



NETHERLANDS OILS, FATS AND OILSEEDS TRADE ASSOCIATION

VERSION 1 JANUARY 2023

# TRADING RULES



# CONTENTS

## Part I General Provisions

|           |  |        |
|-----------|--|--------|
| Chapter I | General provisions applicable to all types of contract | p. 3-7 |
|-----------|--|--------|

## Part II Specific Provisions concerning Types of Contract

|              |  |          |
|--------------|--|----------|
| Chapter II   | Free on Board (F.O.B.)/Free on Rail (F.O.R.)/Free on Truck (F.O.T.) Mill                   | p. 9-10  |
| Chapter III  | Ex Tank  | p. 11-13 |
| Chapter IV   | Freight Paid, Freight & Insurance Paid and Free Delivered                                  | p. 14-16 |
| Chapter V    | Free on Board (F.O.B.) Sea Going Vessel Named Port of Shipment<br>(other than F.O.B. Mill) | p. 17-19 |
| Chapter VI   | Free Alongside Ship (F.A.S.) Named Port of Shipment  | p. 20    |
| Chapter VII  | Cost & Freight (C. & F.)/Cost, Insurance & Freight (C.I.F.)                                | p. 21-24 |
| Chapter VIII | Ex Ship  | p. 25-28 |
| Chapter IX   | Spot/Available   | p. 29-30 |
| Chapter X    | General Business   | p. 31-32 |

## Part III Miscellaneous Provisions

|              |  |          |
|--------------|--|----------|
| Chapter XI   | Insurance  | p. 34-51 |
| Chapter XII  | Option Free on Board (F.O.B.) /Free on Rail (F.O.R.)/Free on Truck<br>(F.O.T.) Mill or Ex Tank   | p. 52    |
| Chapter XIII | Rules for Arbitration  | p. 53-56 |
| Chapter XIV  | Analyses   | p. 57-60 |
|              | a. Standards of Analysis   | p. 58    |
|              | b. Recognized Laboratories   | p. 59    |
|              | b.1 Criteria for Recognized Laboratories   | p. 59-60 |
| Chapter XV   | Annexes  | p. 61-71 |
|              | a. Specimen Short Form Contract  | p. 61    |
|              | b. Approved Delivery Order F.O.B./F.O.R./F.O.T. Mill   | p. 62    |
|              | c. Approved Text Instruction to the Tank Storage<br>Company to issue an Approved Release Ex Tank | p. 63    |
|              | d. Approved Release Ex Tank  | p. 64    |
|              | e. Approved Warrants Ex Tank   | p. 65-66 |
|              | f. Approved Delivery Orders Ex Tank  | p. 67    |
|              | g. Recognized Tankstorage Companies  | p. 68    |
|              | g.1 Criteria for Recognized Tankstorage Companies  | p. 68-69 |
|              | h. Recognized Superintendent Companies   | p. 70    |
|              | h.1 Criteria for Recognized Superintendent Companies   | p. 70    |
| Chapter XVI  | a. FOSFA Heating Instructions  | p. 71-74 |
|              | b. Quality Specifications  | p. 75    |
|              | - Crude degummed soybean oil (NOFOTA)  | p. 75    |
|              | - Crude degummed rapeseed oil (FEDIOL)   | p. 75    |
|              | - Crude rapeseed oil (FEDIOL)  | p. 75    |
|              | - Crude linseed oil (NOFOTA)   | p. 75    |
|              | - U.S.A. Tallows and Greases F.A.S., F.O.B., C.&F. and C.I.F.                                    | p. 75    |
|              | - Hoggrease  | p. 76    |
|              | - Technical Tallows and Greases  | p. 76    |
|              | - Acid Oils and Similar Articles   | p. 76    |
|              | - Soybeans Ex Ship   | p. 77    |
|              | - Used Cooking Oils (UCO's) (NOFOTA)   | p. 77    |

PART I  
**General Provisions**

# CHAPTER I

## GENERAL PROVISIONS APPLICABLE TO ALL TYPES OF CONTRACT

### Clause 1

#### Dutch law

Any contract on these rules and any further agreement resulting therefrom shall be subject to Dutch law.

### Clause 2

#### 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.

### Clause 3

#### Principal obligations if applicable depending on the type of contract

1. Principal obligations of the seller (conditions of the contract) are:
  - a. giving notice of delivery
  - b. physical delivery or shipment of goods of the description contracted for
  - c. covering insurance in accordance with chapter XI
  - d. making a declaration of shipment
  - e. transfer of title to the goods or, as the case may be, presentation of the required documents
  - f. giving notice of the beginning and the termination of force majeure.
2. Principal obligations of the buyer (conditions of the contract) are:
  - a. giving notice of call
  - b. booking freight space
  - c. nomination of freight space
  - d. giving shipping instructions
  - e. nomination of destination
  - f. covering insurance in accordance with chapter XI
  - g. taking delivery
  - h. making payment and, as the case may be, lifting documents
  - i. giving notice of the beginning and the termination of force majeure.
3. Points of time on which and periods of time within which principal obligations must be fulfilled are of the essence of the contract, unless explicitly stated otherwise in the specific provisions concerning the type of contract.
4. If the significance and the consequences of exceeding any period, not falling under the abovementioned periods, have not been provided for, either in the particular contract or in the specific provisions concerning the type of contract, these shall be determined by arbitration.

### Clause 4

#### Ship's Classification and equipment

1. If goods have to be shipped overseas, shipment is to be made by seagoing fully engine-powered vessel(s) classified A 1 in Lloyd's Register or of identical classification of a similar institution.

2. Any tanks, tank heating coils, pumps or fittings, which contain copper or copper alloy shall not be used for loading, carrying or discharging oil or fat.

#### NOFOTA recognition

3. Tankstorage Companies  
Reference in these Trading Rules to tankstorage company shall mean a tankstorage company recognized by NOFOTA.  
The use of NOFOTA recognized tankstorage companies shall be mandatory except where contract parties mutually agree to the use of other tankstorage companies not recognized by NOFOTA.
4. Superintendent Companies  
Reference in these Trading Rules to superintendent or superintendent company shall mean a superintendent company recognized by NOFOTA.  
The use of a NOFOTA recognized superintendent company shall be mandatory, except where the contract or national laws or regulations require the use of Governmental or other agencies not recognized by NOFOTA.
5. Laboratories  
Reference in these Trading Rules to laboratories shall mean a laboratory recognized by NOFOTA.  
The use of a NOFOTA recognized laboratory shall be mandatory except where the contract or national laws or regulations require the use of Governmental or other laboratories not recognized by NOFOTA.
6. Liability
  - a. NOFOTA is not liable for any damage resulting from or in relation to the (non)-recognition of a laboratory/tank storage company/superintendent company. Damage also includes damage caused by death or injury as well as any type of financial losses.
  - b. At all times and in all cases any liability will be limited to a maximum amount of € 5.000,00 per event or series of events with the same cause, except insofar as the damage was caused by an act or omission on the part of the board of directors of NOFOTA, carried out with either the intent to cause that damage or recklessly and with the knowledge that that damage would very probably result thereof.
  - c. When representatives of NOFOTA as well as persons whose services are used by NOFOTA are held liable, these persons can also invoke any exemption and/or liability that NOFOTA can invoke.
  - d. This exoneration and limitation of liability clause is to be considered as an irrevocable clause to the benefit of NOFOTA as meant in Art. 6:253 (4) Dutch Civil Code.

### Clause 5

#### Export- and importdocuments

1. In case of contracts for export the seller shall provide the necessary exportdocuments and further agreed documents, if any; all expenses connected herewith shall be for seller's account. The buyer has to furnish to seller all necessary details enabling the seller to provide these exportdocuments in due time.
2. The buyer shall be responsible for the importdocument(s) which is/are required in the country of destination. All expenses connected herewith shall be for buyer's account.

## Clause 6

### Duties, taxes and levies

1. If 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.
2. If not sold/bought for export, any duties, levies and taxes bearing upon the goods shall be for account of the seller. Unless explicitly agreed otherwise, in this case duties, levies and taxes, in as far as these have become effective or have been increased between the date of the contract and the date of physical delivery shall be for account of the buyer, any repeals and/or reductions thereof between the dates referred to above, shall be to the benefit of the buyer.
3. If the goods are sold duty paid or are of similar customs' status, any duty, levy and tax in as far as these have become effective or have been increased between the date of the contract and the date of physical delivery shall be for buyer's account and any repeal and/or reduction thereof between the dates referred to above shall be to the benefit of the buyer.

## Clause 7

### E.C. regulations

1. Unless otherwise agreed E.C. restitutions and compensatory amounts, whatever named, as well as any alterations thereof between the date of the sale and the date of transfer of title shall be for account of the seller if these are payable in the exporting country; if payable in the importing country, for account of the buyer. If, however, as a result of measures of public authorities any refund, levy or compensatory amount or any part thereof, which was originally payable to either of the parties, is paid to the other party, adjustment between the parties shall be made.
2. The buyer shall have the obligation to furnish the information necessary for the export documents to the seller in good time or, in as far as he attends to those documents himself, provide the seller with the export documents necessary to enable the latter to obtain any restitutions and compensatory amounts allowed for in the contract price.

## Clause 8

### Days

1. In any month containing an odd number of days, the middle day shall be reckoned as belonging to both halves of the month.

### Non-working days and business hours

2. 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.
3. 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 clause.

## Clause 9

### Notices and declarations

1. All notices and declarations in execution of the contract are to be made by e-mail, facsimile or any other means of rapid written

communication. If receipt of any notice or declaration is contested, the burden of proof that the notice was actually received by the addressee shall be on the sender. They shall be deemed to be given or made under reserve for slight errors, omissions or delays in transmission. In a string all notices and declarations in execution of the contract shall be passed on immediately.

2. A notice or declaration from a broker, European house and/or representative and/or other duly authorized agent of either party to the contract shall be a notice or declaration under the contract. Sellers and/or buyers shall remain responsible for such notices and declarations.

## Clause 10

### Weight conversions

If required, North-American weight shall be converted as follows: 2204.6 lbs. being equal to 1000 kilogrammes. Weights according to the English system of weights: 2240 lbs. being equal to 1016 kilogrammes, whilst one hundredweight of 112 lbs. shall be equal to 50,8 kilogrammes. Other weights shall be converted according to special arrangements to be agreed upon.

## Clause 11

### Ascertaining weights on the basis of mass per unit volume ('litre weight' in air)

If it is necessary to determine the mass per unit volume ('litre weight' in air) for ascertaining the weight, a minimum of three samples must be drawn from each tank (one each from the top, middle and bottom of the tank) which samples shall be mixed together. If much sediment is present, samples must be drawn at depths of every 300 mm. The mass per unit volume ('litre weight' in air) shall be determined in the customary manner on the basis of the average temperature of the tank.

## Clause 12

### Packing

When goods are sold including packing, the packing and tare must conform to those usual for such goods.

## Clause 13

### Tare. Weighing of goods delivered in packages

1. Unless otherwise agreed the weight specified in the contract shall mean the nett weight. The weight shall be determined by means of weighing for gross upon delivery irrespective of whether the goods are delivered in seller's or buyer's packages.
2. The tare shall be determined by the seller before the packages are filled, unless it has been agreed that netweights only shall be established. The buyer is entitled to contest the accuracy of the tare within sixty days of delivery, provided that excessive differences are established to the satisfaction of arbitrators. The period of sixty days may, if necessary, be extended by arbitrators.

## Clause 14

### Quality and/or condition. Means of conveyance

1. Quality of goods includes their state or condition. Applicable to edible oil cargoes.

*For shipment to and from countries within the European Union.*

2. In case of shipment or delivery contracts the immediate previous cargo in the tank(s), lines and pump systems used

to load, carry and discharge the oil on any means of conveyance shall have been a product in accordance with the E.U. Commission Regulation 579/2014 or any successive Directive in force at the date of the bill of lading.

3. In case of ex tank deliveries the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil on the means of conveyance from origin of the goods to the tankstorage company shall have been a product in accordance with the E.U. Commission Regulation 579/2014 or any successive Directive in force at the date of the bill of lading.

*For shipment between non EU countries.*

4. In case of shipment or delivery contracts the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil on any means of conveyance shall have been a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading.
5. In case of ex tank deliveries the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil on the means of conveyance from origin of the goods to the tankstorage company shall have been a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading.

*For cargoes stored.*

6. In case of ex tank deliveries, the immediate previous cargo in the tank(s), lines and pump systems used for storage and handling of the oils at the tankstorage company shall have been a product appearing on the FOSFA International list of acceptable previous cargoes in force at the time of actual storage of the goods. For tankstorage companies situated in the European Union the immediate previous cargo in the tank(s), lines and pump systems used for storage and handling of the oils at the tank storage company shall have been a product in accordance with the E.U. Commission Regulation 579/2014.

## Clause 15

### Quality and specifications

1. The goods shall be of good merchantable quality of the description or the make contracted for.
2. Specifications: minimum flash point of 121°C (250°F).  
The FFA content shall be expressed as follows:
  - if as Lauric acid, calculated on a molecular weight of 200;
  - if as Palmitic acid, calculated on a molecular weight of 256;
  - if as Oleic acid, calculated on a molecular weight of 282.

## Clause 16

### Quality available goods

In case of sales of available goods, the seller shall not be responsible for the quality provided the parcel has been specifically described in the contract. The buyer shall be considered to have approved the goods before buying, subject to the reserve of latent defects.

## Clause 17

### Analysis

1. One of the parties shall instruct a laboratory within ten working days after physical delivery of the goods to make an analysis and immediately after receipt of the analysis report shall send a copy of it to the other party. Within five working days after receipt of that copy by the other party either party shall be entitled to instruct an other laboratory to make a second analysis. The mean of the figures in the aforementioned analysis reports shall then be accepted as binding upon both parties, unless on the request of either party a

third analysis shall be made by a third laboratory. The instruction for the third analysis is to be given within five working days after receipt of the second analysis report (or a copy of it). In case of three analyses the mean of the two figures closest to each other for the relevant quality specification shall be accepted as binding upon both parties. If the middle figure differs equally from each of the other figures, the middle figure shall be binding upon both parties.

2. Analysis fees shall be for account of the party ordering the analysis. If the seller and buyer are in agreement on an analysis made at the request of either party, which serves as the basis for a settlement agreed upon between them, or if reciprocal settlement of quality has been contracted, seller and buyer shall each bear half of the costs of that analysis.
3. In a string copy(ies) of the analysis report(s) shall be passed on immediately.

### Samples

4. Sampling shall be done in accordance with the method in ISO 5555 (current edition) and in accordance with the instructions as defined in the relevant Chapter of the NOFOTA Trading Rules.
5. The samples shall be packed, sealed and labelled in accordance with ISO 5555 (current edition) whereby it must be assured that the samples can always be identified and linked to a specific delivery under the contract.
6. Parties must ensure that the samples are stored in cool, dry conditions and away from strong light for a period of 6 months from the actual date of delivery of the goods. The sample area should be insect and rodent free and hygienic.

## Clause 18

### Analysis methods

1. Analyses shall be made in accordance with the methods approved by the Association.
2. If no method has been approved by the Association, the analyses shall be made according to a usual method.

## Clause 19

### Complaints and Quality Arbitration

1. If in the opinion of the buyer the quality is not in accordance with the standard specified in the contract, he must – within 21 consecutive days after the quality was determined in accordance with the contract – lodge a complaint with the seller, if possible together with a copy of an analysis report. The complaint shall give the reasons for complaining and specify the amount of the claim. The buyer shall apply for arbitration within 21 consecutive days of the final rejection of his complaint by the seller, exceptional cases at the discretion of arbitrators. The buyer applying for arbitration shall notify the seller of the application for arbitration at the same time.
2. Should the contract form part of a string of contracts that are identical in all contractual terms and conditions, except as to the date, price and quantity, then any arbitration and subsequent appeal arbitration shall be held as between the first seller and the last buyer in the string as though they were contracting parties. Any award so made (called the String award) shall, subject to the right of appeal as provided in the rules for arbitration, be binding on all the intermediate parties in the string, and may be enforced by any intermediate party against his immediate counter party as though a separate award has been made under each contract. In a string complaints and applications for arbitration shall also be allowed after expiry of the aforementioned periods provided that the first complaint or application for arbitration was made in good time and the subsequent complaints or applications for arbitration were made immediately upon receipt of the preceding complaint or application.

3. If the goods, wholly or partially, do not comply with the contractual quality standards, the buyer shall be entitled to claim an allowance from the seller on account of inferior quality. If the inferior quality is of an exceptional nature or attributable to bad faith on the seller's part, the buyer shall also be entitled to demand that the contract be cancelled, wholly or partially, and to claim refund of the invoice amount paid, if any, together with or without damages as referred to in clause 24. The arbitrators shall, if necessary, determine who shall bear the expenses, damages and interest incurred in the course of the negotiations and/or the arbitration.

## Clause 20

### Force majeure in the case of a specified make

1. If goods of a specified make have been sold, force majeure shall include inability to ship/deliver at all or to ship/deliver in due time as a result of strikes or lock-outs, total or partial damage to or defects of the plant and equipment of the works in question, break-downs through any cause whatsoever in the regular supply of raw and ancillary materials, contracted for by the said works, break-downs in power supplies, transport difficulties affecting the goods to be supplied, any other circumstances interfering with the functioning of the said works, or alternatively inability to ship/deliver in due time as a result of circumstances aggravating any interference existing at the time when the contract was made.
2. Even though a specified make has not been sold, the provisions of the foregoing paragraph shall apply likewise as soon as notice of shipment/delivery for the goods of a specified works has been given, if and in so far as it can be shown that the notice of shipment/delivery for those goods was given at a time, at which there was no question of events constituting force majeure at that works. In a string such notices may be passed on after force majeure arises.

## Clause 21

### Payment

1. Payment shall not be deemed to have been effected before receipt of the amount due by the seller or his bank. If a party pays by bank transfer, payment has to be effected on the day stipulated in the contract, value has to be at the latest on the second working day after the day of payment, failing which interest is due.

### Payment in advance as security

2. In the case of a contract according to which payment after delivery has been stipulated the seller shall always be entitled to demand payment before delivery on the basis of the contract quantity concerned, provided that the buyer is allowed interest at the rate of five percent above the current bank rate of interest for the currency involved. This interest is to be calculated on the amount paid in advance over the period between the date of payment and the date on which payment should have been made according to the original stipulation.
3. The seller shall notify the buyer that he demands payment before delivery at least four working days before the date of delivery.
4. Instead of making a payment before delivery the buyer shall be entitled to have an irrevocable bankguarantee issued in favour of the seller at seller's costs.
5. After payment the guarantee shall be void.

## Clause 22

### Insolvency

1. If before fulfilment of the contract either party suspends payments, 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 after the 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 by e-mail, facsimile or any other means of rapid 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 thirty days, the secretary shall notify the party concerned by e-mail, facsimile or any other means of rapid communication that its creditors gave such notice. The party notified shall inform the secretary by e-mail, facsimile or any other means of rapid 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 e-mail, facsimile or any other means of rapid communication 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 clause 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 fifty percent 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 debt 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 of the competent Association(s) or otherwise and/or, as the case may be, by the competent Court(s).

## Clause 23

### Circle

1. If a seller purchased from his buyer, or from a subsequent buyer, the same quantity of the same goods or part thereof on the same terms as those on which he sold - whether at the same price or not and whether in the same currency or not - a circle as regards the quantity thus purchased shall have been established.
2. The invoices for the mean contract quantity in question shall then be settled between the buyers and the sellers in the circle by payment by each buyer to his seller of the amount by which the invoice exceeds the lowest invoice amount in the circle.
3. In case of different currencies in a circle the invoices for the mean quantity in question shall be settled between the buyers and the sellers in the circle by payment by each buyer to his seller of the full invoice amount concerned.



4. Whenever a circle is established, settlement shall be made on the fifteenth day after the day on which the circle has been established, but not earlier than on the first and not later than on the last working day of the delivery/shipment period. Should the circle only become apparent after expiry of the shipment period, then settlement shall be made on the seventh day after the day on which the circle has been established. If a circle appears to exist only after the documents were put into circulation or after presentation, payment shall be made as if no circle had been established.

#### **Insolvency in a circle with one currency**

5. Should one of the parties in a circle with one currency have suspended payments, have applied for an official moratorium or have been declared bankrupt on or before the day of settlement as mentioned in paragraph 4, the market value on the first working day after the day on which the event in question can be deemed to have been public knowledge shall take the place of the lowest invoice amount and settlement shall be made on that basis, unless the seller as well as the buyer of the party in question explicitly agree in writing to settle on the basis of the lowest invoice amount in the circle. It is at either party's absolute discretion not to agree settlement at the lowest invoice amount in the circle. Should the parties fail to agree about the aforementioned day and/or market value, these shall be determined by arbitration.

#### **Insolvency in a circle with different currencies**

6. Should one of the parties in a circle with different currencies have suspended payments, have applied for an official moratorium or have been declared bankrupt on or before the day of settlement as mentioned in paragraph 4 and contrary to the provisions in paragraph 3, sellers and buyers in the circle shall be obliged to settle, in the currency of the contract, the difference between their invoice amounts and the market value on the first working day after the day on which the event in question can be deemed to have been public knowledge on the basis of the mean contract quantity. Should the parties fail to agree about the aforementioned day and/or the market value, these shall be determined by arbitration.

#### **Force majeure in case of a circle**

7. In case of force majeure (including prohibition, strikes etc., frustration) the date for settlement shall be deferred until the expiry of the extended period of shipment/delivery.
8. If the contract is cancelled in consequence of force majeure, the foregoing paragraphs of this clause shall not apply.

### **Clause 24**

#### **Default**

1. In case of non-fulfilment (including non timely fulfilment) of one or more of their principal obligations by either party, the non-fulfilling party shall be in default without notice of default being required and the other party shall be entitled at its option:
  - a. to cancel the contract immediately without or with indemnification as under b) or c);
  - b. to buy or sell as the case may be against the defaulter within three working days after giving notice thereof and to claim the adverse price difference from the defaulter;
  - c. to claim a possible adverse difference between the contract price and the market value on the first working day after the day of default of the defaulter.
2. If the defaulter is dissatisfied with the price of the purchase or sale mentioned under b) or with the price difference under c), the price difference shall be fixed by arbitration.
3. Any price difference shall be computed on the basis of the mean contract quantity, irrespective of which party being the defaulter. If a minimum and maximum quantity are provided, the mean thereof shall govern.

4. Any other or further damages may be claimed, if they can be attributed to the non-fulfilment of the defaulter, and, failing agreement, shall be fixed by arbitration.
5. Title to the goods is reserved to the seller until such time as the buyer has made payment of the price and all other monies due to the seller under this and any other contract. The buyer may however use, process and sell the goods for which title has been reserved, but only in the ordinary course of his business.
6. In case of non-payment after the buyer has taken possession of the goods the seller may either sue for the price with interest and costs, or, if this is possible, retake possession of the goods and cancel the contract and claim any damages incurred in consequence thereof.

### **Clause 25**

#### **Arbitration**

1. Any disputes arising out of the contract as well as any disputes resulting from the 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 at the date of this contract (See Chapter XIII).
2. Persons through whose intermediary this contract has been concluded and who have signed the sold and/or bought notes shall submit any dispute which may arise either out of the contract or out of their intermediary, to the aforementioned arbitration. 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. Without prejudice to the provisions of clause 19 application for arbitration shall, on pain of losing the right to make a claim, be made in accordance with the Rules for Arbitration within 90 consecutive days after the day on which the dispute has arisen, exceptional cases at the discretion of arbitrators. The party applying for arbitration shall notify the other party of the application at the same time.
5. Should the contract form part of a string of contracts that are identical in all contractual terms and conditions, except as to the date, price and quantity, and provided all parties in the string agree in writing and provided each intermediate party shall have submitted his contract and all relevant information to the Secretariat of the Association, then any arbitration and subsequent appeal arbitration shall be held as between the first seller and the last buyer in the string as though they were contracting parties. A separate award shall be made in respect of each contract. In a string and in a circle applications for arbitration shall also be allowed after expiry of the aforementioned 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.

## PART II

### **Specific Provisions concerning Types of Contract**

# CHAPTER II

## FREE ON BOARD (F.O.B.)/FREE ON RAIL (F.O.R.)/FREE ON TRUCK (F.O.T.) MILL

### Clause 26

#### Quantity margin and settlement

1. If a quantity has been sold with the stipulation 'about' or 'approximately', the seller shall be entitled to deliver one percent more or less. The surplus or deficiency shall be settled at the market value of the goods ruling on the date of delivery.
2. Any surplus or deficiency shall be settled directly between the mill and the final receiver of the goods.
3. If the quantity to be delivered within a specified period is delivered in more than one lot the seller shall have the aforementioned option only with regard to the last lot within that period.

### Clause 27

#### Delivery within a specified period

1. If delivery within a specified period has been agreed upon, the seller shall transfer the title to the buyer within that period on a date elected by the seller. If the goods have been sold for delivery at buyer's call the seller shall transfer the title at a time to be elected by the buyer.
2. 'Immediate' delivery shall be made not later than on the seventh, 'prompt' delivery not later than on the fourteenth day after the date of the contract.

#### Part delivery

3. If the seller effects delivery in parts, each part shall stand as a separate contract with due observance of the provision of clause 26, paragraph 3.

#### Notice of delivery

4. If delivery within a specified period on a date at seller's option has been contracted for, the seller shall give notice of delivery not earlier than on the fifteenth and not later than on the tenth working day before the working day on which the transfer of title is to be effected. This notice must state at least the quantity and the place where the goods are to be taken delivery of, the reference number of the supplying mill for the relevant quantity, together with the amount which - against surrender of a delivery order of the supplying mill - shall be paid at the place to be indicated by the supplying mill. In a string a notice of delivery shall be accepted by the buyer after the tenth working day before the working day on which the transfer of title is to be effected provided that the notice has been passed on immediately. It need not be accepted later than on the fifth working day before the working day on which the seller wants to transfer the title.  
In this respect working days shall be working days in the country where the transfer of title is to be effected.

#### Notice of call

5. If delivery within a specified period on a date at buyer's call has been contracted for (delivery on call), the buyer shall give notice of call not earlier than on the fifteenth and not later than on the tenth working day before the working day on which the transfer of title is to be effected. Thereupon the seller shall immediately indicate the place where the goods shall be received together with the amount to be paid against surrender of a delivery order of the supplying mill and the reference number as mentioned in paragraph 4. Call

of parts is allowed only if agreed. In a string the notice of call must be accepted by the seller after the tenth working day before the working day on which the transfer of title is to be effected provided that the notice has been passed on immediately. It need not be accepted later than on the fifth working day before the working day on which the transfer of title is to be effected.  
In this respect working days shall be working days in the country where the transfer of title is to be effected.

#### Information to be supplied

6. In a string day and hour of the receipt and of the passing on of the notice of delivery or call shall be made known at the request of either the buyer or the seller, by the other party. A notice of delivery or call which is passed on in a string shall mention all previous links.

#### Splitting of delivery orders

7. If required, the supplying mill shall split delivery orders at a charge according to the rates determined by the Association.

#### Duties, levies and taxes

8. In addition to clause 6 it is to be understood that any duties, levies and taxes, bearing upon the goods contracted for shall include those on the raw materials, out of which the goods contracted for are obtained.

### Clause 28

#### Presentation of delivery order and payment and the supplying mill

1. The buyer must inform the seller and the supplying mill by e-mail, facsimile or any other means of rapid written communication as soon as possible after receipt of the notice of the seller mentioned in clause 27, paragraphs 4 and 5, but not later than on the fourth working day before the day of transfer of title to whom the delivery order is to be presented. Payment shall be made against surrender of the delivery order at the place to be indicated by the supplying mill as soon as possible, but not later than on the second working day before the day on which the transfer of title is to be effected.
2. In the event the delivery order is to be presented to somebody other than the buyer, the mill shall be entitled to demand payment of the amount of its invoice in one amount. In that case sellers and buyers in a string shall be obliged to settle the differences between their invoice amounts and the amount to be paid against surrender of the delivery order at the latest on the third working day before the day on which the transfer of title is to be effected. Failing timely payment of price differences by any party in the string, that party shall only be liable for these differences plus interest, costs and any foreign currency losses incurred by its contractpartner(s).

#### Delivery order

3. The delivery order mentioned in paragraph 1 shall be in accordance with the model issued by the Association. It is to be issued by the supplying mill to bearer or, at the request of the buyer, to a specific party. In the delivery order the reference number as mentioned in clause 27, paragraph 4 is to be mentioned.

#### Collection expenses

4. Expenses incurred in presentation of the delivery order are for seller's account. All other collection expenses are for buyer's account.

## Clause 29

### Risk

1. The goods shall be at seller's risk until physical delivery subject to the provisions of paragraph 4 of this clause and paragraph 6 of clause 32.

### Physical delivery

2. The buyer shall take physical delivery of the goods against surrender of the delivery order on the specified day during the customary working hours. The costs of pumping shall be for account of the supplying mill.

### Taking delivery in parts

3. If taking physical delivery F.O.B. tankbarge has been contracted for and the buyer takes delivery of the quantity made available to him in lots of less than 100 tons or by any other means of transport, the seller shall be entitled to charge to the buyer the extra-expenses caused thereby.

### Storage

4. If the buyer fails to take physical delivery in due time or if delivery is requested without the delivery order being surrendered, the seller shall be entitled to store the goods in his own warehouse or with a third party, at buyer's expense and risk. In this case sampling is to take place at the mill in accordance with clause 30. The seller must keep the goods insured during storage and - if applicable - during transport to the storage installation as per Chapter XI and shall be entitled to charge the premium to the buyer. All expenses on account of any transport to third parties and of storage shall also be for account of the buyer. All costs are to be calculated from the indicated day of physical delivery till the day of actual receipt of the goods by the buyer. The seller shall notify the buyer of the storage immediately and in case of a string this notice is to be passed on immediately upon receipt. In case of storage the buyer is liable to pay the abovementioned costs and any interest as they become due, but always before taking physical delivery.

## Clause 30

### Sampling and quality settlement

1. The quality of each delivery shall be ascertained by reference to the samples drawn and sealed in the customary manner at the supplying mill.
2. The seller shall allow the buyer to supervise the sampling. If the buyer wants to avail himself of that right, he shall appoint his superintendent company in due time.
3. The samples drawn and sealed by, or on behalf of, both parties shall be binding. If either party fails to cooperate in the sampling, of which he has been notified in due time by the other party, the sample drawn unilaterally by the latter shall be binding.
4. Any allowance for analysis difference(s) shall be settled directly between the mill and the final receiver of the goods on the basis of the purchase price of the final receiver. Seller always to remain ultimately responsible for such settlement.

## Clause 31

### Weighing

1. The seller must have the weight ascertained in the customary manner and for his own account at the supplying mill.
2. The seller shall allow the buyer to supervise the weighing. If the buyer wants to avail himself of that right he shall appoint his superintendent company in due time.
3. The weight ascertained in accordance with the foregoing shall be binding upon both parties. If the buyer does not have the weighing supervised, the weight unilaterally ascertained by the seller shall be binding.

## Clause 32

### Force majeure

1. Subject to the provisions of clause 20, force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstances beyond 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 fulfil his obligations.
2. The seller shall notify the buyer immediately by e-mail, facsimile or any other means of rapid written communication after force majeure has occurred.
3. Upon termination of force majeure the seller shall be obliged to perform his obligations as soon as possible. The buyer shall be allowed a reasonable period to take physical delivery of the goods.
4. If the seller is unable to fulfil his obligations at the latest on the sixtieth day after the last day, on which the delivery order should have been presented, the contract shall be cancelled without indemnification to either party.
5. The provisions of the foregoing paragraphs of this clause shall apply accordingly in the event of force majeure on the part of the buyer provided that, if normal transportation by water, road or rail is hampered in consequence of abnormal waterlevels, ice, floating ice, snow or other circumstances, the seller shall have the right to store the goods for buyer's account and at buyer's risk whether or not with third parties, unless the buyer takes delivery of the goods by other than the agreed means. The seller shall be obliged to insure the goods or to keep them insured and shall be entitled to charge the premium to the buyer.
6. If, as a result of force majeure, the goods which the seller appropriated to the buyer are wholly or partly lost, the contract or that part thereof shall be cancelled and the purchase price shall be refunded immediately if payment against delivery order has been made; the seller shall be responsible for furnishing evidence that those goods were intended for delivery against the contract in question.  
If as a result of force majeure the goods are not lost, but cannot be delivered after payment has been made, the buyer shall, notwithstanding the provision of paragraph 4, have the right to claim immediate refund of the purchase price.
7. If an event constituting force majeure should occur affecting either the seller or the buyer, which does not fall within the scope of the foregoing provisions, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences of such force majeure shall be determined by arbitration.
8. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

# CHAPTER III

## EX TANK

### Clause 33

#### Quantity margin and settlement

1. If a quantity has been sold with the stipulation 'about', or 'approximately', the seller shall be entitled to deliver one percent more or less. The surplus or the deficiency shall be settled at the market value of the goods ruling on the date of delivery.
2. Any surplus or deficiency shall be settled directly between the first seller and the final receiver of the goods.

#### Delivery and call in parts

3. Delivery shall be made in one lot or in not more than two parts per 100 tons. Calling for parts shall only be permitted if this was explicitly contracted for. No part shall be less than 20 tons. Each part shall stand as a separate contract.

#### Period of delivery

4. 'Immediate' delivery shall be made not later than on the seventh, 'prompt' delivery not later than on the fourteenth day after the date of the contract.

### Clause 34

#### Notice of delivery

1. If delivery within a specified period on a date at seller's option has been contracted for, the seller shall give notice of delivery not earlier than on the fifteenth and not later than on the tenth working day before the working day on which the transfer of title is to be effected, stating the date of delivery, the quantity, the reference number, the tankstorage company where the goods will be in store at the time of delivery and the amount, which shall be paid against the delivery order or against the release of the tankstorage company. In a string a notice of delivery shall be accepted by the buyer after the tenth working day before the working day on which the transfer of title is to be effected provided that the notice has been passed on immediately. It need not be accepted later than on the fifth working day before the working day on which the transfer of title is to be effected.  
In this respect working days shall be working days in the country where the transfer of title is to be effected.

#### Notice of call

2. If delivery within a specified period on a date at buyer's call has been contracted for (delivery on call), the buyer shall give notice of call not earlier than on the fifteenth and not later than on the tenth working day before the working day on which the transfer of title is to be effected, stating the quantity required. Thereupon the seller shall state as soon as possible, but not later than on the fourth working day before the working day on which the transfer of title is to be effected: the date of the transfer of title, the quantity, the reference number, the tankstorage company where the goods will be in store and the amount, which shall be paid against the delivery order or against the release of the tankstorage company. In a string a notice of call shall be accepted by the seller after the tenth working day before the working day on which the transfer of title is to be effected provided that the notice has been passed on immediately. It need not be accepted later than on the fifth working day before the working day on which the transfer of title is to be effected.  
In this respect working days shall be working days in the country where the transfer of title is to be effected.

#### Information to be supplied

3. In a string day and hour of receipt and the passing on of the notice of delivery or call shall be made known at the request of either the buyer or the seller, by the other party. A notice of delivery or call which is passed on in a string shall mention all previous links.

#### Applicable to edible oil cargoes

*For shipment to and within countries of the European Union.*

4. a. For seagoing vessels: FOSFA Combined Masters Certificate or equivalent signed by the shipowner, master or authorized agent of the seagoing vessel indicating that the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil is a product in accordance with the E.U. Commission Regulation 579/2014 or any successive Directive in force at the date of the bill of lading, is to be deposited with the tank storage company by the original principal when storing the goods.  
b. For all other means of transport: A statement, signed by a legal representative of the carrier, that the conveyance is complying with the E.U. Commission Regulation 579/2014 on the hygiene of foodstuffs, indicating the country of origin of the goods is to be deposited with the tank storage company by the original principal when storing the goods.

5. The buyer/final receiver has the right to sight at the tank storage company the certificate(s) as per paragraph 4 of this clause covering the total quantity in the respective shore tank as well as the names of the three cargoes previously stored in the respective shore tank before he effects payment.

6. The tank storage company does not warrant the accuracy of the information/data contained in the certificate(s) and statement(s) as per paragraph 4 of this clause and the seller and the buyer/final receiver shall severally indemnify, defend and hold harmless the tank storage company against all costs, claims, suits, expenses (including legal fees) and damages, arising from or in connection with the handling, including but not limited to receipt, deposit, inspection and delivery of the certificate(s) and statement(s) as per paragraph 4 of this clause.

*For shipment between non EU countries.*

7. Certificate of the last three previous cargoes signed by the shipowner, master or authorized agent of the seagoing vessel indicating that the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil is a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading, is to be deposited with the tank storage company by the original principal when storing the goods.
8. The buyer has the right to sight at the tankstorage company the certificate as per paragraph 4 of this clause covering the total quantity in the respective shoretank before he effects payment.
9. The tankstorage company does not warrant the accuracy of the information/data contained in either the shipowner's, master's or authorized agent's certificate and the seller and the buyer shall severally indemnify, defend and hold harmless the tankstorage company against all costs, claims, suits, expenses (including legal fees) and damages, arising from or in connection with the handling, including but not limited to receipt, deposit, inspection and delivery of the shipowner's, master's or authorized agent's certificate.

## Clause 35

### Delivery (Transfer of Title)

1. Transfer of title shall be effected by surrender of a warrant or a delivery order issued by the tankstorage company where the goods are in store. The warrant or delivery order shall be presented by the (first) seller (in a string) in the area where the aforementioned tankstorage company is located, on a working day before 13.00 hours local time. The tankstorage company referred to in the contract must be recognized by the Association.

### Notice of release

2. Sellers have the right to declare when giving notice of delivery or, as the case may be, in reply to a call, both as referred to in clause 34, paragraphs 1 and 2, to substitute for the surrender of a warrant or delivery order an irrevocable message sent to the buyer by the tankstorage company where the goods are in store stating that the goods concerned will be irrevocably released to the buyer upon fulfilment of the seller's payment instructions. Release expenses of the tankstorage company shall be for seller's account. The text of the message referred to in this paragraph shall be according to the model issued by the Association. The instruction by the seller to the tankstorage company where the goods are in store to send the message mentioned above shall be according to the model issued by the Association and shall be irrevocable.

### Release

3. Upon confirmation by buyer's bank to the tankstorage company, that the payment instructions have been executed irrevocably, the goods shall be deemed to have been released to the buyer and the tankstorage company shall hold the goods at buyer's disposal. The confirmation from buyer's bank must have been received by the tankstorage company not later than on the notified day of release.

## Clause 36

### Payment

1. The buyer shall give notice to the seller as soon as possible after receipt of the notices of the seller mentioned in clause 34, paragraphs 1 and 2, but not later than on the fourth working day before the day of transfer of title to whom the delivery order is to be presented. Payment of the amounts due shall be made net cash without discount either in exchange for (a) warrant(s) or (a) delivery order(s) in the area where the goods are in store, or in accordance with the notice of release.
2. In the event the delivery order is to be presented to or the release as per clause 35, paragraphs 2 and 3 is to be given to somebody other than the buyer, the first seller shall be entitled to demand payment of the amount of his invoice in one amount. In that case sellers and buyers in a string shall be obliged to settle the differences between their invoice amounts and the amount to be paid against surrender of the delivery order or - as the case may be - against the release of the tankstorage company at the latest on the third working day before the day on which the transfer of title is to be effected. Failing timely payment of price differences by any party in the string, that party shall only be liable for these differences plus interest, costs and any foreign currency losses incurred by its contractpartner(s).

### Collection expenses

3. Expenses incurred in presentation of a warrant or delivery order are for seller's account. All other collection expenses are for the buyer's account.

## Clause 37

### Risk

1. The goods shall be at buyer's risk from the time of delivery (transfer of title).

### Tank rent and Insurance

2. The tank rent and the insurance, up to and including at least the seventh day after the day of delivery (transfer of title), shall be for seller's account. The seller shall insure the goods for his own account, as well as for account of third parties, with (a) reputable insurance company(ies) in accordance with Chapter XI.

## Clause 38

### Pumping ex tank

1. The seller shall not be obliged to pump ex tank outside of the usual working hours, unless the buyer takes the extra expenses for his account. Goods which have to be heated may not be pumped ex tank in parts. Other goods may be pumped in parts, provided the quantities are not less than 20 tons, unless otherwise agreed. Such quantities shall not stand as separate contracts within the meaning of clause 33, paragraph 2.

### Weights

2. The weight shall be ascertained in the customary manner.

### Expenses

3. Heating expenses, if any, shall be for account of the seller. The cost of weighing, pumping and all other expenses incidental to the receipt of the goods shall be for buyer's account.

## Clause 39

### Sampling

1. Sampling shall take place for account of the buyer in the customary manner during pumping ex tank not later than one month after expiry of the period of delivery. The tankstorage company shall draw at least four samples which must be sealed jointly with the parties or their representatives. Both the buyer and the seller shall receive two samples. The samples shall have a content of at least 0,25 litre. If required by one of the parties samples of a larger size - with a maximum of one litre - shall be drawn. If the buyer and/or the seller fail(s) to supervise the sampling, the samples which have been sealed by the tankstorage company together with one or without any of the parties or their representatives shall be binding.
2. If a quantity which is to be deemed a separate contract is pumped ex tank in parts, at least four samples of each part shall be drawn. Out of these samples the laboratory shall make an average sample in proportion to the quantities to which they relate. This average sample shall be analysed.

## Clause 40

### Quality settlement

1. If pumping ex tank has not been completed at the latest one month after expiry of the period of delivery, quality settlement shall be made on the basis of the analysis(es) of the quantity pumped ex tank at that time. If nothing or only a relatively insignificant quantity has been pumped out against the contract, the seller shall be entitled to settle on the basis of the intake analysis. Should the seller already have delivered (a) quantity (quantities) out of the same parcel against other contracts out of the tank in question, the analysis(es) of this quantity (these quantities) must be taken into account.
2. Any allowance for analysis difference(s) shall be settled directly between the first seller and the final receiver of the goods on the basis of the purchase price of the final receiver. Seller always to remain ultimately responsible for such settlement.

## Clause 41

### Force majeure

1. Force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstances beyond 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 fulfil his obligations.
2. Force majeure shall not be understood to include causes which prevent the transportation of the goods to the tankstorage company.
3. If, in respect of a contract for delivery at seller's option, the seller is prevented by force majeure from delivering entirely or partially, he shall notify the buyer thereof, by e-mail, facsimile or any other means of rapid written communication as soon as possible, but at any rate before expiry of the period of delivery, stating the cause of the force majeure. In a string, this notice is to be passed on immediately by e-mail, facsimile or any other means of rapid written communication.
4. In the event of force majeure, the period of delivery shall be extended by such a period as the seller reasonably needs to fulfil his obligation to deliver. Should the force majeure last longer than sixty days, the contract shall be cancelled without indemnification.
5. With regard to contracts for delivery on call, the provisions of paragraphs 3 and 4 shall apply accordingly. If in this case an event constituting force majeure arises, the seller shall immediately notify the buyer in the manner indicated in paragraph 3.
6. If an event constituting force majeure should occur affecting either the seller or the buyer which does not fall within the scope of the foregoing provisions, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences of such force majeure shall be determined by arbitration.
7. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

## Clause 42

### Reservation concerning safe arrival

If the seller has made a reservation at the moment of conclusion of the contract concerning the safe arrival of a named vessel or substitute, he shall be obliged to send the buyer a declaration of shipment except if the goods are already afloat. If the goods, or part of them, do not arrive, he shall have to prove that these goods were destined for delivery against the contract.

# CHAPTER IV

## FREIGHT PAID, FREIGHT & INSURANCE PAID and FREE DELIVERED

### Clause 43

#### Quantity margin and settlement

1. Should the seller or buyer, as the case may be, wish to have the ascertaining of the weight supervised, then he shall have to give notice thereof to the other party in good time and he shall have to appoint his superintendent company in good time. Should either of the parties not avail itself of the opportunity to do so, then the other party shall be entitled unilaterally to have the weight ascertained. The weight so ascertained shall be binding on the parties. The buyer shall always mention the weight, which has been ascertained at arrival, on the waybill or cause it to be so mentioned. In the case of arrival weight the buyer shall, on pain of loss of his right to claim, have to state the short weight, if any, by endorsing this on the waybill, or causing it to be so endorsed, and he shall without delay give notice thereof by e-mail, facsimile or any other means of rapid written communication to the seller.

#### Ascertaining the weight

2. In the case of dispatched weight the seller shall have the obligation to have the weight ascertained for his account at the place of dispatch. In the case of arrival weight the buyer shall have the obligation to have the weight ascertained for his account at the place of arrival. Unless otherwise agreed upon the weight must be ascertained by twice weighing the vehicle at the nearest calibrated weighing bridge which is under the supervision of a sworn weigher, i.e. in the case of dispatched weight prior to as well as after the loading, and in the case of arrival weight prior to as well as after the unloading. Separate front and back axle weighing shall not be permitted.
3. Should the seller or buyer, as the case may be, wish to have the ascertaining of the weight supervised, then he shall have to give notice thereof to the other party in good time and he shall have to appoint his superintendent company in good time. Should either of the parties not avail itself of the opportunity to do so, then the other party shall be entitled unilaterally to have the weight ascertained. The weight so ascertained shall be binding on the parties. The buyer shall always mention the weight, which has been ascertained at arrival, on the waybill or cause it to be so mentioned. In the case of arrival weight the buyer shall, on pain of loss of his right to claim, have to state the short weight, if any, by endorsing this on the waybill, or causing it to be so endorsed, and he shall without delay give notice thereof by e-mail, facsimile or any other means of rapid written communication to the seller.

### Clause 44

#### Sampling

1. The quality of each dispatched quantity shall be ascertained by reference to the samples drawn and sealed in the customary way at dispatch or, if so agreed, at arrival. If sampling at arrival has been agreed, samples shall be drawn at the place of unloading or, in the case of storage with third parties, at the place of storage referred to in clause 47, paragraph 4. Of every dispatch at least four samples shall be sealed, two of which shall be intended for the seller and two for the buyer.
2. Should either of the parties wish samples to be taken jointly, then that party shall give notice thereof to the other party in good time and shall appoint his sampling superintendent company in good time.

3. The samples drawn and sealed by or on behalf of both parties shall be binding. Should either of the parties not avail itself of the opportunity to draw samples jointly, then the samples unilaterally drawn and sealed shall be binding.

### Clause 45

#### Freight paid

1. If a sale has been entered into on the condition freight paid, the seller shall engage a means of conveyance for his account up to the agreed place of destination. Ownership shall pass at the place of dispatch. All risks of the voyage and extraordinary costs shall be for account of the buyer.

#### Freight and insurance paid

2. If a sale has been entered into on the condition freight and insurance paid, the seller shall engage (a) mean(s) of conveyance for his account up to the agreed place of destination. Ownership shall pass at the place of dispatch, but the seller shall insure the goods during transport as per Chapter XI. All risks of the voyage and extraordinary costs shall be for account of the buyer.

#### Free delivered

3. If a sale has been entered into on the condition free delivered, the seller shall engage a means of conveyance for his account up to the agreed place of destination. Ownership shall pass at the agreed place of destination. All risks of the voyage and the costs up to the place of destination, except extraordinary costs caused through any acts or omissions on the part of the buyer, shall be for account of the seller.

#### Means of conveyance

4. The seller shall have the obligation to check whether the means of conveyance is suitable for the transport and for the unloading of the goods sold, or to cause this to be checked. In case of freight paid/freight and insurance paid the seller shall give the buyer an opportunity to attend the inspection of the means of conveyance.
5. Whenever hereinafter the expression railway tank car will be used this shall be deemed to include tankcontainer(s). Whenever hereinafter the expression road tank car will be used this shall be deemed to mean road tank cars and/or road tank car combination(s) and/or tank container(s). The means of conveyance shall be in every respect suitable for the safe transport and discharge of the goods contracted for.
6. In case of transport by road or rail the seller shall have the obligation to load the goods at such a temperature that – taking into account the circumstances of the transport and subject to abnormal delays - the goods can on arrival, without previous warming-up, be properly pumped and that the means of conveyance can be wholly emptied. In case of free delivered, the seller shall, if necessary, arrange for heating during transport, or re-heating shortly before arrival, at his expense.
7. In case of edible oil cargoes means of conveyance shall be within the definition of an edible oil or fat dedicated means of conveyance.



### **Dispatch/delivery within a specified period**

8. Should dispatch/delivery within a specified period have been agreed upon, the seller shall have the obligation to dispatch/deliver the goods within that period on a date at his option or within that period on a date at buyer's option, if the goods have been sold for dispatch at buyer's call.
9. Should immediate dispatch/delivery have been agreed upon, the seller shall have the obligation to dispatch the goods not later than on the seventh day after the date of the contract. If the contract stipulates prompt dispatch/delivery then not later than on the fourteenth day after the date of the contract.

### **Dispatch in parts**

10. The seller shall be entitled to dispatch in parts. A quantity which is dispatched by road tank car/railway tank car is to be regarded as one part. Each part shall stand as a separate contract except with respect to the provisions of clause 43, paragraph 1.

### **Notice of dispatch**

11. The seller shall have the obligation to send an advance notice of dispatch to the buyer by e-mail, facsimile or any other means of rapid written communication, at least two working days prior to the intended dispatch. Immediately after the loading of the means of conveyance has been completed, seller shall give notice of dispatch by e-mail, facsimile or any other means of rapid written communication. In a string advance notices of dispatch and notices of dispatch shall be passed on immediately. Advance notices of dispatch shall be accepted even after expiry of the time mentioned before, if they have been passed on immediately.
12. If a contract of sale has been entered into for delivery on buyer's call, the buyer shall have the obligation to call for dispatch at least ten working days prior to the date, on which he requires dispatch to be made. The buyer shall be entitled to call for dispatch in parts of at least one full road tank car/railway tank car. In this connection the usual sizes and weights of road tank cars/railway tank cars, permitted in the countries within which or through which the transport has to take place when following normal routes, shall have to be taken into account. Each part dispatch shall be deemed to be a separate contract, except with respect to the provisions of clause 43, paragraph 1.

## **Clause 46**

### **Payment**

1. Unless payment is to be made against documents provided for in the particular contract, in which case payment must be made immediately on presentation, payment must be made cash, without discount, at the time agreed upon.
2. Each payment by the buyer who has entered into more than one contract with the same seller, shall be deemed to have been made in the sequence of dispatch, in as far as not explicitly stipulated otherwise.
3. Before payment is made the seller must provide a statement signed by the carrier certifying that the tank(s) receiving the vegetable oil or fat has (have) not contained any leaded petroleum or other leaded product(s) at least the last three cargoes carried.

## **Clause 47**

### **Taking delivery**

1. The buyer shall take delivery of the goods immediately after their arrival at the place of destination with due observance of the usual working hours. The costs of unloading the goods shall be for

account of the buyer. In the case of road tank cars the unloading shall have to be completed within two and a half hours; in the case of railway tank cars within twentyfour hours. Demurrage charges for exceeding these periods shall be for account of the buyer, except if in the case of road tank cars the unloading is delayed because the goods cannot be pumped out entirely on arrival as a result of their temperature being too low and if the consequences thereof are for account of the seller in accordance with the provisions of paragraph 2 hereof.

2. If goods carried by road or rail tank car upon discharge cannot be pumped out entirely, the buyer shall notify the seller of this fact without delay and thereupon shall act in accordance with the instructions of the seller. Should in that case the buyer be able to make the goods pumpable by heating them (or causing them so to be made pumpable) he shall without delay notify the seller to that effect. Heating by open steam need not be accepted by any of the parties. The costs of heating, extra costs of haulage, demurrage charges etc. shall be for account of the seller, unless the sale entered into was freight (and insurance) paid and an abnormal delay has arisen during transport through no fault of the seller, or unless those costs ensue from a delay in the transport and/or unloading caused by the buyer. Even if the parties hereto cannot reach agreement on the question of liability for the aforesaid costs, and arbitration be necessary as to these, the buyer shall have the obligation, when requested to do so by the seller, to bring the goods, if possible, into a pumpable condition and thereupon to unload them.
3. The buyer shall not be obliged to take delivery of the goods outside usual working hours, or on Saturdays, Sundays or days which are public holidays at the place of discharge, unless buyer and seller have agreed otherwise. If as a consequence of circumstances beyond the control of the seller goods - which would otherwise have arrived within usual working hours - are delayed, and arrive outside usual working hours, or on Saturdays, Sundays or days which are public holidays at the place of discharge, demurrage caused thereby - if any - shall be for account of the seller if contract condition is free delivered destination; it shall be for account of the buyer if contract condition is freight paid, or freight and insurance paid.
4. Should the buyer fail to take delivery in due time, then the seller shall be entitled to charge the buyer with the demurrage or waiting charges ensuing therefrom and/or store the goods, if necessary with a third party, for account and risk of the buyer. Should the seller insure the goods whilst so in storage, he shall be entitled to charge the insurance premium to the buyer. Extra costs of heating and transport shall likewise be for account of the buyer.

## **Clause 48**

### **Dispatch/delivery in mutual agreement**

Should dispatch/delivery within a specified period in mutual agreement have been agreed upon and neither party have informed the other (with due notice as per clause 45 paragraphs 10 and 11) that he wants to make/take delivery, the dispatch/delivery period automatically shall be extended by one month. This procedure shall be followed three times, after which the contract or the unfulfilled portion thereof shall be automatically cancelled without any compensation for damages being due to either party.

## **Clause 49**

### **Force majeure**

1. Subject to the provisions of clause 20 force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstances beyond 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 is prevented from dispatching the goods sold.
2. The seller shall notify the buyer immediately by e-mail, facsimile or any other means of rapid written communication after force majeure has occurred.

3. Upon the termination of force majeure, the seller shall have the obligation to dispatch the goods as soon as possible.
4. Should the seller due to force majeure not be able to dispatch the goods at the latest on the sixtieth day after the last day, on which he should have dispatched them, the contract or any unfulfilled part thereof shall be cancelled without indemnification of either party.
5. If in case of a contract on free delivered terms as a result of force majeure the goods or a part thereof should be lost or fail to arrive in the conveyance(s) in which they have been dispatched, the contract or the relevant part thereof shall be cancelled without indemnification of either party. Should as a result of force majeure the voyage of the conveyance(s) terminate at a place other than the place of destination, the seller shall be obliged to re-dispatch the goods immediately for his account and the buyer shall be obliged to accept the goods so re-dispatched.
6. If an event constituting force majeure should occur affecting either the buyer or the seller, which does not fall within the scope of the foregoing provisions, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences of such force majeure shall be determined by arbitration.
7. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

# CHAPTER V

## FREE ON BOARD (F.O.B.) SEA GOING VESSEL NAMED PORT OF SHIPMENT (other than F.O.B. Mill)

### Clause 50

#### Delivery

1. The seller shall have the goods ready for shipment during the agreed period of delivery and at the agreed berth, if any. The buyer shall take delivery of the goods within the agreed period.
2. The buyer shall give the seller nomination of vessel, notice of loading berth, if not already agreed, and of delivery dates to the vessel in accordance with clause 51, paragraph 1.
3. The seller must deliver the goods on board and bear all costs and risks of the goods until such time as they shall have effectively passed the ship's rail at the port of shipment, including the costs of any formalities which he shall have to fulfil in order to load the goods on board.

### Clause 51

#### Nomination and substitution of vessel

1. The buyer shall nominate the vessel to the seller, indicating vessel's agents at the port of loading, demurrage rate, if so provided for in the contract of sale, flag, age of the vessel and destination, if latter required by seller. The nomination is to be given by e-mail, facsimile or any other means of rapid written communication at least fifteen consecutive days prior to the date of vessel's expected readiness to load at the first or the sole port of loading.
2. Laytime shall not start counting before the eleventh working day, at 08.00 hours at the place of loading, after the nomination date even if loading commences earlier. At least seven working days prior to the estimated arrival of the vessel at the first or sole loading port, the buyer shall give definite documentary instructions as per clause 9.
3. The buyer shall keep the seller informed of any variation in the expected date of vessel's readiness to load.
4. Buyer shall be allowed to substitute a nominated vessel, provided the substituting vessel is in about the same position. The substituting vessel must be expected ready to load not later than ten consecutive days after the last reported estimated time of readiness of the original nomination. Buyer shall notify seller of such substitution as soon as possible but not later than two working days before the expected arrival of the original vessel. If the original or the substituting vessel is unable to lift the goods by reason of the vessel having sunk or having suffered incapacitating physical damage, any substituting vessel must be in such a position that it can load within the contractual period of delivery. In case of a contract for shipment per a named vessel, no substitution other than after a casualty as described above shall be permitted.

### Clause 52

#### Insurance

Marine and war risk (plus strikes, riots, civil commotions and mine risk) insurance from the time the goods leave the warehouse, premises or place of storage at the port of shipment to commence the transit, is to be covered by buyer on Institute FOSFA Trades Clauses (A) with first class companies and/or underwriters and to be confirmed by such companies and/or underwriters and/or the buyer to the seller (See Chapter XI). If this confirmation is not received by the seller prior to loading of the vessel, the seller has the right to cover insurance for buyer's account and expense.

### Clause 53

#### General loading conditions

1. The goods are to be loaded as fast as the vessel can receive, or alternatively, as fast as berth equipment can load. No demurrage shall be incurred and no dispatch shall be earned. However, if vessel gave notice of readiness in time and if goods are not available in sufficient quantity to start loading on the eleventh working day after vessel's nomination or when free berth becomes available, whichever is later, or if continuous loading of the vessel has to be interrupted due to lack of cargo, the seller shall pay demurrage at the agreed rate or, if not agreed, as per charterparty, booking note or contract of affreightment. If loading is required and mutually agreed on excluded days and extra costs are incurred as a result, such extra costs are to be borne by the party requesting loading at such time(s).
2. Time shall count twentyfour hours per weather working day, Saturdays, Sundays and holidays excepted, unless used. On Mondays and on days after a holiday, time shall start/restart to count at 08.00 hours, unless loading continued or restarted before that hour. Seller shall not be responsible for any time lost due to Act of God, strikes, lockouts, riots, civil commotions, labour stoppages at the port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s), breakdowns of machinery and/or winches, power failures, fires or any other cause of force majeure.
3. Notice of readiness at the first or sole loading port to be given and accepted before 17.00 hours during ordinary business hours. Laytime shall start to count whether in berth or not, whether in port or not, whether in free pratique or not, in case of dry cargo the next working day at 08.00 hours and in case of liquid cargo six hours after notice of readiness has been tendered. A notice of readiness shall only be accepted after surveyors have approved ship's holds/tanks for loading the goods.
4. If upon or after berthing vessel's holds/tanks are found unsuitable by surveyors any time lost due to cleaning shall not be counted as laytime.
5. At a second port of loading, if applicable, laytime shall start to count at the beginning of the next regular working period after vessel's arrival, whether in berth or not, whether in port or not, whether in free pratique or not.
6. If loading berth is free and available, vessel is considered 'arrived' when berthed fast alongside. When the port is congested and/or berth is unavailable, 'arrival' is understood to be the moment the vessel drops anchor at normal place of anchorage in the vicinity of the berth, in the roads or at the bar. Shifting from roads to berth shall not count as laytime.
7. Whenever the vessel nominated loads from more than one seller per berth and/or from more than one berth per port, the time attributable to each individual berth shall be prorated among the sellers loading at that berth. At second and/or further berths time shall count from docking or the next regular working period (from the time the vessel was for all intents and purposes ready to start loading at that berth), whichever is the earlier. Time shall finish upon completion of total load at any berth.

8. Should one or more sellers not have the goods ready for loading at the berth, then prorated counting of laytime to stop from the moment all goods are loaded by seller(s) who had goods ready, and time to be counted separately for the remaining parcel(s). Alternatively, if the vessel is not allowed to berth because one or more seller(s) do not have goods ready for loading, same seller(s) shall be first to load, and time to be for his/their account up to the moment he/they have loaded all his/their goods, after which time to count is to be prorated amongst sellers who had their goods ready for loading.
9. Time used in navigation between ports of loading, i.e. berth to berth, shall not count as laytime.
10. Captain and crew shall collaborate in all quay movements necessary to accommodate shore loading equipment in the respective hold(s)/tank(s).

## **Clause 54**

### **Extension and Carrying Charges**

1. The buyer shall have the right to nominate a vessel for taking delivery after the agreed period of delivery, provided he claims extension at the latest on the last day of the originally stipulated period of delivery.
2. If a vessel has not tendered notice of readiness (filed) per the last day of the period of delivery, the seller shall carry the goods for buyer's account and risk for a maximum of thirty additional days and the buyer shall pay carrying charges at the agreed or current rates.
3. If the buyer has claimed extension, but failed to tender suitable tonnage for readiness within the extension period, the seller shall declare the buyer in default, and in such case the buyer shall pay the seller thirty days carrying charges without prejudice to seller's rights under clause 24. These carrying charges are to be construed as liquidated damages and no proof of actual costs shall be required. However, buyer has the option, provided he gives seller minimum four working days pre-advance, to effect payment against warrant, delivery order or similar document, in place of the bill of lading or mate's receipt, giving unencumbered title to the mean contract quantity, issued by an installation or the producing factory at or near the port of delivery. Such warrant, delivery order or similar document to be guaranteed by a bank if requested by buyer in the pre-advance. The expenses of such bank guarantee to be for buyer's account. Thereafter, all costs of whatsoever nature arising (excluding those of putting the oil free on board ruling on the 30<sup>th</sup> day of the extension) shall be paid by buyer. If buyer exercises his option to take delivery in store, seller shall nevertheless deliver to the ship if it presents in time for loading to commence before the expiry of the extension period.
4. Carrying charges are to be paid by the buyer on presentation of the corresponding debit note together with the shipping documents.
5. Carrying charges shall include any transport cost to a third party storage company and, if applicable, storage, interest and insurance costs.

## **Clause 55**

### **Quantity Margin**

The buyer has the option of calling for five percent more or less than the mean contract quantity. Any excess or deficiency on the mean contract quantity to be settled at the F.O.B. market price on the date of the last bill of lading. That price shall be fixed by arbitration, unless mutually agreed.

## **Clause 56**

### **Loading survey and ascertaining weights**

1. The seller or his superintendent company shall supervise and inspect all particulars in connection with the loading and shipping of the goods in the usual way and the seller shall furnish a survey certificate stating all relevant particulars.
2. The weight shall be ascertained for seller's account.
3. The buyer shall be entitled to have the loading and weighing supervised for his account, provided he has in due time notified the seller and appointed his superintendent company.

## **Clause 57**

### **Sampling**

1. Fully representative samples shall be drawn and sealed conjointly by buyer and seller or their superintendent companies in the usual way at time of loading.
2. If one of the parties chooses not to be represented at the sampling, the samples drawn and sealed unilaterally by the other party or its superintendent company shall be binding.
3. One set of these samples shall be handed to the captain for delivery to the consignees.

## **Clause 58**

### **Notice of delivery**

Notice of delivery stating vessel's name, date(s) of bill(s) of lading or mate's receipt(s) and quantity(ies) loaded shall be given or passed on by the seller to buyer without undue delay for information only.

## **Clause 59**

### **Shipping Documents**

1. The buyer shall instruct the vessel's owners or agents to issue to the seller the documents required for the transfer of title. If practicable, the seller shall follow the instructions of the buyer in having bills of lading issued containing such clauses as buyer's/vessel's agents or owners usually endorse or attach. The buyer shall accept such bills of lading but the seller assumes no responsibility for their correctness.
2. The date of 'on board' bills of lading and/or mate's receipts shall be considered proof of date of delivery in the absence of evidence to the contrary.

## **Clause 60**

### **Payment**

1. The buyer shall pay immediately the full invoice amount by cash on presentation of clean 'on board' bill(s) of lading or 'on board' mate's receipt(s), weight report(s), -list(s), or -certificate(s) and any other document called for under the contract.
2. If documents are presented to the buyer through the intermediary of (a) bank(s) then the bank charges incurred shall be for seller's account. If the buyer demands presentation through a bank of his choice, those bank charges shall be for buyer's account.
3. Documents and goods remain the property of the seller until payment has been effected in accordance with seller's instructions.

## Clause 61

### Force majeure

1. Force majeure affecting either the seller or the buyer shall be understood to mean any unforeseen exceptional circumstances beyond their control and not for account or at the risk of the party concerned which have arisen after the contract has been made, as a result of which the party in question is prevented from fulfilling any of its obligations.
2. A party claiming force majeure shall notify the other party immediately by e-mail, facsimile or any other means of rapid written communication after force majeure has occurred.
3. If force majeure prevents the seller from delivering the goods or part of them in time for shipment, he shall notify the buyer immediately by e-mail, facsimile or any other means of rapid written communication. In such a case the delivery period shall be extended by a period equal to the duration of the force majeure situation. If force majeure continues during more than thirty days beyond the contractual period of delivery, whether already extended according to clause 54 or not, the contract or any unfulfilled part thereof shall be cancelled without indemnification of either party.
4. If loss or delay of nominated shipping space by reason of force majeure prevents the buyer from taking delivery of the goods within the period contracted, the period of delivery shall be extended by thirty days.
5. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

# CHAPTER VI

## FREE ALONGSIDE SHIP (F.A.S.) NAMED PORT OF SHIPMENT

### **Clause 62**

The provisions concerning F.O.B. Seagoing Vessel Named Port of Shipment shall apply accordingly to contracts for delivery F.A.S., excepted that:

- a. the seller need only place the goods alongside the vessel designated and provided by the buyer or in the custody of the buyer or his superintendent company on/or alongside the quay;
- b. the risk of loss shall pass to the buyer when the goods have been placed at the disposal of the buyer on the quay where vessel will load or alongside the vessel in craft. Loading of the goods into the vessel shall be for account and risk of the buyer;
- c. payment shall be made against clean 'received for shipment' bill(s) of lading or quay or ship's receipt and any other documents required according to the contract.

# CHAPTER VII

## COST & FREIGHT (C.&F.)/COST, INSURANCE & FREIGHT (C.I.F.)

### Clause 63

#### Quantity margin and packing

1. If sold on shipped weight the seller shall be entitled to ship five percent more or less; up to two percent shall be settled at the contract price and from two percent to five percent at the market price ruling on the (last) day of shipment.
2. If sold on delivered weight the seller shall be entitled to ship five percent more or less in case of bulk goods and two percent more or less in case of goods in packages.
3. When goods are sold in packages, the packing shall be as usual for such goods.

### Clause 64

#### Shipment

1. If the declared quantity of part shipments in bulk on any one vessel is less than 50 tons, any proved extra expenses incurred thereby shall be paid by seller.
2. Each shipment shall stand as a separate contract, except as regards declared quantities in (separate) compartments on one vessel and except as regards settlement under clause 63, if any, and shall meet the provisions of the contract.
3. The date of the bill(s) of lading shall be proof of the date of shipment in the absence of evidence to the contrary.

### Clause 65

#### Extension of the period of shipment

1. The period of shipment stipulated in the contract shall, if desired by the seller, be extended by an additional period not exceeding eight days, provided the seller gives notice, claiming extension by e-mail, facsimile or any other means of rapid written communication sent not later than the next working day following the last day of the originally stipulated period of shipment. The notice need not state the number of additional days claimed. In a string sellers shall pass on this notice to their buyers by e-mail, facsimile or any other means of rapid written communication in due course after receipt.
2. The goods may be shipped at any time within the eight additional days. In case of deferred shipment the seller shall grant the buyer an allowance of:  
0,5 percent for an extension of 1 - 4 days,  
1,0 percent for an extension of 5 - 6 days,  
1,5 percent for an extension of 7 - 8 days  
of the contract price.  
If the seller after having claimed extension, still effects shipment(s) within the original period of shipment, no allowance is due to the buyer. If the seller after having claimed extension fails to ship the goods within such eight days, the contract shall be deemed to have called for shipment during the original period of shipment plus eight days, at contract price less 1,5 percent and any settlement for default shall be calculated on that basis. If during these eight days shipment is prevented by force majeure as per clause 78 the seller shall grant his buyer an allowance as stipulated above for the number of days between the last day of the original period of shipment and the day on which the force majeure arises. In a string this provision shall apply accordingly between all subsequent sellers and buyers.

### Clause 67

#### Declaration of shipment

1. Declaration of shipment stating the approximate quantity shipped, the name of the vessel(s), the port(s) of shipment and the date(s) of the bill(s) of lading shall be made by the seller to his buyer within ten days after the date(s) of the bill(s) of lading. Declarations of intermediate sellers are to be accepted although received later than ten days after the date of the bill of lading, if passed on by them without undue delay. No declaration of shipment is required if the goods have been sold afloat by named steamer and the contract contains all the details necessary for a declaration.
2. Declaration of shipment shall be made by e-mail, facsimile or any other means of rapid written communication. It is deemed to be made under reserve for slight errors, omissions or delays in transmission. Any slight variation in the vessel(s) name shall not invalidate the declaration.
3. Should the vessel arrive before receipt of the declaration of shipment in accordance with paragraph 1, the buyer shall not be entitled to reject the declaration, but any proved extra expenses incurred thereby shall be for account of the seller.
4. A declaration of shipment cannot be withdrawn, unless with buyer's consent.

### Clause 68

#### Insurance

1. Insurance on Institute FOSFA Trades Clauses (A), which includes the risk of contamination, irrespective of percentage on each hold or tank or on the whole, and including the Institute War and Strikes Clauses (FOSFA Trades) with amendments, additions and supplementary clause, obtainable at time of shipment, shall be effected by the seller for five percent over the price of this contract on the shipped weight with first class underwriters and/or insurance companies. (See Chapter XI)
2. Any claims shall be payable in the currency of the contract in the U.S.A., or any Western European country acceptable to the buyer.
3. The rate of war risk insurance shall not exceed the rate ruling in London on the date of the bill of lading or the date of the ship's sailing from each loading port for which (a) bill(s) of lading is (are) issued, whichever may be adopted by underwriters and/or insurance companies. Any war risk premium in excess of 0,5 percent shall be payable by the buyer at the time of presentation of documents and shall be advised to the buyer not later than at the time of the declaration of shipment or not later than three working days after the rate has been agreed with underwriters and/or insurance companies, whichever may be the later.
4. In case of C.&F. transactions marine, war and strikes risk insurance from the time the goods leave the warehouse, premises or place of storage at the port of shipment to commence the transit, is to be covered by buyer with first class companies and/or underwriters and to be confirmed by such companies and/or underwriters and/or the buyer to the seller (See Chapter XI).  
If this confirmation is not received by the seller prior to loading of the vessel, the seller has the right to cover insurance for buyer's account and expense.

## Clause 69

### Documents

1. The documents to be presented for payment shall at least consist of:
  - a. a complete set of dated negotiable, clean 'on board' bill(s) of lading signed by or for and on behalf of the shipowner or the master, stating whether the freight has been (pre)paid or is to be collected;
  - b. if the bill of lading refers to a charter party and/or any other document relating to the freight-booking, an approved letter of guarantee holding the buyer harmless for any consequences arising from any clauses contrary to the terms of the contract of sale;
  - c. (an) insurance policy(ies) and/or (an) insurance certificate(s) issued under the authority of the underwriters and/or (an) approved broker's certificate(s) of insurance and/or (an) approved letter(s) of insurance conferring upon the bearer the same rights as if he were in possession of the policy and stating the essential provisions therein. (Not required in case of a C. & F. contract);
  - d. a(n) (provisional) invoice in which the freight has been either deducted or included, if same has been paid according to the bill of lading or according to any other document approved by buyer stating that the freight has been paid or will be paid by the seller. If freight has been deducted the buyer to pay freight not later than on vessel's arrival; in case the buyer must pay the freight in another currency than the contract currency same shall be settled in the final invoice at the rate of exchange on the date of actual freight payment;
  - e. in case of shipment in bulk, a report issued by an independent surveyor, certifying that ship's hold(s), tank(s), manifolds and pipelines were clean and fit to receive the goods, and certifying the quantity loaded into each ship's hold(s) or tank(s), including or together with an ullage report if customary, showing the temperature(s) of the goods after loading. If the goods form part of a larger quantity the buyer shall accept photostatic copy(ies) of the survey report;
  - f. a certificate of origin or a certificate usual for the trade between the country of origin and the country of destination as required by the buyer for customs purposes;
  - g. in case of shipment in packages, (a) weight certificate(s) showing marks, numbers, gross or nett weights and original tares at time of shipment;
  - h. statement by shipowner, master or authorized agent certifying that the tank(s) receiving the goods has (have) not contained any lead petroleum or other leaded product(s) on at least the last three cargoes carried. This statement should include, for information only and without responsibility on seller, particulars of the last three cargoes carried and it shall include confirmation, that the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil is a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading (or in accordance with the E.U. Commission Regulation 579/2014 or any successive Directives in force at the date of the bill of lading, where applicable);
  - i. if transshipment is allowed a similar statement as per this paragraph sub h shall be supplied for the oncarrying ship by shipowner or master or transshipment surveyor to the bill of lading holder(s) in the port of destination before discharge.
2. The seller shall be entitled to present, instead of one or more bill(s) of lading, one or more delivery order(s), which either, if so required by the buyer, must be signed or countersigned by the shipowner, his duly authorized agent or the master, or which has (have) been issued by a person or firm holding the bill(s) of lading on behalf and

in the interest of the holders of delivery orders issued instead of the relative bill(s) of lading. If so required by the buyer immediately on presentation, such delivery order(s) is (are) to be guaranteed by a bank. The delivery order(s) must contain the essential particulars of the respective bill(s) of lading and declare applicable all terms and conditions thereof, but shall not contain additional clauses limiting the liability of the shipowner, the carrier or the holder of the bill(s) of lading. In this case the buyer is entitled to (a) photostatic or (a) non-negotiable copy(ies) of the bill(s) of lading.

## Clause 70

### Payment

1. The documents shall be presented to the buyer on a working day. Payment is to be made immediately on presentation nett cash by telegraphic transfer in accordance with the instructions of the seller. If the freight has been deducted from the (provisional) invoice, same shall be paid by the buyer. If the contract stipulates payment on or before arrival, payment shall be made on or at buyer's option before arrival of the vessel at the port of destination named in the contract. Payment of the agreed percentage of the amount mentioned in the provisional invoice shall be made in exchange for the documents presented, any balance as per final invoice to be settled without undue delay.
2. In the event of the documents mentioned in clause 69 not being complete, one original bill of lading shall be presented in any case. The seller shall furnish a guarantee approved by the buyer, for subsequent delivery of the missing documents and/or copies which holds the buyer harmless for any consequences arising from the presentation of incomplete documents. The buyer is entitled to require a bankguarantee.
3. In the event of the bill(s) of lading mentioned in the first paragraph of clause 69 not being signed by or for and on behalf of the shipowner or the master the seller shall furnish written evidence of authorization by the shipowner or the master.
4. Should the vessel arrive before presentation of shipping documents, the buyer shall take delivery against a guarantee to be approved by the shipowner. Any proved extra expenses, costs and damages incurred thereby shall be for account of the seller. In the event that the buyer takes delivery under his own guarantee and the seller fails to provide shipping documents and if buyer's bankguarantee is encashed by the ship, the seller shall be responsible for all damages, costs and consequences arising from his failure to present documents. The buyer shall inform the seller immediately there is a claim against this guarantee and the seller shall have the right to be enjoined in any legal action arising therefrom.
5. Documents remain the property of the seller until payment has been effected in accordance with seller's instructions.

## Clause 71

### Discharge

1. The buyer shall take delivery in the port of destination at one berth only at ship's option with customary quick dispatch after notice has been given by the shipowners or their representative that the vessel will be ready to discharge. If the contract of affreightment, charterparty, booking note or bill(s) of lading should provide for discharge at more than one berth and the buyer desires to take delivery at more than one berth, any extra expenses incurred thereby to be for his account.
2. The buyer has the option of taking delivery of bulk goods into silo(s), land tank(s), barge(s), car(s) or over weigh scales, provided circumstances permit. Extra expenses over those of the normal way of taking receipt at the port of discharge shall be for buyer's account.



3. In case of bulk oils the seller is responsible for pumping out the oil and for all expenses for connecting to ship's outlet(s) and for sweeping or puddling, but discharging expenses arising after the oil has passed ship's rail shall be for buyer's account.
4. Any loose collected goods remaining in the ship's hold(s) or tank(s) after discharge or pumping, shall be discharged at seller's expense and be delivered to the buyer at the discharging berth in packages to be provided by the buyer; and if not so discharged the weight of these loose collected/unpumpable goods shall not be included in the delivered weight.

## Clause 72

### Weighing

1. The buyer shall have the weight of oil ascertained at his expense within seven days after discharge by gauging either in officially calibrated tank barge(s) or in shoretank(s) in which the oil is received, or in tank car(s) which shall be weighed before and after loading, or by discharge into a weighing installation.
2. The weight of other goods in bulk or in packages and of oil in packages shall be ascertained at buyer's expense in the way customary for such goods.
3. The seller has the right to superintend at his expense. The buyer shall notify the seller's superintendent company in due time about the time and place of weighing. Should the seller fail to nominate his superintendent company in due time before the weighing/ gauging, the weight ascertained by the buyer's superintendent company shall be final.
4. The mass per unit volume ('litre weight') in air is to be established on the basis of sealed samples, drawn in accordance with clause 11. In the event of disagreement between buyer's and seller's superintendent companies on the question of the mass per unit volume ('litre weight') in air the procedure mentioned in clause 17 is to be applied.

### Packages and tares

5. The tares of goods in packages are understood to be original tares. Only in case of an exceptional excess in tare the buyer shall have a claim on that account. In that case, failing agreement, the tare is to be ascertained to the satisfaction of arbitrators within sixty days after discharge of the goods.

## Clause 73

### Adjustment of outturn

1. The weight of bulkparcel(s) of oils, fats etc. ascertained at destination shall be settled at contract price if between 98 percent and 102 percent of the contract quantity (without taking into consideration the margin of five percent more or less on shipment). If the weight discharged at destination is below 98 percent or over 102 percent of the contract quantity the difference between the weight discharged and the contract quantity shall be settled at the market value on the first business day after the last day of discharge of the goods from the (last) vessel. Such market value to be fixed by arbitration, unless mutually agreed.
2. The weight of oils, fats etc. in packages ascertained at destination shall be settled at contract price.
3. In case of dry cargoes the difference between the bill of lading weight and the delivered weight shall be settled at the contract price unless paragraph 4 applies.

### Pro rata

4. If a consignment of dry cargo forms part of a larger consignment of the same quality intended for the same port, any under- or overweight, as well as any damage or sweepings shall be distributed pro rata among the consignees concerned. Each consignee shall settle any quantity received short or in excess of his pro rata share with the other consignees on the basis of the market value of the goods on the last day of discharge of the steamer, which current market value shall either be agreed upon between parties or be fixed by arbitration. All buyers and sellers concerned by this pro rata distribution shall each be deemed to have agreed with the others that this provision shall be applicable between them and that any disputes arising from this pro rata distribution shall be settled by arbitration as referred to in clause 25.

## Clause 74

### Sampling and analysis

1. On discharge samples in quadruplicate for analyses and/or arbitration shall be drawn for account of the buyer in the way usual for bulk goods and/or for goods in packages and be sealed jointly by buyer's and seller's superintendent companies. The buyer shall notify the seller's superintendent company in due time about the time and place of sampling. Should the superintendent company of either party not be available at the time of sampling, the samples sealed by the superintendent company of the other party shall be binding.
2. The buyer has the right to instruct, within fourteen days after discharge of the goods, a laboratory recognized by the Association or another laboratory agreed upon to analyse a sample. This analysis shall be accepted by both parties, unless the seller, within seven days after receipt of a copy of the analysis report, instructs another laboratory recognized by the Association or a laboratory agreed upon to analyse another sample. In this case the mean of the results of the two analyses shall be final unless, in special circumstances, arbitrators decide otherwise.
3. Any loose collected goods, and/or sweepings as mentioned in clause 71, paragraph 4, shall be sampled and be analysed separately.
4. Either party shall notify the other party of instructions to the laboratory and send him copy of the analysis report within two working days after dispatch of the instructions or receipt of the analysis report, as the case may be.

## Clause 75

### Reciprocal settlement

If contract stipulations include reciprocal allowances, according to (a) scale(s) agreed upon, either party shall be entitled to have an analysis made by a laboratory recognized by the Association or another laboratory agreed upon and, unless each party had an analysis made, the other party shall be entitled, within seven days after receipt of the certificate of the first analysis, to have another analysis made by a laboratory recognized by the Association or another laboratory agreed upon. The mean of the figures of both analyses shall be final unless, in special circumstances, arbitrators decide otherwise. Either party shall notify the other party of instructions to the laboratory within two business days after dispatch of the instructions and send him a copy of the analysis report within two business days after receipt of it.

## Clause 76

### Arrival Quality and Condition Guaranteed

1. Should the quality and/or condition of the goods, including any loose collected goods and/or sweepings not prove equal to the contractual guarantee(s) and/or should the goods be contaminated by seawater or damaged otherwise during the voyage, the goods are not to be rejected, but to be taken with an allowance, provided always that on loading the goods were of the description and specifications contracted for. Unless such an allowance has already been stipulated in the contract, it shall be mutually agreed or, failing agreement, be determined by arbitration.
2. Should the goods not be of the description contracted for or the inferior quality and/or condition be attributable to bad faith, the buyer shall be entitled to reject the goods. In that event the contract shall be cancelled and the amount paid plus interest shall be refunded to the buyer, together with compensation for any proved damages, including any adverse price difference.
3. Any claims on account of inferior condition on arrival against shipowners and/or insurance companies and/or third parties are to be made by the buyer for his own account.
4. The buyer shall take all necessary steps to safeguard seller's interest in the prosecution of any claim against shipowners and/or insurance companies and/or other third parties in respect of the quality and/or the condition of the goods.

## Clause 77

### Quality and condition final at shipment

If the contract stipulates quality and condition final at shipment, any claims on account of inferior condition on arrival against shipowners and/or insurance companies and/or third parties are to be made by the buyer for his own account.

## Clause 78

### Force majeure

1. Force majeure shall be understood to mean any unforeseen exceptional circumstances beyond 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 is prevented from shipping the goods sold.
2. If shipment of the contract quantity or a part thereof is prevented by force majeure at port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s) and/or preventing the proceeding of the vessel(s) intended for the shipment, to such port(s), at any time during the last twentyeight days of the originally stipulated period of shipment or at any time during the whole period of shipment, if such be less than twentyeight days, then the shipper shall, after the force majeure ceases to prevail, be entitled to an extension of time for shipment from such port(s) of as many days as were left for shipment under the contract prior to the outbreak of the force majeure and in the event of such time left being less than fourteen days he shall be entitled to a minimum extension of fourteen days.
3. If the shipper intends to claim an extension of time for shipment under this clause, he shall give notice thereof to his buyer as soon as possible, but not later than on the first working day after the last day of the originally stipulated period of shipment and state the port(s) from which shipment was intended to be made. All notices shall be given by e-mail, facsimile or any other means of rapid written communication. In a string all notices to be passed on immediately.  
The shipper shall advise the buyer of the outbreak and termination of force majeure by e-mail, facsimile or any other means of rapid written communication without undue delay and must, on request, produce evidence to justify his claim for extension or cancellation.

4. If force majeure still prevails sixty days after expiry of the originally stipulated period of shipment the contract or the unfulfilled part thereof shall be cancelled without indemnification of either party. If the force majeure ceases to prevail within sixty days after expiry of the originally stipulated period of shipment, shipment must be made from (any of) the port(s) stated, unless otherwise agreed. In case of non-fulfilment under these circumstances the default date shall be deferred in conformity with the extension of time for shipment as mentioned in paragraph 2.
5. The shipper shall advise the buyer of the outbreak and termination of force majeure by e-mail, facsimile or any other means of rapid written communication without undue delay and must, on request, produce evidence to justify his claim for extension or cancellation.
6. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

# CHAPTER VIII

## EX SHIP

### Clause 79

#### Quantity margin and settlement

The seller shall be entitled to deliver five percent more or less; up to two percent shall be settled at the contract price and the balance at the market price on the date of arrival of the (last) vessel. If part deliveries are effected, the seller shall retain the right to deliver five percent more or less of the mean contract quantity. If the contract quantity is indicated by a minimum and a maximum, the seller shall be entitled to deliver any quantity within the limits set, but he shall not be entitled, in addition, to deliver five percent more or less. In the case of non-delivery or partial delivery the mean contract quantity shall serve as the basis for settlement.

### Clause 80

#### Shipment

1. Each shipment in partial fulfilment of a contract shall stand as a separate contract and must meet the provisions of the contract, but this shall not affect the margin of five percent more or less as per clause 79.
2. The date of the bill(s) of lading shall be proof of the date of shipment, in the absence of evidence to the contrary.

### Clause 81

#### Extension of the period of shipment

1. The period of shipment stipulated in this contract shall, if desired by the seller, be extended by an additional period not exceeding eight days, provided the seller gives notice, claiming extension by e-mail, facsimile or any other means of rapid written communication sent not later than the next working day following the last day of the originally stipulated period of shipment. The notice need not state the number of additional days claimed. In a string sellers shall pass on this notice to their buyers by e-mail, facsimile or any other means of rapid written communication in due course after receipt.
2. The goods may be shipped at any time within the eight additional days. In case of deferred shipment the seller shall grant the buyer an allowance of:  
0,5 percent for an extension of 1 - 4 days,  
1,0 percent for an extension of 5 - 6 days,  
1,5 percent for an extension of 7 - 8 days  
of the contract price.  
If the seller after having claimed extension, still effects shipment(s) within the original period of shipment, no allowance is due to the buyer. If the seller after having claimed extension fails to ship the goods within such eight days, the contract shall be deemed to have called for shipment during the original period of shipment plus eight days, at contract price less 1,5 percent and any settlement for default shall be calculated on that basis. If during these eight days shipment is prevented by force majeure as per clause 93 the seller shall grant his buyer an allowance as stipulated above for the number of days between the last day of the original period of shipment and the day on which the force majeure arises. In a string this provision shall apply accordingly between all subsequent sellers and buyers.

### Clause 82

#### Declaration of shipment

1. Declaration of shipment stating the approximate quantity shipped, the name of the vessel(s), the port(s) of shipment and the date(s) of the bill(s) of lading shall be made by the seller to his buyer within ten days after the date(s) of the bill(s) of lading. Declarations of intermediate sellers are to be accepted although received later than ten days after the date of the bill of lading, if passed on by them without undue delay. No declaration of shipment is required if the goods have been sold afloat by named steamer and the contract contains all the details necessary for a declaration.
2. Declaration of shipment shall be made by e-mail, facsimile or any other means of rapid written communication. It is deemed to be made under reserve for slight errors, omissions or delays in transmission. Any slight variation in the vessel(s) name shall not invalidate the declaration.
3. Should the vessel arrive before receipt of the declaration of shipment in accordance with paragraph 1, the buyer shall not be entitled to reject the declaration, provided that the goods declared have not been wholly or partially lost, but any proved extra expenses incurred thereby shall be for account of the seller.
4. A declaration of shipment cannot be withdrawn, unless with buyer's consent.

### Clause 83

#### Insurance

1. Insurance on Institute FOSFA Trades Clauses (A), which includes the risk of contamination, irrespective of percentage on each hold or tank or on the whole, and including the Institute War and Strikes Clauses (FOSFA Trades) with amendments, additions and supplementary clauses, obtainable at time of shipment, shall be effected by the seller for five percent over the price of this contract on the shipped weight with first class underwriters and/or insurance companies. (See Chapter XI)
2. Any claims shall be payable in the currency of the contract in the U.S.A., or any Western European country acceptable to the buyer.
3. The rate of war risk insurance shall not exceed the rate ruling in London on the date of the bill of lading or the date of the ship's sailing from each loading port for which (a) bill(s) of lading is (are) issued, whichever may be adopted by underwriters and/or insurance companies. Any war risk premium in excess of 0,5 percent shall be payable by the buyer at the time of presentation of documents and shall be advised to the buyer not later than at the time of the declaration of shipment or not later than three working days after the rate has been agreed with underwriters and/or insurance companies, whichever may be the later.

### Clause 84

#### Documents

1. The documents to be presented for payment shall at least consist of:
  - a. a complete set of dated negotiable, clean 'on board' bill(s) of lading signed by or for and on behalf of the shipowner or the master, stating whether the freight has been (pre)paid or is to be collected;

- b. if the bill of lading refers to a charter party and/or any other document relating to the freight-booking, an approved letter of guarantee holding the buyer harmless for any consequences arising from any clauses contrary to the terms of the contract of sale;
  - c. (an) insurance policy(ies) and/or (an) insurance certificate(s) issued under the authority of the underwriters and/or (an) approved broker's certificate(s) of insurance and/or (an) approved letter(s) of insurance conferring upon the bearer the same rights as if he were in possession of the policy and stating the essential provisions therein;
  - d. a provisional invoice in which the freight is included; if according to the bill of lading or according to any other document approved by buyer the freight is to be collected, same is to be paid by the seller not later than on vessel's arrival;
  - e. in case of shipment in bulk a report issued by an independent surveyor, certifying that ship's hold(s), tank(s), manifolds and pipelines were clean and fit to receive the goods, and certifying the quantity loaded into each ship's tank(s), including or together with an ullage report if customary, showing the temperature(s) of the goods after loading. If the goods form part of a larger quantity the buyer shall accept photostatic copy(ies) of the survey report;
  - f. a certificate of origin or a certificate usual for the trade between the country of origin and the country of destination as required by the buyer for customs purposes;
  - g. in case of shipment in packages, (a) weight certificate(s) showing marks, numbers, gross or nett weights and original tares at time of shipment;
  - h. statement by shipowner, master or authorized agent certifying that the tank(s) receiving the goods has (have) not contained any lead petroleum or other leaded product(s) on at least the last three cargoes carried. This statement should include, for information only and without responsibility on seller, particulars of the last three cargoes carried and it shall include confirmation, that the immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil is a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading;
  - i. if transshipment is allowed a similar statement as per this paragraph sub h shall be supplied for the oncarrying ship by shipowner or master or transshipment surveyor to the bill of lading holder(s) in the port of destination before discharge.
2. The seller shall be entitled to present, instead of one or more bill(s) of lading, one or more delivery order(s), which either, if so required by the buyer, must be signed or countersigned by the shipowner, his duly authorized agent or the master, or which has (have) been issued by a person or firm holding the bill(s) of lading on behalf and in the interest of the holders of delivery orders issued instead of the relative bill(s) of lading. If so required by the buyer immediately on presentation, such delivery order(s) is (are) to be guaranteed by a bank. The delivery order(s) must contain the essential particulars of the respective bill(s) of lading and declare applicable all terms and conditions thereof, but shall not contain additional clauses limiting the liability of the shipowner, the carrier or the holder of the bill(s) of lading. In this case the buyer is entitled to (a) photostatic or (a) non-negotiable copy(ies) of the bill(s) of lading.

## Clause 85

### Payment

1. The documents shall be presented to the buyer on a working day. Payment is to be made after arrival of the ship, but before commencement of discharge, nett cash by telegraphic transfer in accordance with the instructions of the seller. Payment of the agreed percentage of the amount mentioned in the provisional invoice shall be made in exchange for the documents presented, any balance as per final invoice to be settled without undue delay.

2. In the event of the documents mentioned in clause 84 not being complete, one original of the bill of lading shall be presented in any case. The seller shall furnish a guarantee approved by the buyer, for subsequent delivery of the missing documents and/or copies which holds the buyer harmless for any consequences arising from the presentation of incomplete documents. The buyer is entitled to require a bankguarantee.
3. In the event of the bill(s) of lading mentioned in the first paragraph of clause 84 not being signed by or for and on behalf of the shipowner or the master the seller shall furnish written evidence of authorization by the shipowner or the master.
4. Should the vessel arrive before presentation of shipping documents, the seller shall provide substitute documents or a guarantee in favour of the shipowner to enable the buyer to take delivery of the goods from the ship, but payment shall be due against the documents required.
5. Documents and goods remain the property of the seller until payment has been effected in accordance with seller's instructions.

## Clause 86

### Discharge

1. The buyer shall take delivery in the port of destination at one berth only at ship's option with customary quick dispatch after notice has been given by the shipowners or their representative that the vessel will be ready to discharge. If the contract of affreightment, charterparty, booking note or bill(s) of lading should provide for discharge at more than one berth and the buyer desires to take delivery at more than one berth, any extra expenses incurred thereby to be for his account.
2. The buyer has the option of taking delivery of bulk goods into silo(s), land tank(s), barge(s), car(s) or over weigh scales, provided circumstances permit. Extra expenses over those of the normal way of taking receipt at the port of discharge shall be for buyer's account.
3. In case of bulk oils the seller is responsible for pumping out the oil and for all expenses for connecting to ship's outlet(s) and for sweeping or puddling, but discharging expenses arising after the oil has passed ship's rail shall be for buyer's account.
4. Any loose collected goods remaining in the ship's hold(s) or tank(s) after discharge or pumping, shall be discharged at seller's expense and be delivered to the buyer at the discharging berth in packages to be provided by the buyer; and if not so discharged the weight of these loose collected/unpumpable goods shall not be included in the delivered weight.

## Clause 87

### Weighing

1. The buyer shall have the weight of oil ascertained at his expense within seven days after discharge by gauging either in officially calibrated tank barge(s) or in shoretank(s) in which the oil is received, or in tank car(s) which shall be weighed before and after loading, or by discharge into a weighing installation.
2. The weight of other goods in bulk or in packages and of oil in packages shall be ascertained at buyer's expense in the way customary for such goods.
3. The seller has the right to superintend at his expense. The buyer shall notify the seller's superintendent company in due time about the time and place of weighing. Should the seller fail to nominate his superintendent company in due time before the weighing/ gauging, the weight ascertained by the buyer's superintendent company shall be final.

4. The mass per unit volume ('litre weight') in air is to be established on the basis of sealed samples, drawn in accordance with clause 11. In the event of disagreement between buyer's and seller's superintendent companies on the question of the mass per unit volume ('litre weight') in air the procedure mentioned in clause 17 is to be applied.

#### **Packages and tares**

5. The tares of goods in packages are understood to be original tares. Only in case of an exceptional excess in tare the buyer shall have a claim on that account. In that case, failing agreement, the tare is to be ascertained to the satisfaction of arbitrators within sixty days after discharge of the goods.

### **Clause 88**

#### **Adjustment of outturn**

1. The weight of bulkparcel(s) of oils, fats etc. ascertained at destination shall be settled at contract price if between 98 percent and 102 percent of the contract quantity (without taking into consideration the margin of five percent more or less on shipment). If the weight discharged at destination is below 98 percent or over 102 percent of the contract quantity the difference between the weight discharged and the contract quantity shall be settled at the market value on the first business day after the last day of discharge of the goods from the (last) vessel. Such market value to be fixed by arbitration, unless mutually agreed.
2. The weight of oils, fats etc. in packages ascertained at destination shall be settled at contract price.
3. In case of dry cargoes the difference between the bill of lading weight and the delivered weight shall be settled at the contract price unless paragraph 4 applies.

#### **Pro rata**

4. If a consignment of dry cargo forms part of a larger consignment of the same quality intended for the same port, any under- or overweight, as well as any damage or sweepings shall be distributed pro rata among the consignees concerned. Each consignee shall settle any quantity received short or in excess of his pro rata share with the other consignees on the basis of the market value of the goods on the last day of discharge of the steamer, which current market value shall either be agreed upon between parties or be fixed by arbitration. All buyers and sellers concerned by this pro rata distribution shall each be deemed to have agreed with the others that this provision shall be applicable between them and that any disputes arising from this pro rata distribution shall be settled by arbitration as referred to in clause 25.

### **Clause 89**

#### **Sampling and analysis**

1. On discharge samples in quadruplicate for analyses and/or arbitration shall be drawn for account of the buyer in the way usual for bulk goods and/or for goods in packages and be sealed jointly by buyer's and seller's superintendent companies. The buyer shall notify the seller's superintendent company in due time about the time and place of sampling. Should the superintendent company of either party not be available at the time of sampling, the samples sealed by the superintendent company of the other party shall be binding.

2. The buyer has the right to instruct, within fourteen days after discharge of the goods, a laboratory recognized by the Association or another laboratory agreed upon to analyse a sample. This analysis shall be accepted by both parties, unless the seller, within seven days after receipt of a copy of the analysis report, instructs another laboratory recognized by the Association or a laboratory agreed upon to analyse another sample. In this case the mean of the results of the two analyses shall be final unless, in special circumstances, arbitrators decide otherwise.

3. Any loose collected goods, and/or sweepings as mentioned in clause 86, paragraph 4, shall be sampled and be analysed separately.

4. Either party shall notify the other party of instructions to the laboratory and send him copy of the analysis report within two working days after dispatch of the instructions or receipt of the analysis report, as the case may be.

### **Clause 90**

#### **Reciprocal settlement**

If contract stipulations include reciprocal allowances, according to (a) scale(s) agreed upon, either party shall be entitled to have an analysis made by a laboratory recognized by the Association or another laboratory agreed upon and, unless each party had an analysis made, the other party shall be entitled, within seven days after receipt of the certificate of the first analysis, to have another analysis made by a laboratory recognized by the Association or another laboratory agreed upon. The mean of the figures of both analyses shall be final unless, in special circumstances, arbitrators decide otherwise. Either party shall notify the other party of instructions to the laboratory within two business days after dispatch of the instructions and send him a copy of the analysis report within two business days after receipt of it.

### **Clause 91**

#### **Quality and condition**

1. Should the quality and/or condition of the goods, including any loose collected goods and/or sweepings not prove equal to the contractual guarantee(s) and/or should the goods be contaminated by seawater or damaged otherwise during the voyage, the goods are not to be rejected, but to be taken with an allowance, provided always that on loading the goods were of the description and specifications contracted for. Unless such an allowance has already been stipulated in the contract, it shall be mutually agreed or, failing agreement, be determined by arbitration.
2. Should the goods not be of the description contracted for or the inferior quality and/or condition be attributable to bad faith, the buyer shall be entitled to reject the goods. In that event the contract shall be cancelled and the amount paid plus interest shall be refunded to the buyer, together with compensation for any proved damages, including any adverse price difference.
3. The buyer shall take all necessary steps to safeguard seller's interest in the prosecution of any claim against shipowners, and/or insurance companies, and/or other third parties in respect of the quality and/or the condition of the goods. On settlement of the final invoice by the seller the buyer shall, if so requested, hand over to the seller the insurance policy(ies), certificate(s) and any supporting documents, failing which the buyer shall provide a guarantee approved by the seller either to furnish these documents to the seller in due course or holding the seller harmless for any consequences resulting from his failure to fulfil his obligations in this respect. Any sum recovered after such settlement shall be for the benefit of the seller, but he shall refund to the buyer the expenses made by the latter in connection with claims on third parties.

## Clause 92

### Cancellation

If the goods or a part thereof should be lost or fail to arrive in the ship(s) in which they have been declared, the contract or the relevant part thereof shall be cancelled without either party being entitled to claim indemnification. If the voyage of the ship(s) terminates in a port other than the port of destination, the seller shall be obliged to tranship the goods immediately for his account and the buyer shall be obliged to accept the goods on the strength of the original declaration of shipment.

## Clause 93

### Force majeure

1. Force majeure shall be understood to mean any unforeseen exceptional circumstances beyond 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 is prevented from shipping the goods sold.
2. If shipment of the contract quantity or a part thereof is prevented by force majeure at port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s) and/or preventing the proceeding of the vessel(s) intended for the shipment, to such port(s), at any time during the last twentyeight days of the originally stipulated period of shipment or at any time during the whole period of shipment, if such be less than twentyeight days, then the shipper shall, after the force majeure ceases to prevail, be entitled to an extension of time for shipment from such port(s) of as many days as were left for shipment under the contract prior to the outbreak of the force majeure and in the event of such time left being less than fourteen days he shall be entitled to a minimum extension of fourteen days.
3. If the shipper intends to claim an extension of time for shipment under this clause, he shall give notice thereof to his buyer as soon as possible, but not later than on the first working day after the last day of the originally stipulated period of shipment and state the port(s) from which shipment was intended to be made. All notices shall be given by e-mail, facsimile or any other means of rapid written communication. In a string all notices to be passed on immediately.
4. If force majeure still prevails sixty days after expiry of the originally stipulated period of shipment the contract or the unfulfilled part thereof shall be cancelled without indemnification of either party. If the force majeure ceases to prevail within sixty days after expiry of the originally stipulated period of shipment, shipment must be made from (any of) the port(s) stated, unless otherwise agreed. In case of non-fulfilment under these circumstances the default date shall be deferred in conformity with the extension of time for shipment as mentioned in paragraph 2.
5. The shipper shall advise the buyer of the outbreak and termination of force majeure by e-mail, facsimile or any other means of rapid written communication without undue delay and must, on request, produce evidence to justify his claim for extension or cancellation.
6. If on arrival at the port of destination the delivery of the goods or a part thereof is prevented by unforeseen extraordinary circumstances, either on the part of the seller or on the part of the buyer, which are beyond their control, not for their account or at their risk and have arisen after the contract was concluded, the party affected thereby shall notify the other party thereof as soon as possible and the obligations of the parties shall be suspended for the number of days that the said circumstances continue to prevail. If force majeure still prevails sixty days after arrival of the vessel the contract as far as the declared quantity is concerned shall be cancelled without indemnification of either party.
7. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

# CHAPTER IX

## SPOT / AVAILABLE

### Clause 94

#### Spot terms

1. When selling on spot terms the seller shall deliver the goods in transit ex quay and/or ex shed and/or ex warehouse on delivered weights.
2. These conditions are applicable to goods sold:
  - a. as available;
  - b. for future delivery;
  - c. for delivery after shipment from origin during a stipulated period;
  - d. afloat.
3. The expenses of delivery at the place, mentioned in the contract, excluding those for loading on or into buyer's receiving vessels/vehicles, are for account of seller; these expenses also shall include those of weighing.
4. Deliveries within the period contracted for, may be made in one lot or in parts; each part and each (contra)mark shall stand as a separate contract.
5. All risks are for account of seller up to the time of actual delivery of the goods, but any goods put at the disposal of the buyer, which have not been taken delivery of in due time, shall be at the risk of the buyer.

### Clause 95

#### Notice of delivery, delivery and taking delivery

1. Goods sold as available at the time of concluding the contract, shall be held at the disposal of the buyer at the latest on the second working day after the date of the contract. The buyer shall take delivery at the latest on the third working day after the date on which the seller has placed the goods at the disposal of the buyer and has enabled the buyer to inspect the goods.
2. 'Immediate' delivery shall be made not later than on the seventh, 'prompt' delivery not later than on the fourteenth day after the date of the contract.
3. In the cases mentioned in clause 94, paragraph 2, sub b and in paragraph 2 of this clause, the seller shall give notice of delivery as soon as the delivery of the goods can be made. The seller shall enable the buyer to inspect the goods and the buyer shall make the necessary arrangements to take delivery of the goods in the way provided for in the contract, within five working days after the notice. In case no notice has been given by the seller, these arrangements shall be made by the buyer within five working days after the last day of the period of delivery provided for in the contract.
4. If the notice of delivery has been sent before the first day of the period of delivery, same shall be deemed to have been received by the buyer on the first day of the period of delivery. In case the buyer has bought for delivery during a certain period at his option, the notice of delivery mentioned in the third paragraph of this clause shall be deemed to have been sent five working days before the expiration of the period concerned.

### Clause 96

#### Shipment

1. In case of goods to be shipped from origin during a stipulated period, the seller shall have fulfilled his obligations of shipping as soon as the goods have been shipped and a declaration of shipment has been made. After safe arrival of the goods at port of destination the seller has the obligation to put same at the disposal of the buyer as per clause 94, paragraph 1.
2. Shipments, effected within the period contracted for, may be made in one or more parts, direct or indirect, with or without transshipment. Each shipment and each (contra)mark shall stand as a separate contract.
3. 'Immediate' shipment shall be made not later than on the tenth day after the date of the contract. 'Prompt' shipment shall be made from places in Europe not later than on the fourteenth day, from places outside Europe not later than on the twentyfirst day after the date of the contract.
4. The date of the bill of lading or the through bill of lading shall be considered proof of the date of shipment in the absence of evidence to the contrary.
5. When goods sold for shipment from factory or store in the interior are shipped on an ocean bill of lading, the seller shall have to prove that the goods were shipped in due time from factory or store.
6. In case of spot deliveries the means of conveyance from origin of the goods to the tankstorage company shall have carried as immediate previous cargo in the tank(s), lines and pump systems used to load, carry and discharge the oil a product appearing on the FOSFA International list of acceptable previous cargoes in force at the date of the bill of lading.

### Clause 97

#### Inspection, latent defects and arbitration

Inspection of goods shall be made by the buyer or his superintendent company, before or during delivery. Approval of the quality of the goods does not preclude any claim on account of latent defects, provided that the buyer lodges such complaints within three weeks after delivery or immediately after discovery was reasonably possible, whichever was later. The buyer shall apply for arbitration within three weeks from the definite rejection of his complaint by the seller.

### Clause 98

#### Payment

Unless payment is to be made against a storage warrant, delivery warrant or delivery order, payment shall be made cash without discount, within five 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 order of deliveries, unless otherwise stated. Only undisputed claims on account of inferior quality shall constitute a reason for non-payment or partial payment.

## Clause 99

### Force majeure

1. Force majeure shall be understood to mean any unforeseen exceptional circumstances beyond either party's control and not for its account or at its risk which have arisen after the contract has been made, as a result of which the party is prevented from fulfilling its obligations.
2. If force majeure prevents the seller from delivering goods or part of them, sold for delivery during a certain period at his option, he shall notify the buyer by e-mail, facsimile or any other means of rapid written communication before expiry of the period of delivery contracted for. In such cases the time of delivery shall be extended either by a period of thirty days or of seven days, from the moment when the cause of delay ceases to prevail, whichever is the shortest. Should the delay exceed thirty days the contract shall be void.
3. With regard to contracts, at buyer's call for delivery during a certain period at his option, the seller shall notify the buyer immediately upon the occurrence of an event constituting force majeure.
4. If force majeure prevents the seller from shipping the goods or part of them, he shall notify the buyer by e-mail, facsimile or any other means of rapid written communication before expiry of the period of shipment contracted for. In any such case the period of shipment shall be extended either by a period of thirty days or of seven days from the moment when the cause of the delay ceases to prevail, whichever is the shortest. Should the delay exceed thirty days the contract shall be void.
5. The contract shall be void for any goods contracted for, which become a total or partial loss after notice of delivery or shipment has been given. The seller must produce proof that goods forming part of a greater quantity were actually intended to be delivered against the contract in question.
6. 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 force majeure shall be settled by arbitration.
7. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.



# CHAPTER X

## GENERAL BUSINESS

### Clause 100

#### Quantity margin and settlement

1. Where a quantity is sold 'about' or 'approximately', the seller shall be entitled to deliver five percent more or less; up to two percent shall be settled at the contract price and from two percent to five percent at the market price ruling on the day of delivery/dispatch of the goods.
2. If the quantity to be delivered/dispached within a specified period is delivered/dispached in parts the seller shall have the aforementioned option only with regard to the last part within that period.

#### Weighing

3. The seller must have the weight ascertained in the customary manner and for his own account at the supplying mill/works/store. The seller shall allow the buyer to supervise the weighing.
4. If the buyer wants to avail himself of that right he shall appoint his superintendent company in due time.
5. The weight ascertained in accordance with the foregoing shall be binding upon both parties. If the buyer does not have the weighing supervised, the weight unilaterally ascertained by the seller shall be binding.

### Clause 101

#### Sampling

1. The quality of each delivery shall be ascertained by reference to the samples drawn and sealed in the customary manner at the supplying mill/works/store.
2. The seller shall allow the buyer to supervise the sampling. If the buyer wants to avail himself of that right, he shall appoint his superintendent company in due time.
3. The samples drawn and sealed by, or on behalf of, both parties shall be binding. If either party fails to co-operate in the sampling, of which he has been notified in due time by the other party, the samples drawn unilaterally by the latter shall be binding. If both parties fail to have sampling carried out and samples drawn by the supplying mill/works/store are available, then these shall be binding.

### Clause 102

#### Delivery/dispatch within a specified period

1. If delivery within a specified period has been agreed upon, the seller shall make the goods available to the buyer or dispatch them within that period on a date elected by the seller. If the goods have been sold for delivery/dispatch at buyer's call the seller shall make the goods available or dispatch them at a time to be elected by the buyer.
2. If 'immediate' delivery/dispatch is agreed upon the seller shall place the goods at buyer's disposal or dispatch them not later than the seventh day; if the contract stipulates 'prompt' delivery/dispatch, the seller shall deliver/dispatch the goods not later than the fourteenth day after the date of the contract.

#### Part delivery/dispatch

3. If the seller of his own accord effects delivery/dispatch in parts, each part shall stand as a separate contract.

#### Notice of delivery

4. If the goods are sold for delivery at seller's option, the seller shall give notice of delivery not later than on the tenth working day before the day on which he wants to make the goods available. This notice must state at least the quantity and the place where the goods are to be received. In a string the notice must be passed on immediately by e-mail, facsimile or any other means of rapid written communication. It need not be accepted later than the fifth working day before the day on which the goods will be made available.

#### Notice of call

5. If the goods are sold for delivery/dispatch at buyer's call, the buyer shall give notice of call at the latest on the tenth working day before the day on which he requires the goods to be made available or to be dispatched. In the event that the goods are to be made available, the seller shall thereupon notify the buyer immediately of the place where the goods are to be received. In a string the notice of call must be passed on immediately by e-mail, facsimile or any other means of rapid written communication. It need not be accepted later than on the fifth working day before the working day on which the goods will be made available or be dispatched.

#### Notice of dispatch

6. The provisions of the foregoing paragraphs shall not apply, if the goods have been sold for dispatch at seller's option and the seller has to arrange transport. In such event the seller shall give notice of dispatch or of the intended dispatch to the buyer in due time having regard to the circumstances.

### Clause 103

#### Payment

1. Unless payment is to be made against documents provided for in the particular contract, in which case payment must be made immediately on presentation, payment must be made cash, without discount, at the time agreed upon.
2. Each payment by the buyer who has entered into more than one contract with the same seller, shall be deemed to have been made in the sequence of dispatch, in as far as not explicitly stipulated otherwise.

### Clause 104

#### Taking delivery

1. The buyer shall take delivery of the goods made available by the seller on the specified day during the customary working hours.
2. If the seller has to arrange transport, the buyer shall take delivery of the goods immediately after arrival at the place of destination during the customary working hours.

### **Taking delivery in parts**

3. If taking delivery in tankbarge has been contracted for and the buyer takes delivery of the quantity made available to him in lots of less than 100 tons or by any other means of transport, the seller shall be entitled to charge to the buyer the extra-expenses caused thereby.

### **Storage**

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

## **Clause 105**

### **Default in taking delivery**

1. If the buyer fails to take delivery in due time he shall be in default, unless - irrespective of the terms of payment - he makes payment immediately, subject to the provisions of clause 104, paragraph 4.

### **Delivery/dispatch in mutual agreement**

2. Should delivery/dispatch within a specified period 'in mutual agreement' have been agreed upon and neither party have informed the other (with due notice as per clause 102, paragraphs 4 and 5) that it wants to make/take delivery, the delivery/dispatch period automatically shall be extended by one month. This procedure shall be followed three times.
3. The seller has the right to charge the buyer appropriate costs in relation to the extension of the delivery period.
4. When the buyer requires the goods to be made available or to be dispatched during the first month of extension after the expiry of the period specified in the original contract, the buyer shall give notice of call not later than the twentieth working day before the day he requires the goods to be made available or to be dispatched.
5. The seller shall try to accommodate any calls with a shorter pre-advice but shall not be under an obligation to accept these calls as a valid call under the contract and thus not be obliged to make delivery on the required date.
6. Should neither party have informed the other (with due notice as per clause 102, paragraphs 4 and 5 or the applicable amendment thereto during the first month of extension) that it wants to make/take delivery, the contract or the unfulfilled portion thereof shall be automatically cancelled after the last period of extension has ended, without any compensation for damages being due to either party.

## **Clause 106**

### **Force majeure**

1. Subject to the provisions of clause 20, force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstances beyond seller's control and not for his account or at his risk, arisen after the contract has been made, as a result of which he will not be able to fulfil his obligations.
2. The seller shall notify the buyer immediately by e-mail, facsimile or any other means of rapid written communication after force majeure has occurred.
3. Upon termination of force majeure the seller shall be obliged to deliver or dispatch the goods as soon as possible. The buyer shall be allowed a reasonable period to take delivery of the goods.

4. If force majeure prevents seller from delivering or dispatching the goods at the latest on the sixtieth day after the last day, on which he should have delivered or dispatched the goods, the contract shall be cancelled and the purchase price shall be refunded immediately if payment already has been made.
5. The provisions of the foregoing paragraphs of this clause shall apply accordingly in the event of force majeure on the part of the buyer provided that, if normal transportation by water, road or rail is hampered in consequence of abnormal waterlevels, ice, floating ice, snow or other circumstances, the seller shall have the right to store the goods for buyer's account and risk whether or not with third parties, unless the buyer takes delivery of the goods by other than the agreed means. The seller shall be obliged to insure the goods or to keep them insured and shall be entitled to charge the premium to the buyer.
6. If, as a result of force majeure, the goods which the seller appropriated to the buyer are wholly or partly lost, the contract or that part thereof shall be cancelled and the purchase price shall be refunded immediately if payment already has been made; the seller shall be responsible for furnishing evidence that those goods were intended for delivery against the contract in question.
7. If an event constituting force majeure occurs affecting either the seller or the buyer, which has not been covered by the foregoing, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences of such force majeure shall be settled by arbitration.
8. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

PART III  
**Miscellaneous Provisions**

# CHAPTER XI

## INSURANCE

### **Clause 107**

Road and rail transport shall be insured on the generally accepted and used terms of insurance for road and rail transport.

### **Clause 108**

Goods stored in shore-tanks shall be insured against all risk including fire on the generally accepted and used terms of insurance for goods stored in shore-tanks.

### **Clause 109**

Marine and waterway transport shall be insured in accordance with Institute FOSFA Trades Clauses as reproduced here:

- a. Institute FOSFA Trades Clauses (A);
- b. Institute FOSFA Trades Clauses (B);
- c. Institute FOSFA Trades Clauses (C);
- d. Institute War Clauses (FOSFA Trades);
- e. Institute Strikes Clauses (FOSFA Trades);
- f. Institute FOSFA Supplementary Clauses;
- g. FOSFA Insurance Exclusion Clause List.

Buyers shall accept insurance including the Exclusion Clauses on the FOSFA Insurance Exclusion Clause List.

**INSTITUTE FOSFA TRADES CLAUSES (A)**

**Agreed with The Federation of Oils, Seeds and Fats Associations Ltd**

**RISKS COVERED**

Risks

1. This insurance covers all risks of loss of or damage to the subject-matter insured except as excluded by the provisions of Clauses 4, 5, 6 and 7 below.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

"Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

**EXCLUSIONS**

4. In no case shall this insurance cover

- 4.1 loss damage or expense attributable to wilful misconduct of the Assured
- 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
- 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
- 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
- 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
- 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage  
This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
- 4.7 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

5. 5.1 In no case shall this insurance cover loss damage or expense arising from

- 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
- 5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out  
prior to attachment of this insurance or  
by the Assured or their employees and they are privy to such unfitness at the time of loading.

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

6. In no case shall this insurance cover loss damage or expense caused by

- 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
- 6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat
- 6.3 derelict mines torpedoes bombs or other derelict weapons of war.

7. In no case shall this insurance cover loss damage or expense

- 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
- 7.4 caused by any person acting from a political, ideological or religious motive.

**DURATION**

Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,

continues during the ordinary course of transit

and terminates either

- 8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,
  - 8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or
  - 8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or
  - 8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.
  - 8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

#### Termination of Contract of Carriage

- 9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either
  - 9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,
  - or
  - 9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

#### Change of Voyage

- 10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*
- 10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

### **CLAIMS**

#### Insurable Interest

- 11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

#### Forwarding Charges

- 12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

#### Constructive Total Loss

- 13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

#### Increased Value

- 14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

- 14.2 **Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

## **BENEFIT OF INSURANCE**

### **15. This insurance**

- 15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,
- 15.2 shall not extend to or otherwise benefit the carrier or other bailee.

## **MINIMISING LOSSES**

### Duty of Assured

#### **16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder**

- 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,  
and
- 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised  
and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

### Waiver

#### **17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.**

## **AVOIDANCE OF DELAY**

#### **18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.**

## **LAW AND PRACTICE**

#### **19. This insurance is subject to English law and practice.**

*NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.*

**CL413 LMA/IUA**

**1/6/2013**

## INSTITUTE FOSFA TRADES CLAUSES (B)

### Agreed with The Federation of Oils, Seeds and Fats Associations Ltd

#### RISKS COVERED

##### Risks

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
  - 1.1 loss of or damage to the subject-matter insured reasonably attributable to
    - 1.1.1 fire or explosion
    - 1.1.2 vessel or craft being stranded grounded sunk or capsized
    - 1.1.3 overturning or derailment of land conveyance
    - 1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
    - 1.1.5 discharge of cargo at a port of distress
    - 1.1.6 earthquake volcanic eruption or lightning,
  - 1.2 loss of or damage to the subject-matter insured caused by
    - 1.2.1 general average sacrifice
    - 1.2.2 jettison or washing overboard
    - 1.2.3 entry of sea lake or river water into vessel craft hold conveyance container or place of storage,
  - 1.3 total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft.

##### General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

##### "Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

#### EXCLUSIONS

4. In no case shall this insurance cover
    - 4.1 loss damage or expense attributable to wilful misconduct of the Assured
    - 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
    - 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
    - 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
    - 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
    - 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
    - 4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
    - 4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
  5. 5.1 In no case shall this insurance cover loss damage or expense arising from
    - 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
    - 5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading.
  - 5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
  - 5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.
6. In no case shall this insurance cover loss damage or expense caused by
    - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
    - 6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
    - 6.3 derelict mines torpedoes bombs or other derelict weapons of war.
  7. In no case shall this insurance cover loss damage or expense
    - 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions



- 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
- 7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
- 7.4 caused by any person acting from a political, ideological or religious motive.

## **DURATION**

### Transit Clause

- 8.** 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either
- 8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,
  - 8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or
  - 8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or
  - 8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.
- 8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

### Termination of Contract of Carriage

- 9.** If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either
- 9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur, or
  - 9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

### Change of Voyage

- 10.** 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*
- 10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

## **CLAIMS**

### Insurable Interest

- 11.** 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

### Forwarding Charges

- 12.** Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

### Constructive Total Loss

- 13.** No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

#### Increased Value

**14.14.1** If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

**14.2 Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

#### **BENEFIT OF INSURANCE**

**15.** This insurance

15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

15.2 shall not extend to or otherwise benefit the carrier or other bailee.

#### **MINIMISING LOSSES**

##### Duty of Assured

**16.** It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,  
and

16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

##### Waiver

**17.** Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

#### **AVOIDANCE OF DELAY**

**18.** It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

#### **LAW AND PRACTICE**

**19.** This insurance is subject to English law and practice.

*NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.*

**CL414 LMA/IUA  
1/6/2013**

## INSTITUTE FOSFA TRADES CLAUSES (C)

### Agreed with The Federation of Oils, Seeds and Fats Associations Ltd

#### RISKS COVERED

##### Risks

1. This insurance covers, except as excluded by the provisions of Clauses 4, 5, 6 and 7 below,
  - 1.1 loss of or damage to the subject-matter insured reasonably attributable to
    - 1.1.1 fire or explosion
    - 1.1.2 vessel or craft being stranded grounded sunk or capsized
    - 1.1.3 overturning or derailment of land conveyance
    - 1.1.4 collision or contact of vessel craft or conveyance with any external object other than water
    - 1.1.5 discharge of cargo at a port of distress,
  - 1.2 loss of or damage to the subject-matter insured caused by
    - 1.2.1 general average sacrifice
    - 1.2.2 jettison.

##### General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clauses 4, 5, 6 and 7 below.

##### "Both to Blame Collision Clause"

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agree to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim.

#### EXCLUSIONS

4. In no case shall this insurance cover
    - 4.1 loss damage or expense attributable to wilful misconduct of the Assured
    - 4.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
    - 4.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
    - 4.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
    - 4.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
    - 4.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage  
This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
    - 4.7 deliberate damage to or deliberate destruction of the subject-matter insured or any part thereof by the wrongful act of any person or persons
    - 4.8 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
  5. 5.1 In no case shall this insurance cover loss damage or expense arising from
    - 5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
    - 5.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out  
prior to attachment of this insurance or  
by the Assured or their employees and they are privy to such unfitness at the time of loading.
  - 5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
  - 5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.
6. In no case shall this insurance cover loss damage or expense caused by
    - 6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
    - 6.2 capture seizure arrest restraint or detainment, and the consequences thereof or any attempt thereat
    - 6.3 derelict mines torpedoes bombs or other derelict weapons of war.
  7. In no case shall this insurance cover loss damage or expense
    - 7.1 caused by strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
    - 7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions
    - 7.3 caused by any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
    - 7.4 caused by any person acting from a political, ideological or religious motive.

## DURATION

### Transit Clause

8. 8.1 Subject to Clause 11 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit, continues during the ordinary course of transit and terminates either
- 8.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,
  - 8.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or
  - 8.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or
  - 8.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 8.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 8.1.1 to 8.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.
- 8.3 This insurance shall remain in force (subject to termination as provided for in Clauses 8.1.1 to 8.1.4 above and to the provisions of Clause 9 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

### Termination of Contract of Carriage

9. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 8 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either
- 9.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur, or
  - 9.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 8 above.

### Change of Voyage

10. 10.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*
- 10.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 8.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

## CLAIMS

### Insurable Interest

11. 11.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 11.2 Subject to Clause 11.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

### Forwarding Charges

12. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the subject-matter insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the subject-matter insured to the destination to which it is insured.

This Clause 12, which does not apply to general average or salvage charges, shall be subject to the exclusions contained in Clauses 4, 5, 6 and 7 above, and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

### Constructive Total Loss

13. No claim for Constructive Total Loss shall be recoverable hereunder unless the subject-matter insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the subject-matter insured to the destination to which it is insured would exceed its value on arrival.

### Increased Value

14. 14.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

**14.2 Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

**BENEFIT OF INSURANCE**

**15. This insurance**

- 15.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,
- 15.2 shall not extend to or otherwise benefit the carrier or other bailee.

**MINIMISING LOSSES**

Duty of Assured

**16. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder**

- 16.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,  
and
  - 16.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised
- and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

**17. Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.**

**AVOIDANCE OF DELAY**

**18. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.**

**LAW AND PRACTICE**

**19. This insurance is subject to English law and practice.**

*NOTE:- Where a continuation of cover is requested under Clause 9, or a change of destination is notified under Clause 10, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.*

**CL415 LMA/IUA**

**1/6/2013**

**INSTITUTE WAR CLAUSES (FOSFA TRADES)**

**Agreed with The Federation of Oils, Seeds and Fats Associations Ltd**

**RISKS COVERED**

Risks

1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by
  - 1.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power
  - 1.2 capture seizure arrest restraint or detention, arising from risks covered under 1.1 above, and the consequences thereof or any attempt thereat
  - 1.3 derelict mines torpedoes bombs or other derelict weapons of war.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.

**EXCLUSIONS**

3. In no case shall this insurance cover
  - 3.1 loss damage or expense attributable to wilful misconduct of the Assured
  - 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
  - 3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
  - 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
  - 3.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
  - 3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage  
This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
  - 3.7 any claim based upon loss of or frustration of the voyage or adventure
  - 3.8 loss damage or expense directly or indirectly caused by or arising from any hostile use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.
4. 4.1 In no case shall this insurance cover loss damage or expense arising from
  - 4.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
  - 4.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out  
prior to attachment of this insurance or  
by the Assured or their employees and they are privy to such unfitness at the time of loading.
- 4.2 Exclusion 4.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
- 4.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

**DURATION**

Transit Clause

5. 5.1 This insurance
  - 5.1.1 attaches only as the subject-matter insured and as to any part as that part is loaded on an oversea vessel  
and
  - 5.1.2 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is discharged from an oversea vessel at the final port or place of discharge,  
or  
on expiry of 15 days counting from midnight of the day of arrival of the vessel at the final port or place of discharge, whichever shall first occur;  
nevertheless,  
*subject to prompt notice to the Insurers and to an additional premium, such insurance*
  - 5.1.3 reattaches when, without having discharged the subject-matter insured at the final port or place of discharge, the vessel sails therefrom,  
and
  - 5.1.4 terminates, subject to 5.2 and 5.3 below, either as the subject-matter insured and as to any part as that part is thereafter discharged from the vessel at the final (or substituted) port or place of discharge,  
or  
on expiry of 15 days counting from midnight of the day of re-arrival of the vessel at the final port or place of discharge or arrival of the vessel at a substituted port or place of discharge, whichever shall first occur.

5.2 If during the insured voyage the overseas vessel arrives at an intermediate port or place to discharge the subject-matter insured for on-carriage by overseas vessel or by aircraft, or the subject-matter insured is discharged from the vessel at a port or place of refuge, then, subject to 5.3 below and to an additional premium if required, this insurance continues until the expiry of 15 days counting from midnight of the day of arrival of the vessel at such port or place, but thereafter reattaches as the subject-matter insured and as to any part as that part is loaded on an on-carrying overseas vessel or aircraft. During the period of 15 days the insurance remains in force after discharge only whilst the subject-matter insured and as to any part as that part is at such port or place. If the subject-matter insured is on-carried within the said period of 15 days or if the insurance reattaches as provided in this Clause 5.2

5.2.1 where the on-carriage is by overseas vessel this insurance continues subject to the terms of these Clauses,  
or

5.2.2 where the on-carriage is by aircraft, the current Institute War Clauses (Air Cargo) (excluding sendings by Post) shall be deemed to form part of the contract of insurance and shall apply to the on-carriage by air.

5.3 If the voyage in the contract of carriage is terminated at a port or place other than the destination agreed therein, such port or place shall be deemed the final port of discharge and this insurance terminates in accordance with 5.1.2. If the subject-matter insured is subsequently reshipped to the original or any other destination, then *provided notice is given to the Insurers before the commencement of such further transit and subject to an additional premium*, this insurance reattaches

5.3.1 in the case of the subject-matter insured having been discharged, as the subject-matter insured and as to any part as that part is loaded on the on-carrying vessel for the voyage;

5.3.2 in the case of the subject-matter not having been discharged, when the vessel sails from such deemed final port of discharge;

thereafter this insurance terminates in accordance with 5.1.4.

5.4 The insurance against the risks of mines and derelict torpedoes, floating or submerged, is extended whilst the subject-matter insured or any part thereof is on craft whilst in transit to or from the overseas vessel, but in no case beyond the expiry of 60 days after discharge from the overseas vessel unless otherwise specially agreed by the Insurers.

5.5 *Subject to prompt notice to Insurers, and to an additional premium if required*, this insurance shall remain in force within the provisions of these Clauses during any deviation, or any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

(For the purpose of Clause 5

"arrival" shall be deemed to mean that the vessel is anchored, moored or otherwise secured at a berth or place within the Harbour Authority area. If such a berth or place is not available, arrival is deemed to have occurred when the vessel first anchors, moors or otherwise secures either at or off the intended port or place of discharge

"overseas vessel" shall be deemed to mean a vessel carrying the subject-matter from one port or place to another where such voyage involves a sea passage by that vessel)

#### Change of Voyage

6. 6.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*

6.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 5.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

**7. Anything contained in this contract which is inconsistent with Clauses 3.7, 3.8 or 5 shall, to the extent of such inconsistency, be null and void.**

#### **CLAIMS**

##### Insurable Interest

8. 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.

8.2 Subject to Clause 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

##### Increased Value

9. 9.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

9.2 **Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

#### **BENEFIT OF INSURANCE**

10. This insurance

10.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,

10.2 shall not extend to or otherwise benefit the carrier or other bailee.

## **MINIMISING LOSSES**

### Duty of Assured

**11.** It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder

11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,  
and

11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised  
and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

### Waiver

**12.** Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

## **AVOIDANCE OF DELAY**

**13.** It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

## **LAW AND PRACTICE**

**14.** This insurance is subject to English law and practice.

*NOTE:- Where a reattachment of cover is requested under Clause 5, or a change of destination is notified under Clause 6, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.*

**CL416 LMA/IUA**

**1/6/2013**



## INSTITUTE STRIKES CLAUSES (FOSFA TRADES)

### Agreed with The Federation of Oils, Seeds and Fats Associations Ltd

#### RISKS COVERED

##### Risks

1. This insurance covers, except as excluded by the provisions of Clauses 3 and 4 below, loss of or damage to the subject-matter insured caused by
  - 1.1 strikers, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions
  - 1.2 any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted
  - 1.3 any person acting from a political, ideological or religious motive.

##### General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from a risk covered under these Clauses.

#### EXCLUSIONS

3. In no case shall this insurance cover
  - 3.1 loss damage or expense attributable to wilful misconduct of the Assured
  - 3.2 ordinary leakage, ordinary loss in weight or volume, or ordinary wear and tear of the subject-matter insured
  - 3.3 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the subject-matter insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses "packing" shall be deemed to include stowage in a container and "employees" shall not include independent contractors)
  - 3.4 loss damage or expense caused by inherent vice or nature of the subject-matter insured
  - 3.5 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)
  - 3.6 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the subject-matter insured on board the vessel, the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage  
This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract
  - 3.7 loss damage or expense arising from the absence shortage or withholding of labour of any description whatsoever resulting from any strike, lockout, labour disturbance, riot or civil commotion
  - 3.8 any claim based upon loss of or frustration of the voyage or adventure
  - 3.9 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 3.10 loss damage or expense caused by war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power.
4. 4.1 In no case shall this insurance cover loss damage or expense arising from
  - 4.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the subject-matter insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the subject-matter insured is loaded therein
  - 4.1.2 unfitness of container or conveyance for the safe carriage of the subject-matter insured, where loading therein or thereon is carried out  
prior to attachment of this insurance or  
by the Assured or their employees and they are privy to such unfitness at the time of loading.
- 4.2 Exclusion 4.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the subject-matter insured in good faith under a binding contract.
- 4.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and fitness of the ship to carry the subject-matter insured to destination.

#### DURATION

##### Transit Clause

5. 5.1 Subject to Clause 8 below, this insurance attaches from the time the subject-matter insured is first moved in the warehouse or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,  
  
continues during the ordinary course of transit  
  
and terminates either
  - 5.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,

- 5.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or
  - 5.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or
  - 5.1.4 on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- whichever shall first occur.
- 5.2 If, after discharge overseas from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the subject-matter insured is to be forwarded to a destination other than that to which it is insured, this insurance, whilst remaining subject to termination as provided in Clauses 5.1.1 to 5.1.4, shall not extend beyond the time the subject-matter insured is first moved for the purpose of the commencement of transit to such other destination.
  - 5.3 This insurance shall remain in force (subject to termination as provided for in Clauses 5.1.1 to 5.1.4 above and to the provisions of Clause 6 below) during delay beyond the control of the Assured, any deviation, forced discharge, reshipment or transshipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

#### Termination of Contract of Carriage

- 6. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the subject-matter insured as provided for in Clause 5 above, then this insurance shall also terminate *unless prompt notice is given to the Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers*, either
  - 6.1 until the subject-matter insured is sold and delivered at such port or place, or, unless otherwise specially agreed, until the expiry of 60 days after arrival of the subject-matter insured at such port or place, whichever shall first occur,
  - or
  - 6.2 if the subject-matter insured is forwarded within the said period of 60 days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of Clause 5 above.

#### Change of Voyage

- 7. 7.1 Where, after attachment of this insurance, the destination is changed by the Assured, *this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.*
- 7.2 Where the subject-matter insured commences the transit contemplated by this insurance (in accordance with Clause 5.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at commencement of such transit.

### **CLAIMS**

#### Insurable Interest

- 8. 8.1 In order to recover under this insurance the Assured must have an insurable interest in the subject-matter insured at the time of the loss.
- 8.2 Subject to Clause 8.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

#### Increased Value

- 9. 9.1 If any Increased Value insurance is effected by the Assured on the subject-matter insured under this insurance the agreed value of the subject-matter insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurances covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

#### 9.2 **Where this insurance is on Increased Value the following clause shall apply:**

The agreed value of the subject-matter insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the subject-matter insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of claim the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

### **BENEFIT OF INSURANCE**

- 10. This insurance
  - 10.1 covers the Assured which includes the person claiming indemnity either as the person by or on whose behalf the contract of insurance was effected or as an assignee,
  - 10.2 shall not extend to or otherwise benefit the carrier or other bailee.

### **MINIMISING LOSSES**

#### Duty of Assured

- 11. It is the duty of the Assured and their employees and agents in respect of loss recoverable hereunder
  - 11.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss,
  - and
  - 11.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised

and the Insurers will, in addition to any loss recoverable hereunder, reimburse the Assured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

**12.** Measures taken by the Assured or the Insurers with the object of saving, protecting or recovering the subject-matter insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

**AVOIDANCE OF DELAY**

**13.** It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

**LAW AND PRACTICE**

**14.** This insurance is subject to English law and practice.

*NOTE:- Where a continuation of cover is requested under Clause 6, or a change of destination is notified under Clause 7, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation.*

**CL417 LMA/UA**

**1/6/2013**

1/6/2013

**INSTITUTE FOSFA SUPPLEMENTARY CLAUSES (1)**  
(For use in conjunction with Institute FOSFA Trades Clauses (B))

It is hereby agreed that this insurance also covers

- 1 Loss of or damage to the subject-matter insured, due to breakdown or collapse of proper stow in vessel or craft caused by stress of weather, subject always to the exclusions contained in this insurance.
- 2 The risks covered by the Institute Malicious Damage Clause 1/8/82.

**CL418 LMA/IUA**  
**1/6/2013**

---

**INSTITUTE FOSFA SUPPLEMENTARY CLAUSES (2)**  
(For use in conjunction with Institute FOSFA Trades Clauses (C))

It is hereby agreed that this insurance also covers

- 1 Total loss of any package lost overboard or dropped whilst loading on to, or unloading from, vessel or craft, subject always to the exclusions contained in this insurance.
- 2 Washing overboard of Containers, subject always to the exclusions covered in this insurance.
- 3 The risks covered by the Institute Malicious Damage Clause 1/8/82.

**CL419 LMA/IUA**  
**1/6/2013**

---

**INSTITUTE FOSFA SUPPLEMENTARY CLAUSE (3)**  
**SHIP NAVIGATION & MANAGEMENT**  
(For use in conjunction with Institute FOSFA Trades Clauses (B) & (C))

In consideration of an additional premium, it is hereby agreed that this insurance covers, subject always to the exclusions contained in this insurance, loss of or damage to the subject-matter insured, whilst on the ship, caused by error, neglect or default of the carrier or their servants in the navigation or management of the ship, for which they are relieved from liability under the contract of carriage.

**CL420 LMA/IUA**  
**1/6/2013**

---

**INSTITUTE FOSFA SUPPLEMENTARY CLAUSE (4) GRADE CLAUSE**  
(For use in conjunction with Institute FOSFA Trades Clauses)

In the event of omission or error in description of grade, quality or other technical characteristics of the subject matter insured, as named in the relevant FOSFA contract, this must be notified promptly to insurers for rates and terms to be agreed.

Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

**CL421 LMA/IUA**  
**1/6/2013**

## FOSFA INSURANCE EXCLUSION CLAUSE LIST

### EXCLUSIONS

#### INSTITUTE RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE (CL 370 LMA/IUA)

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

1. In no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to or by or arising from
  - 1.1 ionising radiations from or contamination by radioactivity from any nuclear fuel or from nuclear waste or from the combustion of nuclear fuel
  - 1.2 the radioactive, toxic, explosive or hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof
  - 1.3 any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter
  - 1.4 the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter. The exclusion in this sub-clause does not extend to radioactive isotopes, other than nuclear fuel, when such isotopes are being prepared, carried, stored, or used for commercial, agricultural, medical, scientific or other similar peaceful purpose
  - 1.5 any chemical, biological, bio-chemical, or electromagnetic weapon.

#### INSTITUTE CYBER ATTACK EXCLUSION CLAUSE (CL 380 LMA/IUA)

- 1.1 Subject only to clause 1.2 below, in no case shall this insurance cover loss damage liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means of inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus or process or any other electronic system.
- 1.2 Where this clause is endorsed on policies covering war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, clause 1.1 shall operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system, or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

#### TERMINATION OF TRANSIT CLAUSE (TERRORISM) (JC2009/056)

**This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.**

- 1 Notwithstanding any provision to the contrary contained in the contract of insurance or the Clauses referred to therein, it is agreed that in so far as the contract of insurance covers loss of or damage to the subject-matter insured caused by

any act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards the overthrowing or influencing, by force or violence, of any government whether or not legally constituted or

any person acting from a political, ideological or religious motive,

such cover is conditional upon the subject-matter insured being in the ordinary course of transit and, in any event, **SHALL TERMINATE:**

**either**

- 1.1 as per the transit clauses contained within the contract of insurance,

**or**

- 1.2 on completion of unloading from the carrying vehicle or other conveyance in or at the final warehouse or place of storage at the destination named in the contract of insurance,
- 1.3 on completion of unloading from the carrying vehicle or other conveyance in or at any other warehouse or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or
- 1.4 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit,

**or**

- 1.5 in respect of marine transits, on the expiry of 60 days after completion of discharge overseas of the subject-matter insured from the overseas vessel at the final port of discharge,
- 1.6 in respect of air transits, on the expiry of 30 days after unloading the subject-matter insured from the aircraft at the final place of discharge,

**whichever shall first occur.**

- 2 If the contract of insurance or the Clauses referred to therein specifically provide cover for inland or other further transits following on from storage, or termination as provided for above, cover will re-attach, and continues during the ordinary course of that transit terminating again in accordance with clause 1.

# CHAPTER XII

## OPTIONAL CLAUSES

OPTION FREE ON BOARD (F.O.B.)/FREE ON RAIL (F.O.R.)/  
FREE ON TRUCK (F.O.T.) MILL or EX TANK

### Clause 110

1. The seller has the option to deliver goods produced in the EU and in the United Kingdom ex landtank Rotterdam. Goods in landtank Rotterdam are duty paid.
2. If the seller chooses to deliver ex tank Rotterdam, the provisions for ex tank contracts shall take the place of those for F.O.B./F.O.R./F.O.T. Mill.
3. The goods to be delivered must be available in free circulation in the Netherlands, not remaining under customs' control or supervision.
4. In case of delivery ex tank Rotterdam the costs of pumping out of the tendered quantity of goods - during usual working hours - are for account of the seller. These costs shall be limited to the normal costs for pumping into a craft alongside the tankstorage company where the goods are stored on the day of delivery, unless the buyer has the contractual right to take receipt F.O.R. or F.O.T., in which case the actual costs are for account of the seller. In the delivery order or, as the case may be, the notice of release, it shall be stated by the issuing party that the aforementioned pumping costs are not to be charged to the party who is entitled to take delivery of the goods on presentation of the delivery order or after release.

OPTION FREE ON BOARD (F.O.B.)/FREE ON RAIL (F.O.R.)/  
FREE ON TRUCK (F.O.T.) MILL or EX TANK

### Clause 111

This clause is specifically applicable for the trade in crude (degummed) rapeseed oil.

1. The seller has the option to deliver goods produced in the EU and in the United Kingdom ex landtank Rotterdam or Amsterdam. Goods in landtank Rotterdam or Amsterdam are duty paid.
2. If the seller chooses to deliver ex tank Rotterdam or Amsterdam, the provisions for ex tank contracts shall take the place of those for F.O.B./F.O.R./F.O.T. Mill.
3. The goods to be delivered must be available in free circulation, not remaining under customs control or supervision.
4. In case of delivery ex tank Rotterdam or Amsterdam the costs of pumping out of the tendered quantity of goods – during usual working hours – are for account of the seller. These costs shall be limited to the normal costs for pumping into a craft alongside the tank storage company where the goods are stored on the day of delivery, unless the buyer has the contractual right to take receipt F.O.R. or F.O.T., in which case the actual costs are for account of the seller. In the delivery order or, as the case may be, the notice of release, it shall be stated by the issuing party that the aforementioned pumping costs are not to be charged to the party who is entitled to take delivery of the goods on presentation of the delivery order or after release.

### Clause 112

This optional clause is for the F.O.B./F.O.R./ F.O.T. Mill trade in ISCC Used Cooking Oil, in bulk.

1. Any origin.
2. Nominated volumes per 100 metric ton.
3. If explicitly agreed, the seller has the option to deliver goods ex landtank Amsterdam/Rotterdam. Goods in Amsterdam/Rotterdam landtank are duty paid.
4. If the seller chooses to deliver ex-tank Amsterdam/Rotterdam, the provisions for ex-tank contracts shall take the place of those for F.O.B./F.O.R./ F.O.T. Mill.
5. The goods to be delivered must be available in free circulation in the Netherlands, not remaining under customs' control or supervision.
6. In case of delivery ex-tank Amsterdam/Rotterdam the costs of pumping out of the tendered quantity of goods - during usual working hours - are for account of the seller. These costs shall be limited to the normal costs for pumping into a craft alongside the tankstorage company where the goods are stored on the day of delivery, unless the buyer has the contractual right to take receipt F.O.R. or F.O.T., in which case the actual costs are for account of the seller. In the delivery order or, as the case may be, the notice of release, it shall be stated by the issuing party that the aforementioned pumping costs are not to be charged to the party who is entitled to take delivery of the goods on presentation of the delivery order or after release.
7. Payment 100% of total amount 2 days prior to the delivery date. Final invoice after determination of the quantity and quality.

# CHAPTER XIII

## RULES FOR ARBITRATION

### Rule 1 – General

1. Any dispute whatsoever arising from or in respect of contracts entered into on the terms and conditions of one of the TRADING RULES or standard forms of contract of NOFOTA's Oils & Fats and Allied Products Division and NOFOTA's Groundnut Division, each hereafter to be referred to as: 'Division', as well as any dispute arising from any further agreements in respect of such contracts, and also any dispute in respect of which parties have agreed to have it settled by arbitration by NOFOTA or by a Division or under these Rules for Arbitration shall, with due observance of these Rules for Arbitration, be settled by arbitrators or – as the case may be – appeal arbitrators appointed in accordance with these Rules for Arbitration. A dispute also exists if an amount is not paid, although its indebtedness is not disputed.
2. The place of arbitration and of making and issuing the award(s) or – as the case may be – the appeal award(s) shall be Rotterdam, the Netherlands. However, hearings, inspections, deliberations and any other meetings or consultations may be held or performed at any place in or outside the Netherlands, to be determined by the arbitrators or – as the case may be – the appeal arbitrators. The law of the Netherlands in respect of arbitration shall apply.
3. Consolidation, either wholly or partially, of arbitrations or – as the case may be – appeal arbitrations according to these Rules for Arbitration with other arbitrations, as mentioned in art. 1046 of the Dutch Code of Civil Procedures, shall be excluded.

### Rule 2 - The Committee of Arbitrators

1. The Council of each Division nominates annually the arbitrators and appeal arbitrators, taking into account the criteria in respect of the qualifications for appointment as arbitrator or appeal arbitrator. The arbitrators and appeal arbitrators so nominated shall together form the Committee of Arbitrators for such Division.
2. The list of arbitrators and appeal arbitrators for each Division shall be published annually.

### Rule 3 – The Appointment Committee

1. At an annual meeting the Committee of Arbitrators elects an Appointment Committee from its midst. The Appointment Committee shall consist of an uneven number of at least three members. The Committee of Arbitrators also appoints the chair of the Appointment Committee.
2. The Appointment Committee shall appoint arbitrators and appeal arbitrators to settle any dispute notified to the Secretary of the Division.
3. Arbitrators and appeal arbitrators shall be appointed only from the list referred to in Rule 2, paragraph 2, except as provided in Rule 3, paragraph 4.
4. In exceptional circumstances at its discretion the Appointment Committee has the right to appoint persons as arbitrators or appeal arbitrators who are not on the list referred to in Rule 2, paragraph 2.
5. If an arbitrator or appeal arbitrator dies or is unable to continue functioning as an arbitrator or appeal arbitrator or if a challenge of an arbitrator or appeal arbitrator has been accepted or found justified, the mandate of such arbitrator or appeal arbitrator shall discontinue and another arbitrator or appeal arbitrator shall be appointed by the Appointment Committee in due course.

6. In case of strings of contracts or in case of circles or in any other circumstances, at the sole discretion of the Appointment Committee, it shall have the authority to appoint the same arbitrators or – as the case may be – appeal arbitrators in all disputes concerned.
7. Rule 3, paragraph 5, shall apply accordingly with respect to the Secretary of the Division, or a deputy, who shall act as a legal advisor and secretary of arbitrators or – as the case may be – appeal arbitrators.

### Rule 4 – Notice of arbitration

1. Arbitration shall be commenced by sending a notice of arbitration in writing to the Secretary of the Division, while at the same time sending a copy of the notice of arbitration to the other party or parties.
2. The notice of arbitration must contain:
  - a. The name and full address of the claimant(s), together with the telephone number and e-mail address of the person(s) representing the claimant(s);
  - b. The name and full address of the defendant(s) if possible together with the telephone number and e-mail address of the person(s) representing the defendant;
  - c. A brief description of the dispute;
  - d. A brief description of the claim(s);
  - e. A reference to the arbitration agreement and the NOFOTA Trading Rules and/or these Rules for Arbitration.

### Rule 5 – Payment of deposit

1. The Secretary of the Division informs the claimant in writing about the amount it has to deposit at the Secretariat for the costs of the arbitration. Payment of the deposit must be made within 14 consecutive days after the date of the Secretary's communication.
2. If the deposit has not been paid within the period mentioned in Rule 5, paragraph 1, the Secretary of the Division shall notify the claimant in writing of a further period set by the Appointment Committee. The Secretariat shall send copy of this notice to the defendant(s). If this extended payment period also expires without payment of the deposit having been made (in full), the right of the claimant to apply for arbitration in connection with the dispute lapses, subject to the power of the Appointment Committee to deviate from this provision in exceptional circumstances at its discretion.
3. If the defendant lodges a counterclaim against the claimant (see Rule 7, paragraph 5), then the provisions in this Rule 5, paragraphs 1 and 2, shall apply accordingly with regard to the payment of the deposit to be made by it for the counterclaim.

### Rule 6 – Appointment of arbitrators

1. After payment of the deposit within the prescribed period, the Appointment Committee appoints three arbitrators (subject to acceptance of such appointment by the arbitrators). The Secretary of the Division, or a deputy, shall act as legal adviser and secretary of the arbitrators.
2. Immediately following the appointment of arbitrators by the Appointment Committee, the Secretary of the Division shall give notice of appointment to the arbitrators.

3. An arbitrator who intends to accept his appointment shall sign a statement confirming his independence and impartiality in relation to the parties and to the dispute.
4. An arbitrator approached to be engaged as arbitrator in a dispute who has reason to suspect that there could be justifiable doubts as to his impartiality or independence shall communicate the same in writing to the Secretary of the Division.
5. If an arbitrator cannot accept his appointment in a dispute, the Appointment Committee shall appoint another arbitrator in accordance with these Rules for Arbitration.
6. In case of strings of contracts or in case of circles the arbitrators shall be appointed within 14 consecutive days after all parties concerned have become known and the required deposits for the arbitration costs have been made.

#### **Rule 7 – Statement of Claim – Statement of Defence – Counterclaim**

1. A Statement of Claim must be submitted in writing to the Secretary of the Division, while at the same time sending a copy thereof to the defendant(s). The Statement of Claim must contain an exposition of the dispute, together with the formulation of the claim(s) made.
2. For claims under Clause 19 of the NOFOTA Trading Rules the Statement of Claim must be submitted within a period of 14 consecutive days after the claimant's notice of arbitration.
3. For claims under Clause 25 of the NOFOTA Trading Rules the Statement of Claim must be submitted within a period of 30 consecutive days after the claimant's notice of arbitration.
4. Upon receipt of the Statement of Claim, the defendant shall be given an opportunity to submit a written Statement of Defence within – depending on the nature of the claim (Clause 19 or Clause 25 of the NOFOTA Trading Rules) – 14 days respectively 30 days after the submission of the Statement of Claim by the claimant.
5. The defendant is entitled to lodge a counterclaim against the claimant, provided that the counterclaim is connected with the same matter as the original claim(s). If the defendant wishes to lodge a counterclaim he must do this together with the written Statement of Defence.
6. If the counterclaim is not connected with the same matter as the claimant's claim(s), a separate notice of arbitration must be submitted in that respect. However, if the parties involved in such other claim are the same as in the claim, it is permitted to request that such other claim be submitted to those arbitrators who are appointed to settle the original claim(s).

#### **Rule 8 – Proceedings**

1. Arbitrators determine the proceedings, also as regards requests for extensions for any submissions, the onus of proof and the evidence to be supplied by either of the parties. They may order the personal appearance of the parties.
2. The parties are bound to give arbitrators all information and to submit all documents connected with the claim(s) and possible counterclaim(s), if and when required by arbitrators. The parties shall act in accordance with the instructions of arbitrators.
3. Arbitrators may avail themselves of the assistance of experts and order the parties to supply the information required by the experts.
4. At the request of either side the arbitrators may allow further written submissions. The due dates for such submissions shall be set by the arbitrators.
5. Arbitrators shall give the parties an opportunity to be heard by them at a time and place to be determined by arbitrators.

6. The parties may appear personally before arbitrators or be accompanied and/or represented by counsel or special proxy and present their claim(s)/defence/counterclaim(s) verbally.
7. The arbitrators, on the basis of the consent of the parties, may consider using audio or video conference tools for meetings and/or hearings, to be combined with special tools in order to efficiently conduct and organize these meetings and/or hearings.
8. The claim(s) may be altered or amplified during the hearing unless the defendant would be unreasonably harmed in his defence by admitting such change of claim(s). This Rule 8, paragraph 8, equally applies to the counterclaim(s).
9. In the cases referred to in Rule 7, paragraph 6, arbitrators shall determine whether the other claim shall be settled at the same time as the original claim, or whether the same should be dealt with separately.

#### **Rule 9 – Awards**

1. Arbitrators shall render their award(s) as good persons in equity.
2. The Secretary of the Division shall send each party a copy of any arbitral award by registered letter. The Secretary of the Division may decide to transmit arbitral awards to parties electronically with originals and/or certified copies to follow.
3. The awards shall be filed with the District Court of Rotterdam, the Netherlands.
4. Arbitrators' mandate shall continue until their final award has been filed with the District Court of Rotterdam, the Netherlands.

#### **Rule 10 – Arbitration costs**

1. For members of NOFOTA the arbitration deposit for claimant shall amount to € 6,500.00 including € 750.00 for fixed costs of the Secretariat of NOFOTA and € 750.00 arbitrator's fees per arbitrator. Out of the remaining € 3,500.00, the costs of the registrar and of filing the award with the District Court of Rotterdam, the Netherlands, will be paid. If costs are higher than the deposit the claimant has to pay an additional deposit. Rule 5, paragraphs 1 and 2, shall equally apply to the additional deposit. This Rule 10, paragraph 1 shall equally apply to any counterclaim by a member of NOFOTA.
2. For non-members of NOFOTA the arbitration deposit for claimant shall amount to € 7,600.00. This additional contribution of € 1,100.00 shall be for the benefit of NOFOTA and shall never be chargeable to the other party. This Rule 10, paragraph 2, shall equally apply to any counterclaim by a non-member.
3. In case of disbursements and extra costs made by the arbitrators, such as travelling expenses made to attend the hearing(s) and exceptional disbursements incurred by the arbitrators and/or the Secretariat of the Division, such as the assistance of experts, the Secretary of NOFOTA may require the claimant to pay an additional deposit .
4. The amounts mentioned in these Rules for Arbitration are exclusive of value added tax. In as far as required value added tax shall be charged separately.

#### **Rule 11 – Withdrawal of an arbitration**

1. If an arbitration is withdrawn before arbitrators have commenced their task, the claimant (if a member) must pay an amount of € 750.00 or (if not a member) must pay an amount of € 1,850.00 to the Secretariat of NOFOTA. If the deposit is already paid by the claimant, this means that the claimant shall be refunded an amount of € 5,750.00 (regardless if a member or a non-member).



2. If an arbitration is withdrawn after arbitrators have commenced their task, but before a hearing has been held and/or before an examination of the quality and/or condition of the goods in dispute has taken place, the claimant shall be refunded out of the deposit an amount of € 3,250.00 (regardless if a member or a non-member).
3. If an arbitration is withdrawn after arbitrators have held a hearing and/or after an examination of the quality and/or condition of the goods in dispute has taken place, the claimant must pay the full deposit as specified in Rule 10.
4. If an arbitration is withdrawn the claimant shall reimburse to the defendant any reasonable costs, incurred in connection with the arbitration.
5. This Rule 11 shall equally apply to any counterclaim.

#### **Rule 12 – Award of costs**

1. The arbitration costs shall be for account of the losing party.
2. If parties on both sides are declared partially in error, arbitrators may divide the costs of arbitration among the parties in such proportion as they deem to be fair.
3. Arbitrators shall according to their estimates allow for the expenses of the party in whose favour the decision is given, including the expenses of witnesses and of summoning them. If both parties avail themselves of legal aid and claim compensation on that account from the other party, such costs may be awarded to the party in whose favour the award has been made as estimated by the arbitrators at their sole discretion.

#### **Rule 13 – Appeals**

1. Each party has the right to lodge an appeal against an award in the first instance or – as the case may be – a decision by the arbitrators that they lack jurisdiction. An appeal must be made by means of a written notice of appeal to the Secretary of the Division to be received, on pain of loss of rights, within 21 consecutive days after the day on which the copy of the final award has been filed with the District Court of Rotterdam, the Netherlands, as referred to in Rule 9, paragraph 3. The party lodging an appeal shall notify the other party or parties at the same time.
2. In case of a string of contracts or in case of a circle, appeals may also be admitted after expiry of the period mentioned in Rule 13, paragraph 1, provided that the first appeal was lodged in good time and that the subsequent appeals and/or notices were lodged/ passed on immediately upon receipt of the notice of the preceding appeal.
3. No appeal can be lodged against decisions in an award regarding the quality and/or condition of meat, meat products, offals and casings.
4. The deposit for an appeal arbitration by a member shall amount to € 8,650.00 including € 750.00 deposit for the fixed costs of the Secretariat of NOFOTA and € 850.00 deposit for the appeal arbitrators' fees per appeal arbitrator. Out of the remaining € 3,650, the costs of the secretary to the appeal arbitrators and of filing of the appeal award(s) will be paid. If costs are higher than the deposit appellant has to pay an additional deposit.
5. For non-members of NOFOTA the arbitration deposit for appellant shall amount to € 9,750.00. This additional contribution of € 1,100.00 shall be for the benefit of NOFOTA and shall never be chargeable to the other party. This Rule 13, paragraph 5, shall equally apply to any counter appeal by a non-member.
6. The provisions of Rule 10, paragraph 3, shall equally apply to appeal arbitrations.
7. The provisions of Rule 5, paragraphs 1 and 2, shall equally apply to appeal arbitrations.

8. The respondent has the right to lodge a counter appeal arbitration on its part, also after expiry of the period of 21 consecutive days mentioned in this Rule 13, paragraph 1, but at the latest during the first hearing held by appeal arbitrators. As to the deposit to be made in relation to any counter appeal, the same applies as provided for in Rule 5, paragraph 3.

#### **Rule 14 – Appeal arbitration – Proceedings**

1. An appeal arbitration shall be settled by five appeal arbitrators appointed by the Appointment Committee. The Secretary of the Division, or a deputy, shall act as legal adviser and secretary of the appeal arbitrators. In no case shall the legal adviser and secretary of the appeal arbitrators be the same person as acted in this capacity in the first instance.
2. Claims may be altered or amplified in the appeal arbitration, unless the respondent would be unreasonably harmed in his defence by admitting such claims. A new defence can be put forward by the respondent provided that it is not in contradiction with the attitude adopted by the respondent in the first instance.
3. Rules 4-9 that apply to arbitrations in the first instance shall equally apply to appeal arbitrations, unless it is explicitly stipulated otherwise in these Rules for Arbitration.

#### **Rule 15 - Withdrawal of an appeal**

1. If an appeal arbitration is withdrawn before appeal arbitrators have commenced their task, the appellant (if a member) must pay an amount of € 750.00 or (if not a member) must pay an amount of € 1,850.00 to the Secretariat of NOFOTA. If the deposit is already paid by the appellant, this means that the appellant shall be refunded an amount of € 7,900.00 (regardless if a member or a non-member).
2. If an appeal arbitration is withdrawn after appeal arbitrators have commenced their task, but before a hearing has been held and/or before an examination of the quality and/or condition of the goods in dispute has taken place, the appellant shall be refunded out of the deposit an amount of € 4,200.00 (regardless if a member of a non-member).
3. If an appeal arbitration is withdrawn after appeal arbitrators have held a hearing and/or after an examination of the quality and/or condition of the goods in dispute has taken place, the appellant must pay the full deposit as specified in Rule 13.
4. If an application for appeal is withdrawn the appellant shall reimburse to the respondent any reasonable costs, incurred in connection with the appeal arbitration.
5. This Rule shall equally apply to any counter appeal.

#### **Rule 16 – Award of costs in appeal**

1. In case of an appeal, the costs of both instances will be charged to the party which loses according to the appeal award. Rule 12, paragraphs 2 and 3, shall equally apply in this case. If setting aside of the award in the first instance is the outcome of the appeal, either wholly or partially, on the ground that one of the parties in the first instance did not sufficiently substantiate or explain its claim or defence, the appeal arbitrators may charge the costs of the appeal wholly or partially to that party.

#### **Rule 17 – Remission**

1. If the competent court of appeal during setting aside proceedings against an arbitral appeal award rendered under these Rules for Arbitration allows the appeal arbitrators to undo the ground(s) for setting aside the arbitral appeal award and to right a wrong, the appeal arbitrators' mandate shall revive and the appeal arbitration shall be reopened.

2. The most designated party shall promptly inform the Secretary of the Division of the decision of the competent court of appeal and shall at the same time inform the other party or parties. The Secretary of the Division shall subsequently inform the appeal arbitrators. The appeal arbitrators' mandate shall revive on the day the notification is received by the Secretary of the Division.
3. In case of a remission the appeal arbitrators shall determine the proceedings. Rule 4-9 shall equally apply to the remission proceedings if and to the extent that the appeal arbitrators determine so.
4. The Secretary of the Division may ask the most designated party to pay an additional deposit in the amount of € 8,000.00, including appeal arbitrators' fees, costs of the registrar and costs of filing the (revised) arbitral appeal award with the District Court of Rotterdam, the Netherlands.
5. Before the appeal arbitrators render their (revised) arbitral appeal award, they shall hear the parties.
6. If the appeal arbitrators conclude that the ground for setting the original arbitral appeal award aside is capable of being reversed, they render their (revised) arbitral appeal award, which shall replace the original appeal award.

#### **Rule 18 – Non-compliance with arbitral (appeal) awards**

1. A party that does not comply with either (i) an arbitral award ruled under these Rules of Arbitration without (timely) lodging an appeal, or (ii) an appeal award ruled under these Rules of Arbitration may be put on the list of parties that have not complied with arbitral (appeal) awards by the Council of NOFOTA. This list is kept by the Secretary of the Division. If a case of non-compliance comes to knowledge of the Council of NOFOTA, it shall enquire into same. The Council shall give the alleged offender reasonable time to submit any objections. Should it be decided to make an entry on the abovementioned list, the offender shall be notified and the members of NOFOTA shall be informed.
2. As far as disputes arising from contracts made after the notifications of this Rule 18, paragraph 1, are concerned, initiating an arbitration or filing a counterclaim according to these Rules for Arbitration by a party appearing on the list shall be excluded, notwithstanding the right of a party to initiate an arbitration according to these Rules against a party appearing on the list.
3. The Council of NOFOTA may remove from the list the names of parties appearing on it, if it considers such action to be appropriate. Notice of removal shall be given to the party concerned and to the members.

#### **Rule 19 – Publication of an arbitral (appeal) award**

Unless a party communicates in writing to the Secretary of the Division its objections thereto within 30 consecutive days after receipt of the award respectively the appeal award the Council of NOFOTA shall be authorized to have the award respectively the appeal award published without mentioning the names of the parties and deleting any further details that might disclose the identity of the parties.

#### **Rule 20 – Communication**

1. Unless the sender is unable to do so, all requests, communications and other documents to the Secretary of the Division, the arbitrators or the appeal arbitrators shall be sent electronically by e-mail to the address info@nofota.com or to any other address to be specified by the Secretary of the Division.
2. Any correspondence and/or documents, submitted by either party to the Secretary of the Division or to the arbitrators or to the appeal arbitrators shall at the same time be submitted electronically (by e-mail) to the other party.

3. Hard copies of any correspondence, documents and/or submissions may be requested by the Secretary of the Division to be sent to it and to the other party.
4. Once a string arbitration, as meant in Clause 19.2 and 25.5 of the NOFOTA Trading Rules, has been established, any correspondence, documents and/or submissions filed by the first and the last party in the string shall also be sent to the first or the last party in the string. The consequence of non-compliance with this Rule shall be determined by arbitrators or – as the case may be – appeal arbitrators.

#### **Rule 21 – Liability**

Neither NOFOTA, its board members and personnel, the arbitrators, the appeal arbitrators, the secretary, the legal adviser of NOFOTA, if any, nor any other NOFOTA-individuals involved in an arbitration or an appeal arbitration that is held under these Rules for Arbitration shall be liable under contract or otherwise for any act or omission by that individual or any other individual or due to use of any aids in or involving arbitration, unless and insofar as mandatory Dutch law precludes exoneration. Neither NOFOTA, its board members nor its personnel shall be liable for payment of any sum that it is not covered by the deposit.

#### **Rule 22 – Data protection**

1. Any processing of personal data by NOFOTA is subject to applicable data protection legislation, and NOFOTA's privacy declaration can be found on NOFOTA's website.
2. The arbitrators or – as the case may be – the appeal arbitrators may, in consultation with the parties and where appropriate the Secretary of the Division, consider whether it is appropriate to adopt:
  - a) Any specific information security measures to protect the physical and electronic information shared in the arbitration; and
  - b) Any means to address the processing of personal data produced or exchanged in the arbitration or the appeal arbitration in light of applicable data protection or equivalent legislation.
3. The arbitrators or – as the case may be – appeal arbitrators may issue directions addressing information security or data protection, which shall be binding on the parties, subject to the mandatory provisions of any applicable laws.

# CHAPTER XIV

## ANALYSES

Use of the methods mentioned herein is prescribed (unless contracting parties agree otherwise) if sampling or analysis is done in connection with the NOFOTA Trading Rules, or any contract incorporating NOFOTA arbitration, or in other cases where it is intended to use the results of the sampling and/or analysis in connection with NOFOTA arbitration. In case no NOFOTA standard for analysis exists, parties shall agree on a method of analysis to be used.

### **IMPORTANT**

It has been decided, and repeatedly (re)affirmed by NOFOTA, that for purposes of arbitration gaschromatograms will only be deemed evidence if accompanied by the report belonging thereby, made out in the prescribed form, and further accompanied by the gaschromatogram (plus report as before) of a mixture (of methyl esters of fatty acids) of known composition.

Arbitrators are reminded that it is not always possible to pronounce with certainty as to the composition of a fat, on the basis only of gaschromatographic analysis of a mixture of fatty acid methyl esters. It is left to arbitrators to decide - from case to case - whether the evidence obtained by gaschromatographic analysis shall be deemed sufficient or additional analyses are required.

a. Standards of Analysis

The Standards of Analysis of NOFOTA are aligned to the "FOSFA Mandatory Contractual Analysis Methods for Full Analyst Members: Oils, Fats, Technical Tallows and Greases" latest version, applicable on the date of the activity.

| Test No | Determination   | Method of analysis   |
|---------|---|--|
| 1       | Determination of Lovibond colour  | ISO 15305:1998   |
| 2       | Flashpoint limit test using Pensky-Martens closed cup flash tester  | ISO 15267:1998   |
| 3       | Determination of insoluble impurities content   | ISO 663:2017   |
| 4       | Determination of iodine value   | ISO 3961:2018  |
| 5       | Determination of conventional mass per volume (litre weight in air)   | ISO 6883:2017  |
| 6       | Determination of melting point in open capillary tubes (slip point)   | ISO 6321:2002  |
| 7       | Determination of moisture and volatile matter content   | ISO 662:2016   |
| 8       | Determination of peroxide value - Iodometric (visual) endpoint determination  | ISO 3960:2017  |
| 9       | Determination of acid value and acidity (incl. FFA)   | ISO 660:2020   |
| 10      | Determination of ash  | ISO 6884:2008  |
| 11      | Determination of carotene in vegetable oils   | ISO 17932:2011   |
| 12      | Cold Test   | AOCS Cc 11-53 2017   |
| 13      | Determination of sea water contamination in oils  | FOSFA Method:2010  |
| 14      | Determination of trace elements by inductively coupled plasma emission spectroscopy (ICP-OES): copper (Reference method)  | ISO 21033:2016   |
| 15      | Determination of visible foots in crude fats and oils   | ISO 19219:2002   |
| 16      | Determination of fatty acid composition   |  |
| i.      | Preparation of methyl esters of fatty acids   |  |
| ii.     | Analysis by gas chromatography of methyl esters of fatty acids  | ISO 12966-4:2015<br>ISO 12966-2:2017 or ISO 12966-3:2016<br>ISO 12966-4:2015 |
| 17      | Determination of trace elements by inductively coupled plasma emission spectroscopy (ICP-OES): iron (Reference method)  | ISO 21033:2016   |
| 18      | Determination of Chlorophyll Pigments in Crude Vegetable Oils   | AOCS Cc 13k-13, 2017   |
| 19      | Determination of phosphorus content - Part 1: Colorimetric method (Reference method)  | ISO 10540-1:2003   |
| 20      | Determination of refractive index   | ISO 6320:2017  |
| 21      | Determination of saponification value   | ISO 3657:2020  |
| 22      | Determination of alkalinity   | ISO 10539:2002   |
| 23      | Determination of ultraviolet absorbance expressed as specific UV extinction   | ISO 3656:2011, Amd1:2017   |
| 24      | Calculation of total fatty matter   | BS 684-2.4:1976  |
| 25      | Determination of unsaponifiable matter - Method using diethyl ether extraction (Reference method)   | ISO 3596:2000  |
| 26      | Determination of water content - Entrainment method   | ISO 934:1980   |
| 27      | Determination of water content - Karl Fischer method (pyridine free)  | ISO 8534:2017  |
| 28      | Determination of bleachability a. General Case  | BS 684-2.27:1987   |
| 29      | Determination of bleachability b. Bleach Test for Palm Oil  | BS 684-2.27:1987   |
| 30      | Determination of cadmium content by direct graphite furnace atomic absorption spectrometry  | ISO 15774:2017   |
| 31      | Determination of cloud point  | BS 684-1.5:1987/Amd:1989   |
| 32      | Color - FAC Standard Color  | AOCS Cc 13a-43 2017  |
| 33      | Color - Wesson Method Using Color Glasses Calibrated in Accordance with the AOCS-Tintometer Color Scale   | AOCS Cc 13b-45 2017  |
| 34      | Color - Gardner 1963 (Glass Standards)  | AOCS Td 1a-64 2017   |
| 35      | Determination of copper, iron and nickel contents - Graphite furnace atomic absorption method   | ISO 8294:1994  |
| 36      | Evaluation of technical tallows and animal greases  | BS 3919:1987/Amd:1989  |
| 37      | Determination of oxidized fatty acids   | BS 684-2.12:1984   |
| 38      | Determination of oxidative stability (accelerated oxidation test) Rancimat or equivalent  | ISO 6886:2016  |
| 39      | Determination of phosphorus content - Part 2: Method using graphite furnace atomic absorption spectrometry  | ISO 10540-2:2003   |
| 40      | Determination of phosphorus content - Part 3: Method using inductively coupled plasma (ICP) optical emission spectroscopy   | ISO 10540-3:2002   |
| 41      | Determination of content of polar compounds   | ISO 8420:2002/Cor 1:2004   |
| 42      | Phosphoric acid test  | ISO 150:2006   |
| 43      | Determination of polyethylene-type polymers   | ISO 6656:2002  |
| 44      | Refined and Bleached Colour   | AOCS Cc 8d-55 2017   |
| 45      | Determination of smoke point  | BS 684-1.8:1976  |
| 46      | Determination of solid fat content by pulsed NMR - Part 1: Direct method  | ISO 8292-1:2008  |
| 47      | Determination of solid fat content by pulsed NMR - Part 2: Indirect method  | ISO 8292-2:2008  |
| 48      | Determination of individual and total sterols contents - Gas chromatographic method. Part 1- Animal and vegetable fats and oils. Part 2- Olive oils and olive pomace oils | ISO 12228-1/2:2014   |
| 49      | Determination of titre  | ISO 935:1988   |
| 50      | Determination of lead by direct graphite furnace atomic absorption spectroscopy   | ISO 12193:2004   |
| 51      | Determination of unsaponifiable matter - Method using hexane extraction (for Sheanut Oil only)  | ISO 18609:2000   |
| 52      | Determination of sediment in crude fats and oils - Centrifuge method (Reference method)   | ISO 15301:2001/Cor 1:2007  |
| 53      | Determination of benzo[a]pyrene - Reverse-phase high performance liquid chromatography method   | ISO 15302:2017   |
| 54      | Determination of the deterioration of bleachability index (DOBI)  | ISO 17932:2011   |
| 55      | Determination of anisidine value  | ISO 6885:2016  |
| 56      | Determination of the composition of fatty acids in the 2-position of the triglyceride molecules   | ISO 6800:1997  |
| 57      | Determination of residual technical hexane content  | ISO 9832:2002  |
| 58      | Determination of mineral acidity  | BS 684-2.48:1998   |
| 59      | Determination of water-insoluble solvents   | BS 684-1.9:1976  |
| 60      | Detection and identification of a volatile organic contaminant by GC/MS   | ISO 15303:2001   |
| 61      | Determination of stigmastadienes in vegetable oils - Part 1: Method using capillary-column gas chromatography (Reference method).   | ISO 15788-1:1999   |
| 62      | Determination of aliphatic hydrocarbons in vegetable oils   | ISO 17780:2015   |
| 63      | Determination of Lovibond® colour – Automatic method  | ISO 27608:2010, Amd 1:2016   |
| 64      | Determination of PAH by on-line DACC and HPLC with FLU  | ISO 22959:2009   |
| 65      | Determination of conventional mass per volume (litre weight in air) – Oscillating U-tube method   | ISO 18301:2014   |
| 66      | Determination of fatty-acid-bound chloropropanediols (MCPDs) and glycidol by GC/MS  | ISO 18363-1:2015, ISO 18363-2:2018<br>ISO 18363-3:2017                       |
| 67      | Determination of Total Sulfur in Light Hydrocarbons by Ultraviolet Fluorescence   | ASTM D5453-12  |
| 68      | Water quality - Determination of selected elements by inductively coupled plasma optical emission spectrometry (ICP-OES)  | ISO 11885:2009   |

## RECOGNIZED LABORATORIES AS PER 1 JANUARY 2022

1. Eurofins Food & Feed Testing Rotterdam B.V.  
Bijdorpplein 21-23, 2992 LB BARENDRECHT, The Netherlands
2. NofaLab B.V.  
Jan van Galenstraat 41, 3115 JG SCHIEDAM, The Netherlands
3. SGS Belgium N.V. (Division SGS Oleotest)  
Noorderlaan 87, B-2030 ANTWERP, Belgium
4. SGS Nederland B.V.  
(CTS/Agri Food Laboratory B.V.)  
Malledijk 18, 3208 LA SPIJKENISSE, The Netherlands
5. T.L.R. Technical Laboratory Rotterdam B.V.  
Handelsweg 70, 2988 DB RIDDERKERK, The Netherlands
6. Dr. A. Verwey B.V.  
Coolhaven 32, 3024 AC ROTTERDAM, The Netherlands
7. Inspectorate B.V.  
Petroleumweg 30, 3196 KD Vondelingenplaat – ROTTERDAM,  
The Netherlands
8. QTI Services B.V.  
Keenstraat 46, 3044 CD Rotterdam, The Netherlands

## CRITERIA FOR A NOFOTA RECOGNIZED LABORATORY PER 1 JANUARY 2022

### Independence

1. The laboratory shall not be engaged in any way in the trade of products typical the domain of NOFOTA and guarantees to operate fully independently from any other company in executing its activities under the NOFOTA Trading Rules. In case of one or more sister companies with other activities in the domain of NOFOTA (e.g. superintendence), these companies shall operate fully independently from the laboratory activities.

### General conditions/insurance

2. All activities of the laboratory shall be subject to its general conditions valid on the date of the activity and deposited either with the relevant District Court or with the relevant Chamber of Commerce.
3. The laboratory shall cover its liability Insurance with first class underwriters as appropriate to the services performed.

### Operational/technical

4. The laboratory shall be accredited in accordance with the latest version of ISO 17025. The laboratory shall operate professionally in executing its activities within the trade of products typical the domain of NOFOTA. Analyses for which instructions have been given by a client shall be made by the laboratory instructed. Subject to the Principal's agreement subcontracting of standard analysis shall only be allowed to another NOFOTA recognized laboratory.
5. The laboratory shall have relevant knowledge of the NOFOTA Trading Rules as well as of relevant local and international law and regulations.
6. Methods of analyses shall be documented and valid. If analyses are done in connection with the NOFOTA Trading Rules or any contract incorporating NOFOTA Arbitration, the laboratories shall use the NOFOTA Standards of Analyses. If no NOFOTA Standard of Analyses is available, the laboratory at least shall demonstrate that the method of analysis is suitable to determine the desired analyses or properties in a reliable and accurate way, by means of method validation.
7. Reporting of the analysis results to the client shall be done in writing (by means of an original certificate of the laboratory with an authorized signature) within a reasonable time.

### Types of recognition/application/duration/extension

8. The NOFOTA recognition scheme for laboratories consists of a standard recognition, relating to the standard contractual analyses.
9. A laboratory applying for and operating under NOFOTA recognition shall be a member of the Association.
10. The laboratory shall participate in the yearly organized ring test. In order to judge laboratories on their correctness and reproducibility in standard and specific analyses, NOFOTA has decided to align to the yearly FOSFA Proficiency Test for the Oils and Fats section, under the condition that the results of the Proficiency Test for the NOFOTA laboratories are made available to NOFOTA. NOFOTA can decide to replace the aforementioned yearly ring test by a blind ring test or an additional ring test organized by NOFOTA.

11. Initial NOFOTA recognition shall be subject to an audit by auditors to be appointed by the NOFOTA Technical Committee and will be granted upon proposal of the Technical Committee by the NOFOTA Council for a 3 year period.
12. After recognition is granted the laboratory will be requested every three years to fill in a questionnaire and deliver it together with their list of accredited analyses and their latest ISO audit report to the NOFOTA Secretariat.
13. If a physical audit is deemed to be necessary, the Technical Committee of NOFOTA will inform the company with a date of such audit.
14. If a laboratory does not comply with the aforementioned criteria, based on a physical or administrative audit and has received two warnings, NOFOTA holds the right to withdraw their recognition.
15. The recognition may be withdrawn at any time by the NOFOTA Council at its discretion.

#### Liability

16. Any liability of NOFOTA for or resulting from the (non-) recognition of a laboratory is excluded.

# CHAPTER XV

## ANNEXES

### a. Specimen Short Form Contract

We confirm the following transaction:

Date:

---

Seller: Ref:

Buyer: Ref:

Broker/Agent: Ref:

---

Quantity: Bulk/Bags:

Commodity: Origin:

Quality:

Specification:

Price:

Shipment/Delivery Period:

Shipment from:

Destination/Point of delivery:

Optional destination(s):

Payment:

Against presentation of documents in:

Special Conditions:

All the terms, conditions and rules, including the Arbitration Clause, contained in the current edition of the Trading Rules of the Netherlands Oils, Fats and Oilseeds Trade Association and the Rules for Arbitration (of which the parties admit that they have knowledge and notice) shall, except so far as the same may be modified or varied as mentioned in the special conditions above, be deemed to be incorporated in and to form part of this contract. 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.

SELLER

BROKER

BUYER

---

**b. Approved Delivery Order F.O.B./F.O.R./F.O.T. Mill  
according to clause 28, paragraph 3**

Reference number: .....

The undersigned,

.....  
.....  
.....

hereby declare that against surrender of this delivery order they will deliver on ..... 20 .....  
to bearer/..... (name buyer)

Delivery conditions:

F.O.B./F.O.R./F.O.T. Mill ....., in accordance with clause 28, paragraph 1.

Any alterations not initialled and dated by the undersigned make this delivery order invalid.

....., ..... 20 .....

(Authorized signature of the supplying mill)



**c. Approved Text Instruction to the Tank Storage Company to issue an Approved Release Communication Ex Tank according to clause 35, paragraph 2**

We irrevocably instruct you to issue the following release to: .....

Re: Nett ..... kos of ..... ex ..... parcel  
resp. D/O no. .... Per: ..... Storagecharges  
as from ..... for your account.  
Customs' status: .....

---

We irrevocably hold this parcel on basis ex tank Rotterdam at your disposal as owners upon receipt not later than ..... 20 ....  
(the notified date of release) of a bankers' confirmation of irrevocable execution of payment instructions covering the requested amount  
of .....  
by tt. to .....  
favour .....

All activities of the tankstorage company are subject to the latest version of the general conditions for tankstorage in the Netherlands filed in the Dutch, English and German language with the Registry of the District Courts of Rotterdam, Amsterdam and Dordrecht.

**d. Approved Release Ex Tank according to clause 35, paragraph 2**

Re: Nett ..... kos of ..... ex ..... parcel  
resp. D/O no. .... Per: ..... Storagecharges  
as from ..... for your account.  
Customs' status: .....

---

We irrevocably hold this parcel on basis ex tank Rotterdam at your disposal as owners upon receipt not later than ..... 20 ...  
(the notified date of release) of a bankers' confirmation of irrevocable execution of payment instructions covering the requested amount  
of .....  
by tt. to .....  
favour .....

All activities of the tankstorage company are subject to the latest version of the general conditions for tankstorage in the Netherlands filed in the  
Dutch, English and German language with the Registry of the District Courts of Rotterdam, Amsterdam and Dordrecht.

e. Approved format for a Warrant Ex Tank

---

Warrant No.

---

BEARER OF THIS WARRANT IS ENTITLED TO RECEIVE

Commodity: \_\_\_\_\_

Weight: \_\_\_\_\_

Weight: \_\_\_\_\_ Kilogrammes

Cost of reception, storage charges (tank rental, product handling) and product insurance premium as per the agreed rate(s) defined in the active storage contract have been paid.

This Tank Store Warrant must be returned to \_\_\_\_\_ (name storage co.) and the product removed from the tank installation on or before the storage contract end date or before the expiration date as mentioned in this warrant, whichever comes first. Unless the product is removed on or before said date \_\_\_\_\_ (name storage co.) may, without further reference or formalities, act in accordance with applicable provisions of its General Conditions.

The holder of this warrant shall immediately inform \_\_\_\_\_ (name storage co.) in writing of any (proposed) transfer of the product under this warrant.

Place and date of issue: \_\_\_\_\_

Signature: \_\_\_\_\_

(name and/or stamp storage co.)

**ORIGINAL**

| Date: | Quantity (Kg): | Balance qty (Kg): | Signature: |
|-------|----------------|-------------------|------------|
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |
|       |                |                   |            |

**Article 48**

**Transfer or passing of ownership of goods**

- 5. The original and/or transferring Principal shall continue to be liable to the Storage Company for all claims of the Storage Company with relation to or in connection with the storage and/or the operations carried out in the relation to those goods, even if these have been carried out after the transfer or passing of ownership or after the transfer or passing of the right to take delivery, as the case may be. After the transfer or passing of the ownership of the right to take delivery, as the case may be, of the goods the new person entitled to the goods shall be deemed to be the Principal, and he shall in addition to his predecessor in title be jointly and severally liable for all the claims referred in above, including those that have arisen prior to the transfer or passing.
- 6. If such a transfer or passing takes place, however, by means of a handing over of a Store Warrant, the holder of that Storage Warrant who proves to be in good faith, shall only be liable to claims, the existence and/or the extent of which appear from the Storage Warrant, as well as for the cost of measures that have been taken by the Storage Company in accordance with article 10 of these General Conditions.

**Article 54**

**Right of pledge and right of retention**

- 1. In order to secure the payment of anything that is due or will become due by the Principal and/or his assigns to the Storage Company, on any ground whatsoever, the Storage Company shall have a right of retention and a right of pledge over all goods, monies, documents and/or valuables that the Storage Company holds or will hold of or on behalf of the Principal, or that the Storage Company is due or will become due to the Principal.
- 2. This right of retention and this right of pledge shall include the monies that the Storage Company has collected or may collect on behalf of the Principal on account of any insurance claim.
- 3. Anyone who in behalf of a Principal entrusts goods to the Storage Company for carrying out of operations shall be considered by the Storage Company as being authorized by the Principal to establish a right of pledge on these goods.
- 4. The Storage Company shall only exercise its right of retention and its right of pledge against the holder of a Store Warrant who proves to be in good faith, in so far as claims are concerned the existence and/or extent of which are evidenced by the Store Warrant, as well as for the costs of measures that have been taken by the Storage Company in accordance with article 10 of these General Conditions. The Storage Company does, however, retain the right of retention and the right of pledge against such a holder of a Store Warrant by way of security for claims against that holder of a Store Warrant, that arise from any other obligation, on any ground whatsoever, of that holder of a Store Warrant vis à vis the Storage Company.

**Special clause:**

The provision of above article 48, paragraph 6, and of article 54, paragraph 4, first sentence, does not apply to the holder of a Store Warrant having only limited rights to the Store Warrant or with respect to the goods mentioned therein; nor do said provisions apply if the transfer or passing of the Store Warrant to the holder of the Store Warrant or one of its legal predecessors occurred within the framework of execution of security rights.

f. Approved format for a Delivery Order Ex Tank

|  |                               |
|--|-------------------------------|
| <b>DELIVERY-ORDER NO.</b>  | <b>COPY NOT NEGOTIABLE</b>    |
| The undersigned, _____ (name storage co.) at _____ (name place), hereby undertakes   |                               |
| to deliver to BEARER the under mentioned goods.  |                               |
| Product  |                               |
| Quantity   | kilos                         |
| Stored (in transit YES/NO)   | in tank at _____ (name place) |
| On condition ex tank at  | _____ (name place)            |
| Insurance (not) covered by   | _____ (name storage co.)      |
| Parcel no.   |                               |
| Contract   |                               |
| Storage charges from the   | _____ for account of bearer   |
| _____ (name storage co.), _____ (name place)   |                               |
| All activities of the tank storage company shall be subject to its general conditions (VOTOB) valid on the date of the activity and deposited either with the relevant District Court or with the relevant Chamber of Commerce. Applicability of any conditions referred to by the other party is explicitly rejected. |                               |

## RECOGNIZED TANKSTORAGE COMPANIES AS PER 1 JANUARY 2022

Based on the criteria for Recognized Tankstorage Companies of NOFOTA and the results of the audits and the recommendations of the Audit Committee the following tankstorage companies are recognized by NOFOTA.

- 1. Botlek Tank Terminal B.V. (\*)**  
Montrealweg 151 (Havennymer 4260), 3197 KH BOTLEK ROTTERDAM, The Netherlands
- 2. Dekker Tankopslag B.V.**  
Ijsseldijk West 66, 2935 AR OUDERKERK a/d IJSSEL, The Netherlands
- 3. Koole Tankstorage Amsterdam B.V**  
Kabelweg 57, 1014 BA AMSTERDAM, The Netherlands
- 4. Koole Tankstorage Nijmegen B.V.**  
Nijverheidsweg 96, 6541 CN NIJMEGEN, The Netherlands
- 5. Koole Tankstorage Pernis B.V.**  
Tankhoofd 2, (Havennymer 3250), 3196 KE VONDELINGENPLAAT RDAM, The Netherlands
- 6. Koole Tankstorage Zaandam B.V.**  
Sluispolderweg 48, 1505 HK ZAANDAM, The Netherlands
- 7. Maastank International B.V.**  
1e Welplaatdwersweg 1-3, (Havennymer 4135), 3197 KT ROTTERDAM, The Netherlands
- 8. SEA-Tank Terminal N.V.**  
Henri Farmanstraat 25b, 9000 GHENT, Belgium
- 9. Vopak Terminal Vlaardingen B.V.**  
Kon. Wilhelminahaven ZOZ 1, 3134 KH VLAARDINGEN, The Netherlands

(\*) Recognized for the storage and handling of products for technical purposes only (not for food and/or feed).

## CRITERIA FOR A NOFOTA RECOGNIZED TANKSTORAGE COMPANY PER 1 JANUARY 2022

### Independence

1. The storage company shall not be engaged in any way in the trade of products typical the domain of NOFOTA and guarantees to operate fully independently from any other company in executing its activities under the NOFOTA Trading Rules. In case of one or more sister companies with other activities in the domain of NOFOTA (e.g. superintendence), these companies shall operate fully independently from the storage activities.

### General conditions/insurance/certification

2. The tank storage company's approved releases shall be those reproduced in the NOFOTA Trading Rules, latest edition.
3. All activities of the tank storage company shall be subject to its general conditions valid on the date of the activity and deposited either with the relevant District Court or with the relevant Chamber of Commerce.
4. The tank storage company shall cover its liability insurance with first class underwriters as appropriate to the services performed.
5. The tank storage company shall be certified for its operations in accordance with minimal ISO 9001 (latest version):
  - In case the tank storage company facilitates the storage of food products the company should also be ISO 22000 (latest version) or equivalent certified.
  - In case the tank installation facilitates the storage of feed products the company should also be GMP+ International (or equivalent) certified.
  - In case the tank installation stores only non-food/non-feed products (technical oils & fats products) the company should at least have ISO 9001 (latest version) certification.

This implies that the tank storage company shall operate with fully qualified staff and/or contractors at the highest standard customary in the country of operation and provide structural training facilities to its staff members for continuous improvement of its level of service and operations.

### Administration

6. The tank storage company shall be equipped to render the contractual administrative assistance to the trade as provided in the current edition of the NOFOTA Trading Rules. This includes the availability of an administrative batch tracking and tracing system enabling its principals and cargo-owners/-receivers to retrieve the full history of their cargoes from the moment these were brought under the custody of the tank storage company.
7. The tank storage company shall have facilities to allow for administrative work in connection with requirements from fiscal authorities, including financial security with those authorities.

### Operational/technical

8. In case of storage of food products the previous cargoes in the tanks, lines and pump systems used for storage and handling of the oils at the tank storage company must have been a product in accordance with the E.U. Commission Regulation 579/2014 or any successive Directive in force at the time of the actual storage of the goods. All materials and equipment (tanks, lines, pipes, pumps and valves, including sampling apparatus etc.) used for storage and handling of other products shall be completely separated.
9. The tank storage company shall have available officially gauged/calibrated facilities for establishing quantity and shall offer adequate sampling facilities.

**Application/duration/extension**

10. A storage company applying for and operating under NOFOTA recognition shall be a member of the Association.
11. Initial NOFOTA recognition shall be subject to an audit by auditors to be appointed by the NOFOTA Technical Committee and will be granted upon proposal of the Technical Committee by the NOFOTA Council for a 3 year period.
12. After recognition is granted the storage company will be requested every three years to fill in a questionnaire and deliver it together with their latest ISO certificate and audit report to the NOFOTA Secretariat.
13. If a physical audit is deemed to be necessary, the Technical Committee of NOFOTA will inform the company with a date of such audit.
14. If a storage company does not comply with the aforementioned criteria, based on a physical or administrative audit and has received two warnings, NOFOTA holds the right to withdraw their recognition.
15. The recognition may be withdrawn at any time by the NOFOTA Council at its discretion. The recognition remains in place for all parcels stored prior to the date of withdrawal. Parcels stored after the withdrawal has been published to the members are no longer subject to recognition.

**Liability**

16. Any liability of NOFOTA for or resulting from the (non-) recognition of a tank storage company is excluded.

## RECOGNIZED SUPERINTENDENT COMPANIES AS PER 1 JANUARY 2022

Based on the criteria for Recognized Superintendent Companies of NOFOTA and the results of the audits and the recommendations of the Audit Committee, the following superintendent companies are recognized by NOFOTA.

- 1. Cotecna Inspection Services B.V.**  
Jan van Galenstraat 41, 3115 JG SCHIEDAM, The Netherlands
- 2. C-Control B.V.**  
Kastanjelaan 18F, 2982 CM RIDDERKERK, The Netherlands
- 3. Control Union Rotterdam B.V.**  
Boompjes 270, 3011 XZ ROTTERDAM, The Netherlands
- 4. Flokstra Survey Bureau B.V.**  
Calandstraat 62, 3016 CD ROTTERDAM, The Netherlands
- 5. Intertek Nederland B.V.**  
Leerlooierstraat 135, 3194 AB HOOGVLIET-ROTTERDAM, The Netherlands
- 6. Krudo HSC B.V.**  
Tankweg 4B, 3196 KG VONDELINGENPLAAT-ROTTERDAM, The Netherlands
- 7. Schutter Rotterdam B.V.**  
(a Bureau Veritas Group Company)  
Petroleumweg 30, 3196 KD ROTTERDAM, The Netherlands
- 8. SGS Nederland B.V.**  
Inspection Services, Agri Department  
Malledijk 18, 3208 LA SPIJKENISSE, The Netherlands
- 9. WCB International B.V.**  
Strijmondlaan 78, 4731 LV OUDENBOSCH, The Netherlands
- 10. Saybolt Nederland B.V.**  
Oude Maasweg 6, 3197 KJ ROTTERDAM (Botlek), The Netherlands
- 11. BCI Rotterdam B.V.**  
Waalhaven Zz. 40b, 3088 HH ROTTERDAM, The Netherlands

## CRITERIA FOR A NOFOTA RECOGNIZED SUPERINTENDENT COMPANY PER 1 JANUARY 2022

### Independence

1. The superintendent company shall not be engaged in any way in the trade of products typical the domain of NOFOTA and guarantees to operate fully independently from any other company in executing its activities under the NOFOTA Trading Rules. In case of one or more sister companies with other activities in the domain of NOFOTA (e.g. laboratory), these companies shall operate fully independently from the superintendence activities.

### General conditions/insurance

2. All activities of the superintendent company shall be subject to its general conditions valid on the date of the activity and deposited either with the relevant District Court or with the relevant Chamber of Commerce.
3. The superintendent company shall cover its Liability Insurance with first class underwriters as appropriate to the services performed.

### Operational/technical

4. The superintendent company shall operate professionally in executing its activities within the trade of products typical the domain of NOFOTA. Subject to the Principal's agreement, sub-contracting shall only be allowed to another NOFOTA recognized superintendent company.
5. The superintendent company shall comply with the "FOSFA Code of Practice for Member Superintendents" (latest version), the ISO 5555:2001 for sampling of animal and vegetable oils and fats and with the applicable legal requirements. The superintendent company shall assure that all his equipment is in good condition, fit for their purpose and if relevant calibrated (f.i. thermometers).
6. The superintendent company shall have relevant knowledge of the NOFOTA Trading Rules as well as of relevant local and international law and regulations.

### Certification

7. The superintendent company shall be certified for all its operations in accordance with ISO standard 9001 (latest version) or equivalent. This implies that the superintendent company shall operate with fully qualified staff and/or contractors at the highest standard customary in the country of operation and provide structural training facilities to its staff members for continuous improvement of its level of service and operations.

### Application/duration/extension

8. A superintendent company applying for or operating under NOFOTA recognition shall be a member of the Association.
9. Initial NOFOTA recognition shall be subject to an audit by auditors to be appointed by the NOFOTA Technical Committee. Recognition will be granted by the NOFOTA Council, after positive advice from the Technical committee.
10. After recognition is granted the superintendent company will be requested every three years to fill in a questionnaire and deliver it together with their latest ISO certificate and audit report to the NOFOTA Secretariat.
11. If a physical audit is deemed to be necessary, the Technical Committee of NOFOTA will inform the company with a date of such audit.
12. If a superintendent does not comply with the aforementioned criteria, based on a physical or administrative audit and has received two warnings, NOFOTA holds the right to withdraw their recognition.
13. The recognition may be withdrawn at any time by the NOFOTA Council at its discretion.

### Liability

14. Any liability of NOFOTA for or resulting from the (non-) recognition of a superintendent company is excluded.



# CHAPTER XVI

## a. FOSFA Heating Instructions In Respect Of Bulk Shipment of Oils and Fats

1 September 2011

### FOSFA HEATING INSTRUCTIONS IN RESPECT OF BULK SHIPMENT OF OILS AND FATS

(In the following text the word oil shall be understood to mean oil/fat)

1. Shippers shall ensure that the temperature of the oil during delivery into the tank(s) of a ship is that at which the oil is usually handled and where heat is applied that the temperature in no case exceeds that given in the appropriate table.
2. Master shall supply to cargo receivers a statement showing the cargo temperature at loading and a chart on which the daily temperatures after loading have been recorded. The chart shall be signed by the Master or authorised officer.
3. Shippers shall supply the following instructions with regard to heating of oil during the voyage:
  - 3.1 **Ship's tanks fitted with heating coils**
    - 3.1.1 On completion of loading, ship's coils shall be completely covered with oil.
    - 3.1.2 Heating shall be effected by hot water or, where this is impracticable, by low pressure saturated steam. Pressures shall not exceed 1.5 bar gauge.
    - 3.1.3 During the voyage the oil shall be maintained in accordance with the temperatures set out in the Heating Recommendations.
    - 3.1.4 In sufficient time prior to arrival at port of discharge, heat shall be applied gradually to ensure that the temperature of the oil at time of discharge is in accordance with the temperatures set out in the Heating Recommendations. The cargo shall be maintained within this range of temperatures throughout the discharge.
    - 3.1.5 In order to avoid any damage to the quality of the oil, it is essential that heat is applied gradually. A sudden increase in temperature must be avoided as it will almost certainly result in damage to the oil.
    - 3.1.6 The increase in temperature of the oil during any period of 24 hours shall never exceed 5°C.
    - 3.1.7 As far as practicable, top and bottom temperatures shall be maintained at equal levels; the difference between these two temperatures shall never exceed 5°C.
    - 3.1.8 The temperatures referred to above are the average of top, middle and bottom readings. The top reading shall be taken at about 30 cm (one foot) below the surface of the oil. The bottom readings shall be taken:
      - a. In tanks which have bottom coils at 30 cm (one foot) above the level of the coils;
      - b. In tanks which have side coils but no bottom coils, at a point about two feet (60 cm) from the bottom of the tank and about 30 cm (one foot) from the side coils.
    - 3.1.9 The temperatures indicated in 3.1.4 above are applicable under normal conditions ruling at port of discharge. In the event of abnormal conditions (such as extremely low air or water temperatures), receivers, either directly or through their appointed representatives, may vary the temperatures stated and instruct shipowners or their agents accordingly. Details of any such variations shall be duly recorded and advised to shippers or their representatives. If there is more than one receiver of the oil ex one ship's tank:

- a. All receivers from that tank should be in agreement to the proposed variations in the temperatures stated in 3.1.4 above;
- b. Shipper's representatives at port of discharge shall endeavour to reconcile requirements of the individual receivers.

### **3.2 For tanks with heat exchangers**

All instructions under paragraph 3.1 are applicable except for 3.1.1 and in 3.1.8; the bottom temperature should be taken 30 cm (one foot) above tank bottom.

### **3.3 Bulk oils not normally requiring heating during the voyage**

If it is envisaged that the temperature of the oil at the time of discharge will be below the minimum figure indicated in the schedule, the oil must be heated at not more than 5°C per 24 hours until the required discharge temperature is reached.

### **3.4 Bulk oils shipped in tanks by vessels whose voyages by sea or inland waterway do not exceed 5 days**

The oil must be loaded at a temperature which will enable the discharge temperature to be reached by raising the temperature of the oil by not more than 5°C per 24 hours.

## FOSFA HEATING RECOMMENDATIONS

| OIL TYPE   | TEMPERATURES DURING VOYAGE |          | TEMPERATURES AT DISCHARGE |          | SEE NOTE |
|--|----------------------------|----------|---------------------------|----------|----------|
|  | MIN (°C)                   | MAX (°C) | MIN (°C)                  | MAX (°C) |          |
| Castor Oil   | 20                         | 25       | 30                        | 35       |          |
| Coconut Acid Oil   | 27                         | 32       | 40                        | 45       |          |
| Coconut Oil  | 27                         | 32       | 40                        | 45       |          |
| Cottonseed Oil   | Ambient                    |          | 20                        | 25       | 2        |
| Fish Acid Oil  | 20                         | 25       | 35                        | 40       |          |
| Fish Oil   | 20                         | 25       | 25                        | 30       |          |
| Grapeseed Oil  | Ambient                    |          | 15                        | 20       | 2        |
| Grease   | 37                         | 42       | 50                        | 55       |          |
| Groundnut Oil  | Ambient                    |          | 20                        | 25       | 2        |
| Hydrogenated Oils  | Various                    |          | Various                   |          | 3        |
| Illipe Butter  | 37                         | 42       | 50                        | 55       |          |
| Fatty Acid Methyl Esters (FAME) from Maize/Rapeseed/Soyabean/Sunflower | Ambient                    |          | Ambient                   |          | 2        |
| Fatty Acid Methyl Esters (FAME) from Coconut/Palm/Palm Kernel/Tallow   | 25                         | 30       | 30                        | 40       |          |
| Lard   | 38                         | 45       | 50                        | 55       |          |
| Linseed Oil  | Ambient                    |          | 15                        | 20       | 2        |
| Maize (Corn) Oil   | Ambient                    |          | 15                        | 20       | 2        |
| Maize/Soya/Sun Acid Oil  | 30                         | 35       | 45                        | 55       |          |
| Mixed Soft Rape Acid Oil   | 20                         | 25       | 30                        | 35       |          |
| Oiticica Oil   | 24                         | 32       | 35                        | 40       |          |
| Olive Oil  | Ambient                    |          | 15                        | 20       | 2        |
| Palm Acid Oil  | 45                         | 50       | 55                        | 72       |          |
| Palm Fatty Acid Distillate   | 45                         | 50       | 55                        | 72       |          |
| Palm Kernel Acid Oil   | 27                         | 32       | 40                        | 45       |          |
| Palm Kernel Fatty Acid Distillate                                      | 27                         | 32       | 35                        | 45       |          |
| Palm Kernel Oil  | 27                         | 32       | 40                        | 45       |          |
| Palm Kernel Olein  | 25                         | 30       | 30                        | 35       |          |
| Palm Kernel Stearin  | 32                         | 38       | 40                        | 45       |          |
| Palm Oil   | 32                         | 40       | 50                        | 55       |          |
| Palm Olein   | 25                         | 30       | 30                        | 35       |          |
| Palm Stearin   | 45                         | 50       | 60                        | 70       | 4        |
| Rapeseed Oil (HEAR Type)   | Ambient                    |          | 15                        | 20       | 2        |
| Rapeseed Oil (LEAR Type or Canola)                                     | Ambient                    |          | 15                        | 20       | 2        |
| Safflower Oil  | Ambient                    |          | 15                        | 20       | 2        |
| Sesame Oil   | Ambient                    |          | 15                        | 20       | 2        |
| Sheanut Butter   | 37                         | 42       | 50                        | 55       |          |
| Soyabean Oil   | Ambient                    |          | 20                        | 25       | 2        |
| Sunflowerseed Oil  | Ambient                    |          | 15                        | 20       | 2        |
| Tallow (for voyages of 10 days or less)                                | Ambient                    |          | 55                        | 65       | 2        |
| Tallow   | 44                         | 49       | 55                        | 65       |          |

Notes as over page

1. The maximum temperature specified during the voyage is lower than the minimum required for discharge, in some cases by as much as 15°C. Bearing in mind the stipulation contained in paragraph 3.1.6, it should be recognised that in some cases ships officers will need to apply heat a few days prior to arrival in order to reach the appropriate discharge temperature.
2. It is recognised that in some cases the ambient temperatures may exceed the recommended maximum figures shown in the Heating Recommendations.
3. Hydrogenated oils can vary considerably in their slip melting points, which should always be declared. It is recommended that during the voyage, the temperature should be maintained at around the declared melting point and that this should be increased prior to discharge to give a temperature of between 10°C and 15°C above that point to effect a clean discharge.
4. Different grades of palm stearin may have wide variations in their slip melting points and the temperatures quoted may need to be adjusted to suit specific circumstances.

## b. Quality Specifications

### Crude degummed soybean oil (NOFOTA)

Crude degummed soybean oil will be of good merchantable quality, solvent extracted, guaranteed unbleached and produced from sound yellow soybeans.

|   | Basis  | Maximum |
|---|--------|---------|
| • f.f.a. (as oleic, molec. weight 282)                          | 0.75 % | 2.25 %  |
| • moisture and volatile matter                                  | 0.20 % | 0.25 %  |
| • impurities (insoluble in petrol, ether)                       | 0.10 % | 0.125 % |
| • lecithin (expressed as phosphorus)                            | 0.02 % | 0.045 % |
| • colour (1" Lovibond Cell) not darker than 50 yellow and 5 red |        |         |
| • flashpoint minimum 121°C (250°F)                              |        |         |

Allowances on the contract value if actual analysis exceeds the basic specifications:

|            |                       |
|------------|-----------------------|
| for f.f.a. | 0.76 - 1.05 = 2 : 1   |
|            | 1.06 - 1.15 = 2.5 : 1 |
|            | 1.16 - 1.25 = 3.5 : 1 |
|            | 1.26 - 2.25 = 4 : 1   |

|              |                         |
|--------------|-------------------------|
| for lecithin | 201 - 230 ppm = 200 : 1 |
|              | 231 - 250 ppm = 300 : 1 |
|              | 251 - 450 ppm = 350 : 1 |

|                                  |                     |
|----------------------------------|---------------------|
| for moisture and volatile matter | 0.21 - 0.25 = 1 : 1 |
|----------------------------------|---------------------|

|                |                      |
|----------------|----------------------|
| for impurities | 0.11 - 0.125 = 1 : 1 |
|----------------|----------------------|

### Crude degummed rapeseed oil (FEDIOL)

Shall be of good merchantable quality, guaranteed unbleached, and be produced from sound rapeseed.

|  |                |
|--|----------------|
| • f.f.a. (as oleic - mol. weight 282)      | max. 1.75%     |
| • moisture, volatile matter and impurities | max. 0.4 %     |
| • lecithin (expressed as phosphorus)       | max. 300 mg/kg |
| • erucic acid                              | max. 2.0 %     |
| • Flashpoint minimum 250°F (121°C)         |                |

### Crude rapeseed oil (FEDIOL)

Shall be of good merchantable quality, guaranteed unbleached, and be produced from sound rapeseed.

|  |                |
|--|----------------|
| • f.f.a. (as oleic - mol. weight 282)      | max. 2.0%      |
| • moisture, volatile matter and impurities | max. 0.5%      |
| • lecithin (expressed as phosphorus)       | max. 750 mg/kg |
| • erucic acid                              | max. 2.0%      |
| • Flashpoint minimum 250°F (121°C)         |                |

----  
\* P.A.T. = phosphoric acid test

## Crude linseed oil (NOFOTA)

1. If the percentage of moisture exceeds 0.25, the excess of moisture over 0.20 percent shall be allowed for at the rate of 1 percent of the contract price for each percent; fractions of a percent to be allowed for proportionately.
2. If the percentage according to P.A.T.\* exceeds 0.25 but not 0.50, the buyer shall be entitled to an allowance to be paid by the seller according to the undermentioned table:

in case of a percentage of P.A.T.\*  
an allowance of a percentage of the contract price of

above 0.25 up to and inclusive of 0.35:0.3+ 4x(P.A.T.\*-0.25)  
above 0.35 up to and inclusive of 0.45:0.7+ 7x(P.A.T.\*-0.35)  
above 0.45 up to and inclusive of 0.50:1.4+10x(P.A.T.\*-0.45)

If the percentage of P.A.T.\* exceeds 0.50, the allowance is, if the parties fail to agree, to be fixed by arbitration.

3. If the oil is not clear at 65 degrees Centrigade, the allowance shall be determined by arbitration if the parties fail to agree in this respect. The analysis shall be made in accordance with the method approved by the Association.
4. f.f.a. (as oleic mol. weight 282) will be basis 2 percent and maximum 3 percent. If the f.f.a. exceeds 2 percent but does not amount to more than 3 percent, the buyer shall be entitled to an allowance of 2 percent of the contract price; for fractions of a percent he shall be entitled to a proportionate allowance.
5. Should the oil not comply in other respects with the British Standard Specification BS 6900/1987, (equivalent to ISO 150:1980) as far as applicable, the buyer shall be entitled to claim an allowance from the seller on account of inferior quality.
6. If the inferiority of the quality, mentioned in the foregoing paragraph, is of an exceptional nature, or in the event of bad faith, the buyer shall be entitled to demand that the contract be cancelled and that the amounts paid be refunded against restitution of the delivered parcel, with or without interest and/or damages, if any.
7. The method approved by the Association is the following: Fill a bottle of 100 millilitres with about 90 millilitres of linseed oil. Cork the bottle. The corks must have a hole in which a thermometer is placed and a narrow hole to allow the passage of the air on expansion above the linseed oil in the bottle. This whole apparatus to be put in a waterbath having a temperature of 65°C. Check after how many minutes the temperature of the oil is equal to the temperature of the water in the bath (about 10 minutes). Leave the oil another 20 minutes in the bath and check whether the oil is clear. As a means of checking the clarity the following method may be applied: Fill a colorimetertube with a layer of about 10 centimetres of oil and check whether normal Pica typewriting of 2 mm height can be read through this layer of oil.

## U.S.A. Tallows and Greases F.A.S., F.O.B., C.&F. and C.I.F.

Animal fats and oils shall be guaranteed to be unadulterated and free from other fat or fatty substance unnatural to same. They shall contain only the fluids and fatty acids natural to the product, except in such amounts as might occur unavoidably in accordance with industry practices.

The standard specifications for Tallows and Greases of the American Fats and Oils Association Inc. shall govern trading under this contract.

When the quality of the goods tendered is not up to the contract specification but not to the extent that the material is rejectable as provided hereafter the seller shall allow the buyer as follows:

For excess M.I.U. 1 percent of contract price for each percent of excess, fractions in proportion, but if the total M.I.U. is in excess of 1 percent over the contract specification the material may be rejected excepting only that in the case of No. 2 Tallow and Brown Grease the material may not be rejected unless the total M.I.U. is in excess of 3 percent.

For excess f.f.a. 2 percent of contract price for each percent of excess, fractions in proportion but if the quality is not equal to the specification of the contract in respect to both.

Titre and f.f.a. or if either titre or f.f.a. is inferior to the titre of f.f.a. specification of the next lower grade, the material may be rejected. The material may also be rejected if the colour is not equal to the colour specification of the contract. When sales specifications include a guarantee of refined and/or bleached colour, the above named provisions concerning allowable tolerances in quality shall apply. Moreover the buyer may reject the tender if after refining and bleaching according to NEN methods and reading on

51/4" Lovibond scale, the colour exceeds in any degree the following:

|                  |         |
|------------------|---------|
| Extra Fancy      | 1.0 Red |
| Industrial Fancy | 1.0 Red |
| Fancy            | 1.5 Red |
| Bleachable Fancy | 2.0 Red |

When animal fats and oils tendered are rejectable in accordance with the above provisions or if the material has been adulterated or if there is inferiority of quality of an extraordinary nature the seller shall be considered to be in default of contract and the buyer at his option may accept the material subject to an allowance to be agreed upon or as may be fixed by arbitration or may reject the goods as far as the lot in question is concerned and shall be entitled to claim refund of the invoice amount paid, together with interest and indemnification.

The seller shall not be entitled to replace the rejected lot unless otherwise agreed.

If in the opinion of the buyer the goods do not comply with the contract specification and if he cannot reach an amicable settlement with the seller he may proceed to arbitration about quality. Notice hereof shall be given by him or his superintendent company to the other party and the Secretary of the Association without delay after inspection and analysis of the goods.

### **Hoggrease**

Hoggrease and similar goods shall only consist of hogfat; admixture of other ingredients for the purpose of denaturation is allowed if the denaturation is prescribed by law. In no case, however, these admixed ingredients shall consist of vegetable or animal fats, hogfat excepted. Any lot, not in conformity with these conditions, may be rejected. In case of rejection the contract shall be void with regard to the lot in question; arbitrators however may decide whether the buyer has a right to an allowance and if so, to what extent. This latter is also applicable on goods, the percentage of free fatty acids of which exceeds the maximum contracted for.

## **Technical Tallows and Greases**

### **Home melt tallow**

In case the saponifiability is less than 97 percent an allowance for the failing percentage has to be paid at contract price.

### **Imported tallow**

Water and/or dirt above 1 percent to be allowed at contract price. If sold on the basis of titre, any excess or deficiency to be credited or allowed at the rate of 0.2 percent of the contract price for every tenth of a degree centigrade. Any parcel mixed with other ingredients than tallow may be rejected.

### **Technical animal fat (destructievet)**

In case the saponifiability is less than 97 percent an allowance for the failing percentage is to be paid at contract price. If the percentage saponifiable matter is less than 94 percent buyers have the right of rejection.

### **Bonegrease**

In case the saponifiability is less than 97 percent an allowance for the failing percentage is to be paid at contract price. In case of rejection the contract shall be void as far as the lot in question is concerned; arbitrators may however decide whether buyers have the right to an allowance and if so, to what amount.

## **Acid Oils and Similar Articles**

If the percentage saponifiable 1 of acid oils is less than 97 but above 94, the buyer shall be entitled to an allowance of 1 percent for each percent under 97. If the saponifiability of acid oils is less than 94 or if the saponifiability of distilled fatty acids does not come up to the agreed minimum, the buyer shall be entitled to reject the parcel. In that case the contract shall be deemed cancelled and the buyer shall be entitled to compensation of damages consisting of the adverse difference between the market value and the contract price and of the costs incurred by him on account of the parcel. However, if the parcel has already been accepted, the buyer shall be entitled to an allowance to be mutually agreed or, failing such agreement, to be determined by arbitration at his request.

If the inferiority of quality, otherwise than with respect to the percentage of saponifiable matter, is of an exceptional nature or attributable to bad faith on the seller's part, the buyer shall be entitled to demand that the contract be cancelled wholly or partially.

If the contract is to be cancelled the buyer shall be entitled to claim refund of any invoice amounts paid with or without damages.

The arbitrators shall, if necessary, determine who shall bear the expenses, damages and interest incurred in the course of the negotiations and/or the arbitration.

Should the goods, wholly or partially, not comply with the quality standards applicable, then the buyer shall be entitled to claim damages from the seller on account of the deviating quality. Should the deviation of quality be of an extraordinary nature or be attributable to bad faith on the part of the seller, then the buyer shall in addition thereto be entitled to claim the cancellation of the contract wholly or partially, and, consequently, also to claim refund of the amount of the invoice which has been paid, if any, together with or without damages. The arbitrators shall, if necessary, award who shall bear the expenses, damages and interests incurred in the course of the negotiations and/or the arbitration.

## Soybeans Ex Ship

### Packing

For the beans not to be supplied in bulk, new and/or secondhand jute bags of adequate strength shall be used. If the beans arrive in another type of packing, the cutting, emptying and carrying off of the said packing shall be for account of the seller.

### Sampling

During receipt of the consignment five samples in all shall be drawn out of every 500 tons of the sound and undamaged part jointly by the buyer and the seller or their superintendent companies for joint account, and be sealed in cotton bags, which must each contain at least 4 kg of the goods. These samples must be numbered. Sampling shall be effected in the holds of the sea going vessel. Of damaged parts of the consignment two samples shall be packed and sealed in cotton bags in the usual manner on behalf of the arbitrators and, if the damages were caused by moisture, duplicate samples shall, if required, be packed and sealed in glass jars for determination of the moisture content for the information of the arbitrators. If the seller has failed to appoint a superintendent company in good time or if he or his superintendent company is absent or refuses to co-operate in the sampling, the buyer shall be entitled to request a local, recognized authority to take samples or to have samples taken by a qualified independent superintendent company. The costs involved shall be for account of the seller. The samples drawn and sealed in accordance with the above-mentioned provisions shall be dispatched by the buyer to the Comité van Graanhandelaren as soon as possible, but at the latest on the third day after sealing of the samples.

### Analysis

If the buyer desires an analysis to be made, he must, within ten days after sealing of samples, instruct the Comité van Graanhandelaren in writing to proceed to the analysis of sample No. 1. Any claim on the strength of the first analysis result must be lodged with the seller, at the same time submitting the analysis certificate, within three days after the date of receipt of the said certificate. Thereupon, either party shall be entitled to apply within ten days after receipt of this analysis certificate for analysis of sample No. 2 by a laboratory recognized by the Association, notifying the other party to that effect at the same time. The second analysis certificate must be sent to the other party within three days after receipt thereof.

The average of the two analysis results shall be used as a basis for settlement. However, if the difference between the two results is more than 0,5 percent, either party shall be entitled to have sample No. 3 examined by a laboratory recognized by the Association. This examination can only be applied for if the wish to that effect is expressed within ten days after receipt of the result of the second analysis, notifying the other party to that effect at the same time. The average of the two analysis results showing the best agreement shall then be used as a basis for settlement. The cost of the first analysis shall be for account of the buyer. The cost of the second and third analysis shall be for account of the party requiring the analysis to be performed. Each analysis result shall bear the number of the analysed sample.

## Quality Condition Content

If the consignment is not sound on delivery and/or does not fulfil the appropriate quality requirements, the buyer shall be entitled to an allowance, which shall be mutually agreed upon or fixed by arbitration. For any shortage of oil content an allowance shall be paid to the buyer according to the following scale: 1,5 percent of the contract price for every one percentage shortage; fractions of a percentage to be calculated pro rata. If the oil content is higher than the agreed basic percentage no premium shall be payable to the seller by the buyer. For every one percentage excess content of foreign matter an allowance of 1 percent of the contract price shall be payable; fractions of a percentage to be calculated pro rata. If the percentage of foreign matter is lower than the agreed basis percentage, no premium shall be payable to the seller by the buyer. Rejection on the strength of shortage of oil content and/or excess content of foreign matter can only take place in case of deviations of an extraordinary nature, such as at the discretion of the arbitrators.

### Used Cooking Oils (UCO's) (NOFOTA)

|  | Basis |             |
|--|-------|-------------|
| • FFA (as oleic, molec. weight 282)    | 5%    | max. 7%     |
| • Moisture, impurities and unsap (MIU) |       | max. 2%     |
| • Sulphur                              |       | max. 50 ppm |
| • Iodine Value (IV)                    |       | min. 60     |
| • Polyethylene                         |       | max. 50 ppm |

Allowances on the contract value if actual analysis exceeds the basic specifications:

for FFA if quality is between 5.01 – 5.99% (1:1)  
if quality is between 6.00 – 7.00% (1,5:1)  
if quality is above 7% then rejectable







NETHERLANDS OILS, FATS AND OILSEEDS TRADE ASSOCIATION