

## **General Terms and Conditions of Sale and Supply of vegetable, animal including marine animal fats and oils, fats and fatty acids.**

**Issued by the German Wholesale Trade Association of Oils, Fats and Oil Raw Materials, GROFOR  
Hamburg  
as amended 3rd May 1954 and revised in 1996.**

The GERMAN WHOLESALE TRADE ASSOCIATION OF OILS, FATS AND OIL RAW MATERIALS e.V. (registered association) - GROFOR -, Hamburg, recommends to its members, without obligation or commitment, the incorporation and use of the following GENERAL TERMS AND CONDITIONS OF SALE AND SUPPLY of vegetable, animal including marine animal fats and oils, fats and fatty acids in all business transactions with their suppliers and customers. It is left to the discretion of the members to follow this recommendation or to use other General Terms and Conditions of Sale and Supply.

### **1. Delivery/Collection**

2 If the contract stipulates "delivery", the seller shall determine the  
3 date of delivery or, where applicable, collection of the goods within  
4 the period specified in the contract. The buyer is to be notified of  
5 the date of delivery at least 5 working days in advance, to be  
6 calculated from the day following such date of notice.

7 If the contract stipulates "buyer's call", the buyer shall determine  
8 the date of delivery within the period specified in the contract. He  
9 must give the seller notice of the date of collection at least 5  
10 working days in advance.

11 Where the contract stipulates either "delivery" or "collection" of  
12 the goods pursuant to "buyer's call", the term "immediately" shall  
13 mean 3 working days and the term "prompt" 10 working days as  
14 from, but not including, the date of conclusion of the contract.

15 For contracts with agreement of "successive delivery" or  
16 "successive collection" the delivery or collection of the contracted  
17 quantity is to be made by approximately equal quantities during the  
18 period specified for such delivery or collection.

19 Part deliveries or part collections of the goods shall be allowed but  
20 not less than a minimum quantity of 23,000 kg. Each part delivery  
21 shall be considered a separate contract.

22 In case of any failure to comply with the date of delivery or  
23 collection the seller or, where applicable, the buyer shall be entitled  
24 to either insist on performance, or cancel that part of the contract  
25 which is yet to be performed or claim damages for non-  
26 performance, provided that any extension of the time limit for  
27 performance has expired. In stipulating any such period of  
28 extension, not less than 3 working days must be allowed in respect  
29 of an "immediate" delivery date and at least 6 working days where  
30 other periods of delivery have been agreed. A period of extension  
31 is not necessary where fixed-date transactions have been  
32 concluded.

33 Contracts shall be considered void if neither contracting party has  
34 given a notice of reminder to the other within one month following  
35 the expiry of the stipulated date of delivery or collection.  
36 Settlement of any payments due shall be made on the basis of the  
37 market price in force on the last working day of the month  
38 following the expiry of the delivery period. Any differences are to  
39 be refunded.

40 In case of strikes, lockouts, fire, bans on exports or imports or any  
41 other cases of "force majeure" the party affected thereby shall be

42 released from his obligation to comply with the agreed delivery or,  
43 where applicable, collection deadlines. Notice of any such force  
44 majeure is to be given to the other contracting party as soon as it  
45 becomes known. In the event that such a force majeure continues  
46 for a period of more than 30 days following the expiry date of  
47 delivery or collection as stipulated in the contract, both the seller  
48 and the buyer shall be entitled to give written notice of cancellation  
49 of the contract within the 7 working days following thereafter.

50 Any legal acts of an administrative nature issued after conclusion  
51 of contract (e.g. relating to taxes, customs duties, miscellaneous  
52 import and export charges, transport charges, or foodstuff law etc.)  
53 shall entitle the contracting party affected by the above to claim  
54 appropriate compensation.

55 In the event of the sale of non-customs cleared goods, all costs  
56 incurred in connection with customs clearance shall be for buyer's  
57 account.

58 If the place of destination as contractually agreed is changed, any  
59 increase or decrease in costs ensuing therefrom shall be offset  
60 according to the difference in parity.

### **2. Conditions Governing Consignments and Insurance**

62 Those Incoterms of the International Chamber of Commerce in  
63 force at the time of the conclusion of the contract shall be of  
64 application thereto.

### **3. Weight**

66 The seller shall be entitled to deliver with a tolerance of 2% more  
67 or less of the contracted quantity, or 5% more or less if an  
68 "approximate" quantity has been contracted. Each part delivery  
69 shall be considered as a separate contract. At time of delivery or  
70 part delivery of the goods, the seller shall be obliged to give notice  
71 of any deviation from the contract quantity. Performance of the  
72 contract shall be based on the weight established by weighing or  
73 measuring at dispatch or arrival, where applicable. Buyers and  
74 sellers or their authorized representatives shall be entitled to  
75 participate in the weighing or any measurement procedures. Axle  
76 weighing is not permitted.

### **4. Performance of Contractual Quantity**

78 If a particular quantity, limited by two figures (from - up to), has  
79 been agreed upon, the mean quantity shall be the basis of  
80 contractual performance.

### **5. Quality**

82 In the case of sale according to sample, the goods must, on average,

83 correspond to the appearance and the analysis data of the purchase  
84 sample. If the goods are sold “subject approval of sample” an  
85 agreement shall be made as to when the buyer must give his final  
86 decision. If the buyer fails to give due notice to the seller within the  
87 stipulated time limit, the sample shall be deemed to have been  
88 approved. Even in the absence of any special agreement, goods of  
89 sound and merchantable quality are to be supplied at all times. In  
90 the case of “tel quel” transactions, the buyer shall be obliged to  
91 accept the goods irrespective of their quality provided that the  
92 delivered goods are in accordance with the description as specified  
93 in the contract.

#### 94 **6. Claims**

95 In the event that the buyer has lodged a justified claim, he has a  
96 right of either reduction of the contract price or substitute delivery.  
97 The right of rescission is hereby excluded.

98 Any claims must be submitted within 5 working days after receipt  
99 of the goods. The right of substitute delivery is only given in cases  
100 where the goods are returned in their original shipped package(s).  
101 If the goods are affected by defects which cannot be determined by  
102 the purchaser himself without having to consult an expert  
103 beforehand (hidden defect), the purchaser shall retain the rights of  
104 warranty specified in lines 94 ff above if he appoints an expert  
105 without delay and ensures that his notice of claim has been served  
106 upon the seller within a period of 3 working days following  
107 discovery of any such defect(s). Under no circumstances are claims  
108 admissible if the goods have been put into production or have been  
109 transported from the original place of destination unless  
110 independent sealed samples are available for the final  
111 ascertainment of quality. The parties shall be entitled to participate  
112 at sampling. In the event of warranted characteristics being the  
113 subject of contract, these shall be subject to the provisions of  
114 general law. Any rights of claim of persons suffering damage or  
115 loss arising from the PRODUCT LIABILITY LAW shall remain  
116 unaffected hereby.

#### 117 **7. Time Limits**

118 Working days as stipulated by these terms and conditions are the  
119 weekdays Monday to Friday with the exception of the public  
120 holidays as well as 24th and 31st December. The day of conclusion  
121 of the contract or, where applicable, the day upon receipt of any  
122 notice stipulating a time limit, shall not be included in the  
123 computation of the relevant period of time or deadline. Any  
124 declarations which are subject to time limits must reach the  
125 recipient not later than 16:00 hour on the final day prior to expiry of  
126 the time limit. Public holidays which differ according to country or  
127 location shall be construed to apply only in favour of that  
128 contractual party which has to give or receive notice or undertake  
129 any specific action on such a day.

#### 130 **8. Buyer’s Default of Payment**

131 If the buyer has suspended his payments or if a situation arises  
132 equal to such suspension of payments, all outstanding debts and  
133 claims against him shall become due for immediate payment. The  
134 seller is entitled to demand payment in advance for any further  
135 consignments. If such advance payments are not made, the seller  
136 will be entitled to invoke the rights as specified in lines 22 - 39 of  
137 this text.

#### 138 **9. Reservation of Title**

139 The goods remain the legal property of the seller until all claims  
140 against the buyer arising from the mutual business relationship are  
141 settled (hereinafter referred to as goods supplied or delivered under  
142 reservation of title). Any conditional, qualified or future claims are  
143 included. Where a current account exists, the reservation of title  
144 shall operate as security for the balance owing to the seller at the  
145 time in question. The buyer shall only be permitted to resell the  
146 goods supplied under a reservation of title or subject them to any

147 treatment, processing or admixture on condition that he keeps  
148 detailed records of the whereabouts of such goods at any particular  
149 time with specification of the quantities and values involved. In case  
150 of any default he shall be obliged to present to the seller  
151 satisfactory evidence of the above at his own expense. Any  
152 treatment or processing of the goods delivered under reservation of  
153 title shall be undertaken in all cases on behalf of the seller, but  
154 without any additional liabilities arising for the seller. The seller  
155 shall also acquire ownership of the new product which results from  
156 the treatment or processing of the goods supplied. In case of  
157 processing with other goods not belonging to the seller, the seller  
158 shall have a right of joint ownership in the new product which shall  
159 correspond to the proportional value of the goods supplied under  
160 reservation of title as compared to the value of the other processed  
161 goods at time of processing. The value of the goods delivered under  
162 reservation of title shall be defined as the purchase price invoiced  
163 by the seller to the buyer, this definition, also applying hereinafter.  
164 In the event that goods supplied under reservation of title are mixed  
165 or combined with other substances or materials, the buyer shall  
166 already, at this time, assign to the seller his proprietary rights or,  
167 where applicable, joint ownership in the article or substance  
168 resulting from such admixture or combination by virtue hereof, and  
169 shall preserve such rights (hereinafter likewise referred to as goods  
170 supplied or delivered under reservation of title) on behalf of the  
171 seller. The buyer is authorized to resell the goods delivered under  
172 reservation of title within the normal course of his business,  
173 provided that such resale is also made under reservation of title. He  
174 is not permitted to pledge or mortgage the goods as security to third  
175 parties. The buyer herewith assigns to the seller as security all  
176 claims and ancillary rights accruing to himself by virtue of the  
177 resale of such goods, irrespective of whether such resale is effected  
178 prior or subsequent to the processing, admixture or combination of  
179 the goods with other materials or substances. In case goods  
180 delivered under reservation of title are themselves, irrespective of  
181 their condition, resold by the buyer together with other goods not  
182 belonging to the seller for a total price, the assignment of the  
183 buyer’s claim by virtue of such resale, which has already been  
184 executed by virtue of the foregoing, shall be limited to that amount  
185 which the seller has charged to the buyer for those goods originally  
186 supplied by him under reservation of title. In the event that the  
187 buyer receives drafts (including bills of exchange) or cheques from  
188 his customer by virtue of such resale, he herewith assigns to the  
189 seller those claims accruing to him from such drafts or cheques in  
190 the amount of the debt arising from the resale transaction which has  
191 already been assigned to the seller in accordance with lines 175 -  
192 179 hereof.

193 Title to the drafts and/or cheques concerned is herewith assigned to  
194 the seller by the buyer who shall hold in trust such drafts or cheques  
195 on behalf of the seller. The buyer shall be authorized to collect the  
196 assigned claims until such authorization is revoked. In the event of  
197 such revocation, the buyer shall, at the request of the seller, furnish  
198 any information required by the latter and give due notification to  
199 his customers of the transfer of the rights of claim involved and  
200 hand over any relevant cheques and drafts issued by his customers  
201 to the seller. In the event of buyer’s default of payment he shall, at  
202 the request of the seller, be obliged to return the goods delivered  
203 under reservation of title to the seller. The buyer shall furthermore  
204 give immediate notice to the seller by cable or telex of any  
205 attachment which has been exercised by third parties on the goods  
206 supplied under reservation of title and/or any claims assigned to the  
207 seller. At the written request of the buyer, the seller shall undertake  
208 to release securities, of his own choice to the extent that the value of  
209 the securities provided in his favour exceed by more than 20% the  
210 value of open debts and/or claims owed by the purchaser, for which  
211 security is still required.

#### 212 **10. Court of Arbitration**

213 All disputes arising out of this contract shall, as a rule, and to the

214 exclusion of the ordinary courts of law, be decided by the  
215 GROFOR Court of Arbitration in Hamburg in accordance with the  
216 Rules of Arbitration which apply to that court.

217 **11. Applicable Law**

218 The law of the FEDERAL REPUBLIC OF GERMANY shall apply  
219 to the contract and any legal relations between the seller and the  
220 buyer shall be governed by that law. The application of the LAW  
221 PERTAINING TO A UNIFORM LAW ON THE SALE OF  
222 GOODS (UNITED NATIONS CONVENTIONS ON THE  
223 FORMATION OF CONTRACTS FOR THE INTERNATIONAL  
224 SALE OF GOODS) is hereby excluded.

225 **12. Escape or Legal Invalidity Clause**

226 In the event that any individual clauses of these terms and  
227 conditions are, or shall become, invalid, this shall not affect the  
228 validity of the remaining clauses. An invalid condition shall be  
229 deemed to have been replaced by such provision which is legally  
230 valid and corresponds nearest to the economic purpose of the  
231 clause originally deemed invalid. In the event of any dispute as to  
232 the interpretation of these terms and conditions, the German  
233 version of this text shall prevail over any translations thereof.