

NOFOTA

Netherlands Oils, Fats and Oilseeds Trade Association

Oil, Fats and Allied Products Division
Secretariat: P.O. Box 202, 3000 AE Rotterdam

C O N T R A C T

26

for the trade in meat and offals,
chilled or frozen

SPOT / FREE DELIVERED

..... 19

Seller: Ref. no.

.....
.....

Buyer: Ref. no.

.....
.....

Intermediary: Ref. no.

.....
.....

To Messrs.:

.....

of:

.....

We confirm having bought from/sold to you today:

.....
.....

Quantity: tons/container(s) containing about tons

Description of commodity:
.....
.....

Bulk/Packed in:

Price:

Payment:

Method of delivery:

Shipment/Delivery Period:

.....

At seller's option/at buyer's call

Special conditions:
.....
.....

and further on the following conditions, including the Arbitration Clause and the Rules for Arbitration of the Netherlands Oils, Fats and Oilseeds Trade Association, Oils, Fats and Allied Products Division (of which parties admit that they have knowledge and notice) on the understanding that the written word shall take precedence over the printed text. The parties hereby expressly agree to submit all disputes arising out of or in connection with this contract to arbitration in Rotterdam (or elsewhere if so agreed) in accordance with the above-mentioned Rules for Arbitration.

Yours faithfully,

signature buyer

signature seller

Article 1.

Quantity Margin and Settlement

1. Where a quantity is sold "about" or "approximately", the seller shall be entitled to deliver/ship five per cent more or less. In case of default on either part, this margin shall not be taken into account when assessing damages.

Ascertaining the weight

2. Unless otherwise agreed, the seller shall be obliged to have the weight ascertained in the customary manner for his own account.
Goods sold on spot terms shall be weighed on the pier alongside the sea-going vessel from which they were discharged or at the place of stripping the containers. Where the goods are delivered ex coldstore or ex warehouse, weights shall be ascertained at the coldstore or at the warehouse.
Where goods are sold free delivered, weights shall be ascertained prior to loading on the pier alongside the vessel or at the coldstore or at the warehouse.
3. Unless otherwise agreed, the weight stated in the contract shall be understood to mean the newly ascertained weight including the original tare.

Article 2.

Goods sold on spot terms

1. Where goods are sold ex coldstore or ex warehouse, the costs for handling out shall be for the account of the seller. Where goods are sold on vehicle, the costs of delivery on vehicle shall be for the account of the seller.

Shipment free delivered

2. All risks of the goods in transit shall be for account of the seller subject to the provisions of Article 6 in respect of quality and/or condition.

Shipment/delivery within a specified period

3. Should shipment/delivery within a specified period have been agreed, the seller shall be obliged to ship/deliver the goods within that period on a date at his option unless the goods have been sold for shipment/delivery at buyer's call. If any period has been determined at half a month and the month involved contains an odd number of days, the middle day of that month shall be deemed to belong to the relevant half of the month.
4. If "immediate delivery" has been agreed upon, the seller shall be obliged to deliver the goods not later than on the seventh day after the date of the contract. If "prompt delivery" has been agreed upon, the seller shall be obliged to deliver the goods not later than on the fourteenth day after the date of the contract.
If "prompt shipment" has been agreed upon, the seller shall be obliged to deliver the goods not later than on the twenty-first day after the date of the contract.

Shipment/delivery in parts

5. The seller shall be entitled to deliver/ship in parts, in which latter case each part shipped shall stand as a separate contract.

Declaration of shipment

6. In case of shipment the seller shall have the obligation to give the buyer declaration of shipment with due observance of a reasonable term.

Notice of call

7. If the goods are sold for delivery/shipment at buyer's call, the buyer shall be obliged to give notice of call at least five (5) working days before the day on which he requires the goods to be made available. If no notice of call has been given on the fifth day before the final day of the agreed period, the notice of call shall be deemed to have been given on that day for shipment/delivery on the final day of the agreed period and all costs of storage, etc., after the said last day shall be for account of the buyer unless otherwise agreed.

Article 3.

Payment

1. Payment shall be made cash without discount within eight (8) working days after delivery. Each payment made on account by a buyer who has more than one contract with the same seller shall be considered to have been made in the sequence of deliveries, unless explicitly stipulated otherwise.
Upon expiry of the aforesaid eight (8) days the buyer shall be charged statutory interest on the purchase price without prejudice to the seller's right to claim immediate payment. All collection expenses shall be for account of the buyer.
2. The goods delivered shall remain the property of the seller until such time as the purchase price therefor has been paid in full by the buyer. As long as payment in full has not been effected, the buyer is not entitled to transfer the goods to third parties by way of security. If the buyer remains in default of paying the purchase price of the goods, if a winding-up order is made against the buyer or if the buyer applies for a moratorium of payments, he shall be obliged to make the unpaid goods available to the seller or a person designated by the seller at the seller's first request.
All of the above shall be without prejudice to the seller's entitlement to compensation for the damage, if any, sustained by the seller as a consequence of the non-fulfilment of the contract of sale.

Article 4.

Storage

If the buyer fails to take delivery in due time for reasons other than force majeure, the seller shall be entitled either to cancel the contract or to store the goods in his own warehouse or with a third party at the buyer's expense and risk. The seller shall be obliged to insure the goods whilst in storage and he shall be entitled to charge the insurance premium to the buyer.

Article 5.**Default in taking delivery**

1. The mere excess of the shipment/delivery period shall cause the seller to be in default without notice of default being required.
2. If the buyer fails to take delivery in due time, he shall be in default without notice of default being required unless - irrespective of the terms of payment - he makes payment immediately, subject to the provisions of Article 4 ("**Storage**").

Consequences of default

3. In case of default as referred to in the first two paragraphs of this Article the non-defaulting party shall be entitled either to demand specific performance or to cancel the contract, in either case with or without claiming damages.

Cancellation

4. In case of cancellation the non-defaulting party shall at any rate be entitled to claim as damages the possible adverse price difference between the contract price and the market value of the goods concerned on the first working day after the day of default, any other or further damage to be determined by arbitration.

Article 6.**Quality and Condition**

1. If the goods have been sold on the condition "inspected and approved by buyer", the seller shall no longer be liable for claims regarding the quality and condition of the goods.
2. If the goods have been sold on the condition "subject to inspection", the buyer shall be entitled to inspect the consignment indicated to him by the seller at the place of shipment/delivery within 24 hours after having been given the opportunity to do so and to reject same without being required to state the reasons therefor, provided such rejection is notified to the seller within the specified period. Failing such notification, the consignment shall be considered as accepted and approved. Timely notification of rejection shall cause the contract to be cancelled without any compensation for damages being required.
3. If in a sale on sample or in a sale on good merchantable or fair average quality the buyer is of the opinion that the quality and/or condition of the goods do not meet the requirements, he shall not for that reason be entitled to demand cancellation of the contract, yet he shall be entitled to claim from the seller compensation for damages to be agreed upon within seven (7) days after the shipment/delivery. The buyer shall apply for arbitration within three (3) weeks from the definite rejection of his claim by the seller on pain of loss of rights.
4. Should in a sale on sample or in a sale on good merchantable or fair average quality the difference in quality and/or condition be excessive or be attributable to bad faith on the part of the seller, the buyer shall, however, also be entitled to demand the cancellation of the contract in respect of the consignment concerned and consequently also to demand repayment of the invoice amount paid, if any, with or without compensation for damages as specified in Article 5.
5. The arbitrators shall, if necessary, determine which party shall bear the costs, damages and interest accumulated during the course of the negotiations and/or arbitration.
6. All claims regarding Frozen Meat/Offals must be lodged with the seller within three (3) days from taking delivery of the goods. All claims regarding deliveries of Fresh and/or Chilled Meat/Offals must be lodged with the seller within 24 hours from taking delivery of the goods. All claims must be made by telegram, telex or by telefax.
7. Latent defects must be advised to the seller by telegram, telex or by telefax within 24 hours after they are discovered. The seller shall be entitled to arrange for an inspection of his own. The seller shall, however, only be liable for such defects if ascertained within thirty (30) days of receipt in the case of Frozen Meat/Offals and within 72 hours of receipt in the case of Fresh and/or Chilled Meat/Offals.

Article 7.**Insolvency**

1. If before fulfilment of the contract either party suspends payment, applies for an official moratorium or becomes or is declared bankrupt, the contract shall be cancelled and settlement shall be made at the market value on the working day on which the event in question can be deemed to have been public knowledge.
2. Should the parties fail to agree on the abovementioned day and/or the market value, these shall be determined by arbitration.
3. If a party which fails to pay debts without contesting their correctness does not give notice of the suspension of its payments, creditors who sold or bought on the conditions of this contract may summon it to do so at the latest on the next working day, failing which the creditors will be entitled to give notice of such circumstances by telex, telegram or any other means of rapid written communication to the secretary of the Association of such circumstances and, in the event that two or more creditors give such notice within a period of 30 days, the secretary shall notify the party concerned by telex, telegram or any other means of rapid written communication that its creditors gave such notice. The party notified shall inform the secretary by telex, telegram or any other means of rapid written communication at the latest on the next working day of the reason(s) for which it claims not to be obliged to make payments - which reason(s) the secretary shall pass on to the aforementioned creditors -, or shall give notice of suspension of payments to the secretary and its creditors by telex, telegram or any other means of rapid written communication at the latest on the next working day. Failing a reply to the secretary on the next working day, the party concerned shall be deemed to have suspended payments on that day. In this case or if the party concerned informs the secretary that he has suspended payments, the secretary shall inform all members accordingly.
4. In case of an insolvency as meant in paragraph 1 of this Article the holding company of the non-insolvent party to the contract and any other companies of whose ordinary share capital the aforementioned holding company directly or indirectly holds more than 50% shall be entitled to set off any debts which they may have to the insolvent party against any claims which the non-insolvent party has on the insolvent party. If the non-insolvent party has a debt to the insolvent party, it shall be entitled to set off its debts against any claims which its holding company or any other companies belonging to the group as defined above may have on the insolvent party.

The insolvent party shall only be entitled to or be liable for any remaining balance(s), if any. The settlements mentioned in this paragraph may be made irrespective of the origin of the claims and debts involved, as long as they are not disputed.

In case of disputes any amounts due to the insolvent party may be retained by the parties involved until all disputes concerned have been finally settled by arbitration or by the competent Association(s) or otherwise and/or, as the case may be, by the competent Court(s).

Article 8.

Force majeure

1. Force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstances beyond the seller's control and not for his account or at his risk which have arisen after the contract has been made, as a result of which he will not be able to ship/deliver the goods sold.
2. The seller shall immediately notify the buyer of the occurrence of the event constituting force majeure by telegram, telex or telefax and in any event in writing.
3. When the event constituting force majeure has ceased to prevail, the seller shall be obliged to ship or deliver the goods as soon as possible. The buyer shall be given a reasonable period to take delivery of the goods.
4. If an event of force majeure prevents the seller from shipping or delivering the goods within 60 days after the last day on which he should have shipped or delivered, the contract shall be void and the purchase price shall be refunded immediately if payment has already been made.
5. The provisions of the foregoing paragraphs of this Article shall apply mutatis mutandis in the event of force majeure affecting the buyer, on the understanding, however, that if normal carriage by water, road or rail is hampered as a result of abnormal water levels, ice, drift ice, snow or other circumstances, the seller shall be entitled to store the goods in his own warehouse or with a third party at the buyer's expense and risk, unless the buyer takes delivery of the goods in any way other than the one agreed upon. The seller shall be obliged to insure the goods whilst in storage and he shall be entitled to charge the insurance premium to the buyer.
6. If the goods appropriated by the seller for the buyer are wholly or partly lost as result of force majeure the contract or the relative part thereof shall be cancelled and the purchase price shall be refunded immediately if payment has already been made. The seller shall, however, be responsible for furnishing evidence that these goods were shipped or, as the case may be, were intended for shipment/delivery against the contract in question.
7. Dissolution of the contract of sale in deviation of the foregoing on the basis of Section 6:265 Dutch Civil Code is excluded.
8. If an event constituting force majeure occurs affecting either the seller or the buyer, not specified under the provisions of this contract, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences to the parties of such event of force majeure shall be settled in equity by arbitration.

Article 9.

Duties, Taxes and Levies

1. All duties, taxes and levies bearing upon the goods shall be for account of the seller. Unless specifically agreed otherwise, if the goods are sold duty paid, any duties, levies and taxes, in so far as these have become effective or have been increased between the date of the contract and the date of actual delivery, shall be for account of the buyer, and any repeals and/or reductions thereof between the dates referred to above shall be to the benefit of the buyer.
2. If the goods are sold/bought for export, the duties, levies and taxes bearing upon the goods in the exporting country shall be for account of the seller and the duties, levies and taxes in the importing country shall be for account of the buyer.

Article 10.

Non-working days and business hours

1. Saturdays, Sundays, public holidays and any day or part of a day which the Association shall declare to be a non-working day at the place where acts have to be performed in execution of this contract shall not be considered as working days.
2. Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday or any public holiday or on any day declared to be a non-working day, the time so limited shall be extended until the first working day thereafter. All working days shall be deemed to end at 17.00 hours local time. The contractual shipping/delivery period shall not be affected by this Article.

Article 11.

Dutch law

This contract and any further agreements resulting therefrom shall be subject to Dutch law.

Article 12.

International Convention(s)

The Uniform Law on the formation of contracts for the International Sale of Goods (ULFIS), the Uniform Law on the International Sale of Goods (ULIS) and the Convention on the International Sale of Goods (CISG), whether in the international version of the relevant convention or in a national version, shall not apply to the contract.

Article 13.

Arbitration

1. Any disputes arising out of this contract as well as any disputes arisen out of further agreements resulting from this contract shall be exclusively referred to arbitration in accordance with the rules for Arbitration of NOFOTA (the Netherlands Oils, Fats and Oilseeds Trade Association), Oils, Fats and Allied Products Division of Rotterdam, in force on the date of this contract.
2. Persons through whose intermediary this contract has been concluded and who have signed the sold and/or bought notes shall submit to the aforementioned arbitration any dispute which may arise either out of the contract or out of their intermediary. They may be called upon as third parties in a dispute between the buyer and the seller.
3. A dispute shall also then be deemed to exist, if one of the parties fails to pay a claim of the other party without contesting the correctness thereof.
4. Subject to the provisions of Article 6, paragraph 3, application for arbitration shall, - on pain of losing the right to make a claim -, be made within 3 months after the day on which the dispute has arisen, exceptional cases, at the discretion of the arbitrators, excepted. The party applying for arbitration shall notify the other party of the application at the same time. In a string and in a circle applications for arbitration shall also be allowed after expiry of the afore-mentioned period(s), provided that the first application was made in good time and the subsequent applications/notices were made/passed on immediately upon receipt of the notice of the preceding application.