HAMBURGER GETREIDEBÖRSE

DER VORSTAND

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Hamburg Feeding Stuff Contract No. XIII

for C. I. F. transactions in molasses

Edition 1st April 1995

Seller: ....

Buyer: ....

Through: ....

Quantity: ....

Goods: ....

of sound merchantable quality, without any addition of air, gas, water, steam, oil and/or any other foreign matters, at time of loading

Basis: .... % total sugar, ... degrees Brix ....

....

....

Shipment and Classification

Shipment to be made in good condition, direct or indirect, with or without transshipment from .... by first class motor tankers classed not lower than 100 A 1 Lloyds Register or British Corporation BS or Top Classification in American, French, Italian, Norwegian, West-German or other equal ranking Registers.

Seller shall provide chartering on "IMOL 78" Terms or other equal terms.

Price: .... per metric ton delivered weight and quality

C.I.F. ....

Payment: Net cash ....

The parties submit to the following conditions and to the arbitration rules of the Verein der Getreidehändler der Hamburger Börse e.V., Hamburg, in force at contract date. Any disputes arising from this contract and any further agreements connected with it, not only between the Buyer and the Seller but also between the contract parties and Intermediaries, are to be finally settled by the court of arbitration of the Verein der Getreidehändler der Hamburger Börse e.V. The arbitration agreement applies also to any decision as to whether a transaction is valid or not, if, for any reason, one party of the contract challenges its validity. Creditors have the option to put recognized claims, claims arisen from cheques or bills of exchange, as well as purchase price debts, unpaid by that time despite reminder, before a court of law or before the court of arbitration.

Place of jurisdiction: Seller's domicil

Seller: .... Intermediary: .... Buyer: ....

§ 1 Written confirmations/Supplementary Agreements

(1) If contracts or letters or confirmation are being exchanged or given by one party or the intermediary and accepted without protest, all previous verbal agreements will become null and void if they are not repeated in the contract or in the written confirmation. Contracts and letters of confirmation to which there is no immediate protest in writing, by telegram, or telex, are deemed to have been accepted.

(2) If letters of confirmation and contract(s) or several letters of confirmation are sent, the Seller's letter of confirmation applies unless protested against.

(3) If later verbal agreements are made, they must, if they are to be valid, be immediately confirmed in writing or by telex by at least one party. If no immediate protest in writing, by telegram, or telex is raised against such documents, they are deemed to have been accepted.

§ 2 Notices

Any Notices received after 16.00 hours on a business day shall be deemed to have been received on the business day following. All Notices given under this contract shall be given by telegram or by telex or by other method of rapid written communication. In case of resales all Notices shall be passed on without delay by Buyers to their respective Sellers or vice versa.

§ 3 Non-Business Days

Saturdays, Sundays, legal and/or public holidays in the respective countries, the 24th and 31st December to be deemed non-business days. Should the time limit for any communication expire on a non-business day, the time so limited shall be extended to the first business day thereafter. The period of shipment, the time limit for destination and the appropriation clause shall not be affected by this clause.

§ 4 Period of Shipment

As per Bill(s) of Lading dated or to be dated .... The Bill(s) of Lading to be dated when the goods are actually on board. Date of the Bill(s) of Lading shall be accepted as proof of date of shipment in the absence of evidence to the contrary. In any month containing an odd number of days, the middle day shall be accepted as being in both halves ot the month.

§ 5 Destination

Where goods are sold with optional ports of discharge port of destination to be declared by Buyer within one business day after receipt of appropriation. Failing this the Seller may ship to any destination stipulated in the contract at his option under advice to the Buyer.

§ 6 Extension of Shipment

The contract period for shipment, if such be 31 days or less, shall, if desired by Seller, be extended by an additional period not exceeding 8 consecutive days, provided that the Seller gives notice claiming extension as per notice clause (§ 2) not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed, and such notice shall be passed on by subsequent Seller to his Buyer respectively after receipt. The Seller shall make an allowance to his Buyer, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded as follows: for 1, 2, 3, or 4 additional days 1 % of the contract price, for 5, 6, 7 or 8 additional days 2 % of the contract price.

If, however, after having given notice to the Buyer as above, Seller fails to make shipment within such 8 days then the contract shall be deemed to have called for shipment during the originally stipulated period plus 8 days, at contract price less 2 %, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

§ 7 Quantity

(1) The Seller has the option to ship 5 % more or less at contract price.

(2) Should the contract quantity be expressed by two figures (from .... to ....) no further latitude is permitted. In case of non-fulfilment the mean contract quantity shall be the basis of any settlement.

§ 8 Appropriation

(1) Appropriation of shipment effected shall contain the following details:

a) Name of vessel
b) Date of Bill(s) of Lading (for information only)
c) Port(s) of Loading
d) Origin
e) Approximate weight shipped.

(2) The appropriation to be received by the Buyer from his Seller

a) within 3 consecutive days from Bill(s) of Lading (such day not to be counted) in respect of shipments within Europe and from all Mediterranean and Moroccan Ports;
b) within 8 consecutive days from Bill(s) of Lading (such day not to be counted) in respect of shipments from North and South American East Coast Ports and all Central American and Caribbean Ports;
c) within 14 consecutive days from Bill(s) of Lading (such day not to be counted) in respect of shipments from all other ports.

(3) If the appropriation is received by the Buyer after arrival of the vessel at port of destination, the Seller shall be responsible for all extra expenses arising therefrom.

(4) The presentation of proper documents within the periods stated above, shall be deemed an appropriation under the contract.

(5) 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 errors in transmission which has been repeated in good faith.

(6) When a valid Notice of Appropriation has been received by Buyer it shall not be withdrawn except with his consent.

(7) An Appropriation shall not be deemed invalid if the date of the Bill of Lading is within the contract period and if on that date the vessel named is at the port of loading and carrying goods of the contractual description and quantity.

(8) In the event of more than one shipment being made, each shipment shall be considered a separate contract, but the margin of the mean quantity sold shall not be affected thereby.

(9) Notice Clause shall apply.

§ 9 Sales by Named Vessels

For all sales by named vessels, the following shall apply:

a) Position of vessel is mutually agreed between Buyer and Seller.
b) The word "now" to be inserted before the word "classed" in the Classification Clause.
c) Appropriation clause cancelled if sold "shipped".

§ 10 Shipping Documents

(1) Shipping documents shall consist of: 1. Invoice. 2. Complete set(s) of clean on board Bill(s) of Lading and/or Ship's Delivery Order(s) in negotiable and transferable form. 3. Policy (cies) and/or Insurance Certificate(s) and/or Letter(s) of Insurance in the currency of the contract. The Letter(s) of Insurance to be guaranteed by a recognised Bank if required by Buyer. 4. Cleanliness Certificate. 5. Official Certificate of Origin "Form A" or equivalent. 6. Other documents as called for under the contract.

(2) Should documents be presented with an incomplete set of Bill(s) of Lading or should other Shipping Documents be missing, payment shall be made provided that delivery of such missing documents be guaranteed, such guarantee to be signed, if required by Buyer, by a recognised Bank. Acceptance of this guarantee shall not prejudice Buyer's rights under this contract. No clerical error in the documents shall entitle Buyer to reject or to delay payment provided that Seller furnishes at the request of Buyer a guarantee to be counter-signed by a recognised Bank, if required by Buyer. Seller shall be responsible for any loss or expenses incurred by Buyer on account of such error. Buyer agrees to accept documents containing the Chamber of Shipping War Deviation Clause and/or other recognised official War Risk Clause.

(3) If the Bill(s) of Lading refer/s to a Charter Party and/or any other document relating to the freight booking, Seller 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 a photostat copy of written authority from Shipowner or Master authorising the signatory to the Bill(s) of Lading.

(4) If the Bill(s) of Lading has/have not been marked "freight paid/prepaid" freight payment shall be guaranteed by Seller; such guarantee to be signed, if required by Buyer, by a recognised Bank.

§ 11 Payment

(1) Payment to be made by Buyer for .... % of invoice amount by net cash against complete set of shipping documents on presentation by telegraphical transfer for Buyer's account.

(2) Documents shall be presented to the Buyer not later than 12.00 hours on any business day, and shall be taken up and paid for by 16.00 hours on the following business day. Documents presented after 12.00 hours on any business day, will be regarded as being presented on the following business day. If documents are not taken up and paid for as required, the Seller, after giving notice, shall allow the Buyer at least two more business days within which to effect payment, before exercising his rights under § 25 (Default).

(3) If the vessel is lost or the goods are lost or damaged, or General Average has been declared, the documents shall be taken up on presentation; but if payment "on arrival of the vessel" is specified, such payment shall not be required to be made before the normal voyage would have terminated.

§ 12 Duties, Taxes, Levies etc. due on cargo

All export duties, taxes, levies etc., present or future, in country of origin shall be for Seller's account. All import duties, taxes, levies etc., present or future, in country of destination shall be for Buyer's account.

§ 13 Discharge

(1) Buyer guarantees to receive the cargo as fast as vessel can pump SSHINC (Saturdays, Sundays, Holidays included) at a minimum discharging rate of .... tons/hours. Seller undertakes to deliver at a minimum pumping rate of .... tons/hours.

(2) Demurrage, if any, caused by Buyer payable at the rate as per Charter Party, same to be supplied on request.

(3) The cost of receiving and storing the cargo will be for Buyer's account, Buyer shall provide the necessary hoses and reducers to connect the ship's manifold to the shore pipeline and/or barges.

§ 14 Insurance

Seller shall provide insurance on terms not less favourable than those set out hereunder, and as set out in detail in the Grain and Feed Trade Association, London, Form 72 viz:

(1) *Risks Covered:*
Cargo Clauses (All Risk) – (Section 1 of Form 72) including the risk of contamination irrespective of percentage on each tank or on the whole from shore tank to shore tank or other place/s at destination where the Buyer takes delivery whichever shall first occur.
War Clauses (Cargo) – (Section 4 of Form 72)
Strike, Riots and Civil Commotions Clauses (Section 5 of Form 72).

(2) *Insurers*
The insurance to be effected with first class Underwriters and/or Companies who are domiciled and carrying on business in the EU and who, 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 Seller shall not be responsible.

(3) *Insurable Value*
Insured amount to be for not less than 10 % over the invoice amount, including freight when freight is payable on shipment or due in any event, ship and/or cargo lost or not lost, and including the amount of any War Risk premium payable by Buyer.

(4) *Certificates/Policies*
Seller shall give all policies and/or certificates and/or letters of insurance provided for in this contract, (duly stamped if applicable), for original and increased value (if any) for the value stipulated in 3) above. In the event of a certificate of insurance being supplied, it is agreed that such certificate shall state on its face that it is so exchangeable. If required by Buyer, Letter(s) of insurance shall be guaranteed by a recognised Bank, or by any other guarantor who is acceptable to the Buyer.

(5) *Total Loss*
In the event of total or constructive total loss, or where the amount of the insurance becomes payable in full, the insured amount in excess of 10% over the invoice amount shall be for Seller's account and the party in possession of the Policy(ies) and/or certificates and/or letters of insurance shall collect the amount of insurance and shall thereupon settle with the other party on that basis.

(6) *Payment of Claims*
Claims to be paid in the currency of the contract in the EU.

(7) *War and Strike Risks/Premiums*
Any premium in excess of ½% to be for account of the Buyer. The rate of such insurance not to exceed the rate ruling in London at time of shipment or date of vessel's sailing, whichever may be adopted by Underwriters. Such excess premium shall be claimed from the Buyer, wherever possible, with the Provisional Invoice, but in no case later than the date of vessel's arrival, or not later than 7 consecutive days after the rate has been agreed with Underwriters, whichever may be the later, otherwise such claim shall be void unless, in the opinion of arbitrators, the delay is justifiable. Seller's obligation to provide War Risk Insurance shall be limited on the terms and conditions in force and generally obtainable in London at time of shipment.

§ 15 Supervising
Both parties to appoint their representatives for supervision in respect of weighing and sampling during discharge. In the event one party is not present or represented this function is taken over by the other party; in this case the final outturn-report to be submitted to the other party without delay.

§ 16 Weighing
(1) Final at port of discharge. Weight shall be established in the presence of Buyer's and Seller's representatives by reading of the pneumercator gauge(s) fitted to the molasses tank(s) at Buyer's installation. Such shore tank pneumercator reading shall be corrected for temperature of mercury. The molasses content of the pipeline shall be ascertained by Buyer's and Seller's representatives before and after the vessel's discharge and any difference shall be taken into account in calculating the quantity of molasses discharged. Pipeline to be full prior to commencement of discharge and reading of pneumercator and to be left full respectively after completion of discharging and final reading of pneumercator.

(2) In the event of breakdown or malfunctioning or absence of a pneumercator or non positive reading of pneumercator at the time of commencement of discharge, the weight of the molasses loaded shall be in accordance with the vessel's deadweight scale calculation unless otherwise agreed between Buyer's and Seller's representatives.

(3) If required the vessel to inject steam during stripping operations under supervision of superintendents by mutual agreement. The steam to be measured and not to be paid for.

(4) In case of loss or damage of the molasses as a result of leakage and/or damage to any pipelines, pumps and/or other equipment Buyer shall immediately notify survey agent as per insurance certificate or in absence nearest Lloyd's Agent for the purpose of calculating the quantity of loss and/or damage to molasses which to be added to the overall weight measured at point(s) of weight determination. Seller has the right to superintend. Additional weight due to damage not to be paid for.

§ 17 Temperature of Molasses
Not to exceed max. 105° Fahrenheit (= 40,5° Celsius) during discharge operations and molasses must not have been heated above this maximum temperature during vessel's voyage.

§ 18 Sampling
During discharge either a continuous drip-sample or a sample taken in regular intervals of not more than one hour shall be drawn in the presence of representatives of Seller and Buyer from the drip-cock in the discharge pipeline. The resulting composite sample of the cargo shall be thoroughly mixed and six (6) smaller samples in glass jars containing not less than 200 ccm shall be filled and jointly sealed, signed and numbered one to six (1–6). Three (3) samples so drawn and sealed shall be for the Seller (No. 1, 2 and 3) and three (3) for the Buyer (No. 4, 5, and 6).

§ 19 Analysis
(1) Buyer shall despatch sample No. 4 within 10 business days after completion of discharge to an independent laboratory of his choice, the name of which is to be telexed to the Seller within the same time limit.

(2) Seller shall despatch samle No. 1 within four business days after telex information to another independent laboratory ofh his choice.

(3) If the results of these two analyses deviate 1% or less of the total sugars content or 1 degree or less for Brix the mean of the two results shall be deemed to represent the total sugars content/Brix degrees of the molasses delivered.

(4) If the results of the two analyses differ more than 1% or 1 degree the sample No. 2 shall be submitted without delay to Central Scientific Laboratories, London, for referee analysis. Upon determination of such referee tests the total sugars content/Brix degrees of the molasses delivered shall be held to be the mean of the two results closest together out of the three obtained.

(5) The respective chemists shall determine the total sugars content and Brix degrees as follows:
- a 1. Lane-Eynon Volumetric Method (constant volume modification) for determination of reducing sugars, plus
- a 2. Lane-Eynon Volumetric Method (constant volume modification) for determination of sucrose by chemical reduction before and after inversion with hydrochloric acid (as specified in the United Molasses Company Analysis Handbook and Supplement method section E. 1 and F. 1).
- b. for determination of Brix method as specified in the United Molasses Company Handbook section H. 2

§ 20 Claims on Quality and Condition
(1) The Buyer shall submit to the Seller any claims regarding quality and condition of the goods other than provided for in § 19 as per Notice Clause (§ 2) not later than 15 business days after completion of discharge at port of destination.

(2) Differences of contract quality and condition do not entitle the Buyer to reject the goods. Payment must first be made as provided for in the contract.

§ 21 Arbitration
(1) Application for settlement of claims by arbitration based upon § 20 must be submitted to the Court of Arbitration within 21 business days after the claim has first been made.

(2) For all other claims application must be submitted within on year after expiry of the contract period of shipment.

§ 22 Prohibition
In case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin or of the territory where the port or ports of shipment named herein is/are situated, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent 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 cancelled. Seller shall advise Buyer without delay of the reasons therefor and, if required, Seller must produce proof to justify the cancellation.

§ 23 Force Majeure
The Seller shall not be responsible for delay in shipment of the goods or any part thereof occasioned by any Act of God, strike, lockout, riot or civil commotion, combination of workmen, breakdown of machinery, fire or any cause comprehended in the term "force majeure". If delay in shipment is likely to occur for any of the above reasons, the Shipper shall give notice to the Buyer by telegram or telex or by similar advice within 7 consecutive days of the occurrence, or not less than 21 consecutive days before the commencement of the contract period, whichever is later. The notice shall state the reasons(s) for the anticipated delay. If after giving such notice an extension of the shipping period is required, then the Shipper shall give further notice not later than 2 business days after the last day of the contract period of shipment stating the port or ports of loading from which the goods were intended to be shipped, and shipments effected after the contract period shall be limited to the port or ports so nominated. If shipment be delayed for more than one calendar month, the Buyer shall have the option of cancelling the delayed portion of the contract, such option to be exercised by the Buyer giving notice to be received by the Seller not later than the first business day after the additional calendar month. If the Buyer does not exercise this

option, such delayed portion shall be automatically extended for a further period of one month. If shipment under this clause be prevented during the further month's extension the contract shall be considered void. The Buyer shall have no claim against the Seller for delay or non-shipment under this clause provided that the Seller shall have supplied to the Buyer, if required, satisfactory evidence justifying the delay or non-fulfilment.

§ 24 Origin

(1) When goods are sold with the option of shipment from alternative origins Seller has the right at any time, latest in the appropriation, to declare the country of origin.

(2) In case of prohibition such declaration to be given prior the event.

(3) The Force Majeure Clause shall apply if the Seller invokes this clause, this declaration to be given at any time of the shipping period, but latest without delay after the occurrence. This notification is binding the Seller to the country of nominated origin, but not limited to the port(s) so nominated.

§ 25 Default

(1) In default of fulfilment of contract in whole or in part by either party the other party, at its discretion, has the right

a) to cancel the contract;

b) to sell or purchase, as the case may be, against the defaulter within 3 business days through an Agent/Broker who is not involved in the transaction.
The other party when exercising such right shall in due time notify the defaulter of the time fixed for such sale or purchase and also of the name of the Agent/Broker nominated to act.

c) to have the value of the goods established by an Agent/Broker, to be nominated by the Chairman of the Verein der Getreidehändler der Hamburger Börse e.V. or his representative. If the price of the contract goods cannot be ascertained, the price shall be established for comparable merchandise.

(2) The other party shall give notice to the defaulter immediately after the default has been established which of these rights will be exercised. Should the non-defaulting party neglect to do this or should it be impossible to sell or purchase, as the case may be, the non-defaulting party shall still be entitled to the price difference, if any, established as under (1 c).

(3) The Court of Arbitration shall be entitled to check the sale or purchase, as the case may be, or the price established and shall be free to fix a different price and the amount involved if deemed necessary.

(4) Any amount arising from a price difference ascertained under (1 b) or (1 c) as well as the costs of the proceedings, shall be paid by the defaulting party immediately.

(5) If default has not already been declared then (notwithstanding the provisions stated in the Appropriation Clause) if notice of appropriation is not passed by the 10th consecutive day after the last day for appropriation laid down in the contract, the Seller shall be deemed to be in default and the default date shall then be the first business day thereafter.

§ 26 Insolvency

(1) If, before fulfilment of the contract, either party shall suspend payment of their debts or should circumstances arise corresponding to a suspension of payment, the contract shall be closed out at the market price ruling on the business day after such an occurrence.

(2) The market price has to be established in accordance with the rules contained in § 25 sub-section (1 c). The cost for establishing the market price is to be borne by the party which has become insolvent.

§ 27 Commission

Commission agreed to be paid, ship and/or cargo lost or not lost, contract cancelled or not cancelled, executed or not executed.

§ 28 Final Settlement

Final settlement as for weight, quality, price difference, demurrage etc. to be effected within 5 business days after receipt of invoice.

§ 29 Interest

If payment is delayed interest appropriate in the currency involved shall be charged.

§ 30 International Conventions

The following shall not apply to this contract.

a) The Uniform Law on International Sales of Goods and on Formation of International Sales of Goods of 1973;

b) the United Nations Convention on Contracts for the International Sale for Goods of 1980; and

c) the United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980.

For Sales with specified Period of Arrival the following shall apply:

§ 31 Period of Fulfilment

(1) If the goods have been sold on basis "arrival" or "delivery", the Seller has fulfilled the contract with vessel's arrival at port of destination.

(2) If vessel arrives before the period of fulfilment, then it is deemed to be an arrival for the first business day of the period of fulfilment. The Seller has to bear any extra cost incurred through the premature arrival.

§ 32 Appropriation

§ 8 shall apply with the exception of section 2. c). In respect of shipments from all other ports as mentioned in section 2. a) and 2. b) the appropriation to be received by the Buyer from his Seller latest 10 consecutive days prior to the expected arrival of the vessel at the port of destination.

§ 33 Extension of Arrival Period

The contract period for arrival, if such be 31 days or less shall – if desired by the Seller – be extended by an additional period not exceeding 8 consecutive days, provided that the Seller gives notice claiming extension as per notice clause (§ 2) not later than the next business day following the last day of the originally stipulated period. The notice need not state the number of additional days claimed, and such notice shall be passed on by the subsequent Seller to his Buyer respectively after receipt. The Seller shall make an allowance to the Buyer, to be deducted in the invoice from the contract price, based on the number of days by which the originally stipulated period is exceeded as follows: for 1, 2, 3 or 4 additional days 1 % of the contract price, for 5, 6, 7 or 8 additional days 2 % of the contract price. If, however, after having given notice to the Buyer as above, Seller's vessel fails to arrive within such 8 days, then the contract shall be deemed to have called for arrival during the originally stipulated period plus 8 days, at contract price less 2 %, and any settlement for default shall be calculated on that basis. If any allowance becomes due under this clause, the contract price shall be deemed to be the original contract price less the allowance and any other contractual differences shall be settled on the basis of such reduced price.

§ 34 Force Majeure

(1) The Seller shall not be responsible for delay in fulfilment of the contract or any part thereof occasioned by any act of God, strike, lockout, riot or civil commotion, combination of workmen, breakdown of machinery, fire or any other temporary circumstances beyond his responsibility. If the arrival of the vessel should be delayed for more than one calendar month, the Buyer shall have the option of cancelling the delayed portion of the contract, such option to be exercised by the Buyer giving notice to be received by the Seller not later than the second business day after the additional calendar month. If the Buyer does not exercise this option, such delayed portion shall be automatically extended for a further period of one month. If fulfilment under this clause is prevented during the further one month extension the contract shall be considered void. The Buyer shall have no claim against the Seller for delay or non-fulfilment under this clause provided that the Seller shall have supplied to the Buyer, if required, satisfactory evidence justifying the delay or non-fulfilment.

(2) If the Seller claims Force Majeure he has to inform the Buyer by telegram or telex or similar advice at the latest 2 business days after the period of fulfilment has expired.

§ 35 Documents

Payment for the documents is deemed made subject to fulfilment within the agreed period of arrival.