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Going with the grain: recent changes to GAFTA's standard form contracts

Introduction

GAFTA Council has approved changes to a number of its standard form contracts, the optional clauses, and the sampling rules. The changes are effective for contracts entered into on or after 1 October 2024.

Changes 'Cheat sheet'

GAFTA has made these amendments to (i) remove ambiguity around 'Delivery' and 'Shipment' and (ii) correct typographical errors and inconsistencies. The contracts which have been subject to revisions are largely those drafted on FOB terms but changes have also been made to an FCA contract (No. 89) and a CIF contract (No. 81).

In addition, three contracts are being retired from use. We have summarised the changes below.

i. Changes to remove ambiguity

Clause description	Relevant contract	Change effective from 1 October 2024
Quantity clause	Contracts 64, 79A, 119 (all clause 2)	Amended from 'shipment' to 'delivery'.
Price clause	Contracts 18 and 38 (both clause 3)	Heading amended from 'PRICE AND DESTINATION' to 'PRICE'.
Brokerage clause	Contracts 23, 38, 39, 47, 49, 64, 79A, 82, 115, 118, 119, 120 and 202 (all clause 4)	Amended from 'delivery' to 'Performance' or 'period for presentation of the vessel'.
Period of delivery clause	Contracts 18 (clause 6), 23 (clause 7), 38 (clause 6), 39 (clause 6), 47 (clause 6), 49 (clause 6), 64 (clause 6), 79A (clause 7), 82 (clause 6), 118 (clause 7), 119 (clause 6), 120 (clause 6), and 202 (clause 6)	- Heading amended from 'PERIOD OF DELIVERY, Delivery during' to 'PERIOD FOR PRESENTATION OF THE VESSEL, Presentation of the vessel during'. - Amended from 'delivery' to 'presentation of the vessel'.

Extension clause	Contracts 18 (clause 7), 23 (clause 10), 38 (clause 9), 39 (clause 9), 47 (clause 8), 49 (clause 8), 64 (clause 8), 79A (clause 8), 82 (clause 8), 115 (clause 9), 118 (clause 10), 119 (clause 9), 120 (clause 7) and 202 (clause 10)	• Heading amended from 'EXTENSION OF DELIVERY' to 'EXTENSION OF PERIOD FOR PRESENTATION OF THE VESSEL'. • Amended from 'delivery' to 'presentation of the vessel'.
Duties, taxes, levies, etc. clause	Contracts 18 (clause 10), 23 (clause 13), 82 (clause 11), 119 (clause 12), 120 (clause 14) and 202 (clause 13)	Amended from 'shipment' to 'loading'.
Prevention of delivery clause	Contracts 18 (clause 16), 23 (clause 18), 38 (clause 17), 39 (clause 17), 47 (clause 14), 49 (clause 13), 64 (clause 17), 79A (clause 18), 82 (clause 17), 115 (clause 17), 118 (clause 18), 119 (clause 17), 120 (clause 19), 202 (clause 18)	• Heading amended to 'PREVENTION OF PERFORMANCE'. • Amended from 'delivery' to 'presentation of the vessel' or 'presentation'.
Carrying charges clause	Contracts 39 (clause 10)	'contract delivery' replaced with 'presentation of the vessel'.
Non-business days clause	Contracts 18 (clause 18), 23 (clause 21), 49 (clause 15), 64 (clause 19), 79A (clause 21), 82 (clause 19), 115 (clause 19), 118 (clause 21), 119 (clause 20), 120 (clause 22), 202 (clause 21)	Amended from 'delivery' to 'presentation of the vessel' or 'presentation'.
Circle clause	Contracts 18 (clause 20), 23 (clause 19), 38 (clause 22), 39 (clause 22), 47 (clause 21), 49 (clause 20), 64 (clause 21), 79A (clause 19), 118 (clause 19), 119 (clause 18), 120 (clause 20), 202 (clause 19)	Amended from 'delivery' to 'presentation of the vessel' or 'performance'.
General applicable clause	Contract 131	Optional clauses 1-4 replaced with 'general applicable' standing-in clause.
Standing in provisions clause	124 Sampling Rules (clauses 10 and 11)	Standing-in Provisions for Sampling of Feedingstuffs (clause 10) and Referee Analysts' Addresses' (clause 11) replaced with a new clause 10 - Feedingstuffs sold on a contract including the standing-in provisions.

ii. Changes to bring contract consistency

Relevant clause	Relevant contract	Change effective from 1 October 2024
Biomass clause	Contract 202 (clause 1)	'GOODS' added to the heading.
Quantity clause	Contracts 64, 79A, 119 (all clause 2)	'of goods' deleted.
General amendments for typos and consistencies with other contracts	Contract 78UA	(d) and (e) payment clause alphabetical order corrected.
General amendments for typos and consistencies with other contracts	Contracts 81 and 78UA	Full insurance clause added for consistencies with other CIF contracts.

iii. Contracts 29, 98 and 100A are being retired from use

GAFTA's changes in focus

A common theme in GAFTA's new contracts is the change from 'delivery' to 'presentation of the vessel.' This amendment is most evident in the (earlier) period of delivery clause, the extension clause, and the prevention of performance clause. We set out below examples of these three clauses which show GAFTA's recent revisions in redline.¹

PERIOD OF ~~DELIVERY~~ FOR PRESENTATION OF THE VESSEL

~~Delivery~~ Presentation of the vessel during _____ at Buyers' call.

Nomination of Vessel. Buyers shall serve not less than _____ consecutive days' notice of the name and probable readiness date of the vessel and the estimated tonnage required. The Buyer has the right to substitute any nominated vessel. Buyer's obligations regarding pre-advice shall only apply to the original vessel nominated. No new pre-advice is required to be given in respect of any substitute vessel, provided that the substitute vessel arrives no earlier than the estimated time of arrival of the

original vessel nominated and always within the ~~delivery~~ period for presentation of the vessel. Provided the vessel is presented at the loading port in readiness to load within the ~~delivery~~ period for presentation of the vessel, Sellers shall if necessary complete loading after the ~~delivery~~ period for presentation of the vessel and carrying charges shall not apply.
[...]

EXTENSION OF ~~DELIVERY~~ PERIOD FOR PRESENTATION OF THE VESSEL

The ~~contract~~ period of delivery for presentation of the vessel shall be extended by an additional period of not more than 21 consecutive days, provided that Buyers serve notice claiming extension not later than the next business day following the last day of the ~~delivery~~ period for presentation of the vessel. In this event Sellers shall carry the goods for Buyers' account and all charges for storage, interest, insurance and other such normal carrying expenses shall be for Buyers' account, unless the vessel presents in readiness to load within the ~~contractual~~

¹ The changes which came into effect on 1 October 2024 have been tracked onto the clauses in Contract No. 64 effective from 1 January 2022.

~~delivery-original~~ period for presentation of the vessel. Any differences in export duties, taxes, levies etc, between those applying during the original ~~delivery~~-period for presentation of the vessel and those applying during the period of extension, shall be for the account of Buyers.
[...]

PREVENTION OF ~~DELIVERY~~-PERFORMANCE

[...]
Should Sellers' performance of this contract be prevented, whether partially or otherwise, by an Event of Force Majeure, the performance of this contract shall be suspended for the duration of the Event of Force Majeure, provided that Sellers shall have served a notice on Buyers within 7 consecutive days of the occurrence or not later than 21 consecutive days before commencement of the period ~~of delivery~~ for presentation of the vessel, whichever is later, with the reasons therefor. If the Event of Force Majeure continues for 21 consecutive days after the end of the period ~~of delivery~~ for presentation of the vessel, then Buyers have the option to cancel the unfulfilled part of the contract by serving a notice on Sellers not later than the first business day after expiry of the 21-day period. If this option to cancel is not exercised then the contract shall remain in force for an additional period of 14 consecutive days, after which, if the Event of Force Majeure has not ceased, any unfulfilled part of the contract shall be automatically cancelled. If the Event of Force Majeure ceases before the contract or any unfulfilled part thereof can be cancelled, Sellers shall notify Buyers without delay that the Event of Force Majeure has ceased. The period ~~of delivery~~ for presentation of the vessel shall be extended, from the cessation, to as much time as was left for ~~delivery~~ presentation of the vessel under the contract prior to the occurrence of the Event of Force Majeure. If the time that was left for ~~delivery~~ presentation of the vessel under the contract is 14 days or less, a period of 14 consecutive days shall be allowed.
[...]

Comment

The changes to the period of delivery clause and the extension of delivery clause clarify that the obligations and rights provided under these provisions are those belonging to the buyer.

Under a "classic" FOB contract, one of the principal duties of the buyer is to give shipping instructions. This usually means nominating the vessel. Until the buyer has done so, the seller's duty to deliver the goods (by loading them on board the vessel nominated by the buyer) does not arise. We can understand where uncertainty (and therefore disputes) may have arisen under the earlier drafting of the period for delivery clause which appeared to conflate the buyer's obligation to nominate the vessel with the seller's delivery obligation. Similarly, the changes to the extension of delivery clause make clear that this clause entitles the buyer to extend the period for performance of their obligation. It does not entitle the seller to delay delivery.

The changes to the prevention of delivery clause mirror the changes to the period of delivery clause and extension of delivery clause to ensure that the relevant period remains consistent throughout the contract (i.e. the period for presentation of the vessel). However, there is no substantive change to the operation of this clause: it still only applies to the seller's performance and therefore cannot be relied upon by the buyer.

These changes mean that the reference to the "*period for delivery*" has been removed. Where a contract does not provide for the date or date range for delivery (as in GAFTA Contract No. 64), the general rule is that the seller must deliver the goods within a reasonable time. To avoid uncertainty, it is recommended, and usual, for parties to agree a delivery (sometimes called shipment) period.

The update from GAFTA can be found [here](#).

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Contact us

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