



## TERMS AND CONDITIONS OF SALE AND DELIVERY ADM GROUP AS OF 18 SEPTEMBER 2018

### PART 1 – GENERAL TERMS AND CONDITIONS

These Terms and Conditions of Sale and Delivery apply to all agreements between the **Archer Daniels Midland Group** companies set out in 1.1 (“**ADM**”) and a customer (“**Purchaser**”) for the sale and delivery of goods from ADM (“**Goods**”).

#### Section 1 - General

**1.1 ADM company:** ADM International Sàrl, Rolle, Switzerland; ADM Hamburg Aktiengesellschaft, Hamburg, Germany; Archer Daniels Midland Europe B.V., Amsterdam, The Netherlands; Archer Daniels Midland Erith Ltd, Erith, England; Pura Foods Ltd, Erith, England; Archer Daniels Midland (UK) Ltd, Erith, England; ADM Trading (UK) Ltd, Erith, England; Société Industrielle des Oléagineux, Saint-Laurent Blangy, France, Amylum Bulgaria EAD, Razgrad, Bulgaria, AMYLUM NISASTA SANAYI VE TICARET A.S, Adana, Turkey, ADM Morocco S.A., Casablanca, Morocco, the subsidiaries of the above-mentioned companies and other companies under the ultimate control of Archer-Daniels-Midland Company located in Europe and Middle East and operating in the ADM business segments of Agricultural Services, Oilseeds Processing and Sweeteners & Starches as may be applicable from time to time.

**1.2 Exclusive application.** Where industry standard terms are referred to in the ADM sales confirmation these shall prevail. Subject to the foregoing, the Purchaser acknowledges that all existing and future purchase agreements for Goods shall be governed by these Terms and Conditions of Sale and Delivery (referred to hereinafter as “the **Conditions**”) to the exclusion of all other terms and conditions. Any separate purchase conditions of the Purchaser are expressly not acknowledged by ADM. The same shall apply to sales conditions of commercial agents.

**1.3 Contractual subject-matter.** The contractual subject-matter comprises the written sales confirmation from ADM together with these Conditions. In the event of a conflict between these Conditions and any special terms and conditions referred to in the written sales confirmation the latter shall prevail. Any subsidiary oral arrangements are subject to confirmation in writing by ADM. The failure on the part of the Purchaser to return the counter-signed sales confirmation to ADM shall not affect the validity of the terms stated above and hereinafter.

#### Section 2 - Delivery

**2.1 Scope of duty to deliver.** Delivery shall be made within the agreed delivery period at a time chosen by ADM. Where delivery is spread over several months, it shall – in the absence of any other arrangements – take place monthly in approximately equal installments. ADM shall be obliged to supply only within the scope of its existing capacities and taking account of prior orders placed by other customers. ADM shall be entitled to make partial deliveries. In the event of several agreements being processed at the same time, with the same subject-matter and delivery period, ADM shall exercise its equitable discretion in determining the sequence of performance. ADM shall be entitled at all times to supply Goods equivalent in quality to its own but always subject to the proviso that the Goods shall in every respect be at least equal or superior in quality. In the case of delivery “ex production”, the Purchaser shall accept delivery in accordance with the production requirements of the ADM supplying plant. Delivery can always be made from other locations than those specified in the contract, subject to mutual netting of any differences in freight.

**2.2 Delivery to third parties.** Delivery to third parties, in particular to forwarding agents, shall only be made if a requisition is accompanied by clearance certificates duly issued in the name of the ADM supplying plant, the requisition and clearance certificate correspond exactly in terms of quantities and the requisition sets out the respective contract number and lading reference.

**2.3 Delivery period.** In determining the delivery period, the expression “immediate” shall mean within three (3) working days (in the case of ship cargo five (5) working days) and the expression “prompt” shall mean within ten (10) working days. The day on which the contract of sale was concluded shall not be included in this calculation. For the purpose of these Conditions, “working days” shall mean Monday to Friday, excluding statutory and customary public holidays at the place of loading or shipment.

**2.4 Tendering.** ADM shall be entitled to tender the Goods at any time within the delivery period at its discretion. However, the tender or delivery notice shall be given at least five (5) working days before the planned shipment date.

**2.5 Shipping order.** The Purchaser must issue a shipping order at least five (5) working days before the designated delivery date. If the Purchaser fails to issue executable shipping instructions within five (5) working days (in the case of immediate delivery, within two (2) working days) following tender ADM shall be entitled, after the expiry of a grace period set out in Clause 2.6, (i) to demand specific performance and claim damages for the delay in performance, (ii) to rescind the contract or the part not yet performed and claim damages at any time or (iii) to claim damages in lieu of performance or, alternatively, payment against presentation of its own delivery note or a delivery note issued by the warehouse manager. If the Purchaser fails to issue an executable shipping order by the date specified, the Goods intended for the Purchaser shall be stored at the Purchaser's expense and risk on ADM's premises or on the premises of a third party; in addition, ADM shall be entitled to postpone delivery by the same number of working days as the Purchaser was in arrears in addition to a reasonable period for making appropriate arrangements. ADM shall also be entitled to assert the rights set out above in relation to orders deliverable on call, if the Purchaser fails to issue an executable shipping order by the end of the delivery period.

**2.6 Period of grace.** The periods of grace prescribed under Clause 2.5 shall be (i) at least two (2) working days in the case of sales with immediate delivery, (ii) at least three (3) working days for sales with a delivery period longer than "immediate" up to and including "prompt" delivery, (iii) at least three (3) working days for meal sales with a longer delivery period than "prompt" and at least five (5) working days for all other sales with a longer delivery period than "prompt".

**2.7 Assessment of damages.** If ADM claims damages in lieu of performance under Clause 2.5, it may, where applicable under local law, effect assessment of such damage, inter alia, by means of sale ("Selbshilfeverkauf") or price determination ("Preisfeststellung") performed by a third party (e.g. broker). The reference date for price determination shall be the first (1) working day following the expiry of the period of grace.

**2.8 Delays in delivery.** ADM shall make every effort to adhere to the agreed dates and times of delivery. However, ADM shall be released from adherence to contractual delivery dates and periods to the extent that and as long as circumstances occur, either in the home country or abroad, which substantially impede performance ("substantial impediment to performance"). All difficulties, irrespective of their nature, the sphere and segment of the supply chain in which they occur, such as force majeure and acts of God (e.g. floods and low water, ice, delay in and/or loss of harvest, etc), export and import restrictions, problems in procuring commodities, disruptions of operations (e.g. breakdown of machinery, fire, etc.), strikes or any similar actions, states of emergency or loading and transportation difficulties are deemed to be substantial impediments to performance.

**2.9 Consequences of delays in delivery.** In the event of a substantial impediment to performance under Clause 2.8, ADM is entitled to (i) rescind the contract with immediate effect without damages or (ii) extend the agreed delivery period by the duration of such impediment and the time required to make adjustments to production schedules as a consequence thereof by up to five (5) months ("extension period"). ADM shall be entitled but not obliged to supply Goods equivalent to those contractually agreed or to replace failed deliveries with third-party goods of equal value within the extension period. After expiry of the extension period, the contract may be rescinded at the request of either party. If continuation of the contract appears unreasonable for either party before the extension period has expired, that party may rescind or terminate the contract. ADM shall notify the Purchaser of the duration of the extension period.

### **Section 3 – Loading and packaging**

**3.1 ADM's right of choice.** In the absence of any provisions on the part of the Purchaser, ADM shall be entitled to choose the route and means of transport for the Goods. In doing so, ADM shall take reasonable account of the Purchaser's interests. ADM does not guarantee that the cheapest means of transportation will be chosen in every case.

**3.2 Shipments by rail.** In the case of shipments by rail, ADM shall be entitled to effect shipment to the Purchaser's own address after having notified the Purchaser accordingly.

**3.3 Consignments by ship.** ADM shall not be responsible if the vessel contracted for shipment is not available in the event of the shipping company having made other arrangements for the vessel.

**3.4 Loading time.** The loading of the Goods shall be performed within the working hours specified by ADM. All costs arising from delays in loading for which ADM is not responsible such as demurrage and transport costs, shall be borne by the Purchaser. In other respects the respective terms of delivery agreed from time to time shall apply.

**3.5 Purchaser's acceptance of Goods.** If the Goods are loaded onto vehicles provided by the Purchaser, the loading is to be effected within the working hours specified by ADM in accordance with operational requirements and, if necessary, also in several shifts. If the Purchaser is unable to provide its own crew for loading operations in accordance with operational requirements, ADM shall endeavor to make professional staff available for this purpose at the Purchaser's expense. The loading of watercraft shall be effected in accordance with local practice.

**3.6 Acceptance of Goods by third parties.** If the Goods are accepted by a third party on behalf of the Purchaser (in particular a forwarding agent or freight carrier), the bills of lading/consignment notes issued to "order" or endorsed in blank shall be handed to ADM upon request.

**3.7 Assumption of risk.** Risk while the Goods are in transit shall be borne by the Purchaser unless otherwise stipulated in the respective terms of delivery. Any liability of ADM due to inappropriate packaging or loading shall cease once the Purchaser or a third party has accepted the Goods without objection.

**3.8 Suitable means of transportation.** Unless otherwise specified in the respective terms of delivery, the Purchaser shall be responsible for the provision of suitable means of transport at the time of acceptance of the Goods. The means of transport shall only be deemed to be suitable if it meets all statutory requirements and any other regulation at the time of loading, throughout the transit period and during unloading. ADM is entitled to reject a means of transport deemed to be unsuitable and to effect delivery by third-party means of transport at the Purchaser's expense.

## Section 4 – Quality, weight, sampling

**4.1 No warranty of properties.** The Goods delivered by ADM shall be of merchantable quality. The warranty of a specific property shall only be deemed to apply if such property has been expressly guaranteed in writing by ADM. For further details, please refer to the respective product specifications, if any.

**4.2 Samples.** If the Goods are sold on the basis of samples, the sample shall be representative only. No warranty is given that the Goods shall correspond with the sample.

**4.3 Permissible weight fluctuations.** ADM may fall below or exceed the agreed quantity by 5%, with 2% thereof to be charged at the contract price and up to a further 3% at price on day of delivery. ADM shall determine the quantity of Goods with binding effect for both parties applying methods commonly used by ADM for such purposes. Upon prior consultation with ADM, the Purchaser may, together with a qualified representative, participate in the procedure for determining the quantity of Goods.

**4.4 Rules relating to sampling.** Sampling shall only be performed at the place of shipment by an expert sampler at the Purchaser's request and expense. The Purchaser shall notify ADM of the request for sampling in due time, at the latest when the shipping order is placed.

**4.5 Conclusiveness of sampling.** If a sample has been taken, it shall be conclusive in determining the quality of the Goods. In all other cases the sample taken at the ADM supplying plant shall be conclusive.

## Section 5 – Notice of defects

**5.1 Duty of inspection and notification.** The recipient shall carefully inspect the Goods immediately prior to acceptance/acknowledgement of receipt thereof. In the event of a claim, ADM shall immediately be notified in writing or by facsimile with a detailed statement of reasons. The Goods in question must be retained in their transport containers on site to enable ADM to assess whether the claim is justified.

**5.2 Replacement delivery.** Should the claim be justified and raised in due form within the given period, ADM is entitled in the first instance to take back the defective Goods and replace them with Goods con-

forming to the contract. If ADM fails to effect replacement delivery, the Purchaser may reduce the purchase price. The time limit for these claims is one (1) year after delivery of the Goods, even if possible defects are only detected at a later date.

**5.3 Processing and reshipment.** Before commencing processing, the Purchaser shall determine whether the delivered Goods are suitable for their intended purpose, particularly for subsequent processing purposes. Once the delivered Goods are treated or processed, mixed or combined with other materials, they shall be deemed to have been approved by the Purchaser as complying with the contract. Any warranty claims – in particular, claims for damages – shall be excluded thereafter. This shall also apply with respect to reshipment of the Goods from the original place of delivery.

## **Section 6 - Liability**

**6.1 Extent of liability.** In the event of any breach of duty – irrespective of whether such breach is based on a pre-contractual, contractual or non-contractual duty – ADM shall only be liable for damages and reimbursement of costs in the event of intent or gross negligence, subject to any other contractual or statutory conditions precedent to liability. ADM shall in no event be held liable for any damage caused by vicarious agents.

**6.2 Limitation of liability.** Except in the case of intent, ADM's liability is limited to loss or damage which was foreseeable at the time the contract was concluded up to a maximum amount equivalent to the purchase price agreed with ADM. ADM's liability for loss or damage caused by delay is limited to a maximum of 5% of the purchase price agreed with ADM.

**6.3 Consequential loss or damage.** Except in the case of intent, liability for indirect and consequential loss or damage in particular loss of profit, is excluded.

**6.4 Limitation of time.** All claims for damages against ADM shall lapse no later than one year after the Goods have been delivered to the Purchaser; in the event of liability in tort, from the date of knowledge or grossly negligent lack thereof with regard to the circumstances supporting the claim and the identity of the person liable for damages. Any shorter statutory limitations periods shall take precedence.

**6.5 Set-off by ADM.** The Purchaser agrees that ADM may apply by way of set-off an amount equal to any monies or other liability owing from time to time by the Purchaser or any member of the Purchaser's group to ADM against any monies or other liability owing by ADM to the Purchaser.

## **Section 7 – Prices and terms of payment**

**7.1 Increase in prices.** ADM is entitled to increase the price retroactively to reflect additional prime costs such as higher levies and energy costs or insurance premiums as well as hardship allowances (e.g. in the event of flood/low water or ice).

**7.2 Carriage paid.** Unless expressly agreed otherwise, e.g. in the respective terms of delivery, the Purchaser shall bear any additional freight costs as well as specific packaging costs that go beyond standard packaging, incidental charges, public levies and customs duties.

**7.3 Taxes.** All agreed prices shall be exclusive of any tax, i.e. the current energy and value added tax as well as any other applicable taxes and duties shall be paid by the Purchaser in addition to the agreed prices..

**7.4 New obligations.** Should any further-reaching or new obligation of any kind, affecting the terms of the contract, be imposed on ADM by sovereign or official regulations after conclusion of the individual contract, the consequences and additional costs form part of the contract and shall be assumed by the Purchaser vis-à-vis ADM.

**7.5 No discount.** In the case of deliveries of the Goods subject to tax, levies or similar charges, the respective amount of tax or levy shall be paid net, i.e. without a discount being granted.

**7.6 Bills of exchange and cheques.** Bills of exchange and cheques shall only be accepted on account of performance, and bills of exchange only if payment by bill of exchange is agreed in the contract. If payment by bill of exchange has been agreed, the drafts sent by ADM to the Purchaser must be returned to ADM free of any charges within seven days of the date of dispatch, endorsed with acceptance and bank domicile. Discount and bill charges as well as default interest shall always be payable immediately.

**7.7 Due date.** The Purchaser shall be deemed to be in default without a reminder if it fails to effect payment when due unless it proves promptly that it is not responsible for the delay in payment.

**7.8 Default interest.** If payments are past due, such overdue amounts shall be subject to the statutory interest at an annual rate set forth in the Article 73 of Swiss Code of Obligations. ADM may assert claims for further loss or damage.

**7.9 Set-off, right of retention.** Retention of payment or set-off by the Purchaser shall be permissible only if the counterclaims are uncontested or have been finally adjudicated by a court of law.

**7.10 No authority to collect.** ADM's representatives or employees are not permitted to collect any payments without specific written authorization.

## **Section 8 - Customs, foreign trade and excise duty**

**8.1 Excise duty.** The following shall apply to Goods which are subject to excise duty (where such Goods are intended to be used as motor- or heating fuel): in advance of any delivery of the Goods, the Purchaser shall inform ADM about the intended use of the Goods to be delivered, if ADM has provided the Purchaser with an order template (*Kundenabruf*), on such template or, if ADM has not provided the Purchaser with such template, otherwise in writing, by fax or electronically. In addition, the Purchaser shall provide ADM with all information and documents required by ADM to observe the laws and regulations relating to excise duty. In the case of delivery of Goods subject to excise duty the Purchaser shall observe the applicable laws and regulations. In the case of deliveries of Goods under duty suspension, the Purchaser shall in particular be required promptly following delivery to register such Goods into its tax warehouse. The Purchaser shall, upon first request of ADM, indemnify and hold harmless ADM from and against any claim for excise duty or other payments arising from the Purchaser's violation of the obligations under this Clause 8.1.

**8.2 Customs and export regulations.** To the extent that ADM imports Goods into the customs territory of the European Community for the Purchaser under this contract, the Purchaser shall observe the relevant laws and regulations relating to customs. In addition, the Purchaser shall provide ADM with all information and documents required for ADM to observe the applicable laws and regulations. In the event that

the Purchaser intends to use the Goods as heating fuel for technical or industrial purposes, and to claim preferential treatment under customs law the Purchaser shall, without prejudice to its other obligations under this Clause 8.2, inform ADM of such fact in writing and in due time. In such cases, the Purchaser hereby declares to be the holder of all customs authorisations required for release of the delivered Goods into free circulation for specific use. Where the Purchaser himself or a third party designated by him exports the Goods from the customs territory of the European Community, the Purchaser shall also observe all applicable export regulations, in particular those of the European Community, the individual member states of the European Union and the United States. The Purchaser shall, upon first request of ADM, indemnify and hold harmless ADM from and against any claim for customs duties or other payments arising from the Purchaser's violation of the obligations under this Clause 8.2.

**8.3 Embargos.** ADM's performance of this contract shall be subject to the condition that there are no national or international rules relating to foreign trade legislation and no embargoes and/or other sanctions to the contrary.

## **Section 9 – Rights of ADM**

**9.1 Refusal of performance.** ADM may refuse performance under the contract, if

- (i) the Purchaser falls into arrears with the acceptance of a delivery or payment under this contract or any other contract concluded with an ADM company,
- (ii) doubts arise as to the Purchaser's solvency and willingness to pay,
- (iii) the Purchaser's company is liquidated or transferred to a competitor of ADM or
- (iv) the credit limit of ADM's credit insurance for the delivery of the Goods is exceeded.

In such cases, ADM shall also be entitled to demand advance payment from the Purchaser subject to the deadline set out in Clause 2.6 or the provision of a bank guarantee agreed with ADM. Upon expiration of the deadline, ADM may rescind the contract or the part thereof not yet performed without any liability for damages. In the case of (i) above the joint and several

claims of all ADM companies against the Purchaser shall become due immediately, even if bills of exchange or cheques had been provided to this end or payment has been deferred.

**9.2 Advance Payment.** ADM is entitled at any time to demand payment in advance against delivery notice of Goods cleared for loading.

**9.3 Assignment.** The contracting ADM company is entitled to assign, without the consent of or notice to the Purchaser, (a) any and all contractual rights and obligations to another company in the Archer Daniels Midland Group, including, but not limited to, the ADM companies listed in Clause 1.1 and (b) any and all rights to receive payment under any contract with Purchaser to another company in the Archer Daniels Midland Group, including but not limited to, the ADM companies listed in Clause 1.1, or to a third party.

## **Section 10 – Retention of title**

**10.1 Retention of title.** All Goods delivered (“**Goods under retention of title**”) shall remain the property of ADM until all claims including any future or conditional claims arising under contracts concluded concurrently or at a later date have been met.

**10.2 Ownership of processed Goods.** Retention of title under Clause 10.1 shall continue to apply where the Goods under retention of title undergo treatment or processing. In the event that the Goods under retention of title are processed, combined and mixed with other materials by the Purchaser, ADM shall acquire co-ownership of the new product in the ratio of the invoice value of the Goods under retention of title to that of the other materials used. If ADM’s ownership ceases as a result of combining or mixing, the Purchaser hereby assigns title to the new products or materials to the extent of the invoice value of the Goods under retention of title and shall store these on ADM’s behalf free of charge. The Goods subsequently co-owned by ADM shall be deemed to be Goods under retention of title pursuant to Clause 10.1 above.

**10.3 Re-sale by Purchaser.** The Purchaser may only re-sell, process or mix the Goods under retention of title with other materials in the ordinary course of its business and if it is not in default. Pledges and transfer of ownership as security shall not be permitted. If payment of the purchase price by the customer is de-

ferred the Purchaser shall retain title to the Goods under retention of title vis-à-vis its customer on the same terms and conditions applied by ADM to retain title of the Goods. The Purchaser is not, however, obliged to also retain title in respect of claims against its customer arising in the future.

**10.4 Assignment and collection of claims.** In the event of re-sale of the Goods under retention of title, the Purchaser hereby assigns to ADM as security claims for sums due to the Purchaser from the re-sale – where ADM co-owns the Goods under retention of title in proportion to ADM’s co-ownership rights. The same applies to any other claims superseding the Goods under retention of title or otherwise arising with respect to these, such as insurance claims or tort claims in the event of loss or destruction. ADM hereby revocably authorizes the Purchaser to collect the claims assigned to ADM in its own name and for the account of ADM. ADM may only revoke this collection authority in the event of realization.

**10.5 Duty of notification.** In the event of seizure of the Goods under retention of title by any third party, in particular by attachment, the Purchaser shall immediately disclose to such third party ADM’s ownership of the Goods and notify ADM thereof accordingly to enable ADM to assert its ownership rights. To the extent that the third party is unable to reimburse ADM for the legal costs incurred in this connection, the Purchaser shall be liable for payment of such costs.

**10.6 Event of realization.** Should ADM rescind the contract due to a breach by the Purchaser of any terms of the contract, in particular in the event of delayed payments ADM has the right to demand the return of Goods under retention of title.

**10.7 Release.** If requested, ADM shall release the Goods under retention of title and any items or claims superseding them at its discretion to the extent that their value exceeds the amount of secured claims by more than 50%.

## **Section 11 – Final provisions**

**11.1 Place of performance.** The place of performance for delivery and payment shall be the seat of the contracting ADM company.

**11.2 Sanctions and Anti-boycott.**

Each party respectively represents and warrants to the other to best of its knowledge that neither it nor any person or entity that owns or controls it or that it owns and controls is a designated target of any trade, and/or economic and/or financial sanction or sanctions (including without limitation any relevant law, regulation, order, ordinance, resolution, decree, restrictive measure or other requirement having the force of law), adopted by the U.S., E.U. (or its respective Member States), U.N., Switzerland, or the country of origin of the Goods (collectively “Sanctions”). Each party respectively agrees and undertakes to the other that it and its agents, contractors, and representatives will fully comply with the requirements of all applicable Sanctions in the performance of the contract.

ADM agrees and undertakes to Purchaser that the Goods will not directly or indirectly originate from, be provided by or be transported on a vessel or by a carrier owned, flagged, chartered, managed or controlled, directly or indirectly, by any country, person, entity, or body, or for the purpose of any commercial activity, that would cause Purchaser or a person subject to U.S. jurisdiction to be in violation of applicable Sanctions and/or export or re-export controls. If Purchaser requires, ADM shall provide Purchaser with appropriate documentation for the purposes of verifying the origin of the Goods. Purchaser has the right to reject any restricted originating country, vessel, transit route, person or entity that would cause the performance of the contract to violate any applicable Sanctions or which would cause Purchaser or its agents, contractors or representatives or a person subject to U.S. jurisdiction to be in violation of or be penalized by any applicable Sanctions.

Purchaser agrees and undertakes to ADM that the Goods will not be:

- (i) resold to;
- (ii) disposed of by; or
- (iii) transported on a vessel, or by a carrier, owned, flagged, chartered, managed or controlled by, directly or indirectly to,

any country, person or entity, or for the purpose of any commercial activity, which would cause ADM or a person subject to U.S. jurisdiction to be in violation of applicable Sanctions and/or export or re-export controls. If ADM requires, Purchaser shall provide ADM with appropriate documentation for the purposes of verifying the final destination of the Goods. ADM has the right to reject any restricted destination, vessel, transit route, person or entity that would cause

the performance of the contract to violate any applicable Sanctions or which would cause ADM or its agents, contractors, or representatives or a person subject to U.S. jurisdiction to be in violation of or be penalized by any applicable Sanctions.

Purchaser further represents and warrants that it will not make payment for the Goods through or via such country, bank, or other entity or body or facility, as would cause ADM or a person subject to U.S. jurisdiction, directly or indirectly, to be in violation of or be penalized by any applicable Sanctions. Should payment for the Goods be impeded, blocked, delayed, or prevented, for longer than three business days, by reason of Sanctions or their alleged applicability, Purchaser shall use its best endeavours to make payment by alternative lawful means that do not, directly or indirectly, violate any Sanctions, (insofar as they apply or are applied or implemented by banks, governments, or other lawfully-constituted authority whatsoever), unless any such payment problems are a result of ADM’s violation of the Sanctions.

The parties will not cooperate with, agree to, or comply with any terms or requests, including documentary requests, which violate or are otherwise prohibited or penalized under the Anti-Boycott laws or regulations of the U.S.

Without prejudice to the foregoing, the parties agree to cooperate with each other’s reasonable requests for information and/or documentary evidence to support and/or verify compliance with this clause.

**11.3 Anti-corruption.** Each party respectively agrees and undertakes to the other that, in connection with the contract, it will fully comply with all applicable laws, regulations, orders, ordinances, resolutions, decrees, or restrictive measures and/or other requirements having the force of law of the U.S., E.U. (or its respective Member States), U.N., Switzerland, or the country of origin of the Goods relating to anti-bribery and anti-money laundering (“Applicable Legislation”). In particular, each party respectively represents, warrants and undertakes to the other that it shall not, directly or indirectly,

- a. pay, offer, give or promise to pay or authorize the payment of, any monies or other things of value to, or confer a financial advantage on:

- i. a government official or an officer or employee of a government or any department, agency or instrumentality of any government;
- ii. an officer or employee of a public international organisation;
- iii. any person acting in an official capacity for or on behalf of any government or department, agency, or instrumentality of such government or of any public international organisation;
- iv. any political party or official thereof, or any candidate for political office;
- v. any other person, individual or entity at the suggestion, request or direction or for the benefit of any of the above-described persons and entities; or

b. engage in other acts or transactions:

in each case if this is in violation of or inconsistent with the Applicable Legislation, including, without limitation, the U.S. Foreign Corrupt Practices Act and applicable country legislation implementing (in whole or in part) the OECD convention on combating bribery of foreign public officials in international business transactions.

**11.4 Applicable law.** The contract shall be governed by Swiss substantive law. The applicability of the UN Convention on the International Sale of Goods is excluded.

**11.5 Place of jurisdiction.** Any disputes arising from or in connection with contracts to which the Conditions apply shall exclusively be settled in the courts having jurisdiction at the contracting ADM company's domicile. ADM may also bring proceedings against the Purchaser before the competent court having jurisdiction at the Purchaser's domicile.

**11.6 Severability.** If at any time any provision of the Conditions is or becomes invalid this shall not affect the validity or enforceability of the remaining provisions. In this case, the provision in question shall be replaced with a provision with a similar economic effect to that intended by the parties.

**11.7 Written form.** No variation of the Conditions including this clause regarding written form shall be effective unless made in writing.

## PART 2 – SPECIAL TERMS AND CONDITIONS

The following special terms and conditions shall apply to the sale and delivery of particular categories of Goods. In the event of a conflict between the General Terms and Conditions set out in Part 1 and any Special Terms and Conditions set out below then the latter shall prevail.

### Section 1 – Meal

The following special terms shall apply to meal sales:

**1.1 Quality settlement.** The moisture and natural foreign material levels shall not form an independent basis of claim. The following exception shall apply to soya meal: The basis for quality settlement in respect of moisture shall be 14% in the period from 16 September to 15 April and 13% in the period from 16 April to 15 September. Any special terms on moisture referred to in the ADM sales confirmation shall prevail. In the event that these values are exceeded by more than 0.5% or the crude fibre level exceeds the agreed value the contract price shall be reduced by the amount of percent that the agreed values are exceeded.

The price is based on the levels of protein and fat stipulated in the contract. The settlement basis for compensation of a possible lower content shall be the total of both values. Settlement shall be made in a ratio of 1:1.

**1.2 Claims procedure.** Claims based on the substance of content of the Goods can only be made on the basis of samples taken in accordance with Clause 4 of Part 1. If the Purchaser requires the analysis of such a sample he shall send this to a laboratory (sworn Hamburg or Bremen commercial chemist or the Anstalt des Verbandes Deutscher Landwirtschaftlicher Untersuchungs- und Forschungsanstalten or another laboratory agreed between the parties) within 5 working days of receipt of the sample. In the event that the results of the analysis differ from the agreed value ADM has the right to arrange a control analysis by another of the laboratories listed above. If the difference between the two results does not exceed 1% the mean of the two results shall form the basis for settlement. If the results of the two analyses vary significantly both parties have the right within 8 working days after receipt of the second analysis to demand a third analysis. The laboratory shall be determined by ADM. In such a case the mean of the two results closest to each other shall

form the basis for a possible settlement. If a settlement is to be made the costs of all analyses shall be borne by ADM otherwise by the Purchaser.

In the case of claims other than those dealt with under Clause 1.2 the Purchaser shall notify ADM by fax immediately after receipt of the Goods and confirm in writing giving a detailed statement of reasons. If samples have been taken at the place of dispatch these shall be decisive for the assessment of the Goods.

The rejected Goods must be stored separately and must not be processed to enable ADM to assess whether the claim is justified.

### Section 2 – Sweeteners & Starches

The following special terms shall apply to Sweeteners & Starches to the extent that they are consistent with any special terms set out in the contract:

**2.1. Shipping Order.** The Purchaser shall deliver to ADM an executable shipping order during working hours and in advance as per the agreed delivery lead-time stated in the ADM sales contract or as confirmed by ADM in the purchase order confirmation. No order shall be deemed to be accepted by ADM until written acknowledgement thereof is issued by ADM or (if earlier) ADM delivers Goods to the Purchaser.

**2.2. Delivery.** The Purchaser shall unload the Goods within 2 hours upon arrival, if this time is exceeded, ADM has the right to charge the related extra costs to the Purchaser.F

**2.3 Permissible weight fluctuations.** For Goods in bulk, weight ascertained at time of dispatch will be used for invoicing unless the Parties agreed otherwise. In the event of recurring weight differences above 0.5% proven by the Purchaser based on weighbridge tickets from a certified weighbridge, parties will cooperate in investigating the cause of such discrepancy. Subsequently, the Purchaser's or ADM's weighbridge may be adjusted and credit for the weight differences issued to the Purchaser.

### Section 3 – Rapeseed meal

The following terms and conditions shall apply to rapemeal sales in the United Kingdom

**3.1 Goods:** Extracted Rapeseed meal of EU manufacture in bulk Produced from Conventional Rapeseed - 00 -, which is not subject to the labelling requirements specified in current EU regulations.

**3.2 Quality:** Min 34.5% Profat combined, Moisture as per Fediol moisture clause, as determined at loading by ADM Erith Laboratory.

#### 3.3 Ex-Mill

**3.3.1 Quantity:** 1% more or less, or 5 tonnes whichever is the greater; in equal weekly quantities or as otherwise mutually agreed; Erith weights final.

<b>3.3.2 Loading:</b>	Period 1	0600 – 0900
	Period 2	0900 – 1300
	Period 3	1300 – 1700
	Period 4	1700 – 2100

**WAITING TIME:** Where vehicles have booked in during the allocated collection period waiting time is payable by ADM at £25/hour for every waiting hour after two hours up to 2100. Waiting time will recommence at 0600 the following day. £25 per load will be payable for delayed loads having to stay overnight.

**3.3.3 Notice:** ADM reserve the right to close the program for ex-mill collections without prior notice.

**3.3.4 Terms:** All terms and conditions, including the arbitration and appeal clause, contained in the GAFTA 4, subject to the following amendments:

**3.3.4.1 Amendment to Clause 7 Period of Delivery:** Each delivery period (normally one month) shall be considered a separate contract. Purchaser shall collect the Goods ex works within the period specified in the contract. Should Purchaser, through no fault of ADM, fail to collect the contract quantity either in whole or part by the end of the contract period, Purchaser shall pay the purchase price in accordance with the payment terms as if collection had been made. In addition ADM has the option, after notification in writing, to either deliver the quantity due for collection either in whole or in part to a third party store/warehouse at Purchaser's risk with all charges for Purchaser's account or to charge the Purchaser a mutually agreed amount to delay collection to a specified date Should ADM, through no fault of Purchaser, fail to make Goods

available for collection within the specified period of contract, the ADM shall make the Purchaser an allowance of £0.50 per tonne for any portion of the contract tonnage not collected. If ADM fails to make the Goods available after the 14th day following the delivery period an additional allowance of £1 per tonne will be made for the quantity not made available and subsequently an allowance of £1 per tonne for every 14 days further delay until delivery is completed. ADM may at their option tender in satisfaction of this contract the Goods of equivalent quality of another manufacture.

**3.3.4.2 Amendment to Clause 8 Part Deliveries:-** ADM may, at their option, not make the Goods available for delivery if payment for earlier deliveries is overdue.

#### 3.4 Delivered

**3.4.1 Quantity.** 1% more or less, or 5 tonnes whichever is the greater; in equal weekly quantities or as otherwise mutually agreed; Erith weights final.

**3.4.2 Notices.** Purchaser to give a minimum of 5 working days' notice before delivery date.

**3.4.3 Delivery Times.** Whilst every effort will be made, ADM offer no guarantee to deliver on specified days or times and accept no responsibility for any costs that may be incurred by the Purchaser as a result of deliveries failing to arrive on requested days or times.

**3.4.4 Demurrage.** All waiting time at customer works for Purchaser's account.

**3.4.5 Terms:** All terms and conditions, including the arbitration and appeal clause, contained in the GAFTA 4, subject to the following amendments:

**3.4.5.1 Replacement of Clause 7 Period of Delivery** Each delivery period (normally one month) shall be considered a separate contract. Purchaser shall collect the Goods delivered at the contracted destination within the period specified in the contract. Should Purchaser, through no fault of the ADM, fail to take delivery of the contract quantity either in whole or part by the end of the contract period, Purchaser shall pay the purchase price in accordance with the payment clause as if collection had been made. ADM has the option, after notification in writing, to deliver the quantity due for collection either in whole or in part to a third party store/warehouse at Purchaser's risk with all charges for Purchaser's account. Should ADM, through no fault of Purchaser, fail to deliver the Goods within the specified period of contract, the ADM shall

make the Purchaser an allowance of £0.50 per tonne for any portion of the contract tonnage not delivered. If ADM fails to make the Goods available after the 14th day following the delivery period an additional allowance of £1 per tonne will be made for the quantity not made available and subsequently an allowance of £1 per tonne for every 14 days further delay until delivery is completed. ADM may at their option tender in satisfaction of this contract the Goods of equivalent quality of another manufacture.

**3.4.5.2 Addendum to Clause 8 Part Deliveries.**

ADM may, at their option, not make the Goods available for delivery if payment for earlier deliveries is overdue.

**3.5 FOB**

**3.5.1. Quantity.** 5% more or less at Purchaser's option at contract price or as otherwise mutually agreed.

**3.5.2 Delivery.** ADM shall be entitled to receive at least 10 consecutive days pre-advance notifying an intention to put a named vessel or TBN vessel with the specific dates, unless otherwise mutually agreed.

**3.5.3 Payment.** 100% Cash on first presentation of documents.

**3.5.4 Extension.** No extension unless agreed by ADM.

**3.5.5 Terms.** All other terms and conditions, including the arbitration and appeal clause, contained in the GAFTA 119.

**3.6 CIFFO**

**3.6.1 Quantity.** 10% more or less at ADM's option at contract price.

**3.6.2 Payment.** 100% cash on first presentation of documents.

**3.6.3 Terms:**

**3.6.3.1 For Shipment Contracts.** All other terms and conditions, including the arbitration and appeal clause, contained in GAFTA 100

**3.6.3.2 For Arrival Contracts.** All other terms and conditions, including the arbitration and appeal clause, contained in the GAFTA 95.

**3.6.3.3 For Declared Ports.** One safe berth – one safe port suitable vessels of similar size and draft on expected dates.

## Section 4 – Seed for sowing

The following terms and conditions shall apply to seed sales in the United Kingdom.

**4.1. Goods.** Seed which is not subject to the labelling requirements specified in current EU regulations.

**4.2 Quality.** Seed is guaranteed to comply at the time of delivery with the UK Seed Regulations currently in force. All information whether contained in ADM catalogue or given by ADM's staff relation to varieties, varietal characteristics or periods of maturity or fitness for any particular purpose or otherwise relating to the performance of seeds, is given for general guidance only as variation in local or climatic conditions can render such information inaccurate. Purchasers are therefore advised that any such information given to them does not constitute a representation as to these matters and should not be relied on as such. Purchasers should satisfy themselves that any such seeds which they order are of a variety and/or mixture and performance satisfactory for their requirements and order such seeds at their own risk.

Unless otherwise agreed between the parties, any advice given by ADM or its staff to the Purchaser shall not form part of the contract. Purchasers are advised that ADM's staff have no authority to give more than general guidance as described above and ADM disclaims liability for any advice given or opinion expressed by them. Such advice is followed, or such opinion acted upon, entirely at the Purchaser's own risk.

**4.3 Availability.** Seeds are growing organisms and their growth is subject to pests, disease and climatic conditions. All sales of UK grown seeds are therefore subject to harvest and ADM reserves the right in the event of market shortages to apportion such supplies as become available among its customers at its sole discretion. Where seeds sold are imported, their sale is subject to supplies being made available to ADM by its normal supplier with whom the contract for their supply has been placed. In the event of failure of such supplies from abroad, and the seeds not being replaceable from other sources at a price no greater than that charged in the present contract, this sale agreement will be deemed to be cancelled without any liability to either party providing notice of such failure is given to the Purchaser at the earliest opportunity.

**4.4. Business Day / Non-Business Days.** A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognized national

holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation Ltd may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

**4.5. Delivery.** Each delivery or consignment shall stand as a separate contract. Delivery is at ADM's option. Where the contract specifies a particular delivery period, the Purchaser will accept delivery within that period.

**4.6. Retail Substitution.** In accordance with the usual practice of the trade, ADM reserves the right, in the event that the variety and/or mixture ordered is not available, to substitute at its option, a suitable alternative variety and/or mixture. If the substituted variety and/or mixture is not acceptable to the Purchaser, he must return it, unopened, to ADM within 14 consecutive days of receipt, after this any price paid and transport costs will be refunded in full. This contract will then be deemed to be cancelled without any liability to either party.

**4.7. Return of Seed.** The return of seed purchased under this Contract on credit, where such goods are found to be surplus to the requirements of the Purchaser, is at the complete discretion of ADM and ADM's prior agreement must be sought. Where an agreement for the return of seed is obtained a handling charge may be applied which will be made known to the Purchaser at the time agreement is given.

**4.8. Claims.** Claims based upon those defects of quantity, quality or condition which should be apparent upon reasonable examination by the Purchaser shall be advised immediately and confirmed by fax, e-mail or other electronic means or by letter sent by first class post, within two business days of arrival of the goods at their ultimate destination within the UK. In the event of a claim by the Purchaser, ADM reserves the right to inspect the goods prior to any further action being taken.

**4.9. Complaints.** No complaint under the terms of this contract can be considered unless clear proof can be given that the seed grown and alleged to have performed unsatisfactorily was in fact the seed supplied and that it was sown on suitable prepared ground, treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favorable crop.

**4.10. Farm Saved Seed.** The Purchaser shall ensure they comply promptly and fully with all legal obligations in relation to Farm Saved Seed, including the obligation to provide all relevant information upon request by or on behalf of the holder of relevant plant breeders' rights. These legal obligations are set out in various places, including Council Regulation (EC) No.2100/94; Commission Regulation (EC) No.1768/95; the UK Plant Varieties Act 1997 and the regulation and implementing rules granted under the Act, together with any subsequent amendments relating to all of the aforementioned.

**4.11. Seed Treatment.** (a) Where at the Purchasers request any treatment whether chemical or otherwise is applied to the seed, ADM's liability shall be limited to such treatment being carried out in the correct manner and/or in accordance with the instructions given by the manufacturer of the chemical in question. ADM accepts no responsibility whatsoever for the effectiveness of such treatment or any damage direct or consequential which may result therefrom.

(b) Where the seeds have been treated with a liquid or powder to control pests or diseases, or have been fumigated or pelleted, the purity and germination percentages are based on tests made before the treatment.

**4.12. Limitation of Liability.** ADM warrants that the seed supplied shall be of the species and type specified in the contract. ADM disclaims any and all other warranties, whether express or implied, including without limitation the warranties of merchantability, fitness for a particular purpose, and non-infringement.

In the event of any seeds sold not complying with the express terms of the contract of sale, or any of the correct species and type proving defective in varietal purity, ADM will at its option replace the defective seeds free of charge to the Purchaser or will refund all payments made by the Purchaser in respect of the defective seeds.

ADM shall not be liable for any loss or damage arising from the use of any seed supplied and for any consequential loss or damage arising out of such use or any failure in the performance of or any defect in any seeds supplied and for other loss or damage including any total or partial failure of the resultant crop since such failure can depend on many natural and other factors beyond ADM's control.

In accordance with the established custom of the seed trade, any express or implied conditions, statement or warranty, statutory or otherwise, not stated in these conditions are expressly excluded. The price of any

seeds sold or offered for sale is based upon the foregoing limitations of ADM's liability. The price of such seeds would be much greater if a more extensive liability were required to be undertaken. In accepting the seed upon these conditions, the Purchaser acknowledges that the limitation of ADM's liability is fair and reasonable.

**4.13. Latent Defect.** Disease of plants can be transmitted by the wind, insects, animals or human agencies and may also be seed borne or soil borne. ADM believes the seed hereby sold to be free from latent defect, but it is not a condition of sale nor does ADM warrant that any seed sold shall be free from such defect and will not be responsible in any way for the resultant crop.

**4.14. Plant Varieties & Seeds Act 1964 & Plant Varieties Act 1997.** The price of any variety which becomes the subject of a grant of plant breeders' rights under the Plant Varieties & Seeds Act 1964, as amended and/or the Plant Varieties Act 1997, as amended, will be adjusted to include the cost of any royalty payable to the owner of the rights. If, in the case of a variety which is already the subject of plant breeders' rights, there is any change in the rate of royalty payable to the owner of the rights, the price will be adjusted accordingly

**4.15. Default.** In the event of default of fulfillment of contract by either party, the other at its discretion shall, after giving notice by fax, letter or e-mail, have the right to sell or purchase, as the case may be, against the defaulter and the defaulter shall compensate the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration.

In the event of default by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but nothing contained or implied under this contract shall entitle the Buyer/Seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the mean contract quantity. The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been claimed under the Force Majeure clause or agreed otherwise, the date of default shall be the first

business day following the expiry of the extension period.

**4.16. Arbitration.** Any dispute arising out of this Contract shall be governed in all aspects by English Law and resolved as follows:

(a) Unless otherwise agreed, the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Association), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby.

(b) If a dispute relates to unpaid debt or involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed may, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within twenty eight days the party making the request shall be at liberty to commence Court proceedings.

**4.17. Time Limits for Claiming Arbitration:** Arbitration shall be claimed in relation to quantity, quality, or condition within 28 consecutive days from the date of arrival of the goods at their ultimate destination in the United Kingdom and in relation to other claims (including default of fulfilment of all or part of the contract quantity) within 12 months from the last day of the contract period or 28 consecutive days from the harvest of the crop, whichever is sooner. Subject to any special conditions relative to leave being granted to institute court proceedings contained in the arbitration rules of the Agricultural Industries Confederation Limited, the making of an award shall be a condition precedent to any right of action by either party or any person claiming under either of them, so that if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all courses of action relating to that claim whether by way of arbitration or in any Courts of Law are deemed time barred and waived.

**4.18. Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.1(2)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.