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General terms and conditions of sale and delivery at Neufett Twist GmbH & Co. KG

In the 2010 revised edition of the German Association of Wholesalers
of Oils, Fats and Oil Raw Materials (Deutscher Verband des Großhandels
mit Ölen, Fetten und Ölrohstoffen e.V. – GROFOR), Hamburg

General terms and conditions of sale and delivery

§1 Arbitration clause

1. The parties submit to the following conditions as well as to the arbitration provisions of the German Association of Wholesalers of Oils, Fats and Oil Raw Materials (Deutscher Verband des Großhandels mit Ölen, Fetten und Ölorohstoffen e.V. – GROFOR), Adolphsplatz 1 (stock exchange), 20457 Hamburg, applicable on the day the complaint is filed.
2. All disputes in relation to or in connection with this contract and its formation, as well as any further agreements in connection with it, will be decided by the court of arbitration of the “GROFOR e.V.”. Ordinary legal recourse is excluded, not only between buyer and seller, but also between contracting parties and business intermediaries.
3. The court of arbitration also resolves issues regarding the validity of business deals should they be disputed by either party for any reason.
4. Acknowledged claims, receivables from checks and bills of exchange as well as purchase price claims which have not been paid despite a reminder having been sent out can, at the discretion of the creditor, be pleaded before the court of law or the court of arbitration.

§2 Letters of confirmation

1. If intermediary contract notes or letters of confirmation are exchanged or issued by a contracting party or an intermediary, their content is binding for the contractual relationship. Such a document cancels all previous agreements. Contract notes and letters of confirmation that are not immediately objected to in writing are deemed to have been approved.
2. If intermediary contract notes and / or letters of confirmation are issued, the seller's unchallenged letter of confirmation is binding. If only a letter of confirmation from the buyer and an intermediary contract note are issued, the unchallenged letter of confirmation from the buyer is binding.
3. If verbal agreements are made at a later date, these are only valid if they are confirmed in writing by at least one party forthwith. If such documents are not immediately objected to in writing, they shall be deemed to have been approved.

§3 Retrieval contracts

1. Unless the parties have made other arrangements, the contracts concluded must also be fulfilled if collection by the buyer is agreed upon in a retrieval contract.
2. The buyer's retrieval declaration must allow the seller to load, dispatch or hand over the goods within the agreed delivery or receipt period.
3. The buyer must notify the seller of the preferred delivery or receipt date at least 5 business days in advance.
4. If the buyer does not issue a retrieval request by the 10th business day before the end of the agreed delivery or receipt period, the seller shall be entitled to make a claim based on the business partner's non-fulfilment, as detailed in Article 9, after the relevant grace period has elapsed without result, as detailed in Article 8.
5. If the buyer issues a retrieval request in accordance with the contract and the seller does not make the goods available at the time specified in the request, the buyer shall be entitled to make a claim based on the business partner's non-fulfilment, as detailed in Article 9, after the relevant grace period has elapsed without result, as detailed in Article 8.

§4 More precise determination of the delivery time

1. If the delivery is set for a certain period of time, delivery must take place within this period at the discretion of the buyer. In contracts, the timeframes for delivery and receipt are set as follows:
 - a) “Immediate delivery”: within three business days after conclusion of the contract;
 - b) “Prompt delivery”: within seven business days after the conclusion of the contract;
 - c) “Delivery within a named month”: within that month;
 - d) “Delivery within a period of several months”: in approximately equal monthly instalments;
 - e) “Successive delivery”: within the agreed time in roughly equal instalments.
2. If no agreement regarding the delivery time has been made, Section 1(a) applies.

§5 Contracts for receipt / collection

1. If the receipt or collection is set for a certain period of time, the receipt or collection must take place within this period at the discretion of the buyer. Accordingly, the deadline regulations of Article 4(a)–(e) apply.
2. The buyer must notify and provide the road vehicle in good time so that the seller can deliver within the agreed timeframe.

§6 Place of fulfilment, freight and transport risk

Unless the parties have made other agreements (e.g. Incoterms), the following regulations apply:

1. the place of fulfilment for the delivery is the loading bay where the goods are placed in the vehicle intended for transport. If the goods are taken to their destination free of all charges, this is the place of fulfilment.
2. If the goods are sold free on rail or truck, the buyer shall bear the transport costs and the risk of transport.
3. In the case of contracts where carriage paid has been agreed, the seller bears the freight costs, and the buyer bears the risk of transport.
4. Where charges are paid to a certain destination, the seller bears the freight costs to this destination as well as the risk of transport.

§7 Grace period

1. Should a contract not be fulfilled on time, the non-defaulting party is entitled to set a grace period after the delivery period has elapsed. To be valid, the grace period needs to be agreed in written form.
2. The duration of a period of grace for delivery or acceptance is:
 - a) three business days if a delivery time of less than one month was agreed;
 - b) seven business days if a delivery time of one month or more than one month was agreed.
3. The grace period for fulfilling retrieval requests is one business day.
4. A grace period that is too short is nonetheless valid; the grace periods stipulated in paragraphs 2 and 3 will be triggered. A grace period that is too long is nonetheless valid as agreed upon.
5. It is not necessary to grant a grace period,
 - a) if it has been agreed that the contract is to stand or fall on a specific date (firm deal);
 - b) if the other party expressly declares in writing that it will not fulfil the contract.

§8 Rights in case of non-performance

1. After the grace period has elapsed without result, the non-defaulting party is entitled to
 - a) withdraw from the contract and / or
 - b) claim damages in lieu of performance and / or
 - c) store the goods at a third place for the account of the defaulter if the seller has promised the storage in conjunction with the setting of the grace period.
2. The rights detailed in Section 1(a) and (b) also apply in cases in which a grace period is not required as per Article 7 Section 5.
3. If damages are to be claimed, the seller can instigate a substitute sale or the buyer can arrange for a substitute purchase for the account of the defaulting party, either directly or through a broker. This measure needs to be implemented within ten business days after the grace period has elapsed or after non-performance of the contract.
4. Damages due to non-performance can also be claimed by determining the difference between the contract price and the current price (price fixing). The non-defaulting party needs to decide whether the price fixing should be carried out by
 - a) a broker to be engaged by the board of GROFOR or its agent (price fixing procedure, see Article 36 of the arbitration terms),
 - b) a broker to be engaged by the non-defaulting party or
 - c) the competent court of arbitration itself in the arbitration proceedings.
5. The reference date for the price fixing is the business day following the end of the grace period. The same applies to cases detailed in Article 7(5).
6. The defaulting party shall bear the costs of the price fixing.
7. After the period of grace has elapsed or in the event of one of the cases mentioned in Article 7(6), the non-defaulting party is obliged to immediately inform the defaulting party by telex (see Article 23) of which right they will exercise.
8. If the non-defaulting party fails to proceed in accordance with Section 7, they only have the right to a price fixing. The same applies if an announced hedging transaction was not carried out or was not carried out in a timely manner (see Section 3).
9. The competent court of arbitration is entitled to and, at the request of one of the parties, obliged to review a hedging transaction carried out in accordance with Section 3 (substitute sale or purchase) or a price fixing in accordance with Section 4(a). If a review of the hedging transaction or the price fixing shows that these were not carried out properly or led to an obviously unfair result, the court of arbitration must determine the price difference itself, taking into account the market situation.

§9 Hindrances affecting the fulfilment of a contract

1. If, after the conclusion of a contract, its fulfilment is prevented by force majeure, import or export bans at home or abroad, official measures or other circumstances for which one of the contracting parties is not responsible, the contract or its unfulfilled part is cancelled. The other contracting party must be informed of said events immediately after they become known. If they fail to do this, the hindrance affecting the fulfilment of the contract cannot be legally claimed as a reason.
2. If the fulfilment of the contract is impeded by minor events or by riots, strike, lockout, a loading ban or other similar circumstances, the deadline is extended by the duration of the impediment if the party concerned reports the impediment to the other contracting party immediately after becoming aware of it or at the beginning of the fulfilment period. If, after the end of the fulfilment period, the hindrance exceeds 30 calendar days for contracts with a fulfilment period of less than one month or 45 calendar days for contracts with longer fulfilment periods, the contract is cancelled without mutual compensation.
3. If one party claims there to be an obstacle to fulfilling the contract, they must provide the relevant evidence at the request of the other contracting party.

§10 Weight / quantity

1. The weight determined at the agreed place of fulfilment is the relevant weight. If the place of departure is the place of fulfilment and the weight was not determined there, the weight determined at the place of destination is binding.
2. In the case of contracts where carriage is paid to a destination, the weight determined there is the relevant weight. If the weight was not determined at the destination, the weight determined at the point of departure is binding.
3. Each party has the right to be present at the weighing or to appoint a representative to take their place.
4. The seller may fall below or exceed the agreed weight quantity by up to 2 %; if the contract states an "approximate" weight, the weight discrepancy may be up to 5 %.
5. Partial deliveries or partial purchases are permitted but must not fall below a minimum weight of 23,750 kg (weight = quantity x specific weight). Each partial delivery is considered a separate contract.
6. If the parties have agreed to use volume as a contract quantity, the above provisions on weight shall apply to volume in the same.

§11 Quality

1. If no specifics are agreed regarding the quality of the traded goods, then healthy, standard goods of average type and quality are to be delivered.
2. If the goods are delivered in a tanker with several chambers, the goods in each individual chamber must comply with the contractual agreements.

§12 Purchase true to sample / on approval of sample / tel quel

1. If sold true to sample, the goods must on average correspond to the specifications, appearance and analysis data of the purchase sample. See Article 11(2).
2. In the case of a sale "on approval of sample", the parties must agree by when the buyer needs to make his decision. If the parties have not agreed on a timeframe, a deadline of 5 business days from receipt of the sample by the buyer applies.
3. If the buyer has not communicated his decision to the seller within the agreed period or the period according to Article 2(2), the sample is considered rejected.
4. In the case of "tel quel" sales, the buyer is obliged to accept the goods regardless of the quality, provided that the type of goods corresponds to the contractual description.

§13 Rights in case of defects

1. If the delivered goods are of a quality that is not in accordance with the contract, the buyer is entitled to choose one of the following options while observing the individual regulations detailed below:
 - a) replacement delivery
 - b) compensation for reduced value
 - c) compensation for damages according to the statutory regulations
2. If the buyer wishes to exercise his right to provide a replacement delivery, he must inform the seller of this by telex no later than on the business day following the notice of defects.
3. The right to a replacement delivery does not apply if the goods can no longer be returned in their original condition.
4. A compensation for reduced value can only be claimed if the buyer has unsuccessfully set the seller a reasonable grace period for a replacement delivery by telex. Setting a deadline is not necessary if the seller definitively and in all seriousness refuses to make a replacement delivery.

§14 Examination of the goods – sampling

1. Sampling is the responsibility of the buyer and must always be carried out at the place of fulfilment.
2. If the place of dispatch is the place of fulfilment, the seller must give the buyer the opportunity to take representative samples.
3. If the samples were not taken at the place of fulfilment, the buyer can order them to be taken immediately after the goods have arrived at the place of destination.
4. Sampling must be carried out in such a way that representative average samples are taken from each chamber of the transport container.

§15 Notice of defects

1. Should defects be detected during a commercial sensory inspection, the buyer must issue a notice of defects by telex immediately after unloading is complete, but no later than the next business day. This also applies if the goods are accepted “ex works / warehouse”.
2. Should defects be detected that could not be found during a commercial sensory inspection, especially if the delivery deviates from the agreed specifications, the buyer must hand over the samples to a neutral expert immediately after unloading is complete, but no later than two business days later. He must notify the seller of the result of the examination by telex no later than the next business day after he has received the samples.
3. In the case of hidden defects, the buyer must issue the seller with a notice of defects within a period of one business day after becoming aware of the defect.
4. If the deadlines specified in the above three paragraphs are not met, the goods are deemed to have been approved.

§16 Payment of the purchase price

1. Unless the parties agree otherwise, payment of the purchase price must be made within 5 business days after receipt of the invoice by the buyer. If the payment is not made as agreed, the buyer is in arrears, even without a reminder.
2. The buyer is not entitled to offset or withhold the purchase price unless the seller stops making payments or the circumstances amount to an equivalent of a suspension of payments. The ban on offsetting or withholding also does not apply to undisputed or legally established counterclaims.

§17 Arrears

1. In the event of a delay in payment, the seller is entitled to sue for payment and to demand default interest at the statutory rate from the start of the delay.
2. In the case of contracts for the delivery of several partial quantities or contractual instalments the following also applies: if the buyer is in arrears with a payment, the seller is only entitled to withdraw from the contract and / or to claim damages for the outstanding partial quantities or contractual instalments after he has unsuccessfully granted the buyer a grace period of 5 business days for payment.
3. The seller is also entitled to withdraw from the contract and / or to claim damages without issuing a reminder if the buyer is in arrears in more than 2 cases within a single contract.
4. If the seller has reasonable doubts about the solvency of the buyer, the seller can also demand advance payment, even if other payment terms have been agreed.

§18 Other payment claims

Other payment claims are to be fulfilled within 5 business days after invoice receipt. After this period has elapsed without a payment, the beneficiary can sue for the debt and demand interest at the statutory rate.

§19 Suspension of payments

1. If one of the contracting parties stops making payments or if circumstances lead to a de facto suspension of payments, the right to expect a fulfilment of the contract shall expire insofar as the contract is still unfulfilled by both parties. If one of the contracting parties stops making payments or if circumstances lead to a de facto suspension of payments, the right to expect a fulfilment of the contract is replaced by a right to receive the difference between the contract price and the current price.
2. The current price must be determined in accordance with the regulations detailed in Article 8(4). The reference date is the business day following the day the suspension of payment became known. The costs of determining the price shall be borne by the party that is in arrears.

§20 Reservation of ownership

1. The goods or documents remain the property of the seller until full payment of all claims, including future claims. In the case of an open account, the reservation of ownership serves as a security for the respective outstanding balance claim.
2. The handling or processing of the goods remaining the property of the seller is carried out on his behalf, without any liabilities arising for him as a result. The seller is entitled to ownership of the new items created by handling or processing, regardless of the time and degree of handling or processing. When processing with other goods not belonging to the buyer, the seller is entitled to co-ownership of the new item proportional to the value of the conditional goods compared to the other processed goods at the time of processing. Should the buyer, notwithstanding the above regulation, acquire (co-)ownership of the seller's conditional goods through handling or processing, he transfers the (co-)ownership of the goods to the seller upon conclusion of the contract for the moment of his purchase and stores the goods for the seller. The buyer relinquishes any claims for surrender against third-party owners to the seller. The goods are considered conditional goods within the meaning of these provisions.
3. In the event that the goods delivered by the seller are mixed or combined with other items, the buyer transfers his ownership or co-ownership rights over the mixed or new items to the seller and then stores them for the seller. Any claims for surrender against third-party owners are relinquished to the seller.
4. The buyer is authorised to resell the goods in the (co-)ownership of the seller in the ordinary course of business, either against cash or subject to reservation of ownership. He is prohibited to pledge the goods or assign them as security. All claims to which the buyer is entitled from the resale – regardless of whether this takes place before or after processing, mixing etc., including all ancillary rights and any claims for compensation against credit insurance – are relinquished to the seller upon conclusion of the contract. Should the goods only co-owned by the seller or by the buyer together with other goods that do not belong to the seller – regardless of their condition – be sold for a total price, the already completed assignment of the claim will only amount to the sum that the seller has charged the buyer for the relevant part of the goods.
5. Until further notice, the buyer is authorised to collect the claims to which the seller is entitled, since he has acquired them through the assignment. Upon revocation, this right is transferred to the seller – even in the event of insolvency. The buyer must also allow the seller access to the goods at any time and, at the request of the seller, mark the goods as his property and provide the seller with any information he requests. In the event of a delay in payment, the buyer must notify his subsequent buyer of the transfer of claims at the seller's request. Should the buyer receive bills of exchange or checks from the resale to a third party, he shall assign the bill of exchange or check claim to which he is entitled to the seller in the amount of the claim assigned to him from the resale. Ownership of the bill of exchange or check is transferred from the buyer to the seller; the buyer safekeeps the document for the seller.
6. Should third parties gain access to the goods owned or co-owned by the seller or to the claims assigned to him, the buyer must protect the seller's rights and notify him of such access immediately by telex (Article 46).
7. As long as the seller retains ownership of the delivered goods, the buyer must insure them adequately against the usual risks. The buyer shall assign the claims arising from a case of damage – in particular against the insurance company – to the seller to ensure his demands are met up to the amount of his claim.
8. At the buyer's request, the seller shall provide any excess collateral. An overcollateralisation occurs when the value of the collateral exceeds the value of the claims to be secured by more than 20 %.

§21 Applicable law

The contract is subject to German law. In addition, the Incoterms, as set out by the International Chamber of Commerce and valid at the time the contract is concluded, shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 11 1980 (Federal Law Gazette 1989, part 11, p. 588 ff.) does not apply.

§ 22 Deadlines

1. Business days are working days with the exception of Saturdays and the 24th and 31st of December.
2. The day of the conclusion of a contract and the day of receipt of a statement do not count when calculating a deadline.
3. Statements received after 3:00 pm on a business day are deemed to have been received the next business day.
4. Public holidays that are not celebrated nationwide can only be observed by those who live in such an area and who should make or receive a statement or perform a task on such a day.

§23 Written communication

The term "in writing" includes telex traffic and all other types of fast written communication such as fax or email. The term "by telex" includes all other types of fast written communication such as fax or email.

§24 Commission

The seller must pay the agent the agreed commission, regardless of whether the brokered contract is fulfilled or cancelled, unless the agent is demonstrably at fault for the non-fulfilment or cancellation of the contract.

§25 Expiration of claims from contracts and statute of limitations

1. The contract expires automatically if it has not been fulfilled by either party within three months after the end of the period of fulfilment specified in the contract. If no fulfilment time has been agreed, this period begins with the conclusion of the contract.
2. If a reminder is sent within the period specified in Section 1, the contractual claims initially continue to exist.
3. In this case, the contractual rights expire one month after the expiry of the period specified in Section 1, unless one of the parties has asserted their contractual rights in writing.
4. In all remaining cases, claims from contracts come under the statute of limitations after one year. The limitation period begins at the end of the month in which the fulfilment period ends.

§26 Severability clause

Should individual clauses of these terms be or become invalid, this does not affect the validity of the remaining terms. An invalid term is considered to be replaced by a valid regulation that comes as close as possible to the economic purpose of the invalid term and is legally binding.