



C: LONG TERM AGREEMENTS

90

Long term purchasing or supply agreement¹

THIS AGREEMENT is made the day of

BETWEEN:

- (1) (buyer) [of (address) (or) whose registered office is at (address), company registration no ...] ('the Buyer'); and
- (2) (seller) [of (address) (or) whose registered office is at (address), company registration no ...] ('the Seller').

IT IS AGREED as follows:

1 Definitions

In this agreement the following terms have the following meanings:

- 1.1 'Commencement Date' means (date).
- 1.2 'Delivery Date' means the date stipulated in a contract for the delivery of the Goods.
- 1.3 'the Goods' means goods of the type set out in the first schedule.
- 1.4 'Order' means a written order on the Seller's prescribed form given in accordance with clause 3.2 below.
- 1.5 'the Price' means the price of the Goods ascertained in accordance with the Seller's list given from time to time.
- 1.6 'Quarter' means the period of 3 months commencing on the Commencement Date each succeeding period of 3 consecutive months and any shorter period between the end of a quarter and the date upon which this agreement terminates. 'Quarterly' shall be construed accordingly.
- 1.7 'Specification' means the description of the Goods set out in the second schedule or any other description of the Goods agreed by the parties in writing from time to time.
- 1.8 'Term' means the period from the Commencement Date until this agreement terminates.
- 1.9 'Years' means a period of 4 consecutive quarters.

2 Recitals

- 2.1 The Seller deals in the Goods.
- 2.2 The Buyer wishes to buy goods from the Seller for [the purpose of resale (or) use in the Buyer's factory] and the parties have agreed to the terms of this agreement in relation to such supplies.

3 Supply of products

- 3.1 Subject to the provisions of this clause the Seller shall accept Orders from the Buyer to buy the Goods from the start of business on the Commencement Date.
- 3.2 Every Order shall:
- 3.2.1 allow the Seller no less than one Quarter of lead time between receipt of the Order and the Delivery Date;
 - 3.2.2 specify by reference to the product number[s] stipulated in the first schedule the Goods which are to be supplied; and
 - 3.2.3 correctly specify the Price of the Goods which are to be supplied.
- 3.3 The Seller shall not be bound to accept orders for the delivery of:
- 3.3.1 more than (number) thousand pieces of any type of the Goods; and
 - 3.3.2 more than (number) thousand pieces of all types of the Goods;
- for delivery in any Quarter. If the Seller shall accept any Orders in excess of these capacity limits then the Seller shall be bound to perform them.
- 3.4 In each Year the Buyer shall buy Goods with an aggregate price (excluding VAT and other incidental expenses) of no less than £...
- 3.5 The Buyer shall notify the Seller of:
- 3.5.1 the Buyer's reasonable estimate of the Orders for the Goods in each Quarter by no less than ... weeks prior to the Year; and
 - 3.5.2 all anticipated revisions to such estimates as soon as it is reasonably practicable to do so.
- 3.6 All of the Goods sold by the Seller to the Buyer shall conform to the relevant Specification. The parties shall from time to time during the Term review the Specifications to ensure that the Specifications are acceptable to both parties but the Seller shall not be bound to change any of the Specifications at the Buyer's request.
- 3.7 The Seller shall use reasonable endeavours to maintain sufficient stocks of the Goods to fulfil all the Orders placed by the Buyer.

[4354]

4 Duration and termination

- 4.1 This agreement shall come into force on the Commencement Date and shall continue in force for a period of ... years.
- 4.2 If in any Year the aggregate price of the Goods bought by the Buyer is less than the amount stipulated in clause 3.4 above and the shortfall is not due to a breach of the Seller's obligations the Seller may terminate this agreement by giving ... days' written notice to the Buyer.
- 4.3 Either party shall be entitled forthwith to terminate this agreement by written notice to the other if the other party fails to make any payment in accordance with this agreement or commits any other breach of this agreement or if any distress or execution shall be levied upon any of the other party's goods or if the other party offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the other party or the other party is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the other party (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or

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presented or if a receiver or manager shall be appointed over the whole or any part of the other party's business or assets or if the other party shall suffer any analogous proceedings under foreign law.

4.4 Any rights to terminate this agreement shall be without prejudice to the other rights of the parties.

4.5 On termination of this agreement for any reason neither party shall (subject to the accrued rights of either party in respect of any breaches of this agreement) have any further obligation under this agreement to the other.

[4355]

5 Contracts of sale

5.1 Acceptance by the Seller of any Order shall result in a contract for the sale of the Goods which are the subject of such Order.

5.2 The terms and conditions of sale applicable to every contract of sale made in pursuance of clause 5.1 above shall be [the Seller's standard conditions of sale as at the date of this agreement (or) the conditions set out in the third schedule].

[4356]

6 Nature of this agreement

6.1 This agreement is personal to the parties and neither of them may assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights and obligations under this agreement.

6.2 Nothing in this agreement shall create any partnership, joint venture, or relationship of principal and agent between the parties.

6.3 This agreement contains the entire agreement between the parties in respect to its subject matter and supersedes all previous agreements and understandings between the parties and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties².

6.4 Each party agrees that it enters into this agreement without relying on any representation warranty or other provision except as expressly provided in this agreement. Accordingly all conditions warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law³.

6.5 This agreement is subject to the law of England and Wales.

[4357]

7 Notices

7.1 Any notice under or in connection with this contract of sale shall be in writing and shall be served by first class post or by hand on the party or sent by recorded delivery or e-mail at or to the address of the party set out in this contract or at or to such other address as may be subsequently notified by one party to the other.

7.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly served:

7.2.1 if delivered personally when left at the address in clause 7.1;

7.2.2 if sent by recorded delivery 3 days after posting; and

7.2.3 if sent by e-mail, when received.

[4358]

AS WITNESS etc

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FIRST SCHEDULE

The Goods

(describe goods to be supplied by the seller)

SECOND SCHEDULE

Specification

(set out specification of the goods)

[THIRD SCHEDULE

Conditions of Sale

(set out the seller's conditions of sale)]

(signatures (or common seals) of the parties)

(signatures of witnesses)

[4359]

1 No stamp duty. See Information Binder: Stamp Duties [1]: Table of Stamp Duties (Agreement or contract).

2 As to entire agreement clauses see *Watford Electronics Ltd v Sanderson CFL Ltd* [2001] EWCA Civ 317, [2001] 1 All ER (Comm) 696 and Paragraph 318 [1713] ante.

3 See Form 10 note 1 [4057] ante.

[4360]–[4500]

(the next form number is 100)

D: SALES INVOLVING FINANCE HOUSES AND DEALERS

100

Stocking plan hire purchase agreement between finance company and dealer giving dealer power to sell in the ordinary course of business¹

THIS AGREEMENT made the ... day of ...

BETWEEN:

(1) (finance company) having its registered office at (address) ('the Owner' which expression shall where the context so admits include the owner's successors in title) and

(2) (dealer) of (address) ('the Hirer')

[4501]

1 Agreement

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18. LOADING STRIKES-

(a) Should delivery of the goods or any part thereof be prevented at any time during the last 28 days of the guaranteed time of delivery, or at any time during the guaranteed contract period if such be less than 28 days, by reason of riots, strikes or lock-outs at port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s), then Sellers shall be entitled at the termination of such riots, strikes or lock-outs to as much time, not exceeding 28 days, for delivery at such port(s) as was left for delivery under the contract prior to the outbreak of the riots, strikes or lockouts, and in the event of the time left for delivery under the contract, being 14 days or less, a minimum extension of 14 days shall be allowed.

(b) In the event of further riots, strikes or lock-outs occurring during the time by which the guaranteed time of delivery has been extended by reason of the operation of the provisions of paragraph (a), the additional extension shall be limited to the actual duration of such further riots, strikes or lock-outs. In case of non-delivery under the above circumstances the date of default shall be similarly deferred.

(c) Sellers shall serve a notice naming the port(s) not later than 3 business days after the last day of guaranteed time for delivery if they intend to claim an extension of time for delivery, such notice shall limit the port(s) for delivery after expiry of contract period to those for which an extension is claimed.

(d) If required by Buyers, Sellers must provide documentary evidence to establish any claim for extension under this clause.

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19. CIRCLE- Where Sellers re-purchase from their Buyers or from any subsequent Buyer the same goods or part thereof, a circle shall be considered to exist as regards the particular goods so re-purchased, 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, from the same country of origin, of the same quality, and, where applicable, of the same analysis warranty, for delivery from the same port(s) of delivery during the same period of delivery). Different currencies shall not invalidate the circle.

Subject to the terms of the Prohibition Clause in the contract, if the goods are not delivered invoices based on the mean contract quantity, or if the goods have been delivered invoices based on the delivered quantity, shall be settled by all Buyers and their Sellers in the circle by payment by all Buyers to their Sellers of the excess of the Sellers' invoice amount over the lowest invoice amount in the circle. Payment shall be due not later than 15 consecutive days after the last day for delivery, or, should the circle not be ascertained before the expiry of this time, then payment shall be due not later than 15 consecutive days after the circle is ascertained.

Where the circle includes contracts expressed in different currencies the lowest invoice amount shall be replaced by the market price on the first day for contractual shipment and invoices shall be settled between each Buyer and his Seller in the circle by payment of the differences between the market price and the relative contract price in currency of the contract.

All Sellers and Buyers shall give every assistance to ascertain the circle and when a circle shall have been ascertained in accordance with this clause same shall be binding on all parties to the circle. As between Buyers and Sellers in the circle, the non-presentation of documents by Sellers to their Buyers shall not be considered a breach of contract. Should any party in the circle prior to the due date of payment commit any act comprehended in the Insolvency Clause of this contract, settlement by all parties in the circle shall be calculated at the closing out price as provided for in the Insolvency Clause, which shall be taken as a basis for settlement, instead of the lowest invoice amount in the circle. In this event respective Buyers shall make payment to their Sellers or respective Sellers shall make payment to their Buyers of the difference between the closing out price and the contract price.

20. NOTICES- A contract shall be communicated as: - either telex, E-mail, or other means. Any notice is communicated to the person to whom it shall, in the absence of any other indication, be deemed to have been actually transmitted. Any notice received on the day after the date of transmission shall be deemed to have been received on the date of transmission.

21. NON-BUSINESS DAYS- Any day which is a public holiday or legal holiday in the country of origin shall be deemed to be a non-business day. Should the time for delivery fall on a non-business day, the time for delivery shall be extended to the next business day thereafter. The same shall apply to the time for payment.

22. DEFAULT- In the event of default by either party, the provisions shall be as follows: (a) The party in default shall be liable for paying a notice of default to the other party. (b) If either party is in default, the other party shall be entitled to claim damages. (c) The damages shall be the difference between the contract price and the market price of the goods or upon the date of default, or the date when the contract is terminated, whichever is the most favourable to the party in default. (d) In all cases, the party in default shall be liable for the expenses which the other party incurs from the default, including any sub-contracting, arbitration or legal costs, and their sole and exclusive remedy. (e) Damages, interest and costs shall be available to the party in default in favour of the other party.

23. INSOLVENCY- In the event of insolvency of either party, the provisions shall be as follows: (a) The party in insolvency shall suspend payment of the contract. (b) The party in insolvency shall call or hold a meeting of the creditors. (c) The administrator or liquidator of the party in insolvency shall make payment to the other party for the contract price under Section 10 of the Insolvency Act.

20. **NOTICES-** All notices required to be served on the parties pursuant to this contract shall be communicated rapidly in legible form. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as: - either telex, or letter if delivered by hand on the date of writing, or telefax, or E-mail, or other electronic means, 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 dispute, establish, to the satisfaction of the arbitrators(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee. In the case of resales/repurchases all notices shall be served without delay by sellers on their respective buyers or vice versa, and any notice received after 1600 hours on a business day shall be deemed to have been received on the business day following. A notice to the Brokers or Agent shall be deemed a notice under this contract.

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21. **NON-BUSINESS DAYS-** Saturdays, Sundays and the officially recognised and/or legal holidays of the respective countries and any days, which GAFTA may declare as non-business days for specific purposes, shall be non-business days. Should the time limit for doing any act or serving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of delivery shall not be affected by this clause.

22. **DEFAULT-** In default of fulfilment of contract by either party, the following provisions shall apply: -

(a) The party other than the defaulter shall, at their discretion have the right, after serving a notice on the defaulter, to sell or purchase, as the case may be, against the defaulter, and such sale or purchase shall establish the default price.

(b) If either party be dissatisfied with such default price or if the right at (a) above is not exercised and damages cannot be mutually agreed, then the assessment of damages shall be settled by arbitration.

(c) The damages payable shall be based on, but not limited to, the difference between the contract price and either the default price established under (a) above or upon the actual or estimated value of the goods, on the date of default, established under (b) above.

(d) In all cases the damages shall, in addition, include any proven additional expenses which would directly and naturally result in the ordinary course of events from the defaulter's breach of contract, but shall in no case include loss of profit on any sub-contracts made by the party defaulted against or others unless the arbitrator(s) or board of appeal, having regard to special circumstances, shall in his/their sole and absolute discretion think fit.

(e) Damages, if any, shall be computed on the quantity called for, but if no such quantity has been declared then on the mean contract quantity, and any option available to either party shall be deemed to have been exercised accordingly in favour of the mean contract quantity.

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23. **INSOLVENCY-** If before the fulfilment of this contract, either party shall suspend payments, notify any of the creditors that he is unable to meet debts or that he has suspended or that he is about to suspend payments of his debts, convene, call or hold a meeting of creditors, propose a voluntary arrangement, 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 re-construction or amalgamation) become subject to an Interim Order under Section 252 of the Insolvency Act 1986, or have a Bankruptcy Petition

presented against him (any of which acts being hereinafter called an 'Act of Insolvency') then the party committing such Act of Insolvency shall forthwith serve a notice of the occurrence of such Act of Insolvency to the other party to the contract and upon proof (by either the other party to the contract or the Receiver, Administrator, Liquidator or other person representing the party committing the Act of Insolvency) that such notice was thus served within 2 business days of the occurrence of the Act of Insolvency, the contract shall be closed out at the market price ruling on the business day following the serving of the notice. If such notice has not been served then the other party, on learning of the occurrence of the Act of Insolvency, shall have the option of declaring the contract closed out at either the market price on the first business day after the date when such party first learnt of the occurrence of the Act of Insolvency or at the market price ruling on the first business day after the date when the Act of Insolvency occurred. In all cases the other party to the contract shall have the option of ascertaining the settlement price on the closing out of the contract by re-purchase or re-sale, and the difference between the contract price and the re-purchase or re-sale price shall be the amount payable or receivable under this contract.

24. **DOMICILE-** This contract shall be deemed to have been made in England and to be performed in England, notwithstanding any contrary provision, and this contract shall be construed and take effect in accordance with the laws of England. Except for the purpose of enforcing any award made in pursuance of the Arbitration Clause of this contract, the Courts of England shall have exclusive jurisdiction to determine any application for ancillary relief, the exercise of the powers of the Court in relation to the arbitration proceedings and any dispute other than a dispute which shall fall within the jurisdiction of arbitrators or board of appeal of the Association pursuant to the Arbitration Clause of this contract. For the purpose of any legal proceedings each party shall be deemed to be ordinarily resident or carrying on business at the offices of The Grain and Feed Trade Association, (GAFTA), England, and any party residing or carrying on business in Scotland shall be held to have prorogated jurisdiction against himself to the English Courts or if in Northern Ireland to have submitted to the jurisdiction and to be bound by the decision of the English Courts. The service of proceedings upon any such party by leaving the same at the offices of The Grain and Feed Trade Association, together with the posting of a copy of such proceedings to his address outside England, shall be deemed good service, any rule of law or equity to the contrary notwithstanding.

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25. **ARBITRATION-**

- (a) Any dispute arising out of or under this contract shall be settled by arbitration in accordance with the GAFTA Arbitration Rules, No. 125, in the edition current at the date of this contract, such Rules forming part of this contract and of which both parties hereto shall be deemed to be cognisant.
- (b) 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 arbitrator(s) or a board of appeal, as the case may be, in accordance with the Arbitration Rules and it is expressly agreed and declared that the obtaining of an award from the arbitrator(s) or a board of appeal, as the case may be, shall be a condition precedent to the right of either party hereto or of any persons claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

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