

# Trading Terms at the Exchange for Agricultural Products in Vienna (Exchange Usages)

Agreed unanimously by the Council of the Exchange for Agricultural Products in Vienna with provisional effect on June 4<sup>th</sup>, 2008

## Part A

### General Terms

Ratified by the competent Federal Minister with statutory effect on November 28<sup>th</sup>, 2008, with the authorisation number IL.99.1.2/92-III/9/2008

(The German language version is to take priority over this English language version)

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### Trading Terms at the Exchange for Agricultural Products in Vienna (Usages)

#### Part A

##### General Terms

##### Good Faith

The basic principle of good faith is to govern all businesses agreed on the basis of these usages

#### I. Scope of Application

##### § 1

###### Application of the Terms (Usages)

1. The trading terms at the Exchange for Agricultural Products in Vienna (Usages), both Part A (General Terms) and Part B (Special Terms for Trade with Particular Goods) apply, unless the parties to the business agree otherwise, in the case of businesses in the products governed by the Exchange for Agricultural Products in Vienna, if the business is concluded at the exchange or with reference to the usages of the exchange.
2. If contracts are agreed in the products governed by the exchange either on or off the exchange with reference to the usages thereof and contracts are made out, then terms, which are included neither in the Usages, nor in the general terms of the Vienna standard contract, which is reproduced in Appendix III, must be clearly and obviously marked in the contract as especially agreed, or set down in such a form that they are clearly recognisable as especially agreed extra terms.

#### II. The Contract

##### § 2

###### Written Confirmations

1. If brokers' confirmations or letters of confirmation are exchanged or given out by a party to the contract or by a broker, their contents govern the contract relationship. All earlier agreements are considered cancelled. Contracts or confirmations, against which no immediate protest in written form has been made, are considered as approved.
2. If brokers' contracts and/or letters of confirmation are given out, the seller's contract is to apply if it remains uncontested. If only a buyer's confirmation and a broker's contract are issued, then the buyer's uncontested confirmation is considered as having precedence.
3. If later verbal agreements are made, they are valid only if at least one party confirms them without delay in writing. If no immediate protest is made in writing against such written confirmations, they are considered as approved.

##### § 3

###### Disputes over the Existence of a Contract

If there is a dispute over the existence of a contract, the party which claims that a contract has come into existence must without delay set by telex (§ 46) a deadline for acknowledgement of one business day. The reply must be made by telex. If no acknowledgement is received within the required period the party which claims that a contract is in existence may claim compensation according to § 19.

##### § 4

###### Connection

1. If the parties agree at the conclusion of the contract the connection of the Usages to a named form purchase contract or other contractual terms or if they agree to formulations which signify the same thing, then the terms of the form contract or the other contractual terms are valid in addition to the Usages, as long as the Usages do not regulate the points in question and the terms of the form purchase contract or other contractual terms are applicable as appropriate.

2. Disputes are to be settled by the court of arbitration which has jurisdiction.

#### **§ 5**

##### **Transfer of Contract Rights**

1. Contract rights against a party to a contract may only be assigned with the written agreement of that party to a third party.

2. Debts may be assigned to a third party without the agreement of the other contract party.

### **III. Periods of Fulfilment of Delivery Contracts**

#### **§ 6**

##### **Delivery and Receipt**

1. The delivery is to take place in seller's option during the agreed period of delivery.

Delivery and reception is to take place in contracts with the description:

- a) "Immediate delivery": within three business days of conclusion of the contract;
- b) "Prompt delivery": within seven business days of conclusion of the contract;
- c) "Delivery at the beginning of a month": from the first to the tenth day of the month in question;
- d) "Delivery in the middle of a month": from the eleventh to the twentieth day of the month in question;
- e) "Delivery at the end of a month": from the twenty-first day to the end of the month in question;
- f) "Delivery in the first half of a month": from the first to the fifteenth day of the month in question;
- g) "Delivery in the second half of a month": from the sixteenth day to the end of the month in question;
- h) "Delivery within a named month": within the month named;
- i) "Delivery within a period of two months": at any time within the two months;
- j) "Delivery during a period of more than one month", for example January/May: in approximately equal part quantities during each month named;
- k) "Successive delivery": in approximately equal part quantities during the agreed period.

2. The above regulation does not rule out the agreement of other delivery periods.

3. If the last day of the delivery period according to section 1. h), i), and k) falls on a Saturday, a Sunday or a legally recognized public holiday, then the delivery period ends on the last previous business day. In the case of delivery according to c) to g) the delivery period is extended to the next business day.

4. Goods which are sold as "in stock", "available", or "in loco" must actually be available on conclusion of the contract and be in a position to be delivered without delay.

5. If no delivery period is specifically agreed, then the goods are to be regarded as deliverable prompt.

#### **§ 7**

##### **Loading Instructions**

1. The buyer must provide workable loading instructions in the cases of contracts agreed as: "immediate": on the day of conclusion of the contract without the seller needing to give notice;

"prompt": within three business days of conclusion of the contract without the seller needing to give notice;

"delivery within a particular period" (§ 6 section 1. c) to k): within three business days of receipt of seller's request. This request may be made at the earliest on the third business day before the commencement of the period of delivery. A request made before this date is deemed to come into effect only on the third business day before the commencement of the delivery period.

2. Loading instructions must reach the seller within the time period laid down in section 1.

3. The seller must deliver the goods within ten business days after receipt of the loading instructions, or at the latest by the last day of the delivery period. If the loading instructions are received after expiry of the period of fulfilment and a period of grace has not been set, the seller must deliver within ten business days. After the expiry of this period without result the buyer is permitted to exercise his rights as per §§ 18, 19.

4. If the transport of the goods by various methods is agreed in the contract, then the buyer has the right to choose the means of transport. The buyer must exercise this right on sending the loading instructions.

5. The delivery instructions must allow the seller to load, dispatch or to hand over the goods.

6. The buyer is permitted to change loading instructions once after they have been given out. The seller must take account of this change, inasmuch as and as long as he is in a position to do so. Costs resulting from a change are for buyer's account.

7. If the buyer does not give out loading instructions within the time limits as set down in section 1., the seller is permitted, after the expiry without result of the appropriate period of grace as per § 18, to exercise his rights due to non-fulfilment as per § 19.

#### **§ 8**

##### **Delivery by Rail**

1. The seller must order the rail truck at buyer's cost and risk and deliver the goods stowed and trimmed into the truck.

2. If the rail trucks are not provided by the rail company in time, then the delivery period is extended by the period of the rail trucks' non-availability. The seller must inform the buyer of this without delay.

3. The seller must before loading inspect the rail trucks provided on their suitability to be loaded. The seller must compensate the buyer for damage which occurs due to non-observance of this duty.

4. The seller must provide separating boards if required and make sure they are correctly installed and sealed. The costs resulting from this are for the account of the party which is responsible for payment of the freight.

5. The seller must have the trucks sealed.

6. If delivery has been agreed from a station with a special rail tariff, then, unless the buyer was informed of this on conclusion of the contract, extra freight and premiums to the nearest railway station are for seller's account. In the case of purchases made carriage paid to such a destination the same applies to the buyer. This regulation also applies in cases in which the goods are delivered from or to a siding or a quay with resulting incidental charges.

## **§ 9**

### **Delivery by Road Transport**

1. If, in a contract for delivery, the collection of the goods by road transport has been agreed, the contract is not converted by this agreement to a contract at buyer's call.
2. The declaration that the goods are to be collected by road transport counts as a loading instruction. Upon receipt of this declaration the seller must inform the buyer of the place of loading without delay. In the case of "immediate" or „prompt“ delivery (§ 6 section 1. a) and b)) the buyer must take delivery of the goods within the designated time period. In all other cases (§ 6 section 1. c) to k)) the buyer must take delivery of the goods within seven business days of receipt of the seller's call during loading hours normal for the place of loading.
3. If the goods are not delivered to the buyer at the declared loading place, then the seller must reimburse the buyer all costs resulting from the vehicle not being loaded.
4. The agreement "by road transport", without more exact description of the means of transport, includes all common vehicles for the transport of bulk commodities.

## **§ 10**

### **Delivery by Water Transport**

1. In the case of CIF sales the regulations laid down in §§ 50 ff. are to apply.
2. In the case of FOB sales and sales free on vehicle alongside maritime vessel or seller's delivery point the regulations laid down in §§ 64 ff. are to apply.

## **IV. Periods of Fulfilment of Collection or Call Contracts**

### **§ 11**

#### **Collection or Call**

1. If the contract has been made on the basis of collection within a set period, then the buyer is permitted to take delivery of the goods on any business day of the delivery period. The regulations laid down in § 6 governing deadlines are applicable as appropriate.
2. If the contract has been made on the basis of buyer's call within a particular period, then the buyer is permitted to take delivery of the goods on any business day of the delivery period. It is the seller's duty to deliver the goods immediately after receipt of the buyer's call notice.
3. The buyer must give notice of and present the road transport in such a way that the seller is able to deliver the goods within the agreed collection period.
4. In the case of FOB collection the regulations of § 64 ff. are to apply.

### **§ 12**

#### **Call Notices**

1. The buyer's call notice must enable the seller to load, dispatch or hand over the goods.
2. The buyer is permitted to alter a call notice after it has been sent once. The seller must take account of this alteration inasmuch as and as long as he is able to do so. Extra costs resulting from the alteration are for buyer's account.
3. If the buyer does not call for the goods within the agreed delivery period, then the seller is permitted, after the expiry of the appropriate period of grace as per § 18 without result, to exercise his rights due to non-fulfilment as per § 19.

### **§ 13**

#### **Stored Goods**

If the contract calls for stored goods to be collected within a particular period, then, at the end of this period, risks and costs pass to the buyer. The seller is permitted at the end of the period to weigh and separate the goods for buyer's account. If the seller does not make use of this right, then the weight, as it is determined during loading at a later period, is deemed final.

## **V. General Terms Governing the Interpretation of Contracts**

### **§ 14**

#### **Place of Fulfilment for the Delivery**

1. The place of fulfilment for the delivery is the loading point at which the goods are loaded onto the designated means of transport.
2. If goods are sold delivered to a destination, then this destination is the place of fulfilment.

### **§ 15**

#### **Freight Costs and Transport Risk**

1. If the contract has been concluded on the basis "free on rail truck" or "free on road vehicle", then the point of departure of the goods is the place of fulfilment. The freight and transport risks are for buyer's account.
2. In the case of contracts concluded on the basis "carriage paid", the freight is for seller's account and the transport risk for buyer's account.

3. In the case of sales made delivered a destination the costs and risks of transport up to the place of delivery are for seller's account.

#### **§ 16**

##### **Fulfilment Period**

1. The contract is deemed fulfilled by the seller in respect of period at the time of delivery of the goods to the transport company, except in the case of sales made delivered to a particular place, where the contract is deemed fulfilled on delivery at this place.
2. The date of the transport papers is to be regarded as proof of the date of delivery of the goods, unless this date is proven to be false.
3. If the sale has been made for a particular arrival period, then the notification of arrival of the transport company within the time period usual for the place of fulfilment determines the time of fulfilment. If the notification is made before the beginning of the period of fulfilment, then it shall apply from the first business day of the delivery period. All extra costs resulting from the notification being before the beginning of the delivery period are to be borne by the seller.

#### **§ 17**

##### **Parity for Shipment by Rail Truck or Road Vehicle**

1. If the sale is made parity a particular railway station as loading station, then the seller has the right to deliver the goods from a railway station other than the agreed station. Differences in freight are for seller's account or in seller's favour. The buyer must pay the freight only from the station named as parity to the receiving point.
2. If the sale is made parity a station as the station of destination, then the buyer is entitled to order the goods to be delivered to a station other than the agreed parity station. Differences in freight are for buyer's account or in buyer's favour. The seller must pay the freight from the loading station to the parity station.
3. The above regulation applies with appropriate amendments to a shipment by road vehicle.

## **VI. Non-fulfilment**

#### **§ 18**

##### **Period of Grace**

1. If the contract is not fulfilled within the agreed time period, the party responsible for this is held to be in arrears.
2. In the case that a contract is not fulfilled within the agreed time period, the non-dilatory party has the right, after the period of fulfilment has expired, to grant a period of grace by telex (§ 46), which notice must reach the dilatory party by 1500 hours on a business day if it is to take effect on the following business day.
3. The period of grace for delivery or collection is:
  - a) two business days, if the period of fulfilment has been agreed as "immediate";
  - b) three business days if the period of fulfilment has been agreed as "prompt" or if a period of less than a month has been agreed as period of fulfilment;
  - c) five business days if a period of one or more than one month has been agreed as period of fulfilment.
4. The period of grace for payment is one business day (§ 40 section 2.).
5. The period of grace for the remittance of loading instructions or call notice is one business day.
6. If a period of grace is granted before the period of fulfilment has expired it comes into force on the first business day after the end of the period of fulfilment.
7. A period of grace which is too short is deemed to be inoperative, in this case the period of grace as laid down in sections 3., 4. and 5. applies. A period of grace longer than above regulated is valid as granted.
8. A period of grace may be cancelled or prolonged only with the consent of the dilatory party.
9. A period of grace need not be granted
  - a) If the sale has been made on the basis "available", "in stock" or "loco", "without extension" or of stored goods as per § 13;
  - b) If an agreement has been made that the existence of the contract is to be confirmed or cancelled on a particular day (option contract);
  - c) If the other party to the contract declares in writing his express intention not to fulfil the contract.

#### **§ 19**

##### **Non-fulfilment**

1. After the period of grace has expired without the contract having been fulfilled the non-dilatory party has the right either
  - a) To withdraw from the contract and/or
  - b) To claim compensation instead of fulfilment or
  - c) To place the goods in storage at a third place for account of the dilatory party, as long as the seller has given notice of this to the buyer at the same time that he granted the period of grace.
2. The rights as per section 1. a) and b) are also applicable in cases in which a period of grace need not be granted (as per § 18 section 9.).
3. If compensation is to be claimed, the seller may sell or the buyer may buy for account of the dilatory party through a broker or a seneschal of the Exchange for Agricultural Products in Vienna. The assignment of the seneschal or broker is to be carried out within three business days of the expiration of the period of grace or after the occurrence of non-fulfilment.

4. The sum of compensation may also be fixed by determination of the difference between the contract price and the market price (price fixing). The settlement price is to be determined according to the regulations laid down in Appendix 1, in the option of the non-dilatory party through either

- a) a seneschal or broker belonging to the Exchange Agricultural Products in Vienna, or
- b) a broker, who belongs to a Cereals and Product Exchange, or
- c) the court of arbitration which has jurisdiction.

5. The relevant date for the price fixing is the first business day after the end of the period of grace. In cases in which § 18 section 9. is applicable the appropriate date shall apply.

6. The cost of the price fixing is to be borne by the dilatory party.

7. The non-dilatory party must inform the dilatory party without delay by telex (§ 46) at the end of the period of grace, or in the case of §18 section 9. after the default, of which right he intends to make use. If the non-dilatory party chooses the right of having a covering transaction carried out against the dilatory party, then he must in good time inform the dilatory party of the name of the seneschal or broker entrusted with carrying out this business.

8. If the non-dilatory party fails to act as per section 7, then he retains only the right to have the value of the goods fixed. The same applies if a previously announced covering transaction has not been carried out.

9. The court of arbitration which has jurisdiction is entitled, and, at the request of one party, the duty to examine a covering transaction carried out according to section 3. (sale against, covering transaction) or a price fixing carried out according to section 4. a) or b). If the examination shows that the covering transaction or the price fixing has not been correctly carried out or has led to an obviously improper result, then the court of arbitration itself must establish the price difference with due regard to market conditions.

## **§ 20**

### **Impediments to Fulfilment**

1. If, after the conclusion of a contract, its fulfilment is rendered impossible by force majeure, import or export prohibition inland or abroad, government measures or other factors for which a party to the contract has no responsibility, then the contract or its unfulfilled portion is cancelled. The other party to the contract must be informed of the relevant events immediately they are known.

If this does not take place then no contract party may be legally permitted to cite the impediment to fulfilment.

2. If the fulfilment is obstructed by elemental forces or by riot, strike, lock-out, loading prohibition or other circumstances similarly regarded, then the fulfilment period of the contract is extended by the duration of the obstruction, as long as the obstructed party informs the other party to the contract without delay after the obstruction is known, or at the beginning of the fulfilment period. If after the end of the originally agreed contract period the obstruction to fulfilment lasts more than in the case of contracts with a fulfilment period of less than one month 30 running days, or in the case of contracts with a longer fulfilment period 45 running days, then the contract is to be cancelled without mutual allowance.

3. The contract party which claims the impediment to fulfilment must, at the request of the other party, provide proof of the same.

## **VII. Extra Costs due to Unforeseeable Circumstances**

### **§ 21**

#### **Extra Costs**

1. If extra costs arise after conclusion of the contract on collection and/or delivery of the goods, the seller may pass these costs on to the buyer if they have been caused by government regulations which were not generally foreseen in their concrete effects regarding extent and timing of the extra costs. The date of publication in the Federal Journal, the EU Official Journal or other official publication is to govern.

Among other factors the introduction of new taxes counts as extra costs, as well as the increase of taxes already in existence.

2. Correspondingly, cost reductions due to the abolition or the reduction of such costs are in favour of the buyer.

Excluded from the regulations in the above sections are changes in costs resulting from re- or devaluation.

3. A party which is in arrears loses its rights according to sections 1 and 2.

### **§ 22**

#### **Basis Normal Water Levels**

All contracts are made basis normal water levels. Premiums for high and low water as well as for ice are for account of the buyer, as long as they are incurred in direct connection with the fulfilment of the contract.

The seller must provide the appropriate proof.

## **VIII. Fulfilment with Regard to Quantity**

### **§ 23**

#### **Weight**

1. The weight ascertained at the place of fulfilment is to govern invoicing for weight. The weight must be ascertained with a suitable scale which has been officially calibrated. Weight ascertainment by individual weighing of axles is not permitted.

2. In contracts concluded basis Free on Rail Truck or Road Vehicle or Carriage Paid the weight ascertained at the point of departure is to govern. If the weight is not ascertained at the point of departure then the

weight ascertained at the delivery point is to apply. In contracts made basis delivered a destination the weight ascertained there is to govern.

3. If the weight is ascertained through empty and full weighing of the means of transport, then the tare is to be ascertained by separate weighing immediately before loading. If this action is not carried out, then the buyer has the right to have the tare ascertained. If the tare is not ascertained, then the tare weight printed on the wagon is to be used for invoicing.

4. The tare weight ascertained for the wagon is to apply until the final destination.

#### **§ 24**

##### **Part Fulfilment**

Each delivery against the contract or part fulfilment of the contract stands as an independent contract.

#### **§ 25**

##### **Quantity Margins**

1. If the word "circa" or a similar term is agreed in the contract, then in the case of delivery contracts the seller or in the case of loading contracts the buyer has the right to deliver or to load up to 5% more or less of the contract quantity. Of this, 2% are to be invoiced at contract price and the remainder at the current market price. This clause loses its validity if the contract is not fulfilled.

2. The day of fulfilment is the applicable date for determination of the market price.

3. If the quantity contracted is defined by two figures, in the case of delivery contracts the seller or in the case of loading contracts the buyer has the choice of the quantity to deliver or to load within these limits. In the case of non-fulfilment the mean quantity is to form the basis for invoicing.

4. In the case of delivery contracts the seller and in the case of loading contracts the buyer is permitted to apply the quantity margin of 5% to each part delivery, as long as this is declared at the latest on the part-fulfilment in question. Otherwise the right to deliver more or less is to apply only to the quantity remaining to be delivered or loaded.

## **IX. Fulfilment with Regard to Quality**

#### **§ 26**

##### **Quality and Condition**

1. If the quality of the contracted goods has not been specifically agreed, then the terms of Part B (Special Terms of Trade for Particular Goods).

2. "Quality" refers to the type and quality of goods. "Condition" refers to the state of goods, for example smell, colour, heating etc.

3. The terms "surveyed and accepted" or "Tale Quale" do not free the seller from the responsibility for the quality and condition of goods sold, except in case of deception. If the transfer is not to take place immediately, then the seller must store the goods in a correct manner. If the buyer does not take up the goods in time he must pay all proven costs of further storage as well as of preservation of the goods.

4. If a part quantity of the goods have been sold as "surveyed and accepted" or "Tale Quale" then the seller has the right to assign a part quantity of the surveyed goods to the buyer for reception.

5. The term "f.a.q." means "fair average quality" (cf. § 27 4.).

6. If the quality stipulation refers to a range (for example 75/76 kg), the seller has fulfilled the contract if he has delivered goods with at least the lower of the two limits. If goods are delivered with less than the minimum agreed quality any allowance is to be calculated on the basis of the middle of the range (e.g. 75.5 kg).

#### **§ 27**

##### **Goods Traded According to Sample or Without Sample**

1. If goods are sold according to sample, then the sample shall govern the contract as regards quality.

2. If goods are sold „about as per sample“ or "type sample", then small differences in the colour, the granulation, the milling and the admixture are permitted.

3. The buyer must take proper care during the examination of samples. The seller must himself inform the buyer of quality discrepancies known to him which are not, or only with special care, recognisable (e.g. smell, moisture, infestation by insect or mite).

4. If goods of a particular origin are sold without sample or as "f.a.q." (cf. § 26 section 5.), then fair average quality of the year in question of the agreed origin at the time of loading is to be delivered, otherwise the buyer is permitted after ascertainment of the deviation from the average quality to require either a price reduction or to reject the goods.

5. If goods of a particular origin have been sold without sample with the stipulation "certificate final", then the certificate applies only to the complete quantity for which it is issued, and not for part-quantities.

6. In the case of a sale made with the stipulation "quality final at loading" then quality claims may be made only at the place of loading; claims on the condition of the goods may also be made at the place of fulfilment.

7. If a sale is made with the stipulation "quality and condition final at loading" then claims may only be made against delivered goods at the place of loading (see also § 26).

#### **§ 28**

##### **Purchases Dependant on Inspection, Approval of Sample or Sample Delivery**

1. In the case of purchase dependant on inspection the seller must allow the buyer the opportunity to inspect the goods in time. The buyer must carry out the inspection without delay and inform the seller of his decision by 1300 hours of the business day following the inspection.

2. In the case of purchase on approval of sample and/or sample delivery the buyer must inform the seller of his decision by 1300 hours on the business day following the receipt of the sample.
3. In the case of goods whose quality can only be ascertained by special analyses (for example chemical or technical analyses, baking tests and germination tests), the time limit is extended by the time required assuming correct business practice to have these analyses carried out.
4. If the buyer does not inform the seller of his decision within the time period foreseen in sections 1. and 2., then his behaviour is to be regarded as refusal of the goods.

#### **§ 29**

##### **Goods Originating from a Particular Area of Production, Crop Year or a Particular Variety of Cereal**

1. If goods have been traded from a particular area of production, crop year or a particular variety of cereal, then the seller must fulfil the contract with goods of fair average quality of this area of production, crop year or this variety of cereal.
2. The buyer need not accept goods from a different area of production or another crop year.

#### **§ 30**

##### **Manufacture or Brand**

If goods of a particular manufacture or a particular brand are traded, then the contract must be fulfilled with goods of the recognised quality.

## **X. Deficiencies in Quality**

#### **§ 31**

##### **Claims**

1. The buyer must inform the seller by telex (§ 46) of claims for deviation of condition and/or quality immediately after reception of the goods, and before discharge. This is not necessary in the case of deviation from especially agreed quality criteria which can only be ascertained through analysis (§ 36). The seller must however inform the buyer by telex (§ 46) of the result of analysis without delay.
2. If the above conditions are disregarded the goods are seen as accepted as regards quality, unless latent defects are in question (that is: defects which are not immediately recognisable). The seller is responsible for latent defects not regulated by § 37, which are unknown to both parties, only if these are ascertained and claimed for within 20 business days after the receipt of the goods.
3. The seller is also responsible after the period laid down in section 2. for defects, which are known to him, but are not immediately recognisable by the buyer.
4. The buyer must inform the seller of latent defects (section 2 and 3) by telex (§ 46) immediately after discovery.
5. In the case of goods in paper or plastic sacks sealed by the manufacturer a limit of ten business days is set for claims, as long as the original factory seal has not been broken. Deterioration of the goods due to inappropriate storage and external influences during storage disqualify the buyer from making a claim.
6. The claimant is responsible for securing the evidence without delay using samples drawn according to § 33.
7. A claim does not free the buyer from his obligation, except in the case of rejection, to take delivery of and pay for the goods according to the contract.
8. The buyer must declare, on claiming quality deficiency, whether he is prepared to accept the goods on agreement of a reduction in price or whether he rejects the goods. If the buyer has either in part or fully passed the goods on or if the identity of the goods is demonstrably no longer preserved through separation or other means then he is no longer permitted to reject the goods.
9. The buyer however preserves the right to compensation of the difference in value between contractual goods and the goods delivered, if samples have been drawn in accordance with Appendix II before transportation of the goods, or their removal from their packaging at the point of delivery.
10. If the goods affected by the claim are exposed to diminution of quality, the buyer must take steps which are possible to ensure the conservation of the goods at the point of fulfilment in accordance with his duty of due diligence as a prudent businessman, and to inform the seller of this without delay.

#### **§ 32**

##### **Expertise**

1. If buyer and seller cannot agree on the level of reduction in price or the right to reject the goods, then a request is to be made for an expertise (survey of the goods).
2. An expertise may also be made at the intervention of only one party as a collection of evidence through the experts' commission. In both cases the process is to be conducted anonymously, that is, in the absence of the parties concerned and without their names being revealed to the experts. The parties to the contract are not permitted to have any influence on the constitution of the experts' commission.
3. If however in addition to the quality claim there exists also disagreement over other questions such as the contents of the contract, origin etc., then the situation may be resolved only by a claim being made to the appropriate court of arbitration.
4. The samples forming the basis of the request for an experts' commission or the court of arbitration (Appendix II and III of the Usages of the Exchange) as well as the request for the expertise or for the collection of evidence or the claim must be passed without delay to the Exchange for Agricultural Products in Vienna.

(The terms of the “Regulations for expert findings and the collection of evidence including procedures” are to apply to the request for an experts’ commission. Claims before the exchange court of arbitration are governed by the Regulation of the court of arbitration (second part of the Statutes of the Exchange).)

### **§ 33**

#### **Sampling**

1. Sampling is the responsibility of the buyer and is to be carried out at the place of fulfilment of the contract.
2. The seller is permitted to be present at sampling or to be represented. Sampling must be carried out by competent samplers.
3. If the place of loading is the place of fulfilment the buyer must inform the seller at the latest on passing the delivery notice whether he wishes to make use of his right to take samples at loading.
4. If the delivery point is the place of fulfilment the seller must inform the buyer in due time whether he wishes to make use of his right to take part in sampling during unloading at the delivery point.
5. Sampling is to be carried out according to the sampling regulations laid out in Appendix II and III (“Sampling Terms”).

### **§ 34**

#### **Rejection (Refusal of the Goods)**

Notwithstanding the contract terms, which require that goods not delivered in accordance with the contract are to be accepted with a price reduction, the buyer is permitted to reject goods completely, if goods of another type, origin, crop year, or condition are delivered than can be recognised, from the contract terms, the nature of the buyer or other circumstances of the contract, to be in accordance with the reason for purchase, or when the goods are loaded or appropriated in a diseased, spoiled or any other condition, such that their delivery must be seen as an offense against the principles of probity in commerce.

### **§ 35**

#### **Replacement Delivery**

1. If the buyer’s demand that the goods delivered are rejected proves to be justified, then the seller is permitted and required to make one contractual replacement delivery.
2. If a replacement delivery is not made, then the buyer may make use of his rights as per § 19.

### **§ 36**

#### **Analysis, Second Analysis**

1. If in a contract quality characteristics are agreed which can only be ascertained through special analysis (technically exacting and protracted), then the buyer has the right, upon informing the seller immediately after completion of discharge, to arrange for the analysis accordingly.
2. Both parties are permitted, immediately after receipt of the certificate of the first analysis, and after informing the opposing party of this, to arrange for a second analysis to be carried out. In such cases the average of the two analyses are to form the basis for settlement.
3. If because of a determination of the first and/or second analysis an allowance is payable, then all analysis costs are to be borne by the seller. On the other hand, if no allowance is payable, all costs are to be borne by the buyer.
4. The samples are to be analysed at institutes which are accredited or certified according to the norm DIN EN ISO IEC 17025/2000 in its current edition, or a comparable norm.

### **§ 37**

#### **Undesirable/ Banned Substances and Contamination**

1. If levels in delivered goods exceed legally defined absolute levels the buyer is permitted to refuse to take the goods. The regulations laid down in § 34 and § 35 are to apply accordingly.
2. The legal regulations are to govern further claims of the buyer due to undesirable/banned substances and contamination, unless other legally valid agreements have been reached.

## **XI. Payment**

### **§ 38**

#### **Place of Fulfilment for Payment**

The place of fulfilment for payment is the business address of the seller or his nominated bank.

### **§ 39**

#### **Payment**

1. Unless the parties have agreed otherwise, payment of the purchase price is to be net cash without deductions paid by the buyer within one business day after presentation of invoices to the buyer (for example by post or through a bank), accompanied by copy bill of lading, original loading certificate, delivery receipt or comparable document. If such proofs of fulfilment cannot be provided, the seller must, at buyer’s request, provide acceptable proof of delivery in another suitable way.
2. If payment has been agreed against delivery order, then the buyer is permitted to require the delivery order to be endorsed by the direct owner of the goods and the endorsement is to contain the statement that transfer is to take place only on surrender of the delivery order.
3. Delivery of the goods replaces the presentation of documents.

4. Unless otherwise agreed, the seller need not accept bills of exchange, unconfirmed cheques or non-negotiable cheques. Bills of exchange and cheques are deemed as remitted towards fulfilment, and not in lieu of payment. Discount charges and other costs are for buyer's account.
5. The buyer is not permitted to offset or hold back the purchase price unless the seller suspends payments or if facts exist which are equivalent to a suspension of payments.

This prohibition does not apply to uncontested or legally ascertained monetary claims.

#### **§ 40**

##### **Payment Arrears**

1. The buyer is deemed to be in arrears if payment has not been carried out as agreed. No warning is required.
2. In the case of payment arrears the seller is permitted, in addition to his right to claim payment (after setting a period of grace as per § 18 section 4), and, without affecting his rights as per § 19, to claim interest at legal rates from the first day of arrears. In order to exercise these other rights the seller must warn the buyer of the consequences, allowing the buyer a period of grace of one business day as per § 18 section 4. In the case of contracts in which the delivery of several part quantities has been agreed, the seller may exercise his rights as per § 19 regarding future partial deliveries only after he has required for the next partial delivery pre-payment or an irrevocable bank guarantee and the buyer has not fulfilled this requirement despite the granting by the seller of a period of grace of one business day.
3. If justifiable doubt exists over the solvency of the buyer then section 2, sentence 3 applies appropriately, even if other payment conditions have been agreed.

#### **§ 41**

##### **Suspension of Payments**

1. If a party to the contract suspends payments or if facts exist which are equal to a suspension of payments, all claims to fulfilment of the contract lapse, insofar as the contract is still unfulfilled by both parties. In the place of the claim to fulfilment of the contract stands, with the suspension of payments or with the existence of the fact which is equal to the suspension of payments, the right to payment of the difference between the contract price and the market price, which difference is to be mutually settled between the parties.
2. The determination of the market price is to be regulated by § 19 section 4. The date of determination is the business day following the notification of the suspension of payments or the fact which is equal to the suspension of payments. The costs of the price-fixing are for account of the party which is in payment difficulties.

#### **§ 42**

##### **Reservation of Ownership**

1. The goods or the documents remain the property of the seller until full payment has been made of the invoice.
2. The consumption or processing of goods which remain the possession of the seller takes place in his capacity as processor and at his instruction, no obligation arising against him out of this. Goods which come into existence through consumption or processing remain the property of the seller, without consideration of the time and degree of consumption or processing. In the case of processing with other goods which do not belong to the buyer the buyer acquires title to the new product in proportion to the value of the goods on which property is reserved to the other processed goods at the time of processing. Notwithstanding the above regulation, if the buyer acquires co-ownership through processing or consumption in the goods reserved by the seller, he passes on to the seller on conclusion of the contract the (co-) ownership of the goods at the time of his purchase and secures the goods for the seller. The buyer cedes to the seller any claim against third parties to have the goods surrendered to him. The goods are deemed to be reserved in the sense of this regulation.
3. If the goods delivered by the seller are mixed or compounded with other goods, then the buyer cedes to the seller his ownership or co-ownership rights to the mixture or the product and secures these for the seller. The buyer cedes to the seller any claim against third parties to have the goods surrendered to him.
4. The buyer is empowered to sell to third parties in the regular course of business against cash payment or with reservation of ownership goods belonging in whole or part to the seller. He is not permitted to mortgage goods or to use them as security. The buyer cedes to the seller on conclusion of the contract all claims accruing to him from this sale, whether these arise before or after the processing, compounding etc., including all subsidiary rights as well as claims to compensation from a credit insurance. If the goods are only co-owned by the seller or are sold by the buyer for a lump sum together with other goods in whatever condition which do not belong to the seller, the cession of the claim covers only the amount which the seller has invoiced the buyer.
5. The buyer is empowered until notice is given otherwise to collect claims payable to the seller which he has acquired through the assignment. On revocation of this empowerment this right passes to the seller. The buyer must furthermore allow the seller access to the goods at all times and, at the seller's request, to mark the goods as the seller's property and to supply the seller with all information requested. In the case of arrears of payment the buyer must, at seller's request, inform his buyer in string of the passing of claim. If the buyer receives bills of exchange or cheques in settlement of sales to a third party, he must cede to the seller the title to the debt payable to him out of the bill of exchange or the cheque up to the limit of the claim ceded by him from the sale. Title to the bill of exchange or the cheque is ceded from the buyer to the seller; the buyer is to secure the document for the seller.

6. The buyer must defend the seller's rights against seizure by third parties of goods in which the seller has title or co-ownership rights or of claims which have been ceded to him, and must without delay inform him by telex (§ 46) of such seizure.

7. The delivered goods must be adequately insured against the usual risks by the buyer as long as the seller retains ownership. Claims arising from damage, and especially those against the insurance company, must be ceded by the buyer to the seller up to the value of the seller's claim to secure the seller's legal title.

8. Any over-insurance is at buyer's request to be put at his disposal by the seller.

## **XII. Other Terms**

### **§ 43**

#### **Significance of Formal Regulations**

The legal consequences of non-fulfilment of particular formal regulations (e.g. protest notes, formal warnings) are not applicable if the object of the regulation has recognisably been achieved, even in a form different to that prescribed.

### **§ 44**

#### **Applicable Law**

This contract is governed by Austrian law. The United Nations Convention on Contracts for the International Sale of Goods of April 11th, 1980 (BGBl 96/1988) does not apply.

### **§ 45**

#### **Business Days**

1. All working days count as business days apart from Saturdays and December 24th and 31st.
2. The day on which the business is concluded, as well as the day on which notification of the setting of a deadline is received, are not included in the calculation of the deadline.
3. Declarations which are received on a business day after 1500 hours are deemed to have been received on the next business day.
4. Differently recognised public or local holidays count to the benefit solely of the party which must act or make or receive a declaration on such days.

### **§ 46**

#### **Notices**

1. The term "in writing" includes communication by telex and telegraph as well as every other form of rapid written communication such as, for example, telefax or e-mail.
2. Resellers and buyers in string must forward all communications without delay.

### **§ 47**

#### **Commission**

The seller must pay the intermediary the agreed commission independently of whether the contract is fulfilled or cancelled, unless it can be proved that the intermediary bears responsibility for the non-fulfilment or cancellation of the contract.

### **§ 48**

#### **Other Rights to Payment**

All invoices except purchase invoices (for example invoices for price differences, interest claims, and final invoices) must be settled within 10 business days of receipt of the invoice. After this deadline has expired the claimant is permitted to take legal steps and to charge legal rates of interest.

### **§ 49**

#### **Extinction of Contract Claims and Period of Limitation**

1. A contract is regarded as cancelled if within three months after the period of fulfilment laid down in the contract no written notice requiring fulfilment of the contract is sent.
2. If a notice as set down in section 1. is sent and the claimant does not make use of his contractual rights within three months of the notice, then the contract is deemed cancelled without mutual allowance. The regulations of § 20 are not affected by this.
3. Any other claims arising from contracts lapse within one year. The period of limitation begins at the end of the month in which the period of fulfilment ends.

## **XIII. Special Conditions for CIF Contracts**

### **§ 50**

#### **General Terms**

If the parties agree the application of the Usages to CIF contracts, then the above terms are superseded or complemented by §§ 51 - 63. The following terms are to take priority.

### **§ 51**

#### **Definition of CIF Contracts**

1. For the purpose of the following regulations CIF contracts are contracts in which the delivery of goods free on board in the loading port, the freight and the insurance to the destination port are included, and in which the buyer bears the transport risk.
2. Unless otherwise agreed, the terms "delivered weight" and "delivered quality" are deemed to have been agreed.

### **§ 52**

#### **Fulfilment Period**

1. If "shipment" has been sold, the seller fulfils the contract on loading the contracted goods into the ship. The date of the Bill of Lading or the loading document is to be regarded as proof of the time of fulfilment, unless the date is proven to be false.
2. If "delivery" or „arrival“ is sold, then the notice of the transport company determines the time of fulfilment. This notice may be given only after the ship has arrived in the discharge port. The style and the timing of this notice are governed by the law regulating inland water transport, the usual charter parties and/or the custom of the port of arrival. If this notice is given before the beginning of the period of fulfilment then it is deemed to have been given on the first business day of the period of fulfilment. The seller bears all additional costs caused by the premature notice.
3. If the contract has not been fulfilled by the end of the agreed period, then at the expiry of the period of grace as laid down in § 18 without result, the non-dilatory party is permitted to exercise his rights as per § 19.

### **§ 53**

#### **Destination**

1. If the port of destination has not been agreed in advance by the parties, then the seller is permitted to call on the buyer to declare the destination at the earliest 15 business days before the beginning of the fulfilment period. The buyer must declare the destination within two business days. If the contract foresees a fulfilment period of less than one calendar month, then the above regulation is to apply with appropriate amendments.
2. If the declaration naming the destination has not reached the seller within the appropriate time, then the seller may, after giving notice to the buyer by telex (§ 46), declare a destination from among those agreed in the contract.

### **§ 54**

#### **Means of Transport**

1. Sound vessels suitable for the loading and transport of the goods over water are to be used.
2. The seller must agree a freight contract for the transport of the goods at conditions usual to the time and place of shipment.
3. The seller must inspect the tendered transport before loading, ascertain its suitability to load and document this fact. The seller is responsible to the buyer for damage arising from ignoring this duty.

### **§ 55**

#### **Margins**

1. The seller is permitted to load in the case of inland watercraft up to 5%, in the case of seagoing vessels up to 10% more or less than the contracted quantity. 2% of this is to be invoiced at the contract price and the remainder at the market price.
2. If the contractually agreed quantity is defined by two figures, the seller may determine the amount to be loaded within these two figures. In the case of non-fulfilment the mean quantity is to be the basis for invoicing.
3. If the contract is fulfilled in part quantities each part quantity is regarded as a separate contract. The total loaded quantity, however, must lie within the margin for the total quantity for each agreed fulfilment period.
4. The date of the last discharge day in the port of destination is applicable for the calculation of the market price. The acceptance of the documents may not be delayed by a dispute over the market price.

### **§ 56**

#### **Part Shipments**

The goods must be loaded in one ship if the sale is of 200 t or less. The seller may load the goods in several ships if the quantity is larger; in this case however shipments of less than 100 t are not permitted.

### **§ 57**

#### **Shipments together with other Goods**

1. Goods of different type and quality must be shipped separately.
2. If the goods are loaded together with goods of the same type and quality without separations, then this must be noted in the bill of lading. In this case sweepings and damaged goods as well as gains and losses of weight must be apportioned pro rata among the receivers. The apportionment is to be made by the seller within 20 business days after the completion of discharge of the ship. After this time limit the buyer is permitted to decline the apportionment or to carry it out himself.
3. Goods received above the maximum quantity are to be paid for at the market price valid on the last day of discharge. If this day is not a business day the business day immediately following is to apply instead. The court of arbitration which has jurisdiction may also fix the price to be paid. In this case the costs of fixing the price are to be borne by both parties equally.
4. Allowances as per section 3. are to be calculated on the basis of the weight actually discharged.
5. Goods are also to be apportioned if, despite separation, the party has obviously been mingled with other goods of the same type and quality.

### **§ 58**

#### **Appropriation**

1. Notices of shipment stating the ship's name, the loading port, the date of the bill of lading or loading document and the approximate loaded weight must be passed on to the buyer by telex (§ 46) within one business day after the date of the bill of lading or loading document.

2. If the notice of shipment reaches the buyer after the arrival of the ship at the port of destination the seller is responsible for any costs ensuing from this.
3. Sellers in string must pass on the notice of shipment without delay by telex. Informing the agent of the seller or a broker, if it is carried out by telex (§ 46), is deemed to be equal to passing the notice of shipment to the buyer by telex. This party must pass on the notice by telex without delay and, if it arrives within the usual business hours, on the same day.
4. The seller is not responsible for garbled telexes or telegrams. The seller is permitted to correct inaccuracies. The correction of an inaccurate spelling of the name of the ship is however only permissible if the identity of the ship cannot be called into question through this action. Corrections must be made at the latest before payment of documents.

## **§ 59**

### **Payment on Presentation of Documents**

1. Payment must be made on presentation of documents. The bill of lading and/or the loading document must be endorsed with the statement that the freight is paid or is considered paid. The invoice amount is to be settled against receipt of the documents minus the freight unless this has been paid in advance. The freight is reduced by pre-payments if these have been made.
2. The documents consist of
  - a) in the case of sea-going vessels:  
one full set of clean on board bills of lading, consisting of at least two copies or delivery orders for such bills of lading, which have been completed by a reliable third party who is in legal possession of the bills of lading;  
in the case of inland waterway vessels:  
clean river bills of lading or ship's loading certificates, but not delivery orders;
  - b) Insurance policy or policies or certificate or certificates;
  - c) Invoices for the loaded quantity;
  - d) Other documents, if this has been agreed.
3. In the case of sea-going vessels a copy of the charter party or a transcript of the conditions of the charter party important to the buyer is to be included among the documents if reference is made to these in the bill of lading. In this case the buyer may require permission to examine the original charter party as well.
4. If the bill of lading or the charter party differs from the purchase contract the seller must on request provide a bank guarantee or another sufficient guarantee acceptable to the buyer. The same applies if the seller delivers an incomplete set of bills of lading.
5. The seller must at buyer's request provide further documents inasmuch as these under the circumstances may only be able to be provided by the seller (for example certificate of origin). The failure to provide these documents in time does not free the buyer from his duty to pay. The buyer is permitted in this case to require the seller to open a bank guarantee in his favour.
6. If the documents contain mistakes, the buyer may not refuse to take them up if a first class bank situated in the buyer's country provides a guarantee.
7. The documents are to be presented to the buyer by 1200 hours on a business day and are to be paid for by 1200 hours on the next business day.
8. If the buyer refuses to take up the documents, then he must immediately give reasons for his action to the party presenting the documents.
9. If the buyer is in arrears with payment, then the conditions regulating non-fulfilment (§ 19) apply. The seller must inform the buyer of which right he intends to make use. He may make use of this right only on the second business day following his notice. The buyer may make the payment within this period; he must then bear the costs arising from the delay.
10. The buyer must take receipt of the goods even when the documents have not been delivered to him by the time of arrival of the ship. In this case he must give the guarantee which the shipping company requires from him. The seller is responsible for all additional costs arising from the late presentation. The buyer does not waive rights emanating from the documents against the seller by taking reception of the goods and providing a guarantee.

## **§ 60**

### **Insurance**

1. The seller must insure the goods at the usual conditions with a recognised good insurance company, for whose solvency he is however not responsible, at 3% over the contractually agreed value of the goods not including Value Added Tax.
2. The insurance policies or certificates must state explicitly that the premium has been paid or is to be considered as paid. They must otherwise contain the statement that the insurer will pay compensation even if the premium has not been paid. The policies or certificates must also contain the statement that the sum insured including the notional profit will be paid in full in the case of total loss or equivalent event.

## **§ 61**

### **Average**

Average is for buyer's account. The seller must provide the buyer any required assistance in the administration of such a case.

## **§ 62**

### **Discharge**

The goods are to be discharged during normal working hours in accordance with the custom of the port of arrival. If the documents contain different conditions the seller is responsible for all extra costs arising from these conditions. The discharge costs are for buyer's account in the case of sea-going vessels from the ship's rail and in the case of coaster and inland waterway transport from the ship's hold.

#### **§ 63**

##### **Weighing and Sampling**

1. In the case of contracts made on the basis of loaded weight the determination of weight is to be carried out in the loading port, in the case of contracts made on the basis of delivered weight in the discharge port.
2. In the case of contracts made on the basis of loaded quality and condition sampling is to be carried out in the loading port, in the case of contracts made on the basis of delivered quality and condition sampling is to be carried out in the discharge port.
3. Sampling is to be carried out in accordance with the regulations for sampling laid down in Appendix II and III of the Usages.
4. In the case of endangered products two additional bagged samples are to be drawn and sealed for purposes of analysis for contaminants.
5. In the case of contracts agreed on the basis of loaded weight and/or loaded quality or condition the seller must inform the buyer in good time before the commencement of loading, so that the buyer has the opportunity to inspect the goods. If the seller fails to do this, then the determination of weight and the contractual sampling are to be carried out at discharge.
6. In the case of contracts made on the basis of delivered weight and/or delivered quality or condition the seller must inform the buyer in good time before the commencement of discharge whether he intends to make use of his right to inspect the goods at discharge.

## **XIV. Special Conditions for FOB Contracts**

#### **§ 64**

##### **General Terms**

If the parties agree the application of the Usages to FOB contracts, then the above regulations §§ 1 - 49 are altered or complemented by §§ 65 - 76. The following terms are to take priority.

#### **§ 65**

##### **Definition of FOB Contracts**

For the purpose of the following regulations FOB contracts are contracts in which the seller must load the goods into the water transport provided by the buyer at the agreed loading point. The buyer pays the freight and the insurance premium and bears the transport risk.

#### **§ 66**

##### **Margins**

1. The buyer is permitted to call for up to 5% more or less on presentation of inland waterway transport and up to 10% more or less in the case of sea-going vessels. 2% of this margin is to be invoiced at the contract price and the remainder at the market price of the day.
2. If the contractually agreed quantity is defined by two figures, the buyer may determine the amount to be loaded within these two figures. In the case of non-fulfilment the mean quantity is to be the basis for invoicing.
3. If the contract is fulfilled in part quantities each part quantity is regarded as a separate contract. The total loaded quantity however must lie within the margin for the total quantity for each agreed period.
4. The date of the last bill of lading is applicable for the calculation of the market price. Acceptance of the documents may not be delayed by a dispute over the calculation of the market price.

#### **§ 67**

##### **Declaration of Load Port / Berth**

1. If several load ports or berths are laid down in the contract, then the seller must inform the buyer by telex (§ 46) within two business days of the buyer's request the load port or berth; he does not however have to make this declaration earlier than 10 business days before the beginning of the fulfilment period. If the seller does not fulfil this obligation, the buyer has the right to set a deadline of one business day by telex and, if this deadline is not met, to exercise his rights as per § 19.
2. Independently of the above regulation the seller has the right at any time without the buyer's request to declare the load port or place.

#### **§ 68**

##### **Means of Transport**

1. Sound vessels suitable for the loading and transport of the goods over water are to be used.
2. The seller must inspect the water transport before loading, ascertain its suitability to load and document this. The seller is responsible to the buyer for damage arising from ignoring this duty.

#### **§ 69**

##### **Nomination of Vessels**

1. The buyer must inform the seller by telex (§ 46) at least three business days before the expected date of readiness to load of the vessel the name of the ship and the approximate quantity to be loaded. The buyer is permitted within this period to substitute the nominated ship by another equally suitable vessel.
2. If the ship is not presented according to the nomination, the buyer has the right to nominate again. In this case the seller has the right to claim compensation for the costs arising directly from this.

## **§ 70**

### **Period of Fulfilment**

1. In the case of contracts made on a fob shipment basis the seller must deliver the goods into the vessel nominated and presented by the buyer as per § 69 according to the custom of the port of loading. The seller must observe the terms for notice / lay time commonly used in charter parties, inland waterway loading terms or loading certificate terms.
2. In the case of contracts made on the basis of fob delivery the buyer must present the ship within 5 business days of receipt of notice. This notice may be tendered before the beginning of the period of fulfilment and counts from the first business day of the delivery period. If the ship is not presented by this deadline the seller is permitted to allow the buyer a period of grace of three business days and after the fruitless expiry of this period to exercise his rights due to non-fulfilment as per § 19.
3. The seller must complete a vessel for the buyer which gives notice of readiness to load within the period of fulfilment even after the end of the period of fulfilment. Any additional costs arising from the exceeding of the loading or delivery time are for the account of the party responsible for this.
4. If no ship is presented ready to load within the agreed loading period the seller is permitted to exercise his rights due to non-fulfilment as per § 19.

## **§ 71**

### **Period of Fulfilment in the Case of Delivery Free on Vehicle alongside Sea Ship**

In the case of contracts agreed on the basis of delivery free on vehicle alongside sea ship the seller must call on the buyer to present loading capacity, naming the sea ship. The notice must arrive at the buyer or his representative at least two business days before the ship begins discharging. The buyer must take delivery of the goods when the ship delivers them. The seller is permitted, if the means of receipt is not presented in time, to store the goods at buyer's cost and risk. He does not need to allow a period of grace.

## **§ 72**

### **Weighing**

The seller must arrange that the goods are correctly weighed during loading and provide without charge the certificate of a recognised weigher, unless weighing is carried out jointly.

## **§ 73**

### **Insurance**

1. The buyer must insure the goods at the usual conditions with recognised good insurers at 3% over the contract price in the currency of the contract price.
2. The buyer must present to the seller at his request by the commencement of loading an insurance policy or certificate or an insurer's cover agreement. If the buyer does not fulfil this obligation in time the seller is permitted to arrange appropriate cover for buyer's account.

## **§ 74**

### **Sampling**

1. Samples are to be drawn and sealed during loading jointly by seller and buyer or their representatives. Samples are to be drawn and sealed by both parties at their own expense. If one party refuses joint sampling and sealing or is not present or represented, then the other party may draw and seal samples alone. Sampling is not necessary if the buyer expressly waives his rights to it.
2. Sampling is to be carried out at the place of loading as per the Sampling regulations laid down in Appendices II and III of the Usages of the Exchange.
3. In the case of endangered products two additional bagged samples are to be drawn and sealed for purposes of analysis for contaminants.
4. If differences of opinion exist over whether the seller is permitted to reject goods presented for loading, then extra samples are to be drawn and sealed. At the request of the buyer or his representative further samples are to be jointly sealed in airtight glass, plastic or tin receptacles. § 32 is to apply in the appropriate manner.

## **§ 75**

### **Rejection**

1. If differences of opinion exist as to whether the buyer is permitted to reject goods presented for loading, then he may at the latest on the business day after sampling according to § 74 section 4 require an expertise.
2. The rejection is valid if the buyer may not realistically be expected to take over the goods.

## **§ 76**

### **Rights in the Case of Inferior Quality / Condition**

1. If the goods do not conform to the contract then the buyer may require from the seller the payment of an allowance for inferior quality.
2. If the reduction in value due to differences in analysis is more than 10 % of the contract price then the buyer is permitted to require the goods to be removed and the purchase price and the charges and interest pertaining to the goods to be refunded. The right to reject the goods presupposes that they are either still in the ship or stored separately in the discharge port and that their identity can be proven. In this case the buyer also has the right to claim damages, i.e. the difference between contract price and market price on the last day of loading of the party in question on the ship in the loading port.

## **APPENDIX I**

### **Regulations for the Execution of Covering Transactions and Price Fixings**

## **A. Covering Transactions**

### **(Sales Against, Covering Purchases)**

1. A covering transaction has the following purpose: in the case of sales against to achieve the highest possible price on the market for the goods to be sold, in the case of covering purchases to procure the goods at the lowest possible price on the market. For covering transactions the largest possible number of the companies that come into question is to be consulted.
2. The seneschal or broker entrusted with the covering transaction must receive the order in writing (§ 46) and a verbal or telephone order must be confirmed in writing. All significant terms of the unfulfilled contract with exception of the price must be stated in the order. The seneschal or broker who was responsible for mediating the unfulfilled contract may not be entrusted with carrying out the covering transaction.
3. The party giving the order is responsible for setting the day of covering according to § 19 section 3. The seneschal or broker entrusted with carrying out the covering transaction must state in his invitation the closing time for the reception of offers or bids and their required validity after the end of this deadline.
4. If there are extraordinary reasons for this the party ordering the covering transaction may exclude the dilatory party from the transaction. In case of disagreement the court of arbitration is to decide upon the validity of such an exclusion. An instruction of this nature must be passed on in writing (§ 46) to the seneschal or broker by the party giving the order. The broker or seneschal should not of his own accord exclude the dilatory party.
5. The party ordering the transaction is excluded from the tender if he bids or offers alone and the goods offered as "in stock" are not available or, in the case of contracts with later positions, the goods are not deliverable during the period in question.
6. The seneschal or broker must complete a report of the covering transaction in which the contract terms, the companies invited to tender and the result of the tender are recorded. The report must be signed and retained after the completion of the tender so that it can be presented to the court of arbitration for examination of the covering transaction.
7. The commission or seneschal fees are to be included in the price. They are to be published in the invitation and are payable by the seller. The full commission is also payable if the covering transaction cannot be carried out because no bids or offers have been received. If the order is withdrawn before the close of the tender then the seneschal or broker entrusted with the transaction is to be paid half the commission which would have been payable if the covering transaction had been carried out in order to cover his costs.

### **B. Price Fixing**

1. The seneschal or broker entrusted with the price fixing is an expert witness. His price fixing is to be regarded as a legal opinion for the arbitration. It must be furnished to the best of his knowledge and, in case his own records are inadequate, after sufficient inquiry in the market as well as after taking into account notations given out at the market place in question. If his enquiries produce various prices, then the broker entrusted with price fixing must decide in a competent manner which price is to apply. He is permitted to ignore unserious and extreme prices, as long as they are based on too small or too large, and therefore unrepresentative, quantities in comparison.
2. The seneschal or broker entrusted with the price fixing must carry out the price fixing even if the goods in question were not offered on the date set. In this case he must take account of the prices quoted on days preceding and following the due date and of the prices for goods which are comparable because of their use and their merchantability and on this basis put a value on the goods in question on the due date.
3. If enquiries must be made about special qualities or characteristics of the goods before the price can be fixed, the seneschal or broker entrusted with the price fixing may seek information from the competent authorities, institutions or organisations. If he makes use in his price fixing of information received he must state this in his report.
4. Reports are to be signed personally by the seneschal or broker entrusted with the price fixing with the addition of his company's name. He must note in his report how he has reached the price fixed so that he can inform the court of arbitration of this if they examine his price fixing.
5. The regulations laid down above are to be applied with appropriate amendments in the case of a price fixing by the court of arbitration according to § 19 section 4.

### **C. Commission for Covering Transactions and Charges for Price Fixing**

1. The Council of the Exchange for Agricultural Products in Vienna is to fix the commission payable for covering transactions and the charges for price fixing.

## **Appendix II**

### **Sampling Regulations for Cereals and Feeding stuffs**

- I. In the case of bulk free-flowing goods sampling is to be carried out during loading or discharge at regular intervals in a consistent manner. The place where sampling is to be carried out must be suitable for the purpose and as close as possible to the hold. Sample material from each lot must be collected separately, bulked, reduced using a sample divider or a similar system and filled into the bags or receptacles described below.
- II. In the case of sacked goods the sample material is to be extracted in a consistent manner using a sample spear. Samples are to be prepared from material collected in this manner as laid down in Section I.

III. In the case of stored goods, in bulk or in bags, samples must be taken from different points of the store and at different depths in a regular manner using suitable sampling apparatus. Samples are to be prepared as per Section I.

IV. In the case of loading into or delivery by rail truck or road vehicle sampling must be carried out by sample spear or an automatic sampler which conforms to ISO/ ICC or similar norms. Truck and trailer are to be considered as a single unit. Samples must be taken in a consistent manner from each 5 tonne lot. Samples are to be prepared from material collected in this manner as laid down in Section I.

V. In the case of ships, samples are to be collected separately for each 250 tonnes loaded for a quantity up to 1.000 tonnes, for each 500 tonnes loaded for a quantity between 1.000 and 5.000 tonnes and for each 1.000 tonnes for quantities above 5.000 tonnes, to be mixed and to be reduced using a sample divider or comparable system. Samples collected in this manner must be collected in the bags and containers described in Section VI separately for each 250, 500 or 1.000 tonne lot and for the remainder, as long as it exceeds 10 %. In the case of allowances the weighted average forms the basis for calculation.

VI. Two glass, tin or plastic containers and two bags are to be filled and labelled for the purposes of arbitration and analysis. If ascertainment of natural weight is required a further bag is to be provided.

VII. Bags for the samples are to be made of thick, air-permeable material and not previously used. Containers are to be filled with at least 1.000 grams of sample material and completely sealed.

VIII. Further samples may be drawn independently of the regulations of the Usages for the purposes of traceability.

IX. In the case of liquid or semi-liquid goods sampling is to be carried out by pipette or other suitable implement in a uniform manner taking into account the special nature of the goods and the means of transport and storage. Glass or plastic receptacles with a capacity of ca. 0.5 litres are to be used.

X. If goods are found to be damaged or in poor condition on arrival, they are to be carefully separated and classified during discharge. Four bagged samples are to be sealed of each type of damage irrespective of the quantity and the number of receivers immediately after completion of discharge. The sample bags are to be labelled with a description of the quantity and the classification. At the request of one party additional samples are to be sealed jointly in airtight receptacles.

XI. If a certificate of sampling is issued, it must contain the following information:

- a) Number of sample
- b) Place and date of sampling
- c) Name of shipper and receiver
- d) Description, name and/or number of means of transport or place of storage
- e) Quantity represented by the sample, total quantity of the goods, packing and description of the goods
- f) Type and appearance of seals
- g) Total quantity of samples drawn
- h) Declaration that the samplers have drawn the samples themselves and were present up to the time they were sealed
- i) Signature of sampler

If no sampling certificate is issued then the declaration of points a) to e) on the label suffices.

Missing or erroneous declarations may be added or corrected later as long as no doubt exists as to the identity of the samples with the delivered goods.

XII. The sampler or samplers must keep the samples for six months unless one party to the contract issues a different instruction.

## **Appendix III**

### **Sampling and Analysis Regulations for Oilseeds**

#### **I. Sampling**

In the case of bulk free-flowing goods sampling is to be carried out using sample spear or shovel or with a recognised automatic sampling machine continually during the loading or discharge. Sampling is to be carried out in a uniform manner. If a recognised automatic sampler is employed this must be calibrated so that at least the same quantity of sample material is drawn as with sampling by hand.

Sample material is to be drawn and sealed collectively by the parties or their representatives at the place of fulfilment. If one party refuses collective sampling or is not represented, the other party is permitted to have samples drawn by an expert sampler or weigher.

#### **II. Shipment by water transport**

In the case of shipment by water transport sample material is to be drawn and mixed together from each 500 tonnes separately, and from the remainder if it exceeds 50 tonnes. Samples drawn in this way are to be filled into the receptacles described in section V. Four receptacles are to be filled and labelled.

#### **III. Shipment by rail truck or road vehicle**

In the case of shipment by road or rail sample material is to be drawn from at least three different points of the transport unit in order that a representative average sample is produced. Lorries and trailers are to count as one unit. Samples drawn in this way are to be filled into the receptacles described in section V. Samples are to be drawn and sealed as per section II.

#### **IV. Stored goods**

In the case of goods held in bulk storage samples must be drawn for each 50 tonnes from at least 10 separate points or layers of the goods. Sample material collected in this way is to be mixed together and filled into the receptacles laid down in section V. Four receptacles are to be filled and labelled.

#### **V. Receptacles for samples**

At least 500 grams of sample material are to be filled into the individual receptacles.

Airtight clean glass or plastic receptacles or plastic bags capable of being sealed airtight are to be used. The lids or openings of these receptacles are to be completely sealed. Tin receptacles are not permitted to be used.

#### **VI. Damage / Condition**

If goods are found to be damaged or in poor condition on arrival, they are to be carefully separated and graded during discharge. Four samples are to be sealed of each type of damage irrespective of the quantity and the number of receivers immediately after completion of discharge. Samples are to be sealed collectively in airtight glass or plastic receptacles which are to be labelled with a description of the quantity and the classification.

#### **VII. Analyses**

On receipt or shipment of the goods the buyer or his representative must send samples to the agreed place of analysis within seven business days after sampling has been completed. It is not necessary to inform the seller that samples have been mailed. The buyer must send the certificate of analysis to the seller within seven business days of receipt.

Each party is permitted to require a second analysis. The opposing party must be informed of this in writing within seven business days of receipt of the certificate of the first analysis.

Each party is permitted to require a third analysis to be carried out. The opposing party must be informed of this in writing at the latest on the seventh business day after receipt of the certificate of the second analysis. The results arrived at by the third analysis are only to be taken into account if the results of the first and second analysis for the respective values differ more than 0.2% from each other.

Sellers or buyers in string must pass on certificates and the notice that further analyses are required within three business days after receipt.

Analyses are to be carried out according to ISO methods.

#### **VIII. Settlement of analysis accounts**

The average of the two analysis results for the values in question which are closest to each other or, if the analysis are equally close to each other, the average analysis is to form the basis for settlement. The weighted average of the party is to form the basis for the calculation for the allowance.

#### **IX. Sample forwarding and analysis costs**

For the first analysis, costs for forwarding and analysis are for seller's account.

For the second analysis, costs for forwarding and analysis are to be borne by the party requiring the analysis.

Both parties are responsible for the forwarding and analysis costs for the third analysis. If the results of the third analysis for the respective values are not used in the settlement, the costs for the analysis of the value in question and forwarding charges are for account of the party requiring this analysis.

#### **X Labels and Certificate of analysis**

1. The sample label must contain the following information:

Number of sample

Place and date of sampling

Name of shipper and receiver

Description, name and or number of means of transport or place of storage

Quantity represented by the sample, total quantity of the goods, packing and description of the goods.

The certificate of analysis must contain the following additional information:

Type and appearance of seals

Type and appearance of sample receptacle

Weight of sample

Missing or erroneous declarations may be added or corrected later as long as no doubt exists as to the identity of the samples with the delivered goods.

#### **XI. Sample deposit**

The sampler or samplers must keep the samples for six months unless one party to the contract issues a different instruction.

## **Appendix IV**

### **EXCHANGE FOR AGRICULTURAL PRODUCTS IN VIENNA**

1020 Vienna, Taborstrasse 10

Date:

Contract No.:

The following contract is agreed on the basis of the usages of the Exchange for Agricultural Products in Vienna as well as the terms following and overleaf, and, in the case of dispute, both parties to the contract

