



KONINKLIJKE VERENIGING *HET COMITÉ* VAN GRAANHANDELAREN

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GENERAL CONDITIONS FOR THE MOLASSES TRADE

of the

ROYAL DUTCH GRAIN AND FEED TRADE ASSOCIATION

Revised and effective as of 1 January 2004
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1. GENERAL

- A. Aside from common law, only these general terms apply to a Contract concluded on the basis of these general terms for the molasses trade.
- B. 1) These general terms for molasses trade shall be governed by Dutch law.
2) The Vienna Convention on contracts for the International Sale of Goods shall not be applicable to these general terms for the molasses trade.
- C. "Het Comité" refers to Koninklijke Vereniging Het Comité van Graanhandelaren (Royal Dutch Grain and Feed Trade Association) , Rotterdam.
- D. Every transaction concluded under the general terms for the molasses trade of Het Comité must be confirmed by the Seller latest 6.00 pm the following day by sending a contract of sale, indicating that the transaction has taken place under the aforementioned terms.
- E. The Seller is entitled to demand a written acceptance of the contents of the contract of sale from the Buyer.
- F. If no comments are made on the contents of the contract of sale within 3 days after receipt, it will be deemed to have been approved.
- G. "In writing" shall be understood to mean:
Communication via telex, letter, e-mail or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration Clause, that the notice was actually transmitted to the addressee.
- H. References in these terms to days are to normal business days, not including Saturdays, Sundays and non-business days determined by Het Comité.

2. QUANTITY AND QUALITY

As indicated in the contract of sale.

3. DELIVERY

- A. Each delivery constitutes a separate contract. Non-fulfilment of a delivery does not affect a contract in terms of other deliveries, nor other contracts between the same parties.
- B. Delivery occurs: 1. with purchases ex tank or freight paid, as soon as, and in the location where, the molasses is pumped from the tank into the transport vehicle.
2. with purchases franco at the destination as soon as the molasses has passed the connection to the Buyer's facility.
- C. Delivery occurs at the Buyer's demand with at least 5 days' advance notice for deliveries by ship and at least 2 days' advance notice for deliveries by vehicle.
- D. If the Buyer takes less than agreed in a particular contract period, the Seller will offer the Buyer a period of 5 days to proceed with receiving without additional costs. If the Buyer does not take the goods demanded or does not proceed to receive them within the aforementioned period, it will be legally in default.
- E. The Seller must deliver goods that meet the requirements set out in the valid contract of sale. In the event of a discrepancy determined according to article 9, the Buyer will be entitled only to compensation according to the terms of said article.

4. PRICE

- A. Unless otherwise agreed, the price indicated in the contract of sale is on the basis of net laden weight or Seller's choice of measure/weighing on partial delivery. The price is inclusive import duties as indicated in the common customs tariff and exclusive VAT.
- B. The Seller must present the relevant weighing or measuring certificate at the Buyer's request.

5. PAYMENT

If not set out otherwise in the contract of sale, payment will occur within 8 calendar days after invoice date, after which the Buyer will legally be in default and owe legal interest on the purchase price.

6. BUYER'S DEFAULT

If the Buyer remains in default or it is evident that it will be in default of paying the purchase price or receiving the goods, the seller will at all times be entitled:

- A. to store the goods at the Buyer's risk and expense and to charge the Buyer interest at the REFI rate on the contract price of the goods not received;
- B. to suspend further deliveries until the Buyer has fulfilled its obligations;
- C. provided that he informs the Buyer at least 3 days in advance, to dissolve the contract unilaterally and claim damage compensation from the Buyer.

7. SELLER'S DEFAULT

- A. If and insofar as the Seller is in default or it is evident that he will be in default, the Buyer will not be able to demand fulfilment of the contract but will only be entitled to dissolve the contract unilaterally and claim compensation from the Seller, subject to the terms of article 8.
- B. Such compensation will consist solely in the negative difference between the contract price and the current value on the first business day after the day that the Seller is in default, plus any transport charges incurred in vain by the Buyer.
On request of one of the parties arbitrators are authorised to set the value of the goods on the aforementioned day at a different amount. Article 14 of these terms is applicable.

8. SAMPLING, ANALYSIS AND COMPENSATION

Sampling and analysis by delivery on demand and required by buyer will be carried out on the condition that the costs will be borne by the party found to be at fault.

The 3 samples required will be jointly taken and sealed by or on behalf of the Buyer and Seller before or on delivery and these samples will be numbered 1, 2 and 3.

The Buyer will receive the even-numbered samples and the Seller the odd-numbered ones. The Buyer will send sample no. 2 for analysis to LabCo b.v., Europoort, Rotterdam, within 6 days after sealing, on penalty of dissolution of right.

As soon as he has received the analysis report, the Buyer will send a copy to the Seller within 10 days. If the Seller or Buyer requests a second analysis, he will inform the other party in writing within 10 days, in which case the Seller must send sample no. 1 within 6 days after such notice to Verenigde Laboratoria Drs. W.H. Nagel, Amsterdam and simultaneously inform the Buyer in writing of having done so.

The result of the second analysis must be communicated by the Seller to the Buyer within 10 days by sending a copy of the report of the second analysis.

If the difference between the results of the Buyer's analysis and the Seller's second analysis is 1 percentage point or less than 1 percentage point, the average of both results will count.

If the difference between the results of the analysis and the second analysis is more than 1 percentage point, the remaining sample no. 3 will be sent by the Seller, on the request of one of the parties, within 10 days, to Eurofins Scientific in London for analysis. In that case settlement will be based on the average of the analysis and the closest of the two previous analyses.

Analysis methods:

For sugars: total sugar, expressed as sucrose, according to the Luff-Schoorl method using a recently standardised reagent compared to pure sucrose after inversion.

For moisture: 65°C in vacuum, further according to EEC directives.

The costs of the analysis and any second analysis is

- a. for the Buyer if no compensation is owed;
- b. for the Seller if a compensation is owed.

If the moisture percentage is higher or the sugar percentage is lower than agreed, the Sellers will pay damage compensation only on the highest of the deviations in percentage points. Such compensation amounts to 1 percent of the contract price per percentage point of deviation, fractions of percentage points proportionally.

9. UNDESIRABLE SUBSTANCES

- A. If the goods exceed the local legally established maximum allowances for undesirable substances, the Buyer is entitled to refuse the goods and, provided it had already been received, to make it available to the Seller again, provided the lot is still identifiable. The Seller must compensate the Buyer for expenses incurred in vain.

- B. The finding that the goods exceed the maximum allowances for undesirable substances indicated in part 1 must be the result of analysis results of samples taken and analysed by the Buyer and Seller jointly according to article 8, on the understanding that the highest binding analysis result takes precedence.
- C. After refusal, the Seller will be entitled one time to make a replacement delivery within 5 days. If the goods offered exceed the maximum allowances indicated in part 1, the Buyer will again be entitled to refuse the goods according to part 1. In that case, the Seller must settle at the day value of the day of the second refusal if it is higher than the contract price and must compensate the Buyer for expenses incurred in vain.

10. FORCE MAJEURE

- A. Force majeure refers to any unforeseen extraordinary circumstance that could not be prevented or averted by a contract party and which is not at that party's risk and expense, if it arises after the conclusion of the agreement and the contract party in question is not able, as a result, to fulfil its obligations in whole or in part.
- B. If force majeure renders delivery of the goods within the contractual delivery period impossible (may be determined by arbiters), said period will be extended at the request of either party by the time that force majeure persists, to a maximum of 60 days.
If delivery within the extended period is not possible, the contract will be deemed to be cancelled for the monthly quantity in question.
- C. If the party that may have a claim under the terms of the preceding part has not informed the other party within 7 calendar days after the situation of force majeure arises, indicating reasons, he will lose the right to claim force majeure.
- D. If a quantity of the contract to be delivered monthly is cancelled because of force majeure, neither party will be able to claim damage compensation.

11. RETENTION OF OWNERSHIP

As long as the purchase price has not been paid in full, the Seller will retain ownership of the goods.

12. INSOLVENCY

If before the contract is fully settled, one of the parties halts its payments, applies for suspension of payment or is declared bankrupt, the contract will be dissolved for the portion not yet delivered. The other party may claim damage compensation for the difference between the contract price and current value on the first day after the day that the party becomes insolvent, based on the current value to be determined by the Committee.

13. DUTIES, LEVIES, etc.

Duties, levies and taxes on the goods, as far as they have been introduced or increased between the day of sale and the day of delivery, are for Buyer's account. Withdrawals and/or reductions between said dates are in favour of the buyer. The foregoing is not applicable to import duties as indicated in the community customs tariff.

14. ARBITRATION

All disputes arising between the parties as a result of a contract concluded under these terms and other agreements that may result therefrom will be settled in accordance with the Arbitration Rules of the Dutch Trade in Grain and Feed Materials (CNGD) of Het Comité.

A dispute is also considered to exist if one of the parties leaves a claim by the other party unpaid without disputing the accuracy of the claim.

Arbitration must be claimed within three months after the day that the dispute arises and within one year after the last day of the delivery period, on penalty of dissolution of right. There may be exceptions in extraordinary cases, to be determined by arbitrators.

- 15. Even if a translation of these General Terms for the Molasses Trade is issued by or on behalf of the Royal Dutch Grain and Feed Trade Association, the Dutch text will be binding.

- 16. The General Terms for the Molasses Trade of the Royal Dutch Grain and Feed Trade Association are filed with the Clerk of the Court of Rotterdam.