

- 7.13 The first issue which I consider is the contract delivery period. There was no condition pertaining to the delivery period of the Contracts contained in the contract confirmation. Buyers submitted that Sellers knew that August and September 2017 was the period when goods were required to be delivered and it would be fanciful that they had bought goods for an open delivery period. Buyers additionally submitted that by having a prepayment clause which provided for "...within one day after the contract is signed and stamped" along with a liquidated damages clause it could be reasonably expected that Sellers had to deliver immediately upon payment of the prepayment. Sellers, in their email to the Tribunal dated 20 August 2018, submitted that there was no delivery period contained within the Contracts but did not open their argument in any way suffice to say that they (Sellers) would be ready to fulfil their obligations.
- 7.14 Buyers further submitted that 2017 Crop, as described within the Contracts, would be worthless or only sellable at a significant discount as a result of Sellers' delay and failure to perform. Buyers additionally relied on the clause contained within the Contracts entitled "Responsibility of the Parties" in respect of its claim for liquidated damages and its position that delivery was expected immediately or very shortly after contract formation and prepayment. Buyers argued that when read in conjunction with the 'Payment Terms' Clause, then if the Contracts did not state a time for delivery then it would render the "Responsibility of the Parties" clause redundant.
- 7.15 In my opinion it is trade practice that a prepayment clause in a commercial contract operates to provide funds remitted within a reasonable time of the start of the contract delivery period, in this arbitration it may have been correct that Buyers would be required to make a prepayment within one day of the signing of the contract and this would signify that the contract delivery period was near. I accept Buyers' argument that such a strict obligation to make payment within 1 day of the contracts being "signed and granted" and liable for day-to-day delays (as per the "Responsibility of the Parties" Clause) does signify that the delivery period was due to start at a point in time close to the prepayment dates which I take as August 2018 and which Buyers' evidence confirms.
- 7.16 That said, the question then arises of when the time of delivery ceases and the end of the contract delivery period occurs. This is important because it will give either party the date on which the contract ends and can be terminated against the non-performing party. In a commercial sense, it will then provide for a default date and damages (if any) can be assessed to that time. In other words, it gives finality but was not a term which was contained within the Contract confirmations.