

BEST PRACTICE TRADING GUIDELINES

OF THE

AUSTRALIAN COTTON SHIPPERS ASSOCIATION



SECTION 1 PRELIMINARY

The Australian Cotton Shippers Association (“the Association”) has prepared these Best Practice Trading Guidelines for its members to choose to include in their contracts for the purchase or sale of cotton as they see fit.

The Association reviews these Best Practice Trading Guidelines from time to time to ensure they keep abreast with best practice standards. The members of ACSA acknowledge that the Member’s contract (between seller and buyer) supersedes the ACSA Best Practice Trading Guidelines in the case of inconsistency.

SECTION 2 OBLIGATORY CONTRACT RULES

RULE 1 CONTRACTS NOT ASSIGNABLE

Neither party to the contract may assign their interest therein without the written consent of the other party, unless previously agreed between the parties to the contract.

RULE 2 MULTIPLE CONTRACTS FOR SEASON’S COTTON

2.1 Seller to disclose bale ranges to avoid dispute between buyers and to preserve contract order

The seller warrants to the buyer:

- (a) the number of bales sold under the contract can be delivered;
- (b) the cotton bale range sold under the relevant contract will be disclosed and documented in the contract along with any previously sold bale range, quantities and date of such previous sale;
- (c) cotton will be delivered by the bale range specified in the relevant contract.

For the seller’s obligations in this Rule 2.1 there is no requirement to specify the buyer under other contracts when disclosing previously sold cotton bales. The requirement is to simply specify the number of previously sold cotton bales and date of sale. The seller and buyer acknowledge the purpose of specifying previously sold cotton bales is to determine the various contract orders in case of dispute. The seller warrants such disclosure of information will be correct.

2.2 Allocation of cotton to different contracts

The seller shall allocate contracts in accordance with the cotton bale range stipulated.

2.3 Allocation of merchant to merchant contracts

The seller shall allocate sequentially numbered bales only on merchant to merchant allocations and endeavour to allocate the entire gin run.

2.4 Rollover contract from one season to the next

The seller may have a sale contract to a specified buyer which allows any shortfall delivery to be delivered in the following season. The seller and buyer of this contract agree any shortfall from one cotton season to the next must be documented as a new contract between the seller and the buyer and will follow the process set out in Rule 2.1 and Rule 2.2. A rollover of shortfall cotton in one season will not supersede the following season contracts already entered into.

SECTION 3 OPTIONAL CONTRACT RULES

RULE 3 NOTIFICATION, ACCESS TO COTTON & TITLE

3.1 Gin yard cotton

If cotton is sold Ex Gin or FOT Gin Yard (first handler):

- (a) The seller shall notify the buyer, or cause the buyer to be notified by the ginner, in writing when the cotton is ready to be collected from the gin yard such notification to be given no later than one (1) day after the day of ginning of that cotton.
- (b) Such notification shall be deemed to have been given to the buyer at the time of receipt by the buyer of documentation containing the information specified in Rule 9.1.
- (c) If the buyer pays ginning charges relating to the cotton the seller shall procure the ginner to forward a ginning invoice to the buyer within one (1) day after the ginning of that cotton.
- (d) The seller and buyer acknowledge that the buyer will arrange access and collection of the cotton bales purchased from the seller with the cotton ginning organisation. If the buyer is unable to arrange access and collection of the cotton bales with the cotton ginning organisation, then the seller warrants to promptly arrange such access for the buyer for the bale collection.
- (e) The seller and buyer acknowledge that the general Australian cotton industry principles are that the buyer has a maximum of six days storage at the cotton gin site (from the date the cotton bale is ex-gin), however the buyer will use reasonable endeavours to retrieve the cotton bales promptly. If the buyer fails to collect the cotton bales under the contract within seven days from the ex-gin date, then Australian cotton industry principles allow the cotton ginning organisation to apply demurrage charges to the buyer for ex-gin and FOT gin yard purchases.
- (f) The seller and the buyer agree for sales and purchases ex-gin (meaning when the bale is formed), the risk, insurance and title for the cotton under contract passes from seller to buyer ex-gin.
- (g) The seller and the buyer agree for sales and purchases FOT gin yard, the risk, insurance and title for the cotton under contract passes from seller to the buyer FOT gin yard (once the cotton is loaded on a truck acting at the direction or agency of the buyer).
- (h) For a sale contract which is FOT gin yard, between ex-gin and FOT gin yard, the risk, insurance and title for the cotton remains with the seller.

3.2 Gin yard cotton or FOT Gin Yard (merchant to merchant):

If cotton is sold Ex Gin or FOT Gin Yard (merchant to merchant):

- (a) The seller shall notify the buyer, or cause the buyer to be notified by the ginner, in writing when the cotton is ready to be collected from the gin yard such notification to be given no later than one (1) day after the previous title holder received notification. Correspondence to include the original time stamp of the day of ginning of that cotton.
- (b) Such notification shall be deemed to have been given to the buyer at the time of receipt by the buyer of documentation containing the information specified in Rule 9.1.

3.3 Warehouse Cotton

If the cotton is sold ex Warehouse:

- (a) The seller shall notify the buyer in writing when the cotton is ready to be collected from the warehouse.
- (b) Prior to collection the seller shall provide to the buyer the information specified in Rule 9.1.

RULE 4 DEMURRAGE

Any demurrage caused by the delay of the seller or buyer shall be to the account of the seller or buyer respectively.

RULE 5 SPECIFICATIONS FOR COTTON**5.1 Compliance**

All cotton sold under the contract must conform to the following specifications in default of which it may be rejected by the buyer.

5.2 Grades

The cotton must be of a colour or have leaf grades, micronaire, staple, strength or other properties of cotton contemplated as acceptable by the Premiums and Discounts Table forming part of the contract, lowest side of the bale to govern.

5.3 Area and variety of growth

- (a) The cotton must be sourced from the property (and individual fields if so described) specified in the contract and the seller shall if requested by the buyer provide to the buyer adequate proof that the cotton was so sourced.
- (b) The cotton must be of the year of growth specified in the contract.
- (c) The cotton must be ginned at the gin location specified in the contract.

5.4 Internal moisture

- (a) Internal moisture must not exceed 7.5%.
- (b) Any dispute as to level of internal moisture shall be governed by International Cotton Association Rules 233 to 236 inclusive.

5.5 Condition

- (a) The cotton must not be wet or country damaged at time of delivery.
- (b) If the buyer takes delivery of wet or country damaged cotton they may claim against the seller for damages in respect of such affectation. If the buyer accepts delivery into his warehouse they must within 10 days after such delivery serve on the seller a notice of intended claim specifying the damage. If the buyer delivers cotton direct to a purchaser without accepting same into their warehouse they must within 10 days after receiving notice of such affectation serve such notice of intended claim on the seller. Within 90 days after service of such notice of intended claim the buyer must serve on the seller a formal claim specifying the amount claimed in respect of the damage.

5.6 Unacceptable cotton

Cotton shall not be re-ginned, re-baled, plated, fraudulently packed, badly gin cut, scorched, smoky, damaged, water packed, seedy, sandy, dusty, greasy, contaminated with foreign matter or oily and shall not contain gin motes or have perished staple or otherwise not be in a fit and proper condition for immediate shipment to a buyer and the seller shall indemnify the buyer against all losses, penalties and costs suffered or incurred by the buyer as a result of cotton being affected as aforesaid.

RULE 6 PACKAGING AND TARE

6.1 Packaging

Cotton shall be wrapped in bagging and tied with ties as recommended by the Australian Cotton Ginners Association Best Management Practices for Ginning.

6.2 Tare

The weight of each bale measured immediately after the pressing of the bale must be the net weight of lint – ie, after allowing for the weight of wrapping and bands (“the Gin Weight”).

RULE 7 WEIGHTS

7.1 Standard bale weight

If the contract is for forward delivery of cotton the parties agree that it is based on a net weight of 227 kilograms per bale with zero contract weight tolerance.

7.2 Variation in bale weight

A bale of cotton of net weight less than 185 kilograms or more than 245 kilograms may be rejected at the option of the buyer.

7.3 Gin yard weight

Weight of cotton purchased FOT Gin Yard shall be the Gin Weight.

7.4 Warehouse weight

Weight of cotton purchased for delivery at warehouse or gin yard (other than cotton purchased immediately following ginning at that gin) shall be the weight as measured at a weighbridge allowing for tare.

7.5 Reweighing

- (a) The buyer may have the cotton reweighed on arrival at the buyer's warehouse by an independent controller and both parties may appoint a representative to witness such reweighing.
- (b) If the Gin Weight and the weight determined by the independent controller are different then the latter shall be used for the purposes of the contract.

7.6 Expense of reweighs

- (a) The cost of the reweigh shall be borne by the party requesting it.
- (b) If a claim is successful based on the result of the reweigh the claimant, if they paid for the reweigh, shall be reimbursed therefor by the other party.

RULE 8 DELIVERY & SHIPMENT**8.1 Prompt delivery**

If no date for delivery or shipment is specified in the contract prompt delivery or shipment shall be deemed to apply and "prompt" means within 14 days after date of the contract.

8.2 Landed

The term "landed" means delivery free of freight and other expenses (but not including demurrage as a result of the buyer delaying or refusing delivery of cotton without reasonable cause) at the destination designated in the contract.

RULE 9 FOT GIN YARD TERMS**9.1 Information required**

If cotton is sold FOT Gin Yard terms the seller shall promptly after such information becomes available notify or cause to be notified the buyer in writing of such ginning details as are necessary to enable the buyer to complete his contractual obligations including:

- Seller's full legal trading name
- Bale numbers
- Bale weights
- Variety of cotton and whether or not it is genetically modified organism cotton
- Module number
- Farm and field identification
- Date of ginning
- Name of ginner and location

9.2 Non provision of information

If the seller fails to provide or cause to be provided the above particulars to the buyer, the buyer shall not be responsible for consequent delays in the execution of the contract and must be reimbursed by the seller for any charges incurred by the buyer for demurrage which arises as a result of the seller's failure as aforesaid.

RULE 10 SAMPLES**10.1 Samples**

- (a) For cotton sold FOT Gin Yard terms or ex Warehouse terms, the seller shall at their cost provide to the buyer, or procure the provision to the buyer of, individual bale samples. If additional samples are required by the buyer, they shall pay for them.
- (b) If there is a dispute as to the classing of the cotton the sample submitted by the seller to the buyer shall be the sample used in resolution of the dispute.

RULE 11 PAYMENT**11.1 Payment terms**

Payment will be made at the time and in the manner specified in the contract.

11.2 Late payment

If the buyer does not pay in accordance with the said payment terms the buyer shall pay to the seller interest on the overdue amount at the rate of 5% per annum over the prevailing published BBSW 90-day bank bill rate from the due date for full payment until payment is made.

RULE 12 DISPUTES**12.1 Arbitration**

Arbitration of disputes (other than classing disputes as to which see Rules 12.2-12.4) shall be governed by the contract.

12.2 Classing disputes

- (a) If the buyer is responsible for classing the cotton and the seller wants to challenge the results they must serve written notification of the dispute on the buyer within 7 days after despatch by the buyer to the seller of the classing results.
- (b) If the seller is responsible for classing the cotton and the buyer wants to challenge the results they must serve written notification of the dispute on the seller within 7 days after the cotton samples have been delivered to the buyer.

12.3 Resolution process

If there is a dispute between the buyer and the seller in respect of the classing results the parties shall:

- First, endeavour to resolve the dispute amicably between them.
- Secondly, if not resolved the parties shall submit samples of the cotton to the Australian Cotton Classers Association Review Committee in accordance with that Association's review process.
- Thirdly, if not resolved following submission of samples to the Review Committee, either party may refer the matter to arbitration or other form of resolution in accordance with the contract.

12.4 Expense of retesting

If the buyer and the seller agree to retest cotton samples in order to resolve a classing dispute between them then:

- (a) The cost of the retest shall be borne by the party requesting it; and
- (b) If a claim is successful based on the result of the retest the claimant, if they paid for the retest, shall be reimbursed therefore by the other party.

RULE 13 UNACCEPTABLE PRACTICES**13.1 Reginned, blended or recleaned cotton**

The seller acknowledges that delivery in satisfaction of a contract of cotton which has been reginned, rebaled or recleaned is (unless so provided for in the contract) an unacceptable practice and constitutes a fundamental breach of the contract.

13.2 Irrigated or raingrown cotton

The seller acknowledges that delivery in satisfaction of a contract for irrigated cotton or raingrown cotton or vice versa is an unacceptable practice and constitutes a fundamental breach of the contract.

13.3 Removal of bale tags, etc

The parties agree that removal of any bale tag or the failure to replace any such tag on re-covered bales or the obscuring of origin or growth detail is an unacceptable practice and constitutes a fundamental breach of the contract.

13.4 HVI data

HVI data supplied by one party to the other must be accurate as regards the cotton referred to in the contract and any breach of this requirement is an unacceptable practice constituting a fundamental breach of the contract.

13.5 False samples

The submission by one party to the other of false samples (ie samples which were not sourced from the cotton the subject of the contract) is an unacceptable practice and constitutes a fundamental breach of the contract.