

**EUROJUTE JUTE GOODS CFR/CIF CONTRACT FORM**

Effective from April 23<sup>rd</sup> 2004

Messrs,  
Dear Sirs,

We (*Seller*) have this day sold to you (*Buyer*) subject to the conditions endorsed hereon as follows:

A. Quantity:

B. Description of goods:

.....  
.....  
.....  
.....

C. Packing and shipping marks.

D. Quality at time of shipment guaranteed to be fair average Calcutta standard make and to comply with ISS standards, if applicable, or guaranteed to be fair average Bangladesh standard make and to comply with BSI standards, if applicable.

E. Price: ..... per unit CFR or CIF ocean-going vessel port of destination agreed upon.

F. Time of shipment: .....

G. Destination: .....

H. Payment: .....

**1. Definitions**

The following terms whenever used in this contract shall have the meaning set forth in this paragraph:

**Contract shipment time** - The last day of the month specified herein as the month of shipment unless otherwise agreed between Buyer and Seller.

**Date of sale** - Unless Seller has stipulated otherwise in his offer, the date of sale shall be the date on which Buyer transmits order to and at price quoted by Seller or Sellers agent or the date on which Seller transmits his acceptance of Buyer's bid.

**Notices** - Any notice to be served by the Seller or the Buyer under this contract shall be in writing and transmitted by telex or fax or e-mail.

## 2. Force Majeure

Force majeure if and when applicable for Seller or Buyer, to mean force majeure as defined by the Force Majeure (Exemption) clause of the International Chamber of Commerce (ICC Publication No. 421) which is hereby incorporated in this contract. For the purpose of para 8 of ICC Force Majeure Clause the applicable period specified by the Parties is 60 (sixty) days.

## 3. Title and Risk

Goods shall be and remain at Sellers risk and expense until the goods have passed over the ship's rail at the named port of shipment. Title and risk in the goods delivered shall pass from Seller to Buyer when the goods pass the ship's rail at the named port of shipment.

## 4. Nomination

Buyer shall nominate its performing vessel or declare name of shipping company whose vessel is to carry the cargo within the contract shipment time. Buyer's declaration of destination port or ports and full shipping instructions must be received by the Seller not later than nine (9) days prior to the contract shipment time, failing which Seller shall not be responsible for late shipment and shall be entitled to charge interest at LIBOR rate from contract shipment date to bill of lading date. Should shipping instructions not be received within thirty (30) days after contract shipment time, Seller shall have the option to cancel and claim damages.

In the event of the Buyer nominating a vessel which is not load-ready by contract shipment time, Seller shall grant free extension to Buyer as may be required.

In the event of Buyer having no shipping opportunity for the declared destination during shipment time, then the Seller may be entitled to ship by the first available vessel loading for that destination, subject to Buyer's prior agreement.

## 5. Shipment

Shipment of goods or any part thereof shall be deemed to be made in accordance with the contract when all documents stipulated by the Buyer, including a clean on board bill of lading, have been issued by Seller and the goods have been loaded on board vessel for destination specified by Buyer. The date of the bill of lading shall be accepted by the parties hereto as evidence of the date of shipment, unless otherwise agreed upon. A bill of lading dated not more than seven (7) days after contract shipment time shall be evidence of shipment within the contract shipment time.

## 6. Late Shipment

When, for reasons other than force majeure as set out in Clause 2. or late or extended shipment under Clause 4. the goods have not been shipped by seven (7) days after contract shipment time, or when goods have not been shipped within an extended shipment period under Clause 5. Seller shall immediately notify Buyer (either directly or through his agent) of such failure to ship, the reason therefor and his best estimate of the prospective delay in shipment. Such goods when shipped shall be accepted by Buyer with the following allowances which must automatically be deducted from Seller's invoice:

1. Two (2) per cent of the gross invoice value if the bill of lading is dated more than seven (7) days but not more than fourteen (14) days after contract shipment time.

2. Three (3) per cent of the gross invoice value if the bill of lading is dated more than fourteen (14) days but not more than twenty-one (21) days after contract shipment time.

3. Five (5) per cent of the gross invoice value if the bill of lading is dated more than twenty-one (21) days but not more than thirty (30) days after contract shipment time.

If the goods have not been shipped within thirty (30) days of contract shipment time, Seller shall immediately further notify Buyer that the goods have not been shipped and Buyer shall have the following options, to be declared by Buyer to Seller within ten (10) days (Saturdays, Sundays and Public Holidays in India or Bangladesh (*strike out where not applicable*) and/or Buyers country excluded) from receipt of Sellers notice:

a. Cancelling the contract to the extent of such goods, in which event Seller shall be liable to Buyer for the difference, if any, between the contract price and the market price prevailing in Calcutta or Bangladesh (*strike out where not applicable*) for goods of the same description either (a) at contract shipment time or (b) on the date Seller notified Buyer hereunder that the goods have not been shipped as of thirty (30) days after contract shipment time, at Buyers option; or

b. Accepting the goods with an allowance to be mutually agreed upon.

## **7. Short Shipment**

In the event the Seller ships less than the contract quantity, but the shortfall does not exceed five per cent (5%), Buyer shall be bound to accept and pay for the quantity shipped, provided shipment is in all other respects in accordance with the contract. Such acceptance shall not affect Buyers rights to claim damages in respect of the shortfall.

## **8. Shipment in Instalments**

Shipment of goods (in full or in part where allowed), shall be accepted as made in accordance with the contract when all documents specified by the Buyer, including a clean on board bill of lading, have been issued by the Seller and the goods have been loaded on board vessel for destination specified by the Buyer. The date of the clean on board bill of lading shall be accepted by both parties as evidence of date of shipment. A bill of lading dated not more than seven (7) working days after the contract shipment time shall be accepted as shipment within the contract shipping time.

## **9. Insolvency**

If either party shall fail to pay its debts as they fall due, cease to carry on business, become bankrupt or insolvent, have a receiver or sequestrator appointed, go into liquidation, voluntarily or otherwise (other than voluntary liquidation for the purpose of corporate reconstruction), enter into a deed of arrangement or a composition for the benefit of its creditors, or do or suffer any equivalent act or thing under any applicable law, the other party shall be entitled by written notice immediately to close out this contract, at the prevailing market price ruling on the day following such event and this shall prima facie be the basis of settlement of account between the parties in such circumstances.

## **10. Market Price**

The market price referred to in Clauses (6) and (9) shall be determined by mutual agreement and, in absence of agreement, by arbitration.

## 11. Claims, Disputes, Arbitration

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, which cannot be resolved by amicable negotiation, shall be referred to and finally resolved by arbitration under the Rules of the LCIA, which Rules are deemed to be incorporated by reference into this clause. The parties may jointly appoint a sole arbitrator or they may appoint one arbitrator each, in which case the two arbitrators shall jointly appoint an umpire (Chairman) as a third arbitrator to complete the arbitration tribunal. If they are unable to agree on an umpire within thirty (30) days, the matter shall be referred to the LCIA which shall make the appointment.

Arbitrators must be from companies being members either of CJFSA or BJMA (*strike out where not applicable*) or EUROJUTE.

The seat of the arbitration shall be England and all proceedings shall take place in England and be conducted in the English language.

Notice of arbitration shall be given and an arbitrator appointed in writing by the party claiming arbitration:

- a) in respect of contracts for goods sold for shipment which have not been delivered, not later than ninety (90) days after expiry of contract shipment time; and
- b) in respect of quality/condition of goods sold for shipment and delivered, not later than ninety (90) days after completion of discharge at port of destination.

Where the dispute relates to quality, packing, make-up, measurements, weight and/or condition, arbitrators to mutually decide which number of sound, intact, original packages (e.g. bales/trusses/rolls, as the case may be), or which number of samples to be drawn for arbitration purposes to be retained. In case arbitrators consider sampling adequate for purpose of arbitration, number of samples as required for arbitration purposes shall be drawn by local representative of SGS or any survey company of international repute in accordance with instructions received from arbitrators. Costs for transport of packages (e.g. bales/trusses/rolls, as the case may be), if required, for sampling and despatch of samples for account of losing party. Arbitrators are at liberty to carry out inspection at the place where packages (e.g. bales/trusses/rolls, as the case may be) are lying, notwithstanding same being different from place of arbitration. Notwithstanding this, if the Buyer arranges to have the goods surveyed, the relevant survey report in respect of quality, packing etc. shall be admissible in evidence by arbitrators without production of the goods so surveyed before the arbitrators, provided always that if no claim is referred to arbitration before the expiry of ninety (90) days after completion of discharge at port of destination, the Seller shall be discharged from liability in respect of such claim.

## 12. Governing Law

This contract shall be governed by and construed in accordance with English law. For the purpose of all proceedings in arbitration, the contract shall be deemed to have been made in England, any correspondence in reference to the offer, the acceptance, the place of payment or otherwise, notwithstanding, and England shall be regarded as the place of performance.

Disputes shall be settled according to the law of England, whatever the domicile, residence or place of business of the parties may be or become. Neither the Convention relating to a Uniform Law on the International Sale of Goods, of 1964, nor the United Nations Convention contracts for the International Sale of Goods, of 1980, shall apply to this contract.

### **13. Taxes, Duties and Levies**

All existing or future taxes, duties or levies in the nature of taxes etc. which are imposed by the country of origin shall be for the account of the Seller. All existing or future taxes, duties or levies in the nature of taxes which are imposed by the country of destination shall be for the account of the Buyer.

### **14. Import and Export Licences**

It shall be Sellers responsibility to obtain any export licence(s) which may be required and Buyers responsibility to obtain any import licence(s) which may be required. The failure to obtain such licence(s) shall not be sufficient grounds for a claim of force majeure if the regulations in force at the time when the contract was made called for such licence(s) to be obtained.

### **15. No Assignment**

Neither party shall assign this contract without the written approval of the other party.

### **16. Liabilities**

In no event shall Seller or Buyer be liable for special, indirect or consequential damages.

### **17. Entire Agreement**

This contract contains the entire agreement of both parties and cannot be modified unless in writing.

### **18. No Waiver**

No waiver by the Buyer of any breach by the Seller of the terms and conditions of this contract shall be construed as a waiver of any subsequent breach of the same or any other term or condition.

### **19. Incoterms**

Where not inconsistent with the above, ICC Incoterms 2000 for CFR/CIF sales with all latter amendments shall apply.

### **20. Headings**

Headings are for convenience only and shall not affect the construction of any of the terms of this contract.