extension shall be limited to the number of days allowed for shipment under the contract shipment period. Should such cause exist for a period of 60 days beyond the contract shipment period the contract or any unfulfilled part thereof so affected shall be cancelled. Sellers invoking this clause shall notify Buyers with due despatch. When goods of a specific origin are sold with the option of shipment from alternative ports and shipment from all alternative ports is not prevented Sellers may only invoke this clause with regard to the specific port/s provided that the port/s has/have been notified to Buyers as the intended port/s of loading prior to or within seven days of the occurrence but if the occurrence commences within the last seven days of the contract shipment period the port/s of loading to be notified not later than the first business day following the contract shipment period. Shipment after the contract shipment period shall be limited to the port/s so nominated. Buyers have no claim against Sellers for delay in shipment or cancellation under this clause provided that Sellers shall have supplied to their Buyers, if required, satisfactory evidence justifying delay or non-fulfilment to establish any claim for extension or cancellation under this clause. In case of default after extension the default date shall be similarly deferred.	214 215 216 217 218 219 220 221 222 223 224 225 226
<b>23. PROHIBITION:</b> 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 of shipment named herein is/are situate, or of blockade or hostilities, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be extended by 30 days. In the event of shipment during the extended period still proving impossible by reason of any of the causes in this clause the contract or any unfulfilled part thereof shall be cancelled. Sellers invoking this clause shall advise Buyers with due despatch. If required, Sellers must produce proof to justify their claim for extension or cancellation under this clause.	227 228 229 230 231 232 233 234



<b>24. BANKRUPTCY/INSOLVENCY:</b> If before the fulfilment of this contract, either party shall suspend payment, notify any of his creditors that he is unable to meet his debts or that he has suspended payment or that he is about to suspend payment of his debts, convene, call or hold a meeting of his creditors, propose a voluntary arrangement, apply for an official moratorium, have an administration order made, have a winding up order made, have a receiver or manager appointed, convene, call or hold a meeting to go into liquidation (other than for reconstruction or amalgamation), become subject to an Interim Order under Section 252 of the Insolvency Act 1986 or have a Bankruptcy Petition presented against him the contract shall forthwith be closed, either at the actual or estimated market price then current for similar goods or, at the option of the other party, at a price to be ascertained by re-purchase or re-sale and the difference between the contract price and such closing-out price shall be the amount which the other party shall be entitled to claim or shall be liable to account for under this contract. Should either party be dissatisfied with the price ascertained by re-purchase or re-sale, then the matter shall be referred to arbitration. If no re-purchase or re-sale takes place and if the parties cannot agree to a closing-out price, then on application of either party, the closing-out price shall be fixed by a sole arbitrator appointed by the Federation subject to the right of appeal under the Federation's Rules of Arbitration and Appeal.	235 236 237 238 239 240 241 242 243 244
<b>25. CIRCLE:</b> Where a Seller repurchases from his Buyer, or from any subsequent Buyer, the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so repurchased, and the provisions of the Default Clause shall not apply. (For the purpose of this clause the same goods shall mean goods of the same description, of the same country of origin, of the same quality and, where applicable, of the same analysis warranty, for shipment to the same port/s of destination during the same period of shipment.) Different currencies shall not invalidate the circle. If the goods are not declared or, having been declared, documents are not presented as a result of a circle having been established, invoices based on the mean contract quantity shall be settled between each Buyer and his Seller in the circle by payment by each Buyer to his Seller of the excess of the Seller's invoice amount over the lowest invoice amount in the circle. Where the circle includes contract/s expressed in different currencies, the lowest invoice amount shall be replaced by the market price on the first business day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the difference between the market price and the relevant contract price in the currency of the contract. Failing amicable agreement the market price shall be that declared by a Price Settlement Committee of the Federation appointed for that purpose on application of either party. Such settlement shall be due for payment not later than 15 consecutive days after the last day for declaration or, should the circle not be established before the expiry of this time, then settlement shall be due for payment not later than seven days after the circle is established. No circle shall be considered to exist if its existence is not established within 45 days after the last day of shipment. All Sellers and Buyers shall give every assistance to the establishment of the circle and where a circle shall have been established same shall be binding on all parties to the circle. Should any party in the circle commit prior to the due date for payment any act comprehended in the Bankruptcy/Insolvency Clause, the invoice amount for the goods calculated at the closing-out price as provided for in the Bankruptcy/Insolvency Clause, shall be taken as the basis for settlement instead of the lowest invoice amount in the circle, and in this event each Buyer shall make payment to his Seller or each Seller shall make payment to his Buyer of the difference between the closing-out price and the contract price, as the case may be. In the event of a claim under the Prohibition Clause or the Force Majeure Clause, the date for settlement shall be deferred until the expiry of the extended shipment period. Thereafter, if the contract is cancelled under the terms of the Prohibition Clause or the Force Majeure Clause, this clause is not applicable.	245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265
<b>26. DEFAULT:</b> In default of fulfilment of this contract by either party, the other party at his discretion shall, after giving notice, have the right either to cancel the contract, or the right to sell or purchase, as the case may be, against the defaulter who shall on demand make good the loss, if any, on such sale or purchase. If the party liable to pay shall be dissatisfied with the price of such sale or purchase, or if neither of the above rights is exercised, the damages, if any, shall, failing amicable settlement, be determined by arbitration. The damages awarded against the defaulter shall be limited to the difference between the contract price and the actual or estimated market price on the day of default. Damages to be computed on the mean contract quantity. If the arbitrators consider the circumstances of the default justify it they may, at their absolute discretion, award damages on a different quantity and/or award additional damages. Prior to the last day for making a declaration of shipment a Seller may notify his Buyer of his inability to ship but the date of such notice shall not become the default date without the agreement of the Buyer. If, for any other reason, either party fails to fulfil the contract and is declared to be in default by the other party and default is either agreed between the parties or subsequently found by arbitrators to have occurred, then the day of the default shall, failing amicable settlement, be decided by arbitration.	266 267 268 269 270 271 272 273 274 275
<b>27. DOMICILE:</b> This contract shall be deemed to have been made in England and the construction, validity and performance thereof shall be governed in all respects by English law. Any dispute arising out of or in connection therewith shall be submitted to arbitration in accordance with the Rules of the Federation. The serving of proceedings upon any party by sending same to their last known address together with leaving a copy of such proceedings at the offices of the Federation shall be deemed good service, rule of law or equity to the contrary notwithstanding.	276 277 278 279
<b>28. INTERNATIONAL CONVENTIONS:</b> The following shall not apply to this contract:— (a) the Uniform Law on Sales and the Uniform Law on Formation to which effect is given by the Uniform Laws on International Sales Act 1967; (b) the United Nations Convention on Contracts for the International Sale of Goods of 1980; (c) the United Nations Convention on the Limitation Period in the International Sale of Goods of 1974 and the amending Protocol of 1980.	280 281 282 283
<b>29. ARBITRATION:</b> Any dispute arising out of this contract, including any question of law arising in connection therewith, shall be referred to arbitration in London (or elsewhere if so agreed) in accordance with the Rules of Arbitration and Appeal of the Federation of Oils, Seeds and Fats Associations Limited, in force at the date of this contract and of which both parties hereto shall be deemed to be cognizant. Neither party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitrators, umpire or Board of Appeal (as the case may be), in accordance with the Rules of Arbitration and Appeal of the Federation, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators, umpire or Board of Appeal (as the case may be), shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.	284 285 286 287 288 289 290 291