

**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 as a guide for industry to use for the purchase or sale of cotton as they see fit.

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**

### **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.

### **2. CONTRACT BALE DELIVERY**

Seller to disclose bale ranges at the time of sale to avoid dispute and to preserve contract order.

#### **2.1 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;
- (c) cotton will be delivered by the bale range specified in the relevant contract

#### **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, unless cotton is sold under recap terms or otherwise specified.

#### **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 2.1 and 2.2. A rollover of shortfall cotton in one season will not supersede the following season contracts already entered into.

### **3. NOTIFICATION, ACCESS TO COTTON & TITLE**

#### **3.1 Merchant to Merchant Transactions**

When merchants are transacting with other merchants based within Australia, the point of transaction is considered FIS warehouse on mutually agreed payment terms. The selling merchant should include the ginning date when supplying bale data to the merchant buyer. The buying merchant should take all reasonable precautions to ensure the selling merchant has paid the producer/s for the said cotton bales prior to making payment to the selling merchant.

ACSA notes that transactions between merchants may occur on different terms. In such instances both parties should ensure they have conducted adequate due diligence covering counterparty risk assessments and payment and title assurance.

### **3.2 Gin yard Notification**

For the avoidance of doubt, cotton sold to first handler at a designated location is considered FCA under INCOTERMS 2020.

- (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 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, accompanied by relevant data file.
- (d) The buyer will arrange access and collection of the cotton bales purchased 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, unless advised otherwise, the buyer has a maximum of seven days free storage at the cotton gin site, commencing from the date the gin invoice was issued to the buyer (first handler). If the buyer fails to collect the cotton bales under the contract within these seven days, then Australian cotton industry principles allow the cotton ginning organisation to apply demurrage charges to the buyer.
- (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 FCA gin yard, the risk, insurance and title for the cotton under contract passes from seller to the buyer FCA 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 FCA gin yard, between ex-gin and FCA gin yard, the risk, insurance and title for the cotton remains with the seller.

### **3.3 Gin Yard Notification (Merchant to Merchant)**

If cotton is sold Ex Gin or FCA Gin Yard (Merchant to Merchant):

- (a) If cotton is sold by one merchant to another merchant while the cotton remains in the gin yard, all obligations under 3.1 fall to the first buyer of the cotton.

The Merchant 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 two days after the date of ginning.

#### 4. DEMURRAGE

Demurrage means, a cost imposed by the ginner for cotton not removed from the gin yard location within a specified time, as agreed between contracted parties. These charges are to be for the account of the party determined to be responsible for the delay.

#### 5. SPECIFICATIONS FOR COTTON

All cotton sold under the contract must conform to the following specifications or may be rejected by the buyer.

##### 5.1 Quality

The quality of cotton to be determined by classing data from a BMP certified classing facility. It will contain data of colour, 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.

##### 5.2 Origin of cotton

- (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 adequate proof that the cotton was so sourced.
- (b) The cotton must be grown in the crop year specified in the contract.
- (c) The cotton must be ginned at the gin location specified in the contract.

##### 5.3 Internal moisture

- (a) Internal moisture must not exceed 7.5%.
- (b) Where the contract stipulates the use of International Cotton Association Rules, any dispute as to the level of internal moisture shall be governed by International Cotton Association Rules 229.

##### 5.4 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. If the buyer accepts delivery they must claim within 10 days of acceptance and serve on the seller a notice of intended claim specifying the damage.

##### 5.5 Unacceptable practices

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.

The following occurrences constitute a fundamental breach of contract:

- (a) Reginned, blended or recleaned cotton or blended round modules  
The seller acknowledges that delivery in satisfaction of a contract of cotton which has been reginned, rebaled or recleaned or blending of round modules is (unless so provided for in the contract) an unacceptable practice.
- (b) Irrigated or raingrown cotton  
The seller acknowledges that delivery in satisfaction of a contract for irrigated cotton of raingrown cotton or vice versa is unacceptable.
- (c) Removal of bale tags  
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 unacceptable.
- (d) 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.
- (e) 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.

## **6. PACKAGING AND TARE**

### **6.1 Packaging**

Cotton shall be wrapped in cotton bagging and strapped 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 strapping (“the Gin Weight”).

## **7. WEIGHTS**

### **7.1 Standard bale weight**

The standard weight of a bale of cotton is 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 FCA Gin Yard shall be the Net Gin Weight.

### **7.4 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.

#### **7.5 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.

### **8. FCA GIN YARD TERMS**

#### **8.1 Information required**

If cotton is sold FCA 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 and ABN number
- Bale numbers
- Bale weights
- Variety of cotton
- Module numbers
- Farm and field identification
- Date of ginning
- Name of ginner and location

#### **8.2 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.

### **9. SAMPLES**

#### **9.1 Samples**

- (a) For cotton sold FCA Gin Yard 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 an attempt to amicably settle a dispute.

### **10. PAYMENT**

#### **10.1 Payment terms**

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

**11. DISPUTES**

When disputes arise (either technical or quality), buyer and seller shall attempt to reach an amicable settlement. Where this is not possible, the resolution process should be governed by the Contract terms.

ACSA promotes the use of the International Cotton Association (ICA) Rules and Bylaws, and the arbitration process contained therein.