

BANGLADESH JUTE GOODS STANDARD F.O.B CONTRACT FORM

(EFFECTIVE FROM 01-01-1989)

Contract No.....

Date :..... 19

Messrs:

Dear Sirs,

We have this day sold to you, subject to the conditions endorsed hereon, as follows:-

1. Specification
- (a) Size /Quality*
- (b) Weight / Spool Size*
- (c) Porter & Shot / Winding*
- (d) Hemmed or Unhemmed / Twist *
- (e) Striped or plain /Oil Content *
- (f) Sewing /Quality Ratio*
- (g) Other requirement, if any
2. Packing, Make up
3. Quantity
4. Quality at time of shipment guaranteed to be fair average Bangladesh standard make, weight, size, porter and shot, count
5. Price (F.O.B.) Ocean going vessel Chittagong / Mongla / Kamalapur, Dhaka (ICD).....
-
-
7. Destination, if known (a) Port: (b) Country
8. Terms of payment :
-
9. Duties & charges, if any specifically mentioned & forming part of price as in item 5 above, any alterations therein at shipment time when shipment has. been delayed for reasons beyond seller's control to be on buyer's account.

Upon the terms and conditions as detailed on the reverse:

Buyer's acceptance with seal

Yours faithfully,

Confirmed by

Signature

Name of the mill with seal (seller)

* Applicable to yarn only

This form has been approved by the Ministry of Jute on 19th December, 1988

TERMS AND CONDITIONS

1. The following terms whenever used in this contract shall respectively be deemed to have the meaning set forth in this paragraph:
 - (a) **SHIPMENT TIME / MONTH** - Between the first day of the month specified herein as the month of shipment and the 10th day of the following month and /or shipment effected by a loader declared for that month from Bangladesh Ports whichever is later.
 - (b) **DATE OF SALE** - Unless Seller has stipulated otherwise in his offer, the date on which Buyer transmits order to and at price quoted by Seller or Seller's agent or the date on which Seller transmits his acceptance of Buyer's bid.
2.
 - (a) Seller is not to be held nor shall be responsible for any delay in performance of this contract due to any of the following causes affecting the manufacturing mill : Acts of God, war, mobilization, riots, civil commotion, force majeure, lockouts, labour disturbances, power failures, industrial disputes, strikes, fire, pestilence, damage or accident to the mills or its machinery, failure of goods, for reasons beyond Seller's neglect, fault or control, to be delivered on board overseas vessel where goods have been timely despatched from mill ; cancellation or suspension of operation of shipping orders of freight contracts by Steamer companies under War Risk Clauses now or at any time hereafter incorporated in such orders or contracts ; or any other event or circumstances whatsoever beyond the control of the Seller whether due to or in consequence of any of the aforesaid causes or not (this to include delay in performance occasioned by fulfilment by manufacturing mill of any commitments where due dates or dates of such commitments' have been extended either directly or indirectly by reason of any of the causes and /or consequences above mentioned).
 - (b) In the event of a possibility of delay or failure in performance of this contract or any portion thereof by Seller due to or as consequence of any of the aforementioned causes, Seller, immediately upon being informed of such possibility, shall notify Buyer by cable of the number of rolls/bales likely to be delayed and the cause or causes of the delay. Simultaneously, the Seller shall furnish the same information in writing to Bangladesh Jute - Mills Corporation . (BJMC) / Bangladesh Jute Mills Association (BJMA) / Bangladesh Jute Spinners Association (BJSA) as the case may be. The reason for such delay shall be duly certified by BJMC / BJMA / BJSA and such certificates must be sent by Seller to Buyer.
 - (c) On receipt of seller's cable under (b) herein, Buyer shall be entitled to indicate to Seller that he is not prepared to extend the shipment time in which case, if Seller does not ship within seven days after the contract shipment time, the contract shall be deemed to be cancelled and Buyer shall have no claim against Seller in respect to the goods so cancelled.
 - (d) Buyer's election to cancel must be dispatched to Seller by cable thirty (30) days prior to shipment. time or within seven (7) days (Friday, Saturday and Sunday excluded) from receipt of Seller's cable notice under (b) herein, whichever date is later.
 - (e) If Buyer does not notify Seller in the manner setforth in (d) herein of his election to cancel, Buyer shall be deemed to have agreed to extend contract shipment time by the number of calendar days corresponding to the period of delay and if the goods are shipped within this period, that is the original shipment time specified herein plus the number of calendar days corresponding to the period of delay, or if no overseas vessel is then available, if goods are shipped upon the first overseas vessel available thereafter, Buyer shall accept the same without allowance.
 - (f) To the extent that goods are not shipped as stipulated in (a) herein, Seller shall be liable to the provisions of Clause 8 (a) and 8 (c) herein.
 - (g) If the Buyer has elected to accept delayed delivery, Seller shall notify Buyer by cable immediately of the resumption of normal conditions and cessation of the causes and/or consequences responsible for the delay in performance.
3.
 - (a) In all instances of delayed performance of this contract or any portion thereof by Seller due to or as a consequence of any of the causes mentioned in clause 2 (a) in which the manufacturing mill is not affected, Seller shall be entitled to an extension of time for the performance of this contract for a period corresponding to the period of delay and Buyer shall accept all goods so affected without allowances as soon as they are ready and freight can be secured.

(b) -In the event of possibility of delay in performance of this contract or any portion thereof, seller, immediately upon his being informed of such possibility, shall notify Buyer by cable of the number" of rolls/bales likely to be delayed and the cause or causes of the delay. Simultaneously, the Seller shall furnish the same information in writing to Bangladesh Jute Mills Corporation / Bangladesh Jute Mills Association/ Bangladesh Jute Spinners Association. The reason for such delay shall be duly certified by BJMC/BJMA/BJSA and such certificate must be sent by Seller to Buyer.

(c) Seller shall notify Buyer by cable immediately of the resumption of normal conditions and cessation of the cause and /or consequence responsible for the delay in performance under Clause 3 (a).

(d) To the extent that goods are not shipped as stipulated in (a) herein, Seller shall be liable to the provision of Clauses 8(a) and 8(c) herein.

4. In the event the manufacturing mill shall be so affected and damaged by enemy action that the mills contract in respect to the goods to be supplied against this contract cannot be fulfilled, this contract, on notice thereof irmediately given by Seller to Buyer and to BJMC/BJMA/BJSA, shall be cancelled to the extent of such goods. The reason for such failure of performance shall be certified by BJMC/BJMA/BJSA and such certificate must be sent by seller to Buyer.

5. (a) Goods shall be and remain at Seller's risk and expense until placed on board overseas vessel at Chittagong/Mongla for destination specified by Buyer.

(b) In the event goods intended for delivery against the contract are damaged and for lost without fault by Seller after dispatch from mill and prior to loading on board overseas vessel or and Seller is unable to obtain a replacement for such goods by shipment time, Seller shall immediately notify Buyer by cable as to the number of rolls/bales damaged and /or lost and the month or months in which goods to replace such goods can be shipped. Simultaneously, the Seller shall furnish the same information in writing to BJMC/BJMA/BJSA. BJMC/BJMA/BJSA shall certify the extent of damage or loss to the goods and the reason for such damage or -loss and such certificate must be sent by Seller to Buyer.

(c) On receipt by Buyer of Seller's cable under (b) herein, Buyer shall be entitled to cancel this contract to the extent of all or any portion of the goods which Seller i n such cable has stated cannot be shipped by shipment time.

(d) Buyer's election to cancel must be dispatched to Seller by cable within seven (7) days (Fridays/ Saturdays and Sundays excluded) from receipt of Seller's notice under (b) herein.

(e) If Buyer does not notify Seller in the manner setforth in (d) herein of his election to cancel, Buyer shall be deemed to have agreed to extend contract shipment time to the month or months stipulated by Seller in his notice under (b) herein and if the goods are ,shipped accordingly, or if no overseas vessel is available as of such date, if the goods. are shipped upon the first overseas vessel available thereafter, Buyer shall accept the same without allowance.

(f) To the extent that goods are not shipped as stipulated in (e) herein, Seller shall be liable to the provisions of Clauses 8(a) and 8(c) herein.

6. (a) Declaration of destination port or ports and full shipping instructions must be despatched by cable or telex and by post to the Seller not later than the first day of the shipment month failing which the Seller shall not be responsible for late shipment and shall be entitled to charge interest at 15 percent per annum from contract shipment date to bill of lading date. Should shipping instructions not be received within one month after contract shipment time, the Seller shall have the option to cancel the contract and claim damages.

(b) In the event of the Buyer nominating a vessel which is not registering for export cargo on shipment time, Seller shall have the option to ship by any other vessel loading for that destination at shipment time in accordance with Buyer's preferred carrier list and notification to that effect be given to Buyer prior to shipment. Preferred carrier list should include atleast three shipping lines operating on the routes fro n Bangladesh and one of which must be national carrier of Bangladesh.

(c) In the event of there being no steamer of the preferred lists registering for cargo at shipment time for the declared destination then the Seller shall be entitled to ship by the first available vessel loading for the destination and charge interest at the rate of 15 percent per annum from the contract time to the bill of lading

date.

7. (a) Shipment of goods or any part thereof shall be deemed to be made in accordance with this contract when all export licenses have been issued, the goods have been loaded on board overseas vessel for destination specified by Buyer, and a clean, on board, B/L has been issued, the date of the bill of lading to be accepted by the parties hereto as proof of the date of shipment. A bill of lading dated not more than seven (7) days after shipment time shall evidence shipment within the required shipment time.

(b) Where due to circumstances beyond Seller's control, shipment is not effected within 7 (seven) days after the shipment time, then the goods certified by the Steamership Company as being alongside the ocean going vessel for which they were intended, by shipment time, shall be accepted by Buyer as shipped in accordance with the contract. Goods so shipped shall be and remain at the Seller's risk, and expenses until placed on board overseas vessel at Chittagong / Mongla for destination specified by Buyer.

(c) Nothing in this clause shall nullify Seller's right under Clauses 2(e), 3(a), 5(e) or 6 herein.
8. (a) When for reasons other than those set forth in clauses 2(a) or 3(a) and/or 5(b) the goods have not been shipped in accordance with clause 7(a) or 7(b) herein by seven (7) days after shipment time, Seller shall immediately notify Buyer by cable of such failure to ship, the reason thereof and his best estimate of prospective delay in shipment, and such goods when shipped shall be accepted by Buyer with the following allowance :
 - (1) 1-1/4 percent of the gross invoice value if the lading is dated more than seven (7) days but not more than fourteen (14) days after shipment time.
 - (2) 2-1/2 percent 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 shipment time.
 - (3) 3-3/4 percent of the gross invoice value if the bill of lading is dated more than twenty one (21) days but not more than one (1) calendar month after shipment time.
(b) If Seller fails to ship goods in accordance with Clause 1(a) and in the meantime ocean freight rates and/or surcharges are increased, Seller will be liable to pay the Buyer the difference between the old rates and the increased rates in addition to the late shipment allowance as specified in Clause 8(a) herein.

(c) If the goods have not been shipped in accordance with Clause 7(a) or 7(b) herein within one (1) calendar month of shipment time Seller immediately shall further notify Buyer by cable that the goods have not been shipped and Buyer shall have the following option to be despatched to Seller by cable within seven (7) days (Fridays, Saturdays and Sundays excluded) from receipt of Seller's notice:
 - (1). Cancelling the contract herein contained 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 rate prevailing in Bangladesh for goods of the same description, at Buyer's option either (a) at shipment time or (b) on the date seller notified Buyer hereunder that the goods had not been shipped as of one (1) calendar month of shipment time; or
 - (2) Accepting the goods with an allowance to be mutually agreed upon, such allowance in no event to be less than 5 percent of the gross invoice value.
(d) Nothing in this Clause shall nullify Seller's rights under the provisions of clauses 2 (e), 3(a), 5(e) or 6 herein.
9. In the event any portion of the goods covered by this contract is not shipped in accordance with the terms hereof the right of the Buyer to cancel, reject, claim or exact penalties is to apply to such portion only and Buyers are bound to accept any portion shipped in accordance with the contract.
10. Where the contract provides for shipment to be made in instalments, each instalments shall be deemed for all purposes a separate contract.
11. In the event of the Government of the People's Republic of Bangladesh prohibiting or in any way restricting trade between Bangladesh and the destination country before the performance of this contract, this contract shall be deemed to be null and void to the extent of the unfulfilled portion thereof.
12. Where terms of payment for the total value of goods covered by this contract call for opening by Buyer of Letter of Credit such Letter of Credit must be opened not later than 45 (forty five) days before the last day of

the month of shipment. If due date of shipment is less than 45 days from the date of contract then Letter of Credit must be opened and intimation be given to Seller within 10 (ten) days of date of sale unless another date is mutually agreed upon and must not include conditions in any way differing from the terms of contract. The expiration date of Letter of Credit must not be less than one calendar month after shipment time.

13. Irrespective of the method of payment the Buyer shall remain responsible for payment of the full value of all goods shipped in accordance with this contract and shall guarantee payment thereof.
14. Should Buyer fail within seven (7) days of presentation to accept or pay Seller's draft or bill covering goods shipped in accordance with the terms of this contract, Seller shall, in addition to their other rights and notwithstanding the provisions of Clause 9 hereof be entitled (1) to treat such failure as a repudiation by Buyer of this contract or of such part thereof as remains to be performed and by notice by cable to Buyer to refuse to make any further shipments under the contract or such part thereof as remains to be performed and to recover from Buyer in respect of the balance of the contract damages based upon the difference between the contract price and 'the market rate ruling on the date on which Seller shall give such notice and (2) to dispose of the goods already shipped under the contract private sale or public auction on Buyer's account and risk after seven (7) days notice to the Buyer and to recover from the Buyer any loss or deficiency which may arise from such sale together with all' expenses in connection therewith. In no event shall Buyer be entitled to claim any payment on account of the market rate being in excess of the contract price or for any other reason.
15. If either party shall suspend payment of his debts or commits an act of insolvency or goes into liquidation, the other party, at his option which option must be exercised by cable despatched to the first party, may (1) treat the contract as continuing and, 'so far as he legally can, require such contract to be performed or (2) cancel the contract herein contained to the extent of all unshipped instalments and thereupon he shall be entitled to recover from the first party or his estate or the official assignee or receiver or liquidator as the case may be damages for non-performance of the contract based upon the difference between the contract price and the market rate ruling on the second day after the date on which the suspension of payment or commission of the act of insolvency or going into liquidation became known to him. In no event • shall the party suspending payment or committing an act of insolvency or going into liquidation or his estate or the official assignee or liquidator as the case may be, be entitled to claim any payment on account of the market rate being in excess of the contract price.
16. The market. rate referred to in Clauses 8(c)(1), 14, 15 and 19 shall in the case of any dispute be the prevailing market price for goods of similar type and quality as certified by Bangladesh Jute Mills Corporation/Bangladesh Jute Mills Association/Bangladesh Jute Spinners Association.
17. All claims relating to hessian, sacking and other jute goods except carpet backing cloth must be filed within one hundred eighty (180) days from the date of landing of the goods at destination. Seller if necessary has the right to ask for landing certificate at a later date.
18. Failing amicable settlement, all matters, questions, disputes, differences, prices and/or claims whatsoever' arising out of and/or concerning and/or in connection with and/or in consequence of or relating to this contract whether or not the obligations of either party or both parties under this contract be subsistin. . the time of such dispute and whether or not this contract has been terminated or frustrated or purported to be terminated or completed shall be determined by submission to the Tribunal of Arbitration of the Metropolitan Chamber of Commerce & Industry at Dhaka, to be arbitrated upon in accordance with Rules of such Tribunal in force for the time being arbitrated upon in accordance with Rules of such Tribunal in force for the time being and the Award of the Arbitrators appointed thereby "shall be final and binding upon the parties to this contract. Buyer shall retain a fair number of bales/rolls in an intact condition. The Arbitration shall be based on intact bales/rolls held by Buyers which if stipulated by the. Arbitrators shall be returned to Dhaka at the loser's expenses and at contract rate. Not withstanding this, if the Buyer arranged to have the goods surveyed at his premises by a Surveyor mutually selected and agreed upon by the Seller and the Buyer, the relative Survey Report in respect of quality, packing, make up, measurement, weight and condition shall be admissible in evidence by the 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 thirty (30) days from the date of disowning claim by Seller, the Seller shall be discharged front liability in respect of such claim.

The contract, when arbitrated upon, shall be construed according to and the parties agree to be bound by the laws in forces in Bangladesh in all matters governing the rights and liabilities of the parties arising thereunder.

19. If the Buyer commits a breach of any other contract or contracts which may exist between the Seller and the

Buyer the Seller shall be entitled to (1) cancel the contract or (2) treat the conduct of the Buyer in committing 'a breach of such other contract or contracts as wrongful refusal by the Buyer to perform this contract and by notice to the Buyer, put an end to this contract or such parts or instalments thereof as remain to be performed, and thereupon shall be entitled to recover from the Buyer damages for non performance of this contract based on the difference between the contract price and the market rate ruling on the second day after the date on which the Seller shall become aware of the breach by the Buyer of such other contract or contracts. In no event shall the Buyer be entitled to claim any payment on account of the market rate being in excess of the contract price or for any other reason.

20. This contract is subject to the special war and / or other Clauses which may now or at any time be incorporated by shipping companies in their shipping orders and / or which may at the date of shipment be included by Shipping Companies in their bills of lading. Any loss or damage caused directly or indirectly by or in consequences of the operation of 'such Clause is on Buyer's account.
21. Upon Buyer's request, Seller shall furnish Buyer with measurement and weight certificate issued by the Licensed Measurers at Chittagong / Mongla. Such certificate shall be evidence of the weight and measurement of the goods at the time of shipment but not to be conclusive on the parties thereto.
22. Govt. of Bangladesh reserves-the right to amend, alter and change any of the above contract Clauses in order to safeguard the interest of trade in Jute Goods from Bangladesh.