

German-Dutch Contract No. 8

(regulating shipments of cereals and feeding legumes
by ship and river barge within Europe, FOB)

Prepared by
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The original German text and not this translation is legally binding.
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Seller:

Buyer:

Intermediary:

Quantity and Goods:

In Full Shipments/Part Shipments, in Bulk

Quality: Fair Average Quality of Shipments at Time and Place of Loading

Fulfilment Period:

Price:

Per 1.000 kg in bulk

**Delivered Free On Board Buyer's Presented Ship in
Unstowed/Untrimmed**

Payment: Net Cash against Documents

Remarks:

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Buyer

Intermediary/Broker

Seller

§ 1 Arbitration clause

- 1) All disputes relating to this contract and any further agreements connected with it are to be settled by the court of arbitration of the organisation agreed, not only disputes between buyer and seller but also between the parties to the contract and intermediaries. The agreement of the court of arbitration applies also to any decision regarding the validity of the transaction if, for any reason, one party to the contract challenges this.
- 2) Creditors have the option to put recognised claims, claims arising from cheques and bills of exchange, as well as claims on the purchase price which despite reminder have not been settled, before either a court of law or the court of arbitration.
- 3) Arbitration may be carried out through the following organisations:
 - a) Chambre Arbitrale de Paris, Paris
 - b) Koninklijke Vereniging Het Comité van Graanhandelaren, Rotterdam
 - c) Verein der Getreidehändler der Hamburger Börse e.V., Hamburg.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, e-mail or telefax. The term "by telex" includes telegraphic communication as well as any form of rapid written communication such as, for example, e-mail or telefax.
- 2) Resellers and buyers in string must forward all communications without delay, identifying sender and receiver by the use of appropriate reference details.

§ 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 Declaration of the load port or loading place

- 1) If several load ports or loading places are determined in the contract, then the seller must, at buyer's request, declare the load port or the loading place by telex within two business days; he does not however have to fulfil this obligation earlier than ten business days before the beginning of the contract period. If the seller does not fulfil his obligation, the buyer has the right to set a deadline of one business day by telex, and, if this deadline is not met, to make use of his rights according to § 28.
- 2) Notwithstanding the above regulation the seller has the right at any time even though the buyer has made no request to declare the load port or place.

§ 7 Classification of ships

- 1) Shipment must be made by steel ocean-going vessels with their own mechanical propulsion which are without reserve classified according to Lloyd's Register 100 A1 or BS, Germanischer Lloyd 100 A4 or comparable register according to Institute Classification Clause or DTV Classification or Age clause.
- 2) Shipment in inland waterway transport must be carried out by inland ship or pushed or towed barges which are suitable for the reception and transport of the goods and have been classified as suitable by a recognised classifications register. The buyer must provide proof of classification if required to do so by the seller.

§ 8 Nomination of ships

- 1) The seller must receive notification from the buyer of the name of the ship and the approximate quantity to be loaded by telex at least 3 business days before the expected date of readiness to load of the vessel. The buyer has the right to substitute the nominated ship by another of approximately the same size within this period.
- 2) If the ship is not presented according to the nomination, then the buyer has the right to nominate again. The seller has the right to claim the costs arising directly from this fact.
- 3) The nomination must be presented at the latest on the last business day of the contractual shipment period (without extension), otherwise the buyer is in default and the seller is permitted to make use of his rights as per § 30.

§ 9 Margins

- 1) The buyer is entitled to take receipt, in the case of shipment with river barges of up to 5 %, in the case of shipment with sea ships of up to 10 % more or less.
- 2) If the goods are lifted in rates, each part delivery stands as a separate contract. The quantity margin for the total quantity of each agreed delivery period may however be made use of within the final part shipment.

- 3) Within the margin 5 % is to be invoiced at the contract price, the remainder at the market price on the day of the last bill of lading.
- 4) The acceptance of documents may not be delayed because of a dispute over the market price.

§ 10 Period of fulfilment

- 1) The seller must deliver the goods into the vessel nominated and presented by the buyer as per § 8 during usual working hours and according to the custom of the port of loading. The seller is obliged to observe the terms for notice / time counting clauses commonly used in charter parties, inland waterway bills of lading or loading certificates.
- 2) The seller must complete loading a vessel which gives notice of readiness to load within the period of fulfilment without extra costs for the buyer, even after the expiry of the period of fulfilment.
- 3) The date of the bill of lading is deemed to be the time of shipment unless proved otherwise.

§ 11 Extension

- 1) In case the vessel does not give notice of readiness to load within the contractual shipment period, that period is to be extended by up to 10 consecutive days without any special notice required from the buyer. The buyer must pay the seller an allowance of ½ % if the shipment period is exceeded by up to 5 days and an allowance of 1 % of the contract price if the shipment period is exceeded by 6, 7, 8, 9 or 10 days. The last day of loading determines the allowance.
- 2) The seller must complete loading a vessel which gives notice of readiness to load within the extension period without extra costs for the buyer, even after the expiry of the period. Any additional costs which ensue due to overstepping the extension period are for the account of the party responsible for this.
- 3) If, despite nomination, a vessel has not been presented by the end of the extension period, the calculation of the price difference to the contract price is to be made basis the contract price plus 1 %. The same applies if the vessel, taking into consideration the agreed / customary loading time, does not present notice of readiness to load in time.

§ 12 Weighing

The buyer must provide for a correct ascertainment of weight by means of a calibrated scale during loading and, unless the weight is ascertained jointly, furnish a weight certificate at his own expense.

§ 13 Stowage Bags

If loading into stowage bags is required the buyer must organise this and is responsible for costs. The time taken to load into bags may not be reckoned as part of the loading time due to the seller.

§ 14 Loading advice

The seller must inform the buyer by telex without delay after completion of loading the ship's name, the bill of lading date and the loaded quantity. The buyer may not draw any rights from errors or omissions.

§ 15 Insurance

- 1) The buyer must insure the goods at least according to the terms of GAFTA 72, section 3. Cargo Clauses (FPA) or to equal terms including the appropriate strikes and civil disturbance clauses. In the case of transport by sea to foreign countries the risk of war, civil war or warlike events are to be included in the insurance, if this is possible.
- 2) The insurance policy has to be placed at reliable insurance companies and shall cover at least the purchase price plus 3 % (i.e. 103 %) and be in the contract currency.
- 3) The buyer must give the seller at his request a confirmation of insurance by the commencement of loading. If the buyer does not fulfil his duty in time then the seller may organise an appropriate insurance at buyer's cost.

§ 16 Documents / Payment

- 1) The purchase price is to be paid by the seller without deductions against presentation of the invoice and the bills of lading as well as any further agreed documents.
- 2) If the documents are received by the buyer at his business address or at another agreed place until 12:00 a.m. on a business day, then, as long as they are in order, payment must be effected until 12:00 a.m. next business day. If the buyer refuses to accept the documents then he must give his reasons at once to the presenting party.
- 3) The buyer may not refuse to accept the documents, even if they contain errors, if a first class bank in the buyer's country gives a guarantee.
- 4) If the ship, the ship-owner or the agent refuse to hand over the bill(s) of lading for reasons for which the seller is not responsible, then the buyer must pay the invoice sum on presentation of an appropriate receipt from the captain.
- 5) Place of fulfilment in respect of payment is the business address of the seller or the bank named by him. Payment is regarded as effected as soon as the buyer's bank has issued the remittance order. At the seller's request the buyer must arrange that the bank entrusted with payment send a telex or telegraphic confirmation of payment to the seller or the seller's bank: all costs arising from such a request are to be borne by the seller.
- 6) If payment is not made in time the seller may, besides bringing an action for non-payment, and notwithstanding his other rights as per § 30 charge usual bank interest from the day of the non-payment. In order to make use of his rights the seller must set the buyer a period of grace of one business day and inform him of the consequences.

§ 17 Customs clearance

The buyer must furnish the export licence and any other necessary papers at his own cost.

§ 18 Customs duties / restitutions

Unless otherwise agreed, customs duties, export levies, restitutions and such-like are for buyers account or to the benefit of the buyer.

§ 19 Sampling

- 1) Samples for arbitration, analysis, ascertainment of natural weight, varieties or groups of varieties and for making up the standard are to be drawn jointly during loading by representatives of the seller and of the buyer and to be sealed. Unless contradicted by these terms, sampling is to take place according to the local custom. Instead of drawing samples by hand, a recognised automatic sampling apparatus may be used. Both parties are to draw and seal samples at their own expense.
- 2) If a party refuses to draw and seal samples jointly or if that party is not present or represented, the other party has the right to draw and seal samples unilaterally. Sampling is not necessary if the buyer explicitly waives the right to draw samples.
- 3) Samples are to be drawn and sealed by representatives of the buyer and seller for sea-going vessels from each 500 MT and for inland waterway vessels from each 250 MT as well as, in either case, from the remaining balance if it exceeds 50 MT. The sample bags must be of good quality and be made from a tight, porous cloth with inside seams. In the absence of other stipulations the bags must be filled with at least 2 kg. The attached labels must state the ship's name, the lot, the loaded quantity, the names of the seller and of the buyer and the date of sampling. Missing or erroneous declarations may be completed or corrected later as long as there is no doubt of the identity of the samples with the delivered goods.
- 4) In the same way approximately 200 g of sample material must be filled in air-tight glass, plastic or tin containers of a suitable size for the moisture analysis. The lids of the containers are to be completely sealed all round.
- 5) Eight samples in cloth bags and for ascertainment of the moisture content two samples in air-tight containers are required for the court of arbitration, analysis, ascertainment of the natural weight, varieties or groups of varieties and for processes as laid down in § 27. The samples must be labelled according to their destination. Each party is to take possession of four cloth bag samples and one sample in an airtight container. Each party may claim an open sample in addition. The buyer must send the sample for the standard to the appropriate court of arbitration.
- 6) The representatives of the parties must preserve the samples carefully for three months, unless they are required by local laws to hand them over to a designated place of safe-keeping.
- 7) Samples are to be forwarded to the appropriate laboratory or court of arbitration without delay.

§ 20 Condition

The goods are to be delivered in a sound condition. A normal, natural, characteristic smell and slight dry warmth, which has not injured the goods, is not to be objected to.

§ 21 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.
- 2) 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. 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.

§ 22 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.

§ 23 Analysis

- 1) The buyer or his representative must apply to the institute of analysis for an analysis regarding especially agreed quality parameters and/or varieties or groups of varieties to be carried out within 8 business days of completion of loading and inform the seller accordingly. The samples must be analysed by an institute which is accredited according to the latest edition of DIN-Norm EN IOS IEC 17025/2000 or a comparable standard.
- 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.

§ 24 Second analysis

- 1) No second analysis is permitted for moisture and sprouted kernels.
- 2) If a second analysis regarding especially agreed quality parameters and/or varieties or groups of varieties 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 a recognised institute of analysis determined by the applicant.
- 4) 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 or variety or group of varieties, then the costs for all analyses for this quality parameter or this variety or group of varieties are to be borne by the seller, otherwise by the buyer.

§ 25 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.

§ 26 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.

§ 27 Refusal to accept the goods for loading

- 1) If differences of opinion exist over whether the buyer is permitted to refuse to accept goods tendered for loading then he may at the latest on the next business day after the sampling according to § 19 require the goods to be inspected by an expert.
- 2) The expert is to be nominated by the chairman of the agreed court of arbitration or his representative. The decision of the expert is final. The table of charges of the arbitration authority which has jurisdiction is to apply appropriately.
- 3) Rejection of the goods is justified if the buyer may not realistically be expected to take over the goods, but inferior natural weight and differences of analysis are not to be taken into account.

§ 28 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 and/or varieties or groups of varieties within seven business days after the completion of loading.
- 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.

§ 29 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 loading of the party in question,
 - c) due to deviation from the sales sample on which the sale is based within 14 business days after the completed loading 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 loading 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 exceed 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 depends on the goods still being in the ship or its identity being assured through separation or other appropriate course. In this case the buyer is entitled to claim in addition compensation due to non-fulfilment such as the price difference between the contract price and the price on the last day of loading of the ship in the port of loading of the party in question.

§ 30 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 belonging to the organisations named in § 1 Section 3, or
 - c) to have the value of the goods ascertained by an intermediary appointed by the president of the appropriate court of arbitration 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 covering transaction 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 at the latest on the next business day which right it will exercise. If the non-defaulting party exercises its rights as per sub-section 1) b), it must inform in good time the defaulting party 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.

§ 31 Force majeure

- 1) If shipment is rendered impossible through 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 applies if the port of shipment is rendered inaccessible by extraordinary water conditions or ice. If the period of hindrance lasts longer than 28 concurrent days after the end of the originally agreed loading period then the contract is deemed cancelled without compensation. If the seller claims hindrance to fulfilment he must inform the buyer at the latest on the last business day of the loading period.
- 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.

§ 32 Circle clause

- 1) If a seller has bought back from his buyer or from a subsequent buyer the same goods or a portion thereof and if vessels have been nominated, settlement is to be made on the basis of the loaded or nominated 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 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) The above regulation is to be applied with obvious amendments if no vessels are nominated or shipment has not taken place. Buyers must afford whatever help is required to ascertain the circle. A circle binding to all parties which has been established in this way commits each buyer to pay his particular amount resulting from the circle settlement on the basis of contract quantity or mean contract quantity.
- 3) A circle settlement does not take place if the delivery is prohibited as per § 31 and if the parties concerned have a valid claim to invoke that clause.
- 4) 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 § 30 subsection 1) c). The resulting differences are to be mutually settled by the parties to the contract.

§ 33 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 regulated by § 30 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.

§ 34 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.

§ 35 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.

§ 36 Applicable law

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

§ 37 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.