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If no particular court of arbitration has been agreed, the plaintiff party has the right to choose.

- 4) The arbitration is to be carried out according to the regulations governing the court of arbitration in question in the version valid on the day the request for arbitration is made.

§ 2 Written confirmations

- 1) If contracts or confirmations are exchanged or given out by a party to the contract or by an agent, all previous agreements are deemed cancelled if they have not been included in the contract or confirmation. Contracts and/or confirmations against which no immediate protest is made in written form are deemed approved.
- 2) If contract(s) and confirmations or several confirmations are exchanged, the seller's confirmation is to take priority as long as it remains uncontested.
- 3) If later verbal agreements are made, they are valid only if at least one party confirms them immediately in writing. If no immediate protest is made in writing against such written communications, they are deemed approved.

§ 3 Notices

- 1) The term "in writing" includes communications by telex and telegraph as well as any other form of rapid written communication such as, for example, teletex or telefax. The term "by telex" includes telegraphic communication as well as any form of rapid written communication such as, for example, teletex or telefax.
- 2) Resellers and buyers in string must forward all communications without delay.

§ 4 Business days

- 1) All calendar days count as business days apart from Saturdays, Sundays, public and other recognised holidays as well as December 24th and 31st.
- 2) The day on which the business is concluded as well as the day on which notification is received that a deadline has been set is not included in the calculation of deadlines.
- 3) Declarations which are received on a business day after 16.00 hours are deemed to have been received on the following business day.
- 4) Differently recognised public holidays count to the benefit solely of the party which must make or receive a declaration or to act on such a day.

§ 5 Deadlines

The term "first half of a month" includes the days from the first to the fifteenth of the month, the term "second half of a month" includes the sixteenth to the last day of the month in question.

§ 6 Destination

- 1) If the port of destination has not been agreed by the parties, the buyer must declare the destination by telex so that the buyer receives this at the latest on the first business day of the month preceding the agreed delivery month. This regulation applies with appropriate amendments if the period of fulfilment is other than one calendar month.
- 2) If the buyer does not receive the declaration of destination within the time period set he may, on notifying the buyer by telex, set as destination a place lying within the contractual agreement.

§ 7 Shipment / margins

- 1) Shipment must be carried out by first class seaworthy ocean-going vessels, or in the case of river barge transport, good river barges, tow or push barges, directly or indirectly.
- 2) The seller is entitled to ship, in the case of shipment with river barges, up to 5 %, in the case of shipment with sea vessels 10 % more or less at the contract price.
- 3) Each part delivery stands as a separate contract. The seller has the right to make use of the 5 % or 10 % quantity margin only for the final quantity loaded within the agreed period of fulfilment. Part shipments below 47.500 kg are not permitted.

§ 8 Transshipment

The seller is permitted to tranship the goods provided the following conditions are fulfilled:

- a) An appropriation as per §15 for the connecting vessel is sent by the seller after transshipment is completed
- b) The invoice is presented on the basis of the weight loaded into the connecting ship and documents for the connecting ship are presented, if shipment is made without through bills of lading.
- c) The seller bears the transport risk relating to possible damage and average of the goods up to the port of transshipment. After receiving knowledge of such an incident he must inform the buyer without delay.

§ 9 Commingling

- 1) The seller is permitted to load together goods of the same type and quality, which have been traded on the same quality conditions on the basis of a German-Dutch Contract, even if they are destined for several ports. He must give notice of this in the appropriation. No disadvantage must accrue to the buyer from this commingling.
- 2) In the case that goods are discharged in one or more places the receivers must allow pro-rata invoicing to be applied to them. The price on the last day of discharge in the final port of discharge is to apply.

§ 10 Stowage Bags

In the case of seagoing vessels the seller is permitted to load up to 10 % of the goods into stowage bags. In this case the buyer must organise cutting, emptying and handling of the bags during discharge and carry the costs thereof. The sacking material remains the property of the buyer.

§ 11 Timely fulfilment

- 1) If goods have been sold on “delivery” basis the seller fulfils the contract in respect of timeliness with the presentation of the notice of readiness to discharge by the ship’s captain. If the notice of readiness is presented before the beginning of the contractually agreed delivery period then this declaration is deemed to have been presented for the first business day of the period of fulfilment. The seller is responsible for all costs resulting from the premature declaration.
- 2) If goods have been sold on “arrival” basis the seller has fulfilled the contract in respect of timeliness on arrival of the goods in the port of destination.

§ 12 Charter party

- 1) The seller must enter into a freight contract for shipment of the goods at the customary terms. In the case of inland waterway transport the buyer must accept from the seller a freight contract made on the basis of usual bill of lading terms.
- 2) Discharge costs as well as quay dues, wharfage or other costs in the port of destination which are levied in relation to the use of the quay are to be borne by the buyer.
- 3) Lightering costs and demurrage which is incurred because the ship is hindered from reaching the port of destination are to be borne by the seller and if applicable are to be accounted for in the final invoice. The decision to unload goods during inland waterway transport must be made by the seller.

§ 13 Insurance

- 1) The seller must insure the goods in the contract currency at usual FPA terms, in the case of ocean voyage including war, mine and torpedo risk, with first class insurance companies for whose solvency he however is not liable, at a level of 2 % above the contract price. Any sum in excess of this is for the benefit of the seller in the case of total loss. If the premium for the insurance against war, mine and torpedo risk exceeds 0,5 % then the sum in excess of 0,5 % is for account of the buyer.
- 2) The insurance policy or certificate must state that the premium is paid or is deemed paid, or that the insurance company will honour the policy even if the premium is not paid. The insurance policy or certificate must include a remark stating that the insured sum including imaginary profit will be paid in full in the case of total loss or a state of affairs which is deemed equal to total loss.

§ 14 Extension

If the fulfilment does not take place within the agreed time limit then this limit is extended for 6 concurrent days without the seller needing to give particular notice. The seller must pay the buyer an allowance of $\frac{3}{4}$ % if the extension is up to 4 days and of $1\frac{1}{4}$ % of the contract price if the extension is 5 or 6 days. The allowance is to be deducted in the invoice from the contract price or at the latest to be accounted for in the final invoice. If the contract is not fulfilled the difference in price is to be calculated on the basis of the contract price less $1\frac{1}{4}$ %.

§ 15 Appropriation

- 1) The appropriation must state the ship's name, the loading port, the date of the bill of lading or delivery order and the approximate loaded weight and be sent by telex to the buyer, in the case of shipment by river barge, within 2 business days, and in the case of shipment by sea-going vessel, within 1 business day after the bill of lading date.
- 2) If the appropriation reaches the buyer only after the arrival of the ship in the discharge port, then the seller is responsible for resulting costs.
- 3) Sellers in string must forward the appropriation by telex without delay. An appropriation forwarded by telex to the intermediary has the same value as if it were sent to the buyer. It must be sent on by this party without delay by telex.
- 4) An appropriation may not be withdrawn. The seller is not responsible for garbled telexes. The seller is permitted to correct inaccuracies. The correction of an inaccurate spelling of the name of the ship is however only permissible if the identity of the ship cannot be called into question. Corrections must be made at the latest by payment of documents.
- 5) The first seller is not permitted to make an appropriation for a ship that has suffered damage so that it is not seaworthy if he has already been informed of this fact or he is or should be in a position to know about this fact.

§ 16 Bill of lading / delivery order

The date of the bill of lading / delivery order is deemed to be proof of the date of shipment as long as its inaccuracy is not proven.

§ 17 Payment

- 1) Place of fulfilment in respect of payment is the business address of the seller or the bank named by him.
- 2) The bill of lading must contain the remark that the freight is paid or is deemed to be paid.
- 3) The invoice amount is to be remitted against transfer of the documents.
- 4) The documents consist of

- a) in the case of sea-going vessels a full set of bills of lading, at least in duplicate, or ship's delivery order(s),
in the case of river barges clean river bills of lading (e.g. "Connaissancement fluvial") or ships' delivery orders,
 - b) insurance policy or policies or insurance certificate(s)
 - c) invoice(s) for the loaded quantity,
 - d) where appropriate, other agreed documents.
- 5) The buyer is not permitted to refuse to take up the documents even if they contain mistakes or deviations from the purchase contract, as long as the seller puts up an appropriate guarantee. The buyer is permitted to require a bank guarantee.
 - 6) The documents are to be presented to the buyer at his place of business on a business day by 1200 hours and, if found in order, must be settled by 1200 hours of the next business day. If the buyer refuses to take up the documents he must give his reasons for this to the party presenting the documents without delay by telex. Payment for documents is made on the basis that goods are delivered in time.
 - 7) If payment is not made in time the seller may, besides bringing an action for non-payment, and notwithstanding his other rights as per § 18 charge usual bank interest from the day of the non-payment. In order to make use of his rights from § 18 the seller must set the buyer a period of grace of one business day.
 - 8) The buyer must take receipt of the goods even if, on arrival of the vessel, the documents are not available. In this case he must put up the guarantee required by the shipping company. All extra costs caused by the late presentation are to be borne by the seller.
 - 9) The buyer does not waive his rights against the seller from the documents by taking receipt of the goods and putting up the guarantee.

§ 18 Non-fulfilment

- 1) In the case of non-fulfilment the non-defaulting party is permitted either
 - a) to repudiate the contract or
 - b) to sell or buy within three business days the goods or the documents for account of the defaulting party through an intermediary, or
 - c) to have the value of the goods ascertained by an intermediary appointed by the president of the appropriate court of arbitration or his representative and to require the defaulting party to meet the resulting price difference and the costs of ascertainment of the price difference.
- 2) The court of arbitration is entitled and, at the request of one party obliged to examine the covering transaction as per subsection 1) b) or the established value of the goods as per section 1) c). If the examination of the covering transaction or the price-fixing shows them not to have been properly carried out or to have led to a clearly unreasonable result, the court of arbitration itself must establish the price difference, giving due regard to market conditions. The same applies if the announced sale or purchase has not been carried out.
- 3) If arbitration is carried out, the non-defaulting party has the right to have the value of the goods established by the court of arbitration without previously having proceeded as per subsection 1) c).
- 4) The non-defaulting party must inform the defaulting party by telex without delay which right it will exercise. If the non-defaulting party exercises its rights as per

sub-section 1) b), it must inform the defaulting party in good time of the time of the purchase or sale as well as the name of the intermediary entrusted with the transaction.

- 5) If the non-defaulting party fails to proceed as per the preceding subsection of this paragraph, it still retains its rights as per subsection 1) c).
- 6) A party has the right to proceed according to subsection 1) if the other party has declared its inability to fulfil the contract or its intention not to fulfil the same. The relevant date for the price-fixing as mentioned in subsection 1) c) is the first business day after the receipt of the notice declaring default.
- 7) If the buyer has received no appropriation by the 10th business day after the end of the agreed period of fulfilment he is entitled to make use of his rights as per subsection 1). The appropriate day for price-fixing as per subsection 1) c) is the 11th business day after the end of the agreed fulfilment period.

§ 19 Force majeure

- 1) If shipment is rendered impossible through export ban, import ban, blockade, enemy action or other case of force majeure then this contract or all unfulfilled parts of it will be cancelled. If the seller claims such a case of prohibition of fulfilment then he must inform the buyer by telex without delay after the event comes into force.
- 2) If shipment is rendered temporarily impossible due to riot, strike, lockout or any other temporary situation not in the control of the seller then the shipment period is to be extended for the duration of the hindrance. The same is to happen in the case of extraordinary water conditions or hindrance due to ice on the journey or in the port of destination. If the period of hindrance lasts longer than 28 concurrent days then the contract or the unfulfilled portion of the same is deemed cancelled without compensation. If the seller claims hindrance to fulfilment he must inform the buyer at the latest on the business day following the end of the contractually agreed period of fulfilment.
- 3) If the contract is made for several shipment periods then the above regulations govern only the shipment period actually affected by the hindrance to or prohibition of fulfilment.
- 4) At the buyer's request the seller must furnish proof of the hindrance to or prohibition of fulfilment.

§ 20 Weight

The buyer must provide for a correct ascertainment of weight during discharge and, unless the weight is ascertained jointly, furnish at his own expense an attest from a recognised weigher. Differences between loaded and discharged weight are to be invoiced accordingly.

§ 21 Discharge

Discharge is to take place during usual working hours in the arrival port and in accordance with usual port terms. If the documents contain different conditions then the seller is responsible for all ensuing extra costs.

§ 22 Sampling

Sampling is to be carried out during discharge according to the sampling regulations laid down for the German-Dutch Contracts Nos. 6 and 7.

§ 23 Condition

- 1) Sound goods are to be delivered.
- 2) The buyer must accept damaged or unsound goods with an allowance, which if necessary may be set by the court of arbitration.
- 3) Normal goods which smell naturally according to their type as well as slight dry warmth which has not damaged the goods are to be accepted without allowance.

§ 24 Quality

- 1) If no other agreement has been made, fair average quality of shipments at the time and place of shipment is to be delivered. The contractually agreed country of origin or the area which has been taken into account for making the standard in question by the Standards Committee of the court of arbitration responsible is to be considered the place of shipment. Any discrepancies from the fair average quality claimed by the buyer are to be judged by the court of arbitration responsible on the basis of and with reference to the official standard sample made by the court of arbitration responsible valid for the place and time of shipment.
- 2) Separate standards are to be set for maize discharged by suction and maize discharged by grab or other method.
- 3) If a standard sample has not been made then the court of arbitration must decide using its own judgement whether the delivered goods are of fair average quality.

§ 25 Natural weight

- 1) Natural weight is to be ascertained by the parties to the contract or their representatives. If agreement cannot be reached the natural weight is to be ascertained using the one-litre scale of the court of arbitration responsible. The costs are to be met by the losing party.
- 2) If the contract has been concluded on the basis of a natural weight defined by two limits (e.g. 70/71 kg/hl) then the seller has fulfilled the contract if he has delivered goods with at least the lower of the two limits. If goods are delivered with less than the minimum agreed natural weight the allowance is to be calculated on the basis of the middle of the range.

- 3) 1% of the contract price is to be deducted for each kilogram shortage in natural weight for the first and second missing kg/hl and 2% of the contract price is to be deducted for the third missing kg/hl.
- 4) Fractions are to be allowed for in proportion.
- 5) If the natural weight is lower than 3 kg/hl below the minimum guaranteed natural weight the court of arbitration is to agree an allowance.

§ 26 Analysis

- 1) The buyer or his representative must apply to the institute of analysis for an analysis regarding especially agreed quality parameters to be carried out within 8 business days of completion of discharge and inform the seller accordingly. Unless the parties have agreed otherwise the analysis is to be carried out by the institute of analysis recognised by the court of arbitration at its location.
- 2) In the case of goods of the same type and quality, which have been delivered to the buyer by one seller from the same port of shipment with the same ship, the results of analysis is to be averaged, taking account of the quantities represented, even if the goods are distributed over several bills of lading.
- 3) If an allowance must be paid for deviance from one especially agreed quality parameter or one variety or group of varieties, then the analysis costs for the particular quality parameter are to be borne by the seller, otherwise by the buyer.

§ 27 Second analysis

- 1) No second analysis is permitted for moisture and sprouted kernels.
- 2) If a second analysis regarding especially agreed quality parameters is required, then a notice to this effect to the opposite party and the application for a second analysis must be sent to the institute of analysis responsible within 5 business days after the receipt of the certificate of analysis. Sellers in string must pass on messages without delay. The deadline is to be extended accordingly.
- 3) Unless otherwise agreed the second analysis is to be carried out by the same institute that carried out the first analysis.
- 4) The result of the first analysis is to stand unless the second analysis does not deviate from the first analysis by more than $\frac{1}{2}$ %. In this case the costs are to be borne by the party applying for the second analysis.
- 5) If the difference between first and second analysis is more than $\frac{1}{2}$ % then the average of the two results of analysis is to apply. If an allowance is to be paid for deviation from an especially agreed quality parameter, then the costs for all analyses for this quality parameter are to be borne by the seller, otherwise by the buyer.

§ 28 Admixture

- 1) If the admixture exceeds the contractually agreed limits on a sale of milling wheat or milling rye, then for each of the first and second excess percent 1 % of the contract price, for each of the third and the fourth excess percent 2 % of the contract price is to be deducted.

- 2) If the admixture exceeds the contractually agreed limits on a sale of feed grains, then for each of the first, second and third excess percent 1 % of the contract price, for each of the fourth and fifth excess percent 2 % of the contract price is to be deducted. Foreign grain admixture is to be calculated at half its amount.
- 3) Fractions are to be calculated in proportion.
- 4) If the admixture exceeds the limits described above, then the court of arbitration must decide upon the allowance.
- 5) If oats, barley or maize has been contracted as “for industrial use” then the court of arbitration must decide upon an allowance for any deviation.
- 6) If the admixture in the case of feeding legumes exceeds the contractually agreed basis then for each percent of excess admixture 1 % of the contract price is to be deducted. Fractions are to be allowed for in proportion.

§ 29 Undesirable substances

- 1) If the goods are found to exceed the maximum legally permitted levels of undesirable substances in the port of discharge then the buyer may reject the goods or, if they were already taken in, to retender them to the seller, as long as the lot is identifiable. The seller must reimburse the buyer for all costs incurred.
- 2) In addition to the right to refuse to receive the goods or to return the goods the buyer may require once only a replacement delivery of contractual goods. He must inform the seller within seven business days after making the claim which recourse he intends to invoke.
- 3) The seller may for his part replace the goods with a contractual delivery once only. He must inform the buyer within seven business days of the rejection which course he intends to take.
- 4) In the cases of subsections 2) and 3) the seller has a period of grace of 20 business days from the rejection or, in the case of dispute, of the coming into force of the award of arbitration to make the replacement delivery. If the replacement delivery does not take place within this period the buyer is entitled, without setting a deadline, to cancel the contract or to arrange a price-fixing and to require from the seller reimbursement of the resulting difference in price and the cost of the price-fixing. The last business day of the above-mentioned period of grace of 20 business days is the applicable date for price-fixing.
- 5) The buyer must inform the seller by telex without delay after discovery of his claim against goods due to undesirable substances.
- 6) The appropriate court of arbitration must be informed of a request that arbitration be carried out due to undesirable substances within seven business days after the claim.
- 7) Two average samples (in air-permeable material bags) are to be drawn and sealed for analysis for undesirable substances.
- 8) Analyses for undesirable substances are to be carried out at the analysis institutes recognised for this purpose.

§ 30 Moisture

- 1) If the moisture content of the goods exceeds the contractually agreed basis then for the first percent extra moisture 1% and for the second percent extra moisture 1,5% is to be deducted from the contract price. Fractions are to be reckoned in proportion.
- 2) If the moisture content exceeds the contractually agreed basis by more than 2%, then the court of arbitration must agree on the deduction.

§ 31 Claims

- 1) The buyer must inform the seller by telex of a claim against the goods due to deviating condition within two business days and due to deviating quality with the exception of latent defects and deviation from especially agreed quality parameters within seven business days after the completion of discharge.
- 2) The buyer must inform the seller of latent defects by telex immediately after discovery. The seller has the same duty.
- 3) A claim does not release the buyer from his duty to take delivery of and to pay for the goods according to the contract.

§ 32 Entitlements due to deviating condition /quality

- 1) A request that a court of arbitration is called must be made to the appropriate place of arbitration
 - a) due to deviating condition of the goods within 5 business days of the claim,
 - b) due to deviation from the fair average quality within 3 months of the completed discharge of the party in question,
 - c) due to deviation from the sample on which the sale is based within 14 business days after the completed discharge of the ship in the port of destination of the party in question,
 - d) due to deviation from other quality characteristics than those mentioned in b) and c) above within 14 business days after the completed discharge of the ship in the port of destination of the party in question.
- 2) Claims due to inferior natural weight and deviating analysis results are not affected by the above-mentioned deadlines for claims and requests for a court of arbitration even if the allowances (as far as value is concerned) are to be set by the court of arbitration.
- 3) If the goods are not contractual the buyer is permitted to require the seller to pay an allowance.
- 4) If the allowance on the goods due to lower quality and deviating results of analysis exceeds 10 % of the contract price then the buyer is entitled to require the goods to be taken back and the purchase price and costs and interest relating to the goods to be reimbursed. This entitlement does not apply if the buyer has in the meantime either in total or in part sent on the goods or handled them in the course of storage or its identity has not been assured or cannot be proven through separation or other appropriate course.

- 5) In case the buyer makes effective use of his right to return the goods he is entitled to claim in addition in compensation due to non-fulfilment the price difference on the last discharge day of the ship in the port of destination of the party in question.

§ 33 Damage

If a shipment or a part of the same is damaged during transport the rights of the buyer against the ship or the insurance or other third party revert to the seller on payment of the compensation laid down by the court of arbitration. The buyer must reserve all rights against the ship or the insurance or the other third party and hand over to the seller the insurance policy or the certificate of insurance or other required documentation.

§ 34 Average

- 1) Average is for buyer's account. The seller must provide the buyer any required assistance in the administration of such a case. § 33 is not applicable here.
- 2) If only a part of the cargo is affected by average then the regulations contained in § 32 come into force for the rest of the cargo. The same applies if the goods are not damaged by the case of average.

§ 35 Suspension of payments

- 1) If a party to the contract suspends payments, or if facts exist which are equal to a suspension of payments, all claims to fulfilment of the contract lapse, insofar as the contract is still unfulfilled by both parties. In the place of the claim to fulfilment of the contract stands, with the suspension of payments or with the existence of the fact which is equal to the suspension of payments, the right to payment of the difference between contract price and the market price, which difference is to be mutually settled between the parties.
- 2) The ascertainment of the market price is to be regulated by § 18 subsection 1) c). The date of ascertainment is the business day following the notification of the suspension of payments or fact which is equal to the suspension of payments. The costs of the price-fixing are for account of the party which is in payment difficulties.

§ 36 Circle clause

- 1) If a seller has bought back from his buyer or from a subsequent buyer the same goods or a portion thereof, settlement is to be made on the basis of the mean contract quantity, by the buyer paying his seller the difference between the invoice amount relating to the contract concerned and the lowest invoice amount in the circle. Circle invoices must be paid on the 15th of the month following the agreed period of shipment. If the circle is ascertained only at a later date then invoices are to be settled within five business days after receipt. At the end of this period the entitled party is permitted to invoice interest at customary bank rates.

- 2) A circle settlement does not take place if the delivery is prohibited as per § 19 and if the parties concerned have a valid claim to invoke that clause.
- 3) If a party to the circle suspends payments or if facts exist which are regarded as equal to a suspension of payments, instead of the settlement being based on the lowest invoice amount, it is to be based on the market price ruling on the first business day after the suspension of payments or after facts acknowledged to be equal to a suspension of payments have become known. The market price is to be ascertained according to § 18 subsection 1) c). The resulting differences are to be mutually settled by the parties to the contract.

§ 37 Commission

The seller must pay the intermediary the agreed commission, independently of whether this contract is fulfilled or cancelled, unless it can be proved that the intermediary bears responsibility for the non-fulfilment or cancellation of the contract.

§ 38 Other entitlements

All entitlements to payment with the exception of purchase price invoices and invoices resulting from circles are to be settled within 10 business days after receipt of the invoice. If payment has not been made by the end of this period the entitled party is permitted to invoice interest at customary bank rates.

§ 39 Applicable law

The “United Nations Convention on Contracts for the International Sale of Goods” dated 11th April, 1980 does not apply to this contract.

§ 40 Period of limitation

Unless otherwise agreed, any claims arising from this contract lapse within one year after the end of the agreed period of fulfilment.