

NOFOTA

Netherlands Oils, Fats and Oilseeds Trade Association

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

C O N T R A C T

27

for the trade in meat and offals,
chilled or frozen.

F.A.S./F.O.B./C.I.F./C.&F. TERMS

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Seller : ref. no.
.....
.....

Buyer : ref. no.
.....
.....

Intermediary : ref. no.
.....
.....

To Messrs.:
.....
of :
.....

We confirm having bought from/sold to you today :

Quantity: tons/container(s) containing about tons

Description of Commodity:

Shipment as per bill(s) of lading dated or to be dated during the month(s) of / per or substitute from

by seagoing fully engine-powered vessel -or if so agreed by aircraft- classified A1 in any recognized register

Price:

Payment:

in accordance with the provisions of article 6.

Special conditions:

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

Yours faithfully,

signature buyer

signature seller

Article 1.

Quantity.

1. Where meat or offals are to be shipped in container(s), sellers shall indicate in the contract the approximate quantity per container.
2. Sellers shall have the option to ship 5% more or less unless otherwise specified. In case of default on either part, this margin shall not be taken into account when assessing damages.

Article 2.

Shipment.

1. Partial shipments are allowed, unless otherwise stated.
2. Each shipment shall stand as a separate contract but has to be in conformity with the description of the goods in 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.
4. If a month contains an odd number of days, the middle day shall be deemed to belong to the first or the second half at sellers' option. This is to be mentioned in the conditions of the Letter of Credit referred to in article 6.
5. Where the contract provides for shipment within a specified period, the tender of a Bill of Lading shall be a good tender if it is dated not more than 3 calendar days after the expiration of such specific period.
6. In the case of shipment by container vessel the Bill of Lading date shall be the date on which the container is received on board the sea going vessel.
7. Buyers have the right to provide for the freight-space on FAS or FOB terms and they have to notify sellers in due time but not later than 14 calendar days before the scheduled sailing date of nominated vessel advising name of the vessel and expected loading date.
8. In case of buyers on FAS or FOB terms not using their right to provide for the freight space, or failing to do so, sellers shall use their best endeavour to book the necessary freight space for account and risk of buyers at ruling freight rates and no responsibility whatsoever shall attach to sellers for the consequences of their action.
9. In case of CIF or C and F sales it is understood that sellers must provide for the required freight space within the period of shipment specified in this contract.
10. In case of non-availability of freight space within the period of shipment specified in this contract, buyers have to grant an extension until the next vessel with space available, with a maximum of 30 days, after which the contract will be void without indemnification on either side.

Article 3.

Declaration of shipment.

1. Declaration of shipment shall be made within 5 working days as from the date of the Bill(s) of Lading by telegram, telex or any other means of rapid written communication, or if sellers and buyers reside in the same country, by mail. It is deemed to be made under reserve for errors and delays in transmission. Any slight variation in the vessel's name shall not vitiate the declaration.
2. The declaration of shipment must state the quantity shipped, the name of the vessel(s) and the date(s) of the Bill(s) of Lading. No declaration of shipment is required when the goods have been sold afloat by named steamer.
3. Should the vessel arrive before receipt of the declaration of shipment, buyers shall not be entitled to reject the declaration, but any proved extra expenses incurred thereby shall be for account of sellers.

Article 4.

Insurance.

1. Sellers to cover all CIF sales against all risks as per current Institute (Frozen) Meat Clauses (A) or equivalent cover from warehouse to warehouse, including cover for inherent vice as per Frozen Food Extension Clauses, breakdown of machinery as per Institute Frozen Meat Clauses (A) -24 hours breakdown and current Institute War and Strikes, Riots and Civil Commotions Clauses, and irrespective of percentage at contract price plus 10% with underwriters and/or insurance companies of good repute. The aforesaid covers to be amended to Chilled if applicable.
2. 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 buyers at the time of presentation of documents.
3. Buyers to cover insurance on at least the same terms in case of FAS, FOB and C and F sales.

Article 5.

Documents.

1. The documents to be presented for payment shall at least consist of:
 - a. a complete set of dated negotiable, clean "On Board" Bills of Lading, signed by or for and on behalf of the shipowner or the master, evidencing shipment under refrigeration and stating if freight (pre)paid or if freight to be collected.
 - b. an invoice in conformity with the description and terms of the contract, in triplicate, unless otherwise agreed.

- c. (a) health certificate(s), and if so required (a) certificate(s) of origin, valid for the trade between the country of origin and the country of destination, as required by buyers for customs as well as for veterinary purposes.
 - d. (a) weight certificate(s) showing the number of packages and both gross and nett weights at time of shipment from origin.
- and in case of a CIF contract:
- e. (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.

Article 6.

Payment.

1. Payment shall be made by means of an irrevocable Letter of Credit stipulating telegraphic transfer, payable at the counter of the advising bank to be indicated by the sellers and available in due time in accordance with the shipping period, and valid during at least 10 working days after the last day of the period of shipment for negotiation purposes only.
2. The Letter of Credit shall allow part shipments, but transshipments shall not be allowed unless specially agreed upon.
3. In the event that payment is to be made nett cash against documents, payment shall be made by telegraphic transfer to a person or firm to be indicated by sellers. If the freight has been deducted from the (provisional) invoice, same is to be paid by buyers to the beneficiary indicated by sellers.
4. In the event of the documents mentioned in the foregoing article not being complete -1 negotiable copy of the Bill of Lading and the required original health certificate(s) shall be presented in any case- sellers shall furnish a guarantee to be issued by a person or firm approved by buyers, or a bank, for subsequent delivery of the missing documents and/or copies and holding buyers harmless for any consequences arising from the presentation of incomplete documents.
5. Should the vessel arrive before presentation of all required documents, buyers shall not be entitled to rejection or to delay payment, but any proved extra expenses incurred thereby shall be for account of sellers.
6. Should the documents not be complete or not be presented in good order within 8 calendar days after arrival of the vessel, buyers have the option to cancel the contract.
7. In the event of the vessel being officially reported lost by Lloyd's, whether shipment has been declared or not, payment shall be made in full within 7 days after presentation of the documents.
8. Documents and goods remain the property of sellers until payment has been effected in accordance with sellers' instructions.

Article 7.

Quality and/or condition claims.

1. Buyers shall take all necessary steps to safeguard sellers in respect of the quality and/or the condition of the goods.
2. All claims on Frozen Meat and Offals must be passed on within 3 working days after discharge of the goods in the port of destination or within 3 working days after stripping of containers. All claims on Chilled Meat and Offals must be passed on within 24 hours after discharge of the goods in the port of destination or within 24 hours after stripping of containers. All claims must be made by telegram, telex or any other means of rapid written communication to sellers or their representatives.
3. In case of apparent transport damage ascertainable at time of discharge or stripping of containers, buyers shall notify shipowners and the insurance company, or the insurance company's agents. The insurance company's experts shall hold survey and shall fix the amount of transport damage, if any.
4. A dispute concerning any alleged inferiority of quality and/or condition may in no case be the motive for refusal of payment, buyers having to accept the documents, provided they are in good order, without, however thereby prejudicing their rights under the contract. Sellers are entitled to arrange for an inspection of their own or by their representatives. No claims are to be entertained if the bulk of the goods is no longer in the original unopened state of packing.
5. Buyers have no right against sellers to claim apparent inferior quality if goods have been received and approved by them or their representatives or if cargo-surveyors at origin, duly appointed by buyers, have approved the goods and have issued a corresponding quality- and condition certificate. In such cases the goods shall be considered as accepted "tale quale", except for latent defects.
6. Any claim settlement is to be made on the basis of the contractprice only.
7. The goods may only be rejected if an allowance should exceed 20%. Buyers have in such case the option to reject the goods with or without compensation for damages or to accept them with an allowance.
8. In case of rejection all accumulated charges, such as freightrate, insurance, reception, trucking, storage etc. shall be for account of sellers.
Repayment against surrender of the goods is to be made by sellers against first presentation of a storage-receipt and other documents originally delivered to buyers.
9. Latent defects must be advised to sellers or their representatives by telegram, telex or any other means of rapid written communication within 24 hours after they are discovered. Sellers shall be entitled to arrange for an inspection of their own or by their representatives. However, sellers shall only be responsible for such defects if ascertained within 30 days after discharge of the goods at the port of destination in case of Frozen Meat and Offals, and within 72 hours in case of Chilled Vacuum-packed Cuts.
10. Any arbitration on account of claims as mentioned in the foregoing paragraphs of this article is, on pain of loss of rights, to be applied for within 3 weeks from the final rejection of the claim by sellers.

Article 8.

Weights.

1. Original nett shipping weight(s) shall be final with the understanding that on all types of Frozen Meat and Offals, 1% franchise, on Chilled Bone-in Quarters and/or Carcasses 2% franchise, and on Chilled Vacuum-packed Cuts 1 half of 1% franchise has to be taken into consideration, either on shortweight(s) or overweight(s).
2. The franchise is to be settled at contract price only, provided the quantity mentioned in the invoice is within the 5% margin of article 1. If not, the excess or deficiency over or under 5% to be settled at the ruling market price on the date of discharge.
3. Each Bill of Lading shall be treated as a separate contract, provided the goods are of the same description and/or of the same brand. In case the goods are not of the same description and/or of the same brand, such goods are to be weighed separately at the port of discharge.
4. Goods of the same description and/or of the same brand in 1 vessel, but in different holds at different prices, are to be weighed separately at the port of discharge.
5. Weights are to be ascertained at the port of discharge, either on the pier alongside the vessel or at the coldstore, or at the place of stripping the containers.
6. No claim for loss in weight, if any, shall be allowed unless a notice in writing, by telegram, telex or any other means of rapid written communication be handed to sellers or their representatives within 3 working days after weighing at the place of discharge, whereas buyers have to submit certified detailed gross landed weights of approved sworn weighers not later than 14 days after arrival date. Sellers have the right to request a reweighing of the goods under supervision of a reputable surveying company. Charges for such reweighing are for loser's account.
7. Original shipping tares are to be understood with a tolerance of 5 percent at discharge. Average tare is to be ascertained at discharge by weighing the packing material after the contents have been removed. The quantity so to be tested shall be 5% of the Bill of Lading quantity with a maximum of 10 packages. Where a parcel consists of meat packed in bags, boxes or cartons of varying tares, buyers shall be under the obligation to weigh for tare 5% of each type and/or size of packingmaterial with a maximum of 10 packages per type and/or size.

Article 9.

Duties, Taxes and Levies.

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.

Article 10.

Force majeure.

1. If shipment of the contract quantity or a part thereof within the stipulated period is prevented by force majeure at the port(s) of loading or elsewhere preventing the forwarding of the goods to such port(s), the time of shipment shall be extended with 60 days. If the force majeure still prevails 60 days after expiry of the originally stipulated period of shipment, the contract or any unfulfilled part thereof shall be cancelled without indemnification on either side.
2. Sellers shall notify the buyers immediately of the outbreak and termination of the force majeure, in urgent cases by telegram, telex, or any other means of rapid written communication and in any event in writing. Sellers must, on request, produce evidence to justify their claim for extension or cancellation.
3. Force majeure affecting the seller shall be understood to mean any unforeseen exceptional circumstance 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.
4. If, in case of FAS or FOB-contracts buyers have to provide for shipping space, loss or delay of booked shipping space by force majeure prevents sellers to deliver the goods alongside or on board within the stipulated term, the period of delivery shall be extended with 21 days. Any carrying charges shall be for account of buyers. After expiry of the extended period buyers shall be held to pay against received for shipment Bill(s) of Lading or storage warrant(s). If in these circumstances the goods intended by sellers for buyers are wholly or partly lost before shipment as a result of force majeure the contract or the relative part thereof shall be cancelled. Sellers shall be responsible for furnishing evidence that these goods were intended for delivery against this contract.
5. Dissolution of the contract of sale in deviation of the foregoing on the basis of article 6:265 Dutch Civil Code is excluded.

Article 11.

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. immediately to cancel the contract without any indemnification
 - b. to buy or sell as the case may be against the defaulter within 3 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 refuses to accept the price of the purchase or sale mentioned in para 1 sub b) or the price difference in para 1 sub c), the price difference shall be fixed by arbitration.
3. Any price difference shall be computed on the basis of the average contract quantity, irrespective of which party being the defaulter. If a minimum and maximum quantity are provided, the average thereof shall govern.
4. Any proven other or further damages may be claimed, if they can be attributed to the non-fulfilment by the defaulter, and, failing agreement, shall be fixed by arbitration.
5. 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 the goods can be and/or actually are redelivered, cancel the contract and claim damages incurred in consequence thereof.

Article 12.

Insolvency.

1. If before fulfilment of the contract either party suspends payment, applies for an official moratorium or becomes or is declared bankrupt, the contract shall be cancelled and settlement shall be made at the market value on the working day 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 telex, telegram or any other means of rapid written communication to the secretary of the Association of such circumstances and, in the event that two or more creditors give such notice within a period of 30 days, the secretary shall notify the party concerned by telex, telegram or any other means of rapid written communication that its creditors gave such notice. The party notified shall inform the secretary by telex, telegram or any other means of rapid written communication at the latest on the next working day of the reason(s) for which it claims not to be obliged to make payments -which reason(s) the secretary shall pass on to the aforementioned creditors-, or shall give notice of suspension of payments to the secretary and its creditors by telex, telegram or any other means of rapid written communication 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 50% shall be entitled to set off any debts which they may have to the insolvent party against any claims which the non-insolvent party has on the insolvent party. If the non-insolvent party has a debt to the insolvent party, it shall be entitled to set off its debts against any claims which its holding company or any other companies belonging to the group as defined above may have on the insolvent party.
The insolvent party shall only be entitled to or be liable for any remaining balance(s), if any.
The settlements mentioned in this paragraph may be made irrespective of the origin of the claims and debts involved, as long as they are not disputed.
In case of disputes any amounts due to the insolvent party may be retained by the parties involved until all disputes concerned have been finally settled by arbitration of the competent Association(s) or otherwise and/or, as the case may be, by the competent Court(s).

Article 13.

Non-working days and business hours.

1. Saturdays, Sundays, public holidays and any day or part of a day which the Association shall declare to be a non-working day at the place where acts have to be performed in execution of this contract, shall not be considered as working days.
2. Should the timelimit 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.

Article 14.

Dutch Law.

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

Article 15.

International Convention(s).

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

Article 16.

Arbitration.

1. Any dispute arising out of this contract, as well as any dispute arising out of further agreements resulting from this contract, shall be exclusively referred to arbitration in accordance with the Rules for Arbitration of NOFOTA (the Netherlands' Oils, Fats and Oilseeds Trade Association), Oils, Fats and Allied Products Division, Rotterdam, in force on the date of this contract.
2. Persons through whose intermediary this contract was concluded and who have signed the sold and/or bought notes shall submit to the aforementioned arbitration any dispute which may arise either out of this contract or out of their intermediary. They may be called upon as third parties in a dispute between the buyers and the sellers.
3. A dispute shall also then be deemed to exist, if one of the parties fails to pay a claim of the other party without contesting the correctness thereof.
4. Subject to the provisions of article 7, paragraph 10 application for arbitration shall, on pain of losing the right to make a claim, be made in accordance with the Rules for Arbitration within 3 months after the day on which the dispute has arisen, exceptional cases, at the discretion of arbitrators, excepted. The party applying for arbitration shall notify the other party of the application at the same time.
In a string and in a circle applications for arbitration shall also be allowed after expiry of the 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.