



National Grain and Feed Association Arbitration Decision

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August 20, 2025

CASE NUMBER 2919

PLAINTIFF: SIMMONS GRAIN CO., SALEM, OHIO

DEFENDANT: FIELD FARMS MARKETING LTD., PETROLIA, ONTARIO, CANADA

STATEMENT OF THE CASE

This case involves two contracts between Simmons Grain Co. (Simmons), as buyer, and Field Farms Marketing Ltd. (FFM), as seller, for organic soybeans and organic soybean meal. Both parties issued confirmations for these contracts with terms specifically as follows:

Soybean Contract

Simmons Confirmation

Contract No: 79

Contract Date: 2/23/2021

Commodity: Organic Soybeans

Quantity: 33,330.000 BU

Pricing/BU: BU – 33,330.000 Price – 24.5000

Shipment Period: START: 2/22/2021 **END:** 6/30/2021

Ship Mode: Truck

Weights to Govern: Destination

Grades to Govern: Destination

Del. Basis/FOB Point: FOB

Trade Rules to Govern: National Grain & Feed Association

Discount Schedule Notes: Simmons Discount Schedule Eff. 09/01/2019

Contract Notes:

- If this contract is not filled within the specified time, it shall be considered an open contract until the grain is shipped. We reserve the right to cancel, to extend time of shipment or to fill contract here or elsewhere at our option, any grain not shipped within contract time, and any loss resulting thereby to be paid by you.
- If no objection is made to this contract immediately it shall be considered to signify your acceptance and will be considered final. Our verbal contract is a legal contract and you [sic] signed returned copy is only a business courtesy. We require that a signed copy be returned to us promptly for our files.
- This contract is made subject to the trade rules of the National Grain and Feed Assoc., and arbitrated according to such rules as the sole remedy. Shipment will be applied on oldest purchase from you. Unless otherwise provided, off grades to be applied on contract at the above discounts except that we reserve the right to refuse any grain grading 'no grade'.

FFM Confirmation

CONTRACT NO SSBO19016

CONTRACT DATE FEB 10/2021

PRODUCT Organic Feed Crusher Soybeans, NOP/COR – Certified min 38% protein, Oil content min 17%, Moisture max 13%, Foreign material [FM = other than bean material] max 2%, sound and merchantable product suitable for crushing

CONTRACT QTY 1,000.0000 ST Subject to 1 truck load trial in week of Feb. 20th

SHIPPING UNITS Truck Load

SHIPPING SCHEDULE FEB 19/2021 to MAR 31/2021(later amended to April 30 – 2021)

PRICING \$816.66/ST Ex Works

CURRENCY United States Dollars

PAYMENT TERMS Cash on Delivery

DESTINATION Kutztown, United States of America

Trade Rule Info: NGFA GRAIN TRADE/ FEED TRADE RULES, WHICHEVER IS APPLICABLE, NGFA ARBITRATION RULES

Documents: Invoice, Bill of Lading, Organic Certificate

The General Sales Terms of Field Farms Marketing Ltd. ("GST") are hereby incorporated by reference in this Sales Agreement with the same force and effect as if the GST were fully set forth here at length. The GST are hereby made a material part of this Sales Agreement. A copy of the GST is available upon request from Field Farms Marketing Ltd. or can be viewed and/or downloaded from the Field Farms Marketing Ltd. website at: <https://fieldfarms.ca/>

19. Resolution of Disputes. Any dispute, claim or controversy between the Seller and the Buyer as a result of the interpretation, performance or enforcement of any right or obligation arising from these Sales Terms or the Agreement shall be determined in accordance with the terms of these Sales Terms by arbitration to be conducted in accordance with the then appertaining rules of the NGFA, unless the Buyer is a non North American based person or entity, in which event arbitration in accordance with GAFTA Rule No. 125, as amended from time to time, shall be held. The Seller and the Buyer hereby expressly agree to arbitration in accordance with the terms of this paragraph 19. Any arbitration between the parties hereto shall be final, conclusive and binding upon the parties hereto, according to the rules of arbitration used, and any arbitration award shall be enforceable in any court of competent jurisdiction wherever situate. ...

[FFM subsequently issued an amendment to this confirmation, extending the shipping period through April 30, 2021.]

Meal Contract

Simmons Confirmation

Contract No: 84

Contract Date: 3/1/2021

Commodity: SBMIMPORT Imported Organic Soybean Meal

Quantity: 1,000.0000 TON

Pricing/TON: TON – 1,000.0000 Price – 850.0000

Shipment Period: **START:** 3/1/2021 **END:** 6/30/2021

Ship Mode: Truck

Weights to Govern: Destination

Del. Basis/FOB Point: FOB

Contract Notes:

NGFA® TRADE RULES AND ARBITRATION TO APPLY: Except as otherwise provided herein, this Contract shall be subject to the Trade Rules of the National Grain and Feed Association (NGFA), which

are incorporated herein. The parties agree that the sole remedy for resolution of any and all disagreements or disputes arising under or related to this Contract (including, but not limited to, any statutory or tort claims arising from the relationship between the parties) shall be through arbitration proceedings before the NGFA pursuant to the NGFA® Arbitration Rules without the necessity of court order, provided further that Seller consents to enforcement of the obligation to arbitrate disputes in any state or federal court and expressly waives the defenses of personal jurisdiction and venue with respect to any such action. Any question regarding arbitrability shall be decided by the NGFA Secretary or the NGFA arbitrators. The decision and award determined through arbitration shall be final and binding upon the parties. Judgment upon the arbitration award may be entered and enforced in any court having jurisdiction thereof ...

IMPORTANT NOTICE: The parties' Contract also is subject to the terms and conditions set forth on page 2 (which may be the reverse side hereof).

Trade Rules to Govern: National Grain & Feed Association

FFM Confirmation

CONTRACT NO SSBM20023

CONTRACT DATE MAR 15/2021

PRODUCT Organic Soybean Meal, COR/NOP – Minimum protein content of min. 47%, min 5% fat, moisture max 9%, crude fiber content max 7%, Calcium min 0.15%, Phosphorus min 0.4%, Magnesium [sic] min 0.27%, Urease between 0.1 to 0.2, no musty, moldy or other objectionable odour, no discoloration, sound and merchantable. Organic Feed-Grade Soymeal

CONTRACT QTY 1,000.0000 st

SHIPPING UNITS Truck Load

PACKING UNITS Short Ton

SHIPPING SCHEDULE MAR 15/2021 to JUN 30/2021

PRICING \$850.00/st Ex Works

CURRENCY United States Dollars

PAYMENT TERMS Cash on Delivery

DESTINATION Kutztown, United States of America

Documents: Invoice, Bill of Lading, Organic Certificate

Shipments to be coordinated with FFM inventory coordinator week by week.

Container availability, transshipping in Europe and organic certifications are volatile and cannot be influenced by FFM. Therefore, FFM has to up-date week by week the availability of product.

Any dispute, claim or controversy between the Seller and the Buyer as a result of the interpretation, performance or enforcement of any right or obligation arising under the Agreement shall be determined by arbitration pursuant to the provisions of the Ontario Arbitration Act, 1991, S.O. 1991, c. 17 then obtaining and shall be held in the Province of Ontario.

The General Sales Terms of Field Farms Marketing Ltd. ("GST") are hereby incorporated by reference in this Sales Agreement with the same force and effect as if the GST were fully set forth here at length.

The GST are hereby made a material part of this Sales Agreement. A copy of the GST is available upon request from Field Farms Marketing Ltd. or can be viewed and/or downloaded from the Field Farms Marketing Ltd. website at: <https://fieldfarms.ca/>

19. Resolution of Disputes. Any dispute, claim or controversy between the Seller and the Buyer as a result of the interpretation, performance or enforcement of any right or obligation arising from these Sales Terms or the Agreement shall be determined in accordance with the terms of these Sales Terms by arbitration to be conducted in accordance with the then appertaining rules of the NGFA, unless the Buyer is a non North American based person or entity, in which event arbitration in accordance with GAFTA Rule No. 125, as amended from time to time, shall be held. The Seller and the Buyer hereby expressly agree to arbitration in accordance with the terms of this paragraph 19. Any arbitration between the parties hereto shall be final, conclusive and binding upon the parties hereto, according to the rules of arbitration used, and any arbitration award shall be enforceable in any court of competent jurisdiction wherever situate. ...

[FFM subsequently issued an amendment to this confirmation, extending the shipment period through August 30, 2021]

Claims by the Parties

Simmons claims FFM failed to fully perform on the contracts because FFM failed to make timely shipments in accordance with the contract terms; and FFM demanded that Simmons prepay for shipments and pay duty deposits on soybean meal originating from India (neither of these conditions were provided for in the contracts). Simmons also claims it made numerous efforts to resolve the contractual issues with FFM. Simmons deemed FFM in default and cancelled the contracts on July 29, 2021. Simmons calculated its damages and issued an invoice to FFM, with a credit of \$76,435.76 for the quantities delivered by FFM under the contracts.

FFM claims Simmons improperly cancelled the contracts and it was Simmons that breached the contracts. FFM argues it invoked an “Act of God Clause” due to the COVID-19 pandemic and a major event with delays at the Suez Canal. FFM claims Simmons breached the Soybean Contract by not taking delivery before the deadline of April 30, 2021; and Simmons breached the Meal Contract because there was a month left in the delivery period in the contract terms at the time Simmons cancelled the contract. FFM also argues Simmons breached both contracts by failing to make timely payment for delivered product. FFM further challenges the jurisdiction of NGFA to resolve the parties’ dispute with respect to the Meal Contract because FFM’s confirmation for that contract provided for arbitration pursuant to the Ontario Arbitration Act.

THE DECISION

The arbitrators noted that the contract confirmations presented in this case are inconsistent, as each party included and omitted different key items in their respective confirmations. The confirmations issued by the parties contained different and contradictory contract dates, delivery periods, contingencies and other terms. Ultimately, FFM’s confirmations were signed by Simmons; and, therefore, the arbitrators determined the FFM confirmations hold precedence.

Soybean Contract

The Simmons confirmation provided for delivery through June 30, 2021, and FFM’s confirmation provided for delivery through April 30, 2021. The parties continued to discuss delivery under the Soybean Contract in mid-June 2021. Simmons ultimately took delivery of the majority of the beans under the Soybean Contract through July 2021.

The arbitrators find it odd that in the email conversation between the parties when entering into the Soybean Contract in February 2021, FFM stated its “Kutztown bin” was full and needed to be cleared out by the end of March to make room for additional product – but then the parties amended the contract for delivery in April. Delivery then continued through June and July. 6,650.66 bushels were still outstanding as of July 29. The arbitrators question whether FFM truly had the product in February as delivery should then have occurred long before July.

FFM argued that lack of payment by Simmons was the issue. Based upon the evidence presented in this case, Simmons did not make next-day payment on any of the invoices; however, no invoices were outstanding past 30 days (until the final payments were withheld as Simmons was then seeking assurance of further deliveries). FFM's submitted a chart depicting invoicing and payments in this case, but it did not demonstrate a history of delinquent payments by Simmons. On the contrary, FFM's submission shows most payments arrived within a week or two of invoicing, which is acceptable in the grain industry. From the submissions provided in this case, the arbitrators are unable to identify any internal credit limits or other information that could shed light on FFM's claims related to the payments being late. The arbitrators also note that withholding of payment until assurances of delivery is provided is a practice in the industry.

The arbitrators find in favor of Simmons regarding the Soybean Contract. The parties each presented one source for establishing of price, and the arbitrators used an average of the two to calculate damages as follows:

Average Price: $(\$36.25 + \$26.73)/2 = \$31.49$

Cancellation Price: $\$31.49 - \$24.50 = \$6.99$

Total Damages: $\$6.99 \text{ cancellation price} \times 6,650.66 \text{ bushels} = \$46,488.11$

Because Simmons owed \$50,085.76 for unpaid deliveries under the Soybean Contract, after deducting for the contract cancellation, Simmons owes to FFM the amount of \$3,597.65.

Meal Contract

The arbitrators find the issues with the Meal Contract to be very similar to those with the Soybean Contract. While FFM did discuss Force Majeure on its imports from India with Simmons in March 2021, the parties worked out an amendment to ultimately delay delivery until Aug. 31, 2021. Thus, the arbitrators conclude Force Majeure does not apply in this case. The arbitrators also note the meal could come from any destination including domestic locations, and this appeared acceptable to both parties given they amended the contract. The arbitrators determine this was also a reasonable resolution. FFM did not appear to make any substantial attempt to buy-in meal from other destinations to fulfill its contract obligations with Simmons.

With respect to the challenge whether NGFA Arbitration has jurisdiction in this matter over the Meal Contract, Paragraph 19 [Resolution of Disputes] of FFM's own General Sales Terms specifically provides for NGFA Arbitration. Therefore, the arbitrators conclude NGFA has jurisdiction over the Meal Contract.

Thus, the arbitrators find in favor of Simmons regarding the Meal Contract. The parties each presented one source for establishing of price, and the arbitrators used an average of the two to calculate damages as follows:

Average Price: $(\$1600 + \$963.67)/2 = \$1,281.84$

Cancellation Price: $\$1,281.84 - \$850 = \$431.835$

Total Damages: \$431.835 cancellation price x 887.45 tons = \$383,231.97

Because Simmons owed \$26,250 for unpaid deliveries under the Meal Contract, after deducting for the contract cancellation, FFM owes to Simmons in the amount of \$356,981.97.

The total award to Simmons is consequently \$353,384.32 (\$356,981.97 less \$3,597.65).

THE AWARD

The arbitrators awarded \$353,384.32 in damages to Simmons Grain Co. from Field Farms Marketing Ltd. No interest or legal fees are awarded.

Decided: May 30, 2025

Submitted with the unanimous consent of the arbitrators, whose names appear below:

Mike Hogan, *Chair*
Corporate Origination Manager
Consolidated Grain and Barge Co.
Jeffersonville, IN

Darren Amerongen
Director of Merchandising
Parrish & Heimbecker Ltd.
Winnipeg, MB, Canada

Craig Haugaard
Grain Division Manager
Superior Ag
Huntingburg, IN