United States

NATIONAL PULSE TRADE RULES

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INTRODUCTION

Pulse, n. The edible dried seeds of certain pod-bearing plants, such as peas and beans. [Middle English pols, from Old French, from Latin puls, pottage of meal and pulse, probably ultimately from Greek poltos.] Source: The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2007

This guidebook contains the National Pulse Trade Rules (NPTR) as presented by the National Pulse Trade Rules Committee of the United States Dry Bean Council (USDBC), and as adopted by the members of USDBC January 26, 2010.

The United States Dry Bean Council is responsible for the administration of the NPTR.

NATIONAL PULSE TRADE RULES (NPTR)

The United States Dry Bean Council ("USDBC") is the governing body of these National Pulse Trade Rules ("NPTR").

Annually, the USDBC president will appoint a USDBC committee known as the National Pulse Trades Rules Committee ("NPTR Committee").

Committee members should appropriately represent several aspects of the industry, and the committee should include a representative from each production area.

The NPTR Committee will meet at least annually for the sole purpose of considering and recommending changes to the NPTR.
The USDBC is a private trade organization that represents growers, shippers, canners and packagers of U.S. edible dry beans. It is comprised of U.S. state and regional groups and corporations. USDBC members are:

Bush Brothers and Company
California Dry Bean Advisory Board
California Bean Shippers Association
C & F Foods
Colorado Dry Bean Administrative Committee
Faribault Foods
Furmano Foods
Goya Foods, Inc.
Idaho Bean Commission
LH Hayward and Company
Michigan Bean Commission
Michigan Bean Shippers Association
Nebraska Dry Bean Commission
New York State Bean Shippers Association
North Central Bean Dealers Association
Northarvest Bean Growers Association
Rocky Mountain Bean Dealers Association
Washington Bean Dealers Association
Western Bean Dealers Association

SECTION 1: INCORPORATION INTO CONTRACTS

Reference to or incorporation of the “NPTR” in a contract means that except as specifically provided otherwise in the contract, each of the provisions of the NPTR is incorporated into and made a part of the contract, each party to the contract agreeing to be bound thereby. Further, by such reference or incorporation each party acknowledges the existence of and binding effect or the NPTR as applied to the contract. The NPTR are to be interpreted in accordance with industry customs and practices.

In all matters except contract formation and confirmation, in case of conflict between any provision of the NPTR and a contract provision, the contract provision prevails.

SECTION 2: CONTRACT TERMS

Buyer, Seller, and all intermediaries shall include the following terms in their original contract and confirmations:

a. Full legal name and address and representatives of Buyer and Seller and any intervening broker

b. Date of contract

c. A contract identifying number

d. A detailed product description, including:

   1. Type(s) of product
   2. Quantity
   3. Packaging
   4. Quality - clearly and thoroughly defined
   5. Weight - clearly and thoroughly defined
e. Price per unit

f. Basis of contract per Incoterms (as published by the International Chamber of Commerce, Paris, France)

g. Mode of transportation

h. Terms of shipment

i. Documents required

j. Terms of payment

k. Storage agreement, if any

l. A statement that the NPTR apply to the contract

Except as provided in Section 3, written contracts require the signature of the Buyer, the Seller, and all intermediaries. Faxed and electronic signatures are as valid as original signatures.

SECTION 3: CONFIRMATION OF AGREEMENT

a. Direct trades -

Within five (5) business days from the time of unwritten agreement Buyer and Seller must mail, fax or email a written confirmation each to the other (the Buyer a confirmation of purchase, the Seller a confirmation of sale) setting forth the contract terms as agreed upon. Within two (2) business days of receipt of the faxed or mailed written confirmation or prior to execution of a written contract, whichever is sooner, a party who believes the other’s confirmation does not conform to the agreement shall notify the other party by telephone and in writing – by mail, fax or email - setting forth the disagreement.

In the absence of timely notice of nonconformance as set forth above if one party fails to send a written confirmation, the confirmation sent by the other party is deemed to correctly set forth the contract terms and is binding upon both in case of any dispute.

b. Broker trades -

When a trade is made through a broker other than for its own account, the broker shall, not later than the close of business on the day following the unwritten agreement, fax and mail or email a written confirmation to Buyer and Seller setting forth the terms of the trade as made by the Broker and the identities of the Buyer and Seller. Within two (2) business days of receipt of such faxed or mailed written confirmation or prior to execution of a written contract, if any, whichever is sooner:

1. a party who believes the Broker’s confirmation does not conform to the agreement shall notify the Broker and the other party by telephone and in writing – by fax and mail or email - setting forth the disagreement; and

2. Buyer or Seller may reject the trade based on the identity of the other party by notifying the Broker and the other party by telephone and in writing – by fax and mail or email - of the rejection.

In the absence of timely notice of nonconformance or rejection as set forth above, the confirmation sent by the Broker is deemed to correctly set forth the contract terms and is binding upon all parties in case of any dispute.
SECTION 4: BROKER'S COMMISSION

The Broker's commission is due once the trade invoice is paid in full, or in the case of any genuine claim or dispute arising out of the trade, when the claim or dispute is settled. It is fully understood that Seller will collect any relevant storage charges due from the Buyer when the product is ordered. However, no dispute as to shipping charges affects the right of the Broker to be timely paid its commission or the Seller's obligation to pay that commission.

If a buyer pays the invoice in full to the seller at the end of the shipping period (e.g. October/November/December: invoice is paid at the end of December) the Broker’s commission is due at the time of payment regardless whether the subject of the trade or any part of it remains unshipped.

SECTION 5: ALTERATION AND ASSIGNMENT

Once a contract is executed by both parties and/or the time periods for notice of nonconformance or rejection specified in Section 3 have passed, whichever is sooner, the terms of a contract cannot be changed without the express written consent of both the Buyer and Seller. Any changes mutually agreed upon by Buyer and Seller must be confirmed by both within two (2) business days of agreement in a writing setting forth the change and its effective date.

The contract is not assignable unless mutually agreed in writing by Buyer and Seller.

SECTION 6: SHIPMENT

On all sales for shipment within ten (10) business days from the date of agreement Buyer must furnish Seller complete shipping instructions no later than the business day following the date of agreement. On all sales for shipment later than ten (10) business days (future contracts), the Buyer must furnish Seller shipping instructions early enough to permit Seller fifteen (15) business days within which to complete shipping prior to the closing date of the contract. Seller may accept or reject shipping instructions that do not conform to the terms of the contract. Seller must accept or reject non-conforming shipping instructions within two (2) business days of receipt. Shipment must be completed in full within a reasonable period of time after suitable shipping instructions are received.

SECTION 7: CONTRACT MATURITY

Unless otherwise stated by written agreement the contract shall be considered “mature” on the last day of the final month of the shipping period. Otherwise, thirty days after receipt of a corresponding invoice the unshipped portions of the contract shall become due and payable. Negotiable warehouse receipts representing unshipped quantities shall be issued to the buyer upon receipt of payment. Unpaid interest and storage charges shall accrue upon contract maturity and must be paid prior to shipment.

SECTION 8: SEPARABLE LOTS

Failure to comply with contract terms as to a particular lot, portion, or shipment of contracted product is not grounds for rescission of the entire contract or of any other contract between Buyer and Seller. Buyer can not refuse to accept delivery of or refuse to pay for any separable lot, portion or shipment of contracted product for failure of any other lot, portion or shipment to comply with the contract.

SECTION 9: MARKS

Lot Identification: An identifying lot number shall be provided on each bag at no charge.

Export Marks: None unless specified in the contract or later agreed by Buyer and Seller.
SECTION 10: RESPONSIBILITY

Except as provided in the NPTR, responsibility is as defined by Incoterms.

Seller is not liable for failure of or delay in delivery caused by strikes, riots, lockouts, civil commotions, fire, flood, earthquake, volcanic activity or other Acts of God, war, blockade, hostile acts, civil unrest, or failure, interruption or delay of transportation facilities.

SECTION 11: DIVERSION OF SHIPMENT

Diversion of a shipment by Buyer to a destination other than originally specified in the contract constitutes acceptance of that shipment and releases Seller from further responsibility for that shipment.

SECTION 12: EXAMINATION AND APPROVAL

a. Domestic:

Shipments must be inspected before unloading and within seventy-two (72) hours of constructive placement. Buyer or its representative must make any product quality claim within the same seventy-two (72) hour period. Failure to make claim within that time constitutes acceptance by Buyer. In case of partial unloading, any claim or dispute as to product quality may be made only as to the portion of the shipment that is still intact.

b. Export:

Any claim as to product quality and/or condition in respect to containerized product must be made within thirty (30) days after discharge of the vessel at the port of destination.

Any claim as to product quality and/or condition in respect to non-containerized product must be made before the product is loaded onto any vessel. Loading of claimed nonconforming quality product onto any vessel shall not negate Buyer’s right to claim or arbitration if Buyer notifies Seller and a neutral third party intervener acceptable to both Buyer and Seller prior to loading and the product is inspected and sampled (if considered necessary at the time of inspection) prior to loading.

c. Expenses of Product Dispute

In the event any product quality claim is honored, Buyer shall recover from Seller the reasonable expenses of unloading, storage and reloading of product, travel and third party intervention. In the event any product quality claim is not honored, Seller shall recover from Buyer reasonable expenses of unloading, storage and reloading of product, travel and third party intervention.

SECTION 13: QUALITY

Unless otherwise specified, product quality as determined by an official inspection certificate(s) issued by a body recognized as authoritative by industry custom and practice is final. Product that is the subject of the contract shall conform to the existing standards established at time of sale. Unless otherwise agreed, at the time of shipment the product must be sound, unadulterated (except in cases where it is custom of the trade for it to be stained, treated, inoculated, etc.), marketable, and without bad odor.

In any case in which it is claimed that delivered product does not conform to the quality required by the contract:
(a) any issue as to whether delivered product meets a contract specified industry recognized grade standard will be determined by an official inspection certificate(s) issued after inspection by a body recognized as authoritative by industry custom and practice; and

SECTION 14: WEIGHTS AND PACKING

Official product weight is determined by a licensed weigh master scale ticket provided by Seller to Buyer. Except as provided in this Section 8, weight so obtained at origin governs and is final.

Any claim for shortage must be made within twenty-four (24) hours of constructive placement of the product and must be accompanied by a statement certified by a licensed weigh master of weights on 10% or more of the entire shipment.

In case of a dispute as to the weight of a bag and tote shipment, the entire shipment shall be re-weighed at destination under the joint supervision of Seller and Buyer (or their representatives) within seventy-two (72) hours from constructive placement of the product. If such re-weighing shows a total weight less than the above allowance of the contract weight, Seller will immediately either make up the shortage or adjust the invoice in accordance with the proper weight as agreed upon between the parties.

Product shall be packed according to contract terms.

SECTION 15: LIABILITY

Expenses necessarily incurred by either party because of the other party's failure to comply with the terms of the contract, including expenses of telegrams, cables, telexes, telephone charges, demurrage, storage, handling insurance, interest, travel, attorney fees, and other expenses shall be promptly paid by the party responsible immediately upon receipt of an invoice covering such expenses and supported by documentation of such expenditures.

SECTION 16: PAYMENT

Unless otherwise specified, payment shall be in U.S. dollars, payable within thirty (30) calendar days of the bill of lading date. The following documents must be presented for payment:

(a) a copy of the original invoice
(b) proof of shipment
(c) such other documents as specified in the contract.

Proofs of shipment shall be provided no later than three (3) business days after the date of the inland bill of lading.

SECTION 17: BREACH OF CONTRACT AND PROCEDURE

a. Breach By Seller:

Buyer must notify Seller in the event Seller is in breach of the contract. Until Buyer provides such notice all contract terms apply. Within three (3) business days after Buyer's notification to Seller that Seller is in breach Buyer must notify Seller which of the following rights he elects:

1. To change those contract terms as to which Seller is in breach, without penalty to the Seller, so that Seller may thereafter comply with the remainder of the contract terms, or;
2. To cancel the contract and require Seller to pay the difference between the contract price and the fair market price on the date of cancellation.

b. Breach By Seller:

Seller must notify Buyer in the event Buyer is in breach of the contract. Until Seller provides such notice all contract terms apply. Within three (3) business days after Seller's notification to Buyer that Buyer is in breach Seller must notify Buyer which of the following rights he elects:

1. To change those contract terms as to which Buyer is in breach, without penalty to the Buyer, so that Buyer may thereafter comply with the remainder of the contract terms, or;

2. To cancel the contract and require Buyer to pay the difference between the contract price and the fair market price on the date of cancellation.

SECTION 18: MEDIATION AND ARBITRATION

a. Mediation

Parties may at any time voluntarily submit any dispute arising out of or relating to the contract to mediation using Section 16 of NPTR and the Commercial Arbitration Rules and Mediation Procedures ("CARMP") or the International Dispute Resolution Procedures ("IDRP") of the American Arbitration Association ("AAA"). In the event of a conflict between or among Section 16 of NPTR, CARMP, and IDRP, the provisions of Section 16 prevail unless the parties agree otherwise. Mediation may be requested in any form and manner accepted for initiation of mediation by the AAA as published from time to time at www.adr.org, the AAA website.

Any requested mediation must be concluded within three days after request to the AAA unless the parties agree otherwise.

Request for or initiation of mediation does not toll the time limit set forth in Section 16b., below, re: demand for arbitration

b. Arbitration of Domestic Disputes

All disputes arising out of or relating to the contract or its breach shall be resolved by final, binding arbitration as administered by the AAA using Section 16 of NPTR and the CARMP. In the event of a conflict between Section 16 of NPTR and the CARMP, the provisions of Section 16 prevail unless the parties agree otherwise.

Arbitration may be demanded by filing a demand for commercial arbitration with the AAA in any form and manner accepted by the AAA as published from time to time at www.adr.org, the AAA website. A demand is “filed” when it and the appropriate filing or administrative fee are received by the AAA.

A demand for arbitration must be filed within one year (12 months) following a breach or from the date of notice of breach was provided as set forth in Section 16, whichever is later or the claim is forever barred.

c. Arbitration of International Disputes

If the dispute involves an international party or transaction, the party initiating the arbitration should consult AAA to determine whether the matter is considered to be international in scope. If the dispute is considered by the AAA to be international in scope the arbitration shall be conducted using Section 16 of
NPTR and the IDRP. In the event of a conflict between or among Section 16 of NPTR, CARMP, and IDRP, the provisions of Section 16 prevail unless the parties agree otherwise.

d. Procedural Questions Addressed to AAA

Because Section 16 of NPTR prevails over conflicting provisions of CARMP and IDRP, a party contacting the AAA with a procedural question shall read, fax or email a copy of Section 16 to the AAA to enable the AAA staff to provide appropriate response.

e. Irreparable Harm/Emergency Measures

If a party believes that it is threatened with irreparable harm, that party shall seek injunctive relief from the AAA. Use of the AAA Rules for Emergency Measures of Protection contained within CARMP or IDRP is mandatory. The decision to seek injunctive relief shall not itself be arbitrable.

f. Selection of the arbitrator

1. If claims and counterclaims total less than $100,000, the arbitration shall be heard by one arbitrator selected by the parties from the AAA’s commercial panel, using the “strike and rank” method of selection.

2. If claims and counterclaims total more than $100,000, the arbitration shall be heard by three arbitrators selected as follows:
   - A. Each party shall select a party-appointed neutral arbitrator who must be an industry professional.
   - B. The two party-appointed neutral arbitrators shall use the “strike and rank” method to select the third neutral arbitrator from a list of commercial panel arbitrators provided by the AAA.
   - C. The third neutral arbitrator shall serve as the chair of the panel.

g. The Arbitration Hearing(s)

1. The arbitration hearing shall be conducted at a time and locale mutually convenient to the parties or as determined by CARMP or IDRP or the arbitrator(s).

2. If the parties cannot agree on jurisdiction and venue, the AAA or the arbitrator(s) shall determine those issues.

3. If claims and counterclaims total less than $15,000 necessary hearings including the arbitration hearing shall be conducted by telephone conference call unless all parties and the arbitrator agree otherwise.

h. The Arbitrator(s) Award

The award of the arbitrator(s) shall be a “reasoned award”; in writing and fully setting forth the facts, reasoning and conclusions upon which the award is based. The arbitrator may grant a request for specific performance and may consider industry standards and practices in making the award.
The arbitrator(s) may but is not obliged to award the prevailing party its reasonable costs, fees and expenses, including but not limited to filing fees, expert witness fees, attorney fees and arbitration fees and expenses. One or more parties may be the “prevailing party” on one or more issues.

i. Publication of Awards

Parties submitting the arbitration disputes shall voluntarily agree that awards shall be published by the USDBC in a timely manner.

j. AAA Guide to Mediation and Arbitration

Material pertaining to alternative dispute resolution (ADR) – including mediation and arbitration in commercial and international matters – is available from the AAA website, www.adr.org, and, in particular at the “AAA ONLINE LIBRARY”, located (as of the date of this writing) at http://www.adr.org/online_library.

SECTION 18: AMENDMENT OF NPTR

The NPTR may be amended by a majority vote of the dealer association members of the United States Dry Bean Council (USDBC).