

MINUTE of MEETING of the "CONDITIONS"
sub-COMMITTEE of the SCOTTISH POTATO
TRADE ASSOCIATION held at 8, Kinnoull
Street, PERTH at 4 p.m on Tuesday,
16th OCTOBER, 1979

PRESENT:

Messrs. G. Brass, J. George, R.D. Hunter and D.H. Lindsay,
with D. Blackmore (Assistant Secretary) in attendance.

APOLOGIES:

Mr. Blackmore intimated apologies on behalf of Messrs. J.H. Barr,
and J. Henderson.

Mr. Hunter explained that to-day's Meeting followed directly
from Council's special Meeting on 2nd October, when instructions had
been received on "working days" and "mitigation of loss" matters and
when NASPM's Second draft "Conditions of Sale" had been remitted to
the sub-Committee's detailed examination. He felt it was important
to complete the latter task before tomorrow's Meeting of the Joint
Liaison Committee in Edinburgh although this had meant regrettably
short notice of today's Meeting.

He also recounted the content of a further telephone call from
Mr. Christopher Baker giving his private views on two changes he
intended to discuss with Mr. Manton Baxter before tomorrow's Meeting.
In a brief review the sub-Committee agreed the SPTA position at
tomorrow's Meeting be confined to a form of progress report outlining
the main remaining differences of view, without deciding specific
issues not competent to that Meeting.

Turning to detailed examination of NASPM's second draft "Conditions
of Sale" and comments contained in Mr. Manton Baxter's covering letter
therewith (compared with the first (printed) draft) the sub-Committee
discussed and agreed as follows:-

- 2(1) - BASIS AND APPLICATION - deletion of "and revised price quoted
by the seller" - it was considered this clause could be restored
if "may be" was inserted between "price" and "quoted" without
impairing reasonableness. The phrase "prior to sale" preceding
this deletion was also felt to be un-necessary.
- 3(1) - CONSUMERS AND NEGLIGENCE - addition of "a commercial grower
would not be classed as a consumer" to the end of this clause
was accepted
4. - CERTIFIED AND - Insertion of "BASIC", at the beginning
of the heading was accepted
5. - TITLE - No change proposed - it was agreed none was required
6. PROTECTION - substitute "five working days" and add "working
days in these Conditions excludes Saturdays, Sundays Statutory
and Bank holidays and holidays by Royal Proclamation."

While accepting these amendments the sub-Committee felt surprise
that the provision "unless the uplifting and despatch of the
Seed Potatoes would be imprudent owing to adverse weather conditions"
(as used in the SPTA Conditions of Purchase(3)) had not been
used. Considering that addition of this provision following
"uplifting the Seed Potatoes" in the second draft would improve
reasonableness, it was agreed it should be suggested to NASPM
for their views in this latter respect.

7. - TOLERANCES:- Neither the Manchester Meeting or the second draft
made any change to the first draft of this Condition.

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8. - DELIVERY(3) - Mr. Hunter, pointed out that despite the Manchester meeting's agreement to accede to the N.F.U observation that delay owing to adverse weather be by agreement, amendments in the second draft (on NASPM's legal advice) still do not allow the Buyer to postpone delivery for this cause at his end. The sub-Committee was unanimous that this omission be rectified and that "and delivery" be deleted from this clause, which should now read "Without prejudice to Condition 16 below, loading may be postponed by the Buyer or the seller owing to adverse weather Conditions".

(4) Mr. Manton Baxter's comment was noted and this clause was accepted as unchanged.

(5) Noting that in the first draft this clause referred primarily to "short-weight" and subsequently (ambiguously) to "quantity", whereas the second draft specifies only "number of containers", the sub-Committee felt concern that complaints for short weight (either in the whole consignment or in individual bags etc.) appeared not to be provided for.

After discussion it was agreed that sub-clause (a) should be further amended to read "The buyer or his authorised representative acknowledges in writing at the time of arrival of the Seed Potatoes at their destination the quantity actually received and"

In the context of sub-clause (b) the sub-Committee recognised that "receipt" determined the commencement of the permitted period for complaint. It was agreed "such arrival" should be substituted for "receipt" and in view of the (now) pre-definition of "working days" (under Clause 6 amended, as above), it was also agreed to add "When the third day falls on a day other than a working day the period shall continue until the first working day thereafter" to this sub-clause

9. - PASSING OF RISK (1) - Mr. Hunter pointed out that he had understood at the Manchester Meeting it had been agreed to insert the words "or in accordance with his instructions" after the words "Buyer's premises" in this sub-clause. In the event the second draft now read "or to such premises as he may direct". It also was pointed out that even this wording should^{be} altered from "may direct" to "has directed". After further discussion it was decided not to propose any further changes in this sub-clause. Mr. Hunter remained unhappy with the looseness of "or collected by the Buyer's transport" and it was agreed NASPM be asked to have their legal advisors confirm their satisfaction with this point.

sub-clause (2) Property was unchanged and accepted.

10. - GERMINATION - Despite the N.F.U's observation on this Condition, the sub-committee re-affirmed its view that it must not be changed in any way.
11. - PATENT DEFECTS (1) Mr. Manton Baxter's comments and the various amendments incorporated in the second draft were carefully studied and very fully discussed. It was agreed that the definition of Patent Defects was absolutely clear and pre-cluded its application to skin spot, gangrene and dry rot, which diseases the trade has traditionally termed "Latent diseases." It was recognised that N.A.S.P.M.'s wish^{to confine the term} "Latent defects" to tuber-borne virus diseases (which do not manifest themselves until the daughter crop) required exclusion of skin spot, gangrene and dry-not from the term "latent".

Resolution of the difficulty thus created remains the central and most serious difficulty. It is further complicated in/

in that skin spot, gangrene and dry rot are diseases that can be present but undetectable at loading (hence the existing 10-day period allowed after arrival for their emergence) yet, although not so present at loading, can also arise from handling after loading (hence the limiting of the period to 10 days).

During very prolonged discussion of various suggestions the following amendments to the second draft were noted:-

- (A) 11 - omit "PATENT" from the heading
- (B) - in (1), after ("Patent Defects") add "or to latent diseases as defined in sub-para (a) hereof"
- (C) "THE SELLER" terminates at "..... DESTINATION."
- (D) in sub-clause (a) insert "which latent diseases are not Patent Defects" between "dry rot" and "the Buyer"
- (E) - (2) to become IN RESPECT OF (1) AND (A) ABOVE IT IS PROVIDED THAT:-
 - (a) The Seller is given an opportunity to inspect the Seed Potatoes
 - (b) "if the buyer"
- (F) (present) 2 renumbered (3)
- (G) (present)(3) renumbered (4) and amended as agreed by Council on 2nd October, 1979.
- (H) - (present)(4) renumbered (5). Mr. Hunter felt this definition of "destination" to be inadequate. It was felt it may yet be necessary to use the present S.P.T.A Conditions of sale definition. While the Manchester Meeting had agreed different definitions in the Scottish and English versions of the revised Conditions would be in order Mr. Hunter still preferred only such divergence as was absolutely necessary
- (I) - CONDITION 12 to be renumbered 11 (6) and be re-sub-headed, at the same time deleting (present) (3) as which latter was understood to have been agreed by the Manchester Meeting.

Mr. Hunter felt these changes would effectively resolve the central problem. The sub-Committee agreed he should prepare and evaluate a combination of the second draft Conditions 11 and 12 in a single Condition 11 ^{con}restructured on these lines for submission to N.A.S.P.M.

- 13. EXCLUSION OF LIABILITY,
- 14. COMPENSATION AND DAMAGES, were each accepted in unamended form
- 15. PAYMENT:
- 16. FORCE MAJEURE, now amended by inclusion of the Buyer and deletion of "Council" was accepted.
- 17. CONSTRUCTION Confirmed as absolutely essential differences in the eventual Scottish and English forms.
- 18. DISPUTES

NOTE - It was confirmed this should be deleted.

The sub-Committee's Meeting was thereupon concluded.