

# A.G.E.R.

ASSOCIAZIONE GRANARIA EMILIANA ROMAGNOLA – BOLOGNA

## ITALIAN CONTRACT FOR FOREIGN OIL SEEDS “Free on wagon and/or other vehicle”

1994

(In effect since 2 April 1994)

**Contract No. 125**

Drawn up in ..... on .....  
in confirmation of the contract already entered into by the Parties.

**Vendor:**

**Buyer:**

**Mediator:**

under all the general conditions listed, in addition to those printed and handwritten of this contract, to be interpreted, where necessary, according to the commercial customs of Bologna and subject to the conditions of the Association's Charter and Regulations, in effect today.

**Goods:**

**Quality:**

- Crop ..... - Characteristics
- On sample ..... In hands .....
- Good average for the year at the time and place of loading (F.A.Q.).
- On official certificate issued by .....

**Condition:** sound, reliable, marketable quality goods.

**Quantity:** ..... (2% more or less at the Seller's option). Over such a tolerance, the Seller has the faculty of embarking up to 3 % more or less (for full loads 8%) of the quantity sold; the difference shall be calculated at current prices. (Article IV – General Conditions)

**Delivery:**

**Period of:**

**Pick-up:**

**Price:**

**Goods delivered carriage paid:**

**Packaging:**

**Payment:**

**Commission:**

**Particular conditions:**

GENERAL CONDITIONS OVERLEAF

## GENERAL TERMS

In addition to both the hand-written conditions and those described overleaf, this contract is regulated by the following clauses:

### Art. I

1. Either a request for arbitration or any dispute between the Parties may not interrupt the course of the regular carrying out of any of the operations deriving from this contract.

### Art. II

1. Each delivery shall be considered as a separate contract.
2. The goods, when the sale is not made subject to visit and check, shall always be picked up by the Buyer.
3. The Seller does not guarantee the goods free from hidden defects.
4. The times expressed in this contract in days are intended as consecutive calendar days, unless otherwise specified.
5. Saturday is considered, conventionally, a non-working day for all purposes of this contract. Also considered non-working days or holidays are the days declared such where the contract is performed, and the Party residing there shall notify the other Party accordingly in good time.

### Art. III – QUALITY

1. The goods delivered shall correspond in origin, quality, and characteristics to what is indicated in this contract.

### Art. IV – QUANTITY

1. When the agreed quantity is preceded or followed by the word “approximately”, it is at the Seller’s discretion whether or not to deliver 2% more or less than the agreed amount for each single quantity.
2. When the agreed quantity varies within two limit amounts, it is at the Seller’s discretion whether or not to delivery each quantity within the limits indicated; in the event of non-fulfilment, the average quantity serves as the basis for calculating any differences. For coactive purchase or sale the procedure will be similar.

### Art. V – DELIVERY TIMES

1. READY delivery or READY pick-up refer to a sale of goods available from the working day following that of the entering of the contract, and it is not necessary for the Seller to send a “readiness” notice, which is considered implicit with the entering of the contract.
2. 10-DAY deliveries are intended as deliveries to be made from the 1st through the 10<sup>th</sup> day, from the 11th through the 20<sup>th</sup> day, or from the 21st day through the end of the month.
3. FIRST 15 DAYS deliveries are deliveries to be made within the first 15 days of the month.
4. SECOND 15 DAYS refers to a delivery to be made from the 16th day through the end of the month.
5. IN THE MONTH means a delivery to be made from the 1st through the last day of the month.
6. A delivery FROM DESIGNATED SHIP refers to a delivery to be made within the 5 (five) working days following that of the end of the unloading of the ship itself and, in the case of unloading by barge, from the date when the barges may begin the unloading on land. If the sale has been made after said date, the delivery shall be made within 5 (five) days after that of the sale, excluding holidays and days declared non-working days in the unloading port.
7. SPLIT deliveries are deliveries to be made, in practically equal quantities, split up among the established times.
8. Unless otherwise stipulated, in EX WAREHOUSE deliveries the Buyer is granted a period of 8 (eight) working days free of warehouse and insurance charges during which to pick up the goods. After that period, warehouse costs and risks will be at the Buyer’s expense.
9. At the end of the allowance period, the Buyer will lose all rights regarding conditions if the goods are paid for without being picked up. The goods will remain stored on its/his behalf and the warehouse and insurance expenses and all connected risks will be at its/his expense. In any case, at the time of pick-up, the Buyer will be entitled to withdraw, jointly and, if necessary, ex officio, the sample that will be valid only for the purpose of establishing the correspondence of the goods delivered with the type, variety, and origin of the goods sold.
10. Any belated delivery caused by either ascertained wagon deficiency or cases of force majeure may not be cause for rejection of the goods. In this case the Seller shall make the sold goods available wherever they are. The delay in the pick-up caused by either ascertained wagon deficiency or other cases of force majeure may not be cause for refusal to deliver the goods. In this case the Buyer shall see to paying for the goods.

### Art. VI – DELIVERY IN RELATION TO A CERTAIN LOADING PERIOD

1. In the sales for delivery in relation to a certain loading period, the Seller is entitled to delivery goods which have arrived from any ship provided they have been loaded at the origin during the period indicated in the contract; likewise, the Seller is entitled to cancel this contract or any part of it not yet performed in the case of either import prohibition at the place of destination or of export prohibition at the place of origin, blocking, war, revolt, or other cases of force majeure which prevent the delivery of the goods. In any case the Seller is not obliged to issue a notice of appropriation, but shall indicate to the Buyer the name of the ship from which it/he intends to make the delivery, no later than three working days from the arrival of said ship. If the Seller issues a notice of appropriation, while doing that it shall follow the provisions of item 2 hereinafter.
2. **Appropriation** – The appropriation notice with the name of the ship, the date of the bill of lading, and the approximate quantity loaded shall be communicated by telegram or telex by the loader/Seller directly to the Buyer or via its/his agent within 10 (ten) days from the date of the bill of lading, and by every other Seller to its/his Buyer within the said 10 (ten) days and in due time if received after said deadlines. Said deadline is reduced to 5 (five) days for goods coming from: Europe - Mediterranean - Middle East - North Africa. This notice shall be considered transmitted barring errors or telegram and/or telex delays. Once made, a regular appropriation notice may no longer be withdrawn.
3. **Extension of the loading period** – The loader/Seller is entitled to extend by no more than 8 (eight) days the deadline by which loading must be carried out, provided it/he notifies its/his Buyer, directly or via its/his agent, that it/he intends to avail

itself/himself of this right, by telegram and/or telex sent no later than the working day following the last day of the period set for loading, and provided the contract loading period is 31 days or less. Said notice will be transmitted by all other Sellers to their Buyers in due time. In said notice it is not necessary for the Seller to specify the number of days of extension it/he is requesting and the loading may be carried out on any of the 8 (eight) days stated above. The Seller shall, however, grant the Buyer a discount on the contract price, to be subtracted on the invoice and calculated as follows:

for 1 -2 -3 or 4 days of extension, 0.50% of the gross CIF price  
for 5 or 6 days of extension, 1% of the gross CIF price  
for 7 or 8 days of extension, 1.50% of the gross CIF price

If, after notifying the Buyer that it/he intends to avail itself/himself of this right, the Seller does not make the loading even in the 8 (eight) additional days, the contract will be considered drawn up for the original loading deadline plus 8 (eight) days, at the contract price less 1.50%, and the regulation of the differences for non-fulfilment will be made on such basis.

#### **Art. VII – DELIVERY FROM DESIGNATED SHIP**

1. When the sale is made either for delivery on arrival of a designated ship, or for delivery in relation to a certain loading period, followed by a regular appropriation, in the event of total or partial loss of the goods the contract will be cancelled totally or in proportion to the goods lost. In any case in which the goods arrive with total or partial defects such that they cannot be delivered, the contract will be totally or proportionally cancelled. Delays caused by strikes in the countries of origin are not attributable to the Seller, provided they are proven.

#### **Art. VIII – NOTICE OF READINESS**

1. The Seller is always obliged to notify the readiness of the goods except in the case of ready-goods sale.
2. The readiness shall be notified by telex or telegram sent not later than 6.00 p.m. on one of the working days of the contract period, and shall contain sufficiently clear indications for the Buyer to be able to organize itself/himself with normal diligence. If presented after 6 (six) o'clock p.m., the notice of readiness is considered valid, for all intents and purposes, as if made the following day.
3. If made on the last working day of said period, it shall be communicated by telegram or telex presented by and no later than 12 (twelve) o'clock noon
4. However, the Seller is granted the possibility to move up the sending of the notice of readiness even to within the 5 (five) working days preceding the period envisaged in the contract, provided the terms of all the other contract obligations remain unchanged. In this case the allowance will start on the first working day of the contract period.
3. In the case of sale for "pick-up" the Seller shall notify the readiness within the end of the last working day prior to the period envisaged for pick-up. If made on the last working day of said period, it shall be communicated by telegram or telex presented by and no later than 12 (twelve) o'clock noon.

#### **Art. IX – DISPATCH OF GOODS – TRAVEL RISKS**

1. Goods dispatched by rail travel on behalf and at the risk and danger of the Buyer, even when the sale is made franco delivery address, meaning, in this case, that only the transport cost is at the Seller's expense, and not the travel risk. With reference to the weight, at the Buyer's risk and expense, the Seller shall have the weight on departure verified by the railway administration, where possible.
2. For goods sold "franco delivery address" with dispatch by truck, the travel risks are at the Seller's expense.

#### **Art. X – PRICE**

1. Unless otherwise expressly provided for in the contract, the term "finished price for all intents and purposes", if between the date of the closing of the deal and that of the readiness of the goods there have been impositions or variations of taxes by the Italian and/or EU authorities, weighing in any way on the import and nationalization costs of the goods, the price of this contract will undergo equal increases and decreases to be calculated on the contract price less all expenses for transformation from CIF to free on customs-cleared vehicle.

#### **Art. XI – SAMPLING**

- 1) The Buyer is always entitled to witness or have witnessed the loading and sampling of the goods to be sent to it/him, and therefore the goods are intended as accepted and found satisfactory with regard to weight, quality, and conditions, at the time they are loaded onto the wagon and/or another vehicle, even when the Buyer has not availed itself/himself of such right, and even if the goods are sold "franco delivery address" with dispatch by rail.  
In the latter case, the Seller will promptly inform the Buyer of the place and time of the loading, whereas if such information is lacking, the sampling carried out jointly on arrival will be held valid.
- 2) For sales made "franco delivery address" with dispatch by truck, the check of the weight and sampling will be made on arrival. If the Seller does not make other arrangements, it/he will be validly represented by the carrier.
- 3) The withdrawal of the samples shall be made jointly by the Parties or their representatives, who will immediately seal them.  
The samples shall be prepared as follows:
  - two specimens, in glass jars, numbered "1" and "2", containing at least 300 g each, to check moisture level;
  - two specimens, in cloth bags, containing at least 2000 g each, for verification of the hectolitre weight and characteristics;
  - one specimen, also in a cloth bag, of at least 2000 g, to check the condition.The samples shall be withdrawn during the delivery of the goods so as to represent the exact average.  
The samples withdrawn and sealed as stated above shall be left at the Association's laboratory within 8 (eight) days, or sent to said laboratory within 5 (five) days, from their sealing.  
The sampling expenses will be at the Seller's expense if the analysis results, even for just one datum, turn out to be in the Buyer's favour.

- 4) In the event of disagreement between the Parties over the withdrawal of the samples, the Association's President (or his representative) will make an unappealable decision on the dispute, and may also charge a person he deems trustworthy with carrying out said withdrawal and sealing procedure.

The request for verification of the analytic characteristics does not entail the obligation of leaving or sending the sample for verification of the condition, and vice versa.

5) **Ex officio sampling**

In absence of representatives of the Parties, at the request of one of them and after advance payment of all the expenses which, in any case, will be charged to the defaulting Party, the Association President (or his representative) may delegate a competent person to witness both the sampling procedure and the delivery of the samples of the relevant goods.

**Art. XII - ANALYSES**

1. The request to have some tests performed to ascertain the existence of the characteristics agreed upon and mentioned in art. XIII herein does not necessarily imply an arbitration procedure.
2. The analyses shall be carried out according to the official methods in effect on the date of the contract. The analysis aimed at checking the characteristics of the goods will be carried out by the Association's Chemistry Laboratory on specific samples, at the request of the Party concerned; these samples shall be sent to said Laboratory within 8 (eight) days from the date of the joint sealing, with the communication to the other Party sent by telegram or telex at the same time. The resulting certificate will be sent to the requesting Party who will pass it on to the other party by registered letter or telefax, not later than 8 (eight) days after the original receipt of the certificate.
3. If one of the Parties is not satisfied with the results obtained on the first sample it/he will be entitled to ask the Association, within 8 (eight) days from receipt of the certificate of the first analysis, for an analysis on the second sample, notifying the other Party of such request in writing.
4. If the contract envisages that the second analysis be carried out by a chemistry laboratory other than that of the Association, the Association itself will see to sending the samples to the chosen laboratory, which will transmit the analysis results to the Parties. In the event of a difference between the results of the two analyses, the average of the data obtained in the first and second analyses will be taken as the basis for calculating any discounts.
5. The analysis expenses, for each single determination, will be at the Seller's expense if the results prove to be in the Buyer's favour. In all other cases, the analysis expenses will be paid by the Buyer.
6. If the quality differences of the goods exceed the limits envisaged in the "Discounts" clause hereinafter, with a need to resort to arbitration, the time period for proposing an arbitration solution for quality differences will start from the day after the date of transmission of the analysis certificates to the other Party.
7. A similar procedure will be adopted for the verification of and possible objection concerning characteristics agreed upon but not included in the above mentioned "Discounts" clause.
8. In the sales made "according to characteristics", any differences in the quality of the goods from that agreed upon will entitle the Buyer to the discounts shown in the "Discounts" clause hereinafter.

**Art. XIII – DISCOUNTS FOR QUALITY DIFFERENCES**

The Buyer's discount for quality excesses or deficiencies with respect to the agreed characteristics, are regulated in proportion to each point or fraction and are calculated on the contract price.

1. **Moisture:**

2. 1.00% discount every 1.00% excess with respect to the agreed characteristics and up to 2.00%.

3. **Miscellaneous impurities:**

4. 1.00% discount every 1.00% excess with respect to the agreed characteristics and up to 2.00%.

5. **Oil content impurities (other oily grains):**

6. 0.50% discount every 1.00% excess with respect to the agreed characteristics and up to 2.00%

7. 1.00% discount every 1.00% excess from 2.01% and up to 4.00%.

8. **Oil content:**

9. 1.50% discount every 1.00% excess with respect to the agreed characteristics and up to 2.00%.

10. Over said limit, the matter will be submitted for arbitration .

1. In the sales made "according to characteristics", any differences in the quality of the goods from that agreed upon will entitle the Buyer to the discounts shown in the attached table, which is an integral part of this contract.

2. The request for the analyses aimed at checking the characteristics agreed upon and included in the attached table does not necessarily imply an arbitration procedure.

3. If the quality differences of the goods exceed the limits envisaged in the attached table, with a need to resort to arbitration, the time period for proposing an arbitration solution for quality differences will start from the day after the date of transmission of the analysis certificates to the other Party.

4. A similar procedure will be adopted for the verification of and possible objection concerning characteristics agreed upon but not included in the attached table.

**Art. XIV – CANCELLATION OF THE SAMPLE**

Any package or sealed sample submitted for arbitration over quality and condition which has been opened without the presence of the contracting Parties or their duly authorized representatives will be considered destroyed, except for the quality arbitration in the case envisaged by Art. XIII.

**Art. XV – RIGHT TO REJECT GOODS**

1. If the Buyer considers the goods not in compliance with the contract terms and conditions, it/he may make a formal objection and the arbiters, appointed according to the terms of this contract, will decide whether the Buyer is obliged to keep the goods or may exercise the right to reject them. In the objection procedure, at the time of delivery, the Parties and their representatives shall jointly collect and seal regular samples of the goods being contested.

2. In order to exercise the rejection right, the Buyer, being always obliged to pick up the goods – unless otherwise agreed with the other Party – shall place them, on behalf and at the expense of whoever is responsible, in a public or private warehouse where their identification is possible and guaranteed, immediately notifying the Seller accordingly, by telegram or telex. If the Arbitrators state that the Buyer had the right to reject the goods, the Seller shall reimburse it/him for all expenses incurred for the transport, storage, and safekeeping; in this case it will be the Buyer's right to refuse the goods or have them replaced or repurchase them via a Public Mediator, with refund by the Seller of the difference between the contract price and the purchase price and Mediator's fees. The Buyer's decision shall be made within 2 (two) working days from the receipt of the arbitration decision, and communicated to the Seller by telegram or telex.
3. The rejection right shall be recognized every time the depreciation because of quality and/or condition is, in the Arbitrators' opinion, of an amount higher than 10% (ten percent). If the Arbitrators do not recognize the rejection right, the Buyer will receive only the normal quality and/or condition discounts. In any case the Arbitrators, in establishing the value differences, shall take into account the use for which the goods are intended if it is stated in the contract.

#### **Art. XVI – PAYMENT**

1. Payment shall be made always and in any case to the Seller's or shipper's domicile, in cash and free of expenses, at each single delivery. The issuing of drafts, bank receipts, or equivalent on the Buyer, even if on the basis of an explicit contract term, does not change, for accrual purposes, the agreement of payment at the Seller's domicile
2. "Ready" payment means a payment to be made by and no later than 8 (eight) days after the delivery or pick-up or dispatch of the goods. When the goods are sold under the generic term of delivery "franco valuta", the payment is intended as having been agreed upon as "ready".
3. For "deferred" payments, i.e. after the 8 (eight) days stated in the preceding paragraph, the period starts on the date of delivery, collection, or dispatch.
4. For goods not picked up within the allowance period, payment must mandatorily be made by and within the last day of allowance, even in the case of deferred payment. In the latter hypothesis, the Buyer is entitled to a price reduction equal to the amount of the interest for advance payment, in the amount of the official discount rate increased by 4 (four) points.
5. In spite of the fact that a "deferred" payment has been agreed upon, the Seller is always entitled, during the execution of each single portion, to demand payment on delivery of the goods, while granting the Buyer:
  - in the case of a payment agreed as "ready": a 2% (two percent) discount on the contract price;
  - in the case of a payment agreed as "deferred", in addition to the 2% (two percent) discount, a subtraction from the contract price of the interest amount, calculated on the basis of the Official Discount Rate increased by 4 (four) points, for the period running from the eighth day after the delivery or pick-up or dispatch to the payment deadline specified in the contract.

In the case of rejection by the Buyer, to be expressed within 2 (two) working days from receipt of the Seller's request, the contract or portion of it will be considered terminated with the reciprocal refund of any price differences, on the basis of the original contract price.

Any complaint which the Buyer may have in progress for the goods received does not exempt it/him from making the payment to the Seller.

Only in the case in which the Buyer has exercised the rejection right, it/he shall pay the Seller the amount of no less than 90% (ninety percent) of the contract price by the established deadlines, except in the case where the quality differences found are an obvious reason for rejection. Should the amount withheld be in excess of that recognized by the Arbitrators, the debtor shall also pay the interest calculated at the Official Discount Rate increased by 4 (four) points..

6. In the case of previous unpaid invoices concerning payments whose due dates have already passed, for supplies of goods covered by this contract, the Seller will be entitled to suspend any further deliveries and, after an 8-day default notice by telegram or telex, if not paid, to declare the contract terminated because of the defaulting Party. Even for goods which, in the meantime, may have been made available, the Seller is entitled to suspend the delivery as indicated above. Any charges deriving from such suspension are at the Buyer's expense.
7. For unpaid invoices referring to payments having fallen due under other contracts, the Seller will be entitled to suspend any further deliveries and, after an 8-day default notice by telegram or telex, if not paid, to request the termination of the contract, with the reciprocal refund of any price differences and with the right to compensation between such differences and the amount of the unpaid invoices.
8. In the event of the occurrence of insolvency on the part of the Buyer, the Seller is entitled to suspend the delivery of the goods already arranged, sending the Buyer immediate written communication of the suspension, without prejudice to the provisions of Art. XVIII, point 4.

#### **Art. XVII – PACKAGING**

1. Unless otherwise agreed upon, the goods are intended as negotiated in bulk.

#### **Art. XVIII – NON-PERFORMANCE OF THE CONTRACT**

1. Except in cases of force majeure, any non-execution of this contract or any part thereof, even if due to the recognized right of the Buyer to reject goods that do not comply with the contract terms, as per Art. XV above, will be a basis, solely for the part of the contract which has not been performed, (i) for the termination of the contract itself and the refund of the difference between the contract price and the current price on the last day useful for performance or, if so chosen by the Party in compliance, on the day when the other Party defaulted; or (ii) also if so chosen by the Party in compliance, and after notification to the defaulting Party by telegram or telex within 5 (five) consecutive days from the date of the default, for the purchase or sale of the portion not performed via a Public Mediator, with all differences, losses, and related expenses at the expense of the defaulting Party.
2. The above notification shall also be given by the same deadline and in the same manner to the Public Mediator.
3. The defaulting Party will be responsible for paying the interest on any price differences calculated on the basis of the Official Discount Rate increased by 4 (four) points, starting from the date when the default occurred up until that of payment.
4. Any contracting Party who is declared bankrupt or in moratorium or who calls creditors for the purpose of obtaining an arrangement, whether in or out of court, or who in any case is known to have suspended payments, will certainly be considered in

default. In this case, the other Party will be entitled to proceed immediately – after notification to the other Party or its/his agent or business intermediary by telegram or telex – with the repurchase or resale or, as it/he so chooses, with the refund of the difference between the contract price and current price, of all the portions of the contract not yet performed up until the occurrence of the above-said situations, including those for future deliveries, and it/he will be entitled to a refund or claim, as creditor of the liquidation or bankruptcy, of any differences, losses, and/or expenses; it/he shall account for any profits, with the right, however, to offset the profits with the losses, even if deriving from the liquidation of this or other contracts in progress with the same contracting Party.

**Art. XIX – ARBITRATION CLAUSE**

1. The Parties agree to refer the settlement of any dispute that may arise with regard to the validity or performance of this contract to informal arbitration, to be carried out according to the Association’s Arbitration Regulations, with which the Parties state they are familiar and which they accept.

**Art. XX – INFORMAL ARBITRATION**

1. With reference to either the contract between the Parties – which shall be in line with this standard contract – or to the commitment deriving from an association agreement, any dispute, including those over validity, performance, termination, interpretation, etc., will be mandatorily submitted for the decision by informal amicable arbitration; the arbitrators will judge “ex bono et aequo”, without any legal formality, under the Arbitration Regulations of the A.G.E.R. of Bologna, with which the Parties state they are familiar and which they accept.
2. For all effects and purposes – including those under Articles 1341 (arbitration clause) and 1342 (contract negotiation using forms) of the Italian Civil Code – the Parties agree to comply with the Association’s Arbitration Regulations mentioned above.
3. The arbitration request, indicating the appointed Arbitrator, shall be made, on penalty of expiry, by the Party concerned to the other Party, directly or through the A.G.E.R.:
  - a. within seven consecutive days following the date of receipt of the goods, by telegram or telex, for the objections over the quality and/or condition of the goods and/or following the exercise of the right to reject said goods;
  - b. within six months either from the delivery deadline stated in the contract or from the objection raised, by registered letter or telegram or telex, in all other cases.
4. After said deadlines have passed, the Arbitrators will decide whether it is possible to proceed with the arbitration just the same, if the belated request is duly justified.
5. Should one of the contracting Parties refuse to adhere to such form of amicable settlement, the Party concerned is entitled to ask the A.G.E.R. for ex officio arbitration under the Association’s Arbitration Regulations.

**Art. XXI – ADDITIONAL CONDITIONS**

1. Neither of the Parties shall take legal steps in court except for demanding payment of invoices or precautionary measures, or to have the arbitration decisions enforced.
2. This contract is signed in acceptance by the contracting Parties and, if applicable, by the Mediator.

**The General Terms and Conditions of this contract have been agreed upon by the trade organizations concerned through a special joint Commission, and they have been approved with a resolution passed on 21-1-1994 by the Board of Governors of the A.G.E.R. of Bologna. The form (standard contract) thus approved has been filed with the Chamber of Commerce, Industry, Handicraft and Agriculture of Bologna.**

THE BUYER  
hereby expressly accepts  
the arbitration clause

THE MEDIATOR

THE SELLER  
hereby expressly accepts  
the arbitration clause

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