

PURCHASE CONTRACT CONFIRMATION TERMS

- 1. BUYER'S CONFIRMATION:** Provisions in Seller's offer, confirmation or other writing which are inconsistent with or in addition to the terms and conditions of this Grain Purchase Contract Confirmation (the "Contract") are not binding upon Buyer unless expressly approved in writing by Buyer. This Contract supersedes and constitutes a modification of any and all other agreements of the parties which may be found to have been entered into prior to the date hereof or contemporaneous herewith regarding the subject matter of this Contract. Any proposals for additional or different terms or any attempt by Seller to vary any of the terms of this Contract are rejected. No amendment or modification of this Contract shall be effective unless consented to in a writing signed by an authorized representative of Buyer.
- 2. NGFA® TRADE RULES AND ARBITRATION TO APPLY:** Except as otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association ("NGFA"), which are incorporated herein. In all events (even where another set of rules may apply in whole in part), the parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this Contract (including, but not limited to, any statutory or tort claims arising from the relationship between the parties) shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules without the necessity of court order, provided further that Seller consents to enforcement of the obligation to arbitrate disputes in any state or federal court and expressly waives the defenses of personal jurisdiction and venue with respect to any such action. Any question regarding arbitrability shall be decided by the NGFA Secretary or the NGFA arbitrators. The decision and award determined through such arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof. (Copies of the NGFA® Rules are available from the National Grain and Feed Association, Telephone: 202-289-0873; Website: <http://www.ngfa.org>). The parties agree that any arbitration conducted hereunder shall be governed by the Federal Arbitration Act, 9 United States Code §§ 1-16, as now existing or hereinafter amended. This Contract shall otherwise be governed by, and construed in accordance with, the laws of the state where Buyer is located (with the exception of such state's conflict of laws statutes or case law).
- 3. GRADE AND QUALITY SPECIFICATIONS/MERCHANTABLE QUALITY:** Unless otherwise agreed, the quality of agricultural commodity delivered under this Contract shall be determined at the time and place of delivery, with the weights, grades and other quality criteria at the destination location to govern. Seller is obligated to deliver the grade and quality described in this Contract. Buyer reserves the right to reject individual shipments not complying with the Contract terms. If the Buyer elects to accept deliveries not meeting Contract grade and/or quality, the Buyer's scale of discounts and premiums at time of delivery shall apply, unless otherwise specified in writing. Refusal of the Buyer to accept delivery of agricultural commodities not meeting Contract terms shall not release Seller from this Contract. Acceptance of any delivery of commodities by Buyer after breach of the terms and conditions of this Contract by Seller shall not waive any rights or remedies accruing to Buyer as a result of such prior breach. All commodity delivered under this Contract shall be of merchantable quality, unadulterated, and unrestricted from movement in interstate commerce within the meaning of the Federal Food, Drug and Cosmetics Act, the U.S. Grain Standards Act, and all other applicable local, state and federal laws. Seller shall not deliver commodities found to contain mycotoxins that exceed advisory, action or regulatory levels issued by the federal Food and Drug Administration (or any other similar federal, state or local government agency) in effect at the time of delivery of the contracted commodity. Buyer may require more stringent mycotoxin levels than FDA guidelines and maximum levels will be so stated as part of the contracted quality terms. If any commodity applied to this Contract is adulterated, unmerchantable or misbranded under any applicable laws, or the commodity or its shipment is in violation of any provision contained in this Contract, Seller shall be in breach of this Contract and shall indemnify Buyer from all costs, damages and losses. Seller represents and warrants that any agricultural commodity delivered to Buyer has not been grown from, commingled with or otherwise exposed to seed (including without limitation, genetically modified seed) which has not received full and final approval for importation and use from the applicable authorities in all domestic and foreign markets utilized by Buyer (including without limitation, the United States, Canada, China, Japan, Mexico and the European Union) with respect to such commodity. Buyer reserves the right to test the commodities delivered by Seller for conformity with the representations and warranties contained in this Contract. No such testing by Buyer shall constitute a waiver of Buyer's rights or remedies with respect to this Contract.
- 4. PAYMENTS TO SELLER/RIGHT OF OFFSET/LIQUIDATION:** Payments due Seller under this Contract will be paid after delivery and acceptance of the contracted commodity per Seller's ordinary payment terms or as otherwise expressly agreed upon by the parties. In addition to any other allowable deductions or offsets (whether arising from this Contract or from other debts or claims owed to Buyer or its affiliates by Seller), any payments to Seller for commodity delivered under this Contract shall be subject to prior deduction for applicable discounts or other charges owed to Buyer or its affiliates. Seller warrants and represents that commodity delivered under this Contract shall be free and clear of all liens and encumbrances and that free and clear title to the agricultural commodity is being conveyed to Buyer. If any security interests or other liens are made known to or discovered by Buyer prior to or at delivery of the agricultural commodity, acceptance of the agricultural commodity shall be at the Buyer's discretion. The Seller expressly agrees that Buyer has the right to issue multiple party checks for payment of the agricultural commodity should the Buyer have any reason to believe that any third party has or may assert a lien or encumbrance against the agricultural commodity delivered under this Contract. The parties agree that Buyer shall have the right to cause liquidation, termination or acceleration of this Contract because of (a) the insolvency or financial condition of the Seller, (b) the commencement of a case under Title 11 of the United States Code, (c) the appointment of or taking of possession by a trustee in a case under Title 11 of the United States Code or by a receiver or custodian before such commencement, (d) any and all other defaults of the terms and conditions specified herein either directly or by reference thereof. It is expressly agreed that this Contract is a forward contract (as that term is generally understood in the trading of agricultural commodities and within the definition of forward contract set forth in Title 11 of the United States Code) subject to the Buyer's right to setoff any mutual debts and claims against Seller under or in connection with this Contract, as well as any and all other debts, contracts or forward contracts between the parties, as provided in 11 United States Code §§ 362(b)(6) and 556, or by other applicable law.
- 5. BUYER'S RIGHT TO DELAY DELIVERY PERIOD/FORCE MAJEURE:** The Buyer has the right, without penalty, to delay the time for accepting delivery and making payment under this Contract if such delay is caused by government regulation or action, acts of God, labor strikes, riots, insurrection, freight embargoes, transportation delays or other causes not within Buyer's control. In the event of a delay, Buyer shall accept delivery and make payment under this Contract as soon as practicable after the cause for delay has ceased.
- 6. SELLER'S DELIVERY WARRANTY/LOCATION/FREIGHT:** Seller's obligation to deliver is absolute and Seller warrants it shall deliver the quality and quantity set forth in this Contract. Unless otherwise provided herein, this Contract shall be considered a delivered contract and title and risk of loss shall remain in Seller until physical delivery to Buyer's designated delivery point, acceptance and application to the Contract by Buyer. The specified delivery location or price basing point set forth in this Contract between the parties shall be deemed the delivery location, except that Buyer shall have the right, but not the obligation, to designate any reasonable alternate delivery points. If Buyer designates an alternate delivery location, then Buyer's schedule of transportation costs at the time of delivery shall apply. If Seller requests an alternate delivery location and Buyer consents, then any increased transportation costs are Seller's sole responsibility. Seller agrees that it shall be the responsible party for purposes of complying with the sanitary transportation requirements of the Federal Sanitary Food Transportation Act of 2005 and the Federal Food Safety Modernization Act of 2011, as now existing or hereinafter amended.
- 7. ADEQUATE ASSURANCES/MULTIPLE CONTRACTS:** Seller acknowledges that it has the obligation to provide Buyer with assurances that it will perform and make timely delivery of the contracted commodity. As adequate assurance, Buyer may demand payment from Seller up to an amount equal to the difference between the Contract price and the then prevailing market price for the contracted commodity. Seller shall provide such adequate assurance within 48 hours of the receipt of a demand from the Buyer. Seller's failure to provide adequate assurance as demanded by Buyer shall constitute Seller's repudiation of this Contract. Buyer has the right to designate how deliveries are applied to open forward contracts when Seller has more than one contract with Buyer. Buyer may apply all commodity delivered by Seller against this Contract. If any part of this Contract or any other contract remains unfilled or Seller is otherwise in default on this Contract or any other contract, Buyer reserves the right without further notice to Seller to: 1) extend time for delivery; 2) declare Seller in default on the Contract, charging losses if any to Seller; or 3) purchase commodity to fulfill Seller's Contract. Buyer has the right, but not the obligation, to declare Seller in default on other contracts due to any default by Seller on one or more contracts.
- 8. SELLER LIABLE FOR ATTORNEY FEES, COST OF COLLECTION, INTEREST:** In the case of Seller's default of any of its obligations in this Contract, Seller shall be liable to Buyer for all costs incurred (including attorney fees) in enforcing this Contract and/or collecting any damages found owing to Buyer. Seller also shall be liable for the payment of compound interest at the higher of 18% per annum or the highest amount permissible by law from the date of default on any damages found owing to Buyer. In no event shall Buyer be liable for any special or consequential damages claimed suffered by Seller.
- 9. SUCCESSORS/ASSIGNS:** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Contract cannot be assigned by Seller unless express written consent is first obtained from Buyer.