

# HAMBURGER GETREIDEBÖRSE

DER VORSTAND

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## HAMBURG FEEDINGSTUFFS CONTRACT NO. II (regulating sales of imported feedingstuffs by land and water transport)

Legally binding shall be the original German text, but not this translation

**Effective August 1st, 2003**

**Seller:**

**Buyer:**

**Intermediary:**

**Quantity and Goods: about**

**Condition/Quality:**

**Specification:**

**Price per 1.000 kg net in bulk:**

Parity:\*      a) Free Carrier alongside Seagoing Vessel  
                  b) Free Carrier alongside Delivery Point  
                  b) Free on Truck  
                  c) Free on Rail Wagon

Payment: Net cash

Place of fulfilment: For the delivery the loading point  
                          For payment the business address of the seller or his nominated bank

Remarks:

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Buyer

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Intermediary/Broker

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Seller

\* Delete where appropriate

### § 1 Arbitration Clause

The parties to this contract submit to the following conditions and to the arbitration rules of the "Verein der Getreidehändler der Hamburger Börse e.V." in force on the date the claim is submitted. All disputes relating to this contract and any further agreements connected with it are to be settled by the court of arbitration of the "Verein der Getreidehändler der Hamburger Börse e.V.", 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. 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.

### § 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 (i.e. without culpable delay) is made in written form are deemed approved.

- (2) If contracts and confirmations or several confirmations are exchanged, the seller's confirmation is to apply if it remains uncontested. If only a buyer's and an agent's confirmation are made out, the buyer's confirmation is to apply if 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 Connection**

- (1) If, at the conclusion of this contract, the parties agreed its connection to the purchase form-contract of the seller, the conditions of the latter are to apply in addition to the conditions of this contract, in so far as they are applicable to the contract relationship. The conditions of this contract are, however, to have priority, with the exception of §14 subsection (1) sentence 1. In such a case the seller is responsible for the correct drawing of samples in accordance with the purchase form-contract. If the buyer requires the seller to carry out an analysis on the basis of the seller's purchase contract he shall inform him in writing of this requirement within eight business days of loading. The seller is permitted, in the case of deviating quality and condition, deviating analyses, and all other matters of dispute, to refer to the determinations undertaken and the recognised allowances of his own purchase contract and, on notification of his buyer, call for a court of arbitration's decision on the basis of his purchase contract. The buyer shall allow the verdict made on the seller's purchase contract to apply against himself where appropriate to the contract relationship between the parties. If the seller has had his claim against his seller rejected for technical legal reasons or if the verdict is not applicable to the existing contract relationship, then the court of arbitration shall decide upon the basis of this contract.
- (2) The buyer is not required to allow to apply to him a contractually agreed connection relating to the analyses and the judgement of the court of arbitration regarding the condition and quality of the goods, if the goods have been stored longer than 30 calendar days after discharge in the transshipment port.
- (3) The regulation in subsection (2) also applies in the case of goods which have been traded on the basis of loading certificate or loaded quality.
- (4) If the connection of this contract has been agreed the buyer shall allow to apply to him analyses and assessments of quality made by arbitration even if they have been carried out by the seller for a larger quantity.
- (5) If the connection of this contract has been agreed the analysis and arbitration costs incurred by the seller are to be borne by the buyer in proportion to his quantity, inasmuch as they were caused by his claim.
- (6) The "Additional Conditions to the Contracts of the "Verein der Getreidehändler der Hamburger Börse e.V. regulating their connections to other contracts" are not applicable to this contract.

### **§ 4 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, telefax or e-mail. The term "by telex" includes telegraphic communication as well as any form of rapid written communication such as, for example, telefax or e-mail.
- (2) Resellers and buyers in string must forward all communications without delay.

### **§ 5 Business Days**

- (1) All working days count as business days apart from Saturdays and December 24<sup>th</sup> and 31<sup>st</sup>.
- (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 are 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**

- (1) “Spot” means within three business days, “prompt” means within ten business days.
- (2) The term “beginning of a month” includes the days from the first to the tenth, the term “middle of a month” includes the eleventh to the twentieth and the term “end of a month” includes the twenty-first to the last day of the month in question.
- (3) 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.
- (4) If the last day of a fulfilment period as defined in subsection (2) and (3) falls on a Saturday, Sunday or a public holiday or the 31<sup>st</sup> December, the immediately preceding business day counts as the last day of the fulfilment period.

## **§ 7 Delivery**

- (1) Delivery must take place within the agreed fulfilment period at the seller’s option. Only goods which are ready to be loaded or accessible or due may be appropriated. The rendering of a delivery/release note containing no reservation or other limiting condition counts as an appropriation.
- (2) The seller may appropriate the goods before the beginning of the delivery period for the first day of the delivery period. Storage costs and other charges which are demonstrably caused by the buyer, are to be borne by this party.

## **§ 8 Delivery Free on Water Conveyance alongside Seagoing Vessel or Delivery Point**

In the case of delivery “free on water conveyance alongside seagoing vessel or delivery point” the buyer must take receipt of the goods at the time and in the manner the seagoing ship or the delivery point delivers the same. Stowing or trimming in the receiving ship is for buyer’s account. The appropriation of goods to be received from the seagoing vessel must be passed to the buyer at the latest two business days before commencement of discharge of the goods to be received. If this deadline is not kept the seller must reimburse the buyer any resulting extra costs or replace the appropriation.

## **§ 9 Delivery Free on Truck**

In the case of delivery “free on truck” it is the buyer’s duty to take delivery of the goods after receipt of the notification within the delivery period after agreeing a date with the delivery point.

## **§ 10 Delivery Free on Rail Wagon**

- (1) In the case of delivery “free on rail wagon” the buyer must on request provide practicable loading instructions in good time so that the seller is enabled to load within the appropriate delivery period. The seller is responsible for ordering the rail truck for account and risk of the buyer and to deliver the goods into the wagon.
- (2) If the rail wagons are not available at the appointed time, and this non-availability can be proved to have been caused by the railway company, then the period of delivery is extended by the duration of the wagons’ non-availability. The seller must inform the buyer of this state of affairs without delay. Any additional costs resulting from unpunctual arrival of rail wagons are for buyer’s account. If the unpunctual arrival of rail wagons is caused by the seller then this party must bear resulting additional costs.
- (3) The seller is entitled in the case of justified doubt about the buyer’s solvency despite the buyer’s instructions otherwise to dispatch the goods to his own address or that of a forwarding agent at destination. In this case he must inform the buyer in good time. Any extra costs caused by this are for seller’s account.

## **§ 11 Parity in the Case of Delivery by Rail Wagon or Truck**

If goods are sold with the parity “free on rail wagon or free on truck” in a particular loading place, then the seller is entitled to appropriate and load goods from another loading place and compensate extra or charge saved costs.

## **§12 Period of Grace**

- (1) If the contract is not fulfilled in time, the non-dilatory party has the right, after the period of fulfilment has expired, to grant an extension by telex, which notice must reach the dilatory party by 16.00 hours on a business day if it is to take effect on the following business day as the first day of the period of grace.
- (2) The periods of grace are
  - a) two business days if the sale is for delivery “spot”,
  - b) three business days if the sale is for delivery beyond “spot” up to and including “prompt”,
  - c) five business days if the sale is for delivery beyond “prompt”
  - d) one business day for payment,
  - e) one business day for the dispatch of loading instructions.
- (3) If a period of grace is granted before the period of fulfilment has expired, it takes effect on the first business day after the end of the period of fulfilment.
- (4) The granting of an insufficiently long period of grace is not invalid; it rather sets in motion the prescribed extension period.
- (5) The withdrawal or prolongation of a period of grace is permitted only with the consent of the dilatory party.
- (6) A period of grace need not be granted if the other party declares in writing its intention not to fulfil the contract.

## **§ 13 Default**

- (1) After the period of grace has expired the non-dilatory party has the right either
  - a) to withdraw from the contract, and/or
  - b) to buy or sell the goods for account of the defaulting party within three business days through a broker of the “Verein der Getreidehändler der Hamburger Börse e.V.” or a broker accredited by a German Product or Goods Exchange taking account of the regulations governing the execution of covering transactions and price-fixings published by the Board of the “Verein der Getreidehändler der Hamburger Börse e.V.”, or
  - c) to have the value of the goods established by a broker nominated by the chairman of the “Verein der Getreidehändler der Hamburger Börse e.V.” or his designated representative taking account of the regulations governing the execution of covering transactions and price fixings published by the Board of the “Verein der Getreidehändler der Hamburger Börse e.V.” and to demand from the defaulting party the resulting price difference and the costs incurred for having the price established. The settlement date is to be the first business day after the expiry of the period of grace,or, if the buyer is the dilatory party,
  - d) to place the goods in storage facilities suitable for feedingstuffs for buyer’s account and risk, if warning of such action was explicitly given when the period of grace was granted and/or
  - e) to demand the fulfilment of the contract or the contract portion concerned.
- (2) The court of arbitration has the right and - at the request of one party – the duty 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 an 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 not later than the first business day following the end of the period of grace 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 broker entrusted with the transaction.
- (5) If the non-dilatory 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 in the same manner with the exception of subsections 1)d) and e) if the other party has declared its inability to fulfil the contract or its intention not to fulfil it. 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 appropriation or the delivery instructions have not been given within the period of fulfilment both parties have the right at any time during the following month to demand fulfilment of the contract; but the seller is entitled to a delivery period suited to the quantity. If the parties do not agree in writing within a month after the end of the period of fulfilment to extend this period further, they retain solely the right to settle pro and contra as per subsection (1)c). The settlement date to apply is the last business day of the month following the end of the period of fulfilment.

#### **§ 14 Force Majeure**

- (1) If, at the conclusion of this contract, the parties agreed its connection to the purchase form-contract of the seller, the conditions of the latter are to have priority in relation to all forms of force majeure (impediment or obstruction) and are to be applied where applicable to the contract relationship between the parties. The following force majeure clause of this contract applies only in so far as the corresponding terms of the purchase form contract are not applicable.
- (2) If, at the conclusion of this contract, the parties did not agree its connection to a purchase form-contract, then, in the case of impediment of delivery due to the coming into force of export prohibitions or equivalent government measures, blockades, epidemics, hostilities or inimical regulations or other instances of force majeure, the seller is entitled to declare this contract or the unfulfilled part of it as cancelled. If the relevant declaration is not made within two business days after the end of the delivery period then the contract shall be extended for a period of one month, at the end of which the contract shall be cancelled. The same applies if the loading from the country of origin is impossible for one of the above- mentioned reasons.
- (3) If, at the conclusion of this contract, the parties did not agree its connection to the purchase form-contract of the buyer, then, in the case of an obstruction to fulfilment such as riot, strike or actions relating to strike actions or lockouts or similar disturbances in the country of origin, during transportation, or at the place of delivery or forwarding, including ice, the delivery period shall be extended for the duration of the obstruction. If the contractual delivery period needs to be extended for more than one month then each party has the right to withdraw from the contract without mutual allowance on the first business day after the end of this month. If neither party makes such a declaration, the delivery period is extended for a further month, at the end of which period the contract shall be cancelled without mutual allowance.
- (4) If the seller claims force majeure according to subsections (2) or (3) then he must inform the buyer by telex of the events causing his declaration without delay after their becoming known, otherwise he will not be entitled to make use of the impediment to fulfilment for legal purposes. The seller must provide the buyer with the relevant proof if the latter requires it.
- (5) In the case of measures taken by authorities such as limitation of usage the buyer on his part is entitled to declare force majeure. The subsections above are to be applied appropriately.

#### **§ 15 Government Measures**

If the delivery is delayed due to injunctions of the government department responsible for this, then the seller is entitled to an appropriate extension of the delivery period. §14 subsection (3) applies as to deadlines. The seller must deliver proof for the reason for the delay.

## **§ 16 Declaration of Manufacture/Origin**

- (1) If the contract gives the seller the option to deliver the production of several manufacturers or origins, then he may exercise his option at any time up to the appropriation of the goods.
- (2) If the delivery is impeded or obstructed, then the above declaration is valid only if it has been exercised before the occurrence of the incident leading to the existence of the obstruction or impediment.
- (3) If a valid declaration of option has been made before the occurrence of the impediment or obstruction to delivery then the seller is freed from his obligation to deliver or to deliver within the fulfilment period on the occurrence of the situation of force majeure.

## **§ 17 Public Taxes**

- (1) If, after the conclusion of this contract, extra costs arise in the receipt and/or delivery of goods, the seller may debit the buyer with them if these costs are due to actions by authorities which in their actual consequences regarding amount and date were in general unforeseeable. The publication in the Journal of Federal Law, the EU Official Journal or other official publication is authoritative with regard to date. The introduction of new taxes or the increase of existing taxes, for example, count as increased costs.
- (2) Alternatively, reductions due to abolition or reduction of such charges are to be for the benefit of the buyer.
- (3) A party loses its rights as per subsections (1) and (2) if it is in default.

## **§ 18 Quantity Margins / Part Delivery**

- (1) The word “circa.” in relation to the contracted quantity signifies that the seller is entitled to ship up to 5 % more or less. 2 % of this quantity shall be invoiced at the contract price and the remainder at the option of the buyer either at the market price or the contract price.
- (2) If “free carrier alongside seagoing vessel” has been sold and if the delivered quantity is below the 5 % minimum margin, the buyer has the right to invoice the missing quantity which exceeds 2 % at the market price or at the contract price. In the case of delivery over the 5 % margin the buyer has the right either to reject the quantity over the 5 % maximum margin or in his option to accept this quantity at the market price or at the contract price.
- (3) If the contract quantity is limited by two figures no quantity margin applies. In such a case the buyer must accept the maximum quantity or be satisfied with the minimum quantity. In the case of non-fulfilment the mean quantity is to form the basis of the final settlement.
- (4) Each contract portion or each part delivery stands as a separate contract. The seller has the right to make use of the 5 % quantity margin for each part delivery, provided he declares his intention at the latest when he invoices the part delivery. If “free carrier alongside seagoing vessel” has been sold, the seller is to bear all extra costs resulting from a part delivery below 100 tonnes.

## **§ 19 Weight**

The weight determined at loading at the responsibility and cost of the seller by recognised weighers is final. The buyer is entitled to have the weighing superintended at his own expense.

## **§ 20 Condition/Quality**

- (1) Unless otherwise agreed, sound, merchantable quality normal to the country is to be delivered. Goods to be delivered consist of processed or unprocessed natural products which are subject to biological variation. Unless § 21 applies deviation from the contracted condition/quality and/or the stated specification of the goods do not entitle the buyer to refuse to accept them. The goods are rather to be accepted and paid for according to the contract terms. The buyer's rights regarding a possible reduced market value remain untouched by this. Unless the parties are able to reach an amicable agreement, the reduction in value is to be established by arbitration.
- (2) German and EU Feedingstuffs regulations are not affected by the above.

## **§ 21 Undesirable Substances**

- (1) The goods must be free from forbidden and undesirable substances as defined by the regulations of German and EU feedingstuffs law. Inasmuch as maximum levels for individual undesirable substances or for pesticides are laid down by feedingstuffs regulations the content of the relevant substances may not exceed the legal limits in each of the delivered lots.
- (2) If the goods are not permitted to be brought into circulation due to contamination with forbidden or undesirable substances or due to an excessive pesticide content then the buyer is entitled to decline the receipt of the goods. In addition to the right to refuse the goods the buyer is entitled to require a single replacement delivery. The seller must be informed of the claim of this right by telex within five business days after the refusal of the delivery.
- (3) The seller for his part is entitled to make one contractual replacement delivery for refused goods. The buyer must be informed of the claim of this right by telex within five business days after the refusal of the delivery.
- (4) The replacement delivery must take place within ten business days after the refusal of 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.
- (5) The first analysis must be arranged by the buyer without delay after knowledge of the deficiency. The buyer must inform the seller by telex of a claim regarding the contamination of the goods with forbidden or undesirable substances without delay after receipt of the first analysis. Each party is entitled to require within five business days after receipt of the first analysis that a further analysis is carried out. If the results of the first and the second analysis differ, each party is entitled within five days after receipt of the second analysis to require a third analysis. The average of the analyses which are closest together is conclusive.
- (6) The right of the buyer to claim damages due to deficiencies as per subsection (1) remains.
- (7) The additional terms of the Hamburg Cereals Exchange regulating the Hamburg Cereals Contracts Nos. 4, 7 and 16 and the Hamburg Feedingstuffs Contracts Nos. I, II, IIa and VII form no part of this contract.

## **§ 22 Destruction/ Damage**

- (1) If the goods are sold or appropriated as a particular lot and it later becomes evident, that the goods or a part of the same have been destroyed or damaged, then the seller is entitled to repudiate the contract on gaining knowledge of the damage.
- (2) The seller may not exercise this right to repudiate the contract if the buyer, without delay after the receipt of the seller's notification of his intention and after viewing the goods declares his wish to take receipt of the goods. In this case the buyer must give the seller the opportunity to protect his rights against the ship and the insurance. Any claims must be regulated by arbitration, if the parties are unable to agree on the same. If such an arbitration is carried out the loading deadlines may be disregarded according to § 14 subsection (2) of the arbitration regulations of the "Verein der Getreidehändler der Hamburger Börse e.V". In this case the buyer may not refuse to accept the goods.
- (3) If the seller does not make use of his right to repudiate the contract § 26 is to be applied.

## **§ 23 Sampling**

- (1) The buyer is responsible for sampling. If he requires sampling then this is to be carried out jointly at the place of fulfilment by the parties to the contract or their representatives. If one party is not present or represented or the seller refuses to allow joint sampling, then sampling must be carried out by a competent sworn sampler.
- (2) In all other aspects the sampling regulations for feeding stuffs as laid down in the Hamburg Feeding stuffs Contracts Nos. I, II, IIa and VII in the form valid on the date of fulfilment apply.

## **§ 24 Quality Analysis**

- (1) If the goods delivered deviate with regard to the agreed quality so that their value is reduced, then the deficiency is to be reimbursed in the proportion 1:1 for the first three percent, for the fourth and fifth percent in the proportion 1:2 and for every further percent in the proportion 1:3. Fractions are to be reckoned in proportion.
- (2) The buyer may send the samples to the analyst within five business days after sampling and, on informing the seller of his intention, require an analysis to be carried out.
- (3) Both parties are permitted, within eight days of receiving the certificate of analysis, on informing the other party, to require a control analysis. The samples necessary for carrying out the control analysis are to be placed at the disposal of the party requiring this and to be forwarded to another place of analysis. The average of both analyses is to form the basis for the calculation of the allowance.
- (4) If the analyses differ by more than ½ %, both parties have the right within eight days of the receipt of the analysis certificate for the second analysis, on informing the other party, to require a third analysis. This analysis must be carried out by a different analyst to the ones which carried out the first and second analysis. In such a case the average of the two analyses closest to each other, or, in the case of the same deviation, the analysis in the middle is to form the basis of any allowance.
- (5) If an allowance is to be paid for deviation from quality parameters the costs of all analyses are to be borne by the seller, otherwise by the buyer.
- (6) Samples must be analysed by recognised laboratories which have been certified according to the DIN Norm EN ISO EC 17025/2000 or comparable norms.
- (7) Analyses must be carried out using the methods laid down in the GAFTA form 130 in the version which is valid at the time of fulfilment of the contract.

## **§ 25 Claims**

- (1) Apart from in the case of latent defects and deviations from quality parameters in the case of delivery free carrier alongside ocean-going vessel or delivery point, the buyer must inform the seller by telex not later than two business days after receipt and in the case of delivery free on truck or rail wagon not later than two business days after receipt or after the end of the period of free storage. If the goods are stored beyond the end of the free storage period the period of grace for claims begins with the transfer of risk to the buyer. Sellers in string must pass on the claim by telex without delay.
- (2) The buyer must inform the seller by telex of latent defects immediately after discovery. The seller has the same responsibility.
- (3) A claim does not free the buyer from his duty to take delivery of and pay for the goods according to the contract.

## **§ 26 Entitlements in Cases of Deviating Condition/Quality**

- (1) Inasmuch as it has not been agreed otherwise, the seller guarantees that the goods are sound, merchantably clean and untainted (cf. for example §7 Subsection (3) of the Feedingstuffs Regulations). If the goods do not fulfil these criteria then the buyer is entitled to compensation.
- (2) Under reservation of his rights as per Subsections (3)ff. the buyer may claim an allowance for inferior value. If the parties are unable to reach an amicable settlement the allowance is to be set by the court of arbitration.
- (3) If the value of the goods is reduced by more than 10% on average by the result of the analysis and/or the findings of the court of arbitration, the buyer is entitled to reject the goods delivered to him and to require the seller to reimburse the purchase price as well as costs and interest relating to the goods.
- (4) The buyer has, in addition to his right to reject the goods, the right to require a single replacement delivery of contractual goods. He must inform the seller at the latest on the third business day after the receipt of the final analysis result or the final arbitration award of which rights he intends to make use. Otherwise he is permitted only to require payment of the appropriate allowance for inferior quality.
- (5) The seller is entitled to make a single replacement delivery for goods which he must take back. He must inform the seller that he intends to make use of this right within three business days after receipt of the seller's notice as per subsection (4), in which notice the seller expresses his intention to reject the goods.

- (6) In the case that subsections (4) and (5) are applied the seller is permitted a period of ten business days from the rejection of the goods or the coming into force of the arbitration award for the replacement delivery. If no replacement delivery is made within this period, the buyer is entitled without notice from his side either to withdraw from the contract or to have the market price established and to require from the seller the payment of the price difference and the costs of establishing the market price. The date of establishment of the market price is the last business day of the above-mentioned period of ten business days.

### **§ 27 Sampling and Analysis**

- (1) For analyses for undesirable and forbidden substances as well as for merchantable purity and freedom from taint four additional average samples (in bags of air-permeable material) must be drawn and sealed.
- (2) The samples must be analysed by an recognised institute, which must be certified according to DIN-Norm EN ISO EC 17025/2000 or comparable norms.

### **§ 28 Applications for Settlement by a Court of Arbitration**

- (1) Applications for the settlement of claims provided for in § 21 and 26 by a court of arbitration must be made to the “Verein der Getreidehändler der Hamburger Börse e.V.” within twelve business days after the claim is made.
- (2) Notwithstanding that the parties have agreed the connection of this contract with another form contract the court of arbitration of the “Verein der Getreidehändler der Hamburger Börse e.V.”, independently of its competence in other matters, is responsible for deciding upon all questions relating to undesirable or forbidden substances as well as with merchantable purity and freedom of taint.

### **§ 29 Payment**

- (1) Place of fulfilment in respect of payment is the business address of the seller or the bank named by him. Payment is deemed to have been carried out when the sum transferred in payment has been received by the seller’s bank.
- (2) Payment of the purchase price is always to be net cash paid by the buyer within one business day after presentation (for example by post or through a bank) of invoice accompanied by copy bill of lading, loading certificate, delivery receipt or similar. If such proofs of delivery cannot be provided, the seller must, at buyer’s request, provide acceptable proof of delivery in another way. Delivery of the goods replaces the presentation of documents.
- (3) Unless otherwise agreed, the seller need not accept bills of exchange, unconfirmed cheques or non-negotiable cheques. Bills of exchange and cheques are deemed as remitted towards payment, and not in lieu of payment.
- (4) The buyer is not permitted to offset or hold back the purchase price unless the seller suspends payments or if facts exist which are equivalent to a suspension of payments. This regulation does not apply in the case of undisputed or legally confirmed claims.

### **§ 30 Default of Payment**

- (1) Default of payment is deemed to have occurred if the payment is not carried out as agreed.
- (2) In case payment is defaulted the non-dilatory party is permitted notwithstanding other rights to invoice interest at the current bank rate.
- (3) Unless other payment terms have been explicitly agreed in the contract the seller has the right to demand payment concurrent with delivery. If the buyer remains in arrears with the fulfilment of his payment obligation or if other justified doubts exist about the buyer’s ability to pay, the seller may demand payment concurrent with delivery even if other payment terms have been agreed.

### **§ 31 Reservation of Ownership**

- (1) The goods or the documents remain the property of the seller until full payment has been made of all debts payable by the buyer to the seller arising out of the business relationship. In the case of running invoices the reservation of property guarantees each payment demand.
- (2) The processing or consumption of goods which remain the possession of the seller takes place in his capacity as processor and at his instruction, no obligation arising against him out of this. Goods which come into existence through processing or consumption remain the property of the seller, without consideration of the time and degree of processing. In the case of processing with other goods which do not belong to the buyer the buyer shall have title to the new product in proportion to the value of the goods on which property is reserved to the other processed goods at the time of processing. If the buyer, despite the above regulation, through processing or consumption acquires co-ownership in the goods reserved by the seller, he passes on to the seller on conclusion of the contract the (co-) ownership of the goods at the time of his purchase and keeps the goods for the seller. The buyer cedes to the seller any claim against third parties to have the goods surrendered to him. The goods are deemed to be reserved in the sense of this regulation.
- (3) If the goods delivered by the seller are mixed or mingled with other goods, then the buyer cedes to the seller his ownership or co-ownership rights to the mixture or the product and secures these for the seller. The buyer cedes to the seller any claim against third parties to have the goods surrendered to him.
- (4) The buyer is empowered to sell to third parties in the regular course of business against cash payment or with reservation of ownership goods belonging in whole or part to the seller. He is not permitted to mortgage goods or to use them as security. The buyer cedes to the seller on conclusion of the contract all claims accruing to him from the sale, whether these arise before or after the processing, compounding etc., including all subsidiary rights as well as claims to compensation from a credit insurance. If the goods are only co-owned by the seller or are sold by the buyer for a lump sum together with other goods in whatever condition which do not belong to the seller, the cession of the claim covers only the amount which the seller has invoiced the buyer.
- (5) The buyer is empowered until notice is given otherwise to collect claims payable to the seller which he has acquired through the assignment. On revocation this right passes to the seller even in the case of insolvency. The buyer must furthermore allow the seller access to the goods at all times and, at seller's request, to mark the goods as his property and to supply the seller with all information required. In the case of arrears of payment the buyer must at seller's request inform his buyer in string of the passing of claim. If the buyer receives bills of exchange or cheques in settlement of sales to a third party, he must cede the title to the debt payable to him out of the bill of exchange or the cheque up to the limit of the claim ceded by him from the sale. Title to the bill of exchange or the cheque is ceded from the buyer to the seller; the buyer is to keep the document for the seller.
- (6) The buyer must defend the seller's rights against seizure of goods in which the seller has title or co-ownership rights or retains a claim which has been ceded to him and must without delay inform him by telex of such seizure.
- (7) The delivered goods must be adequately insured against the usual risks by the buyer as long as the seller retains ownership. Claims arising from damage, and especially those against the insurance company, must be ceded by the buyer to the seller up to the value of the seller's claim to secure his legal title
- (8) Any over-insurance is at buyer's request to be put at his disposal by the seller. The goods are over-insured if the value of the insurance is more than 30% over the value of the claim insured against. The seller may choose the security to be released.

### **§ 32 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 § 13 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.

**§ 33 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 contract quantity, or if appropriations have passed, on the basis of the actual 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.
- (2) A circle settlement does not take place if the delivery is impeded as per § 14 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 § 13 subsection (1)c). The resulting differences are to be mutually settled by the parties to the contract concerned.

**§ 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 Applicable Law**

This contract is governed by German law. The “United Nations Convention on Contracts for the International Sale of Goods” dated 11<sup>th</sup> April, 1980 (BGBl. 1989, Part II, pg. 588ff.) 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.