



TERMS AND CONDITIONS OF SALE AND DELIVERY ADM GROUP AS OF 1 JUNE 2009

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; ADM Beteiligungsgesellschaft mbH, Hamburg, Germany; Archer Daniels Midland Europe B.V., Koog aan de Zaan, Netherlands; Archer Daniels Midland Erith Ltd, Erith, England; Pura Foods Ltd, Purfleet, England, Archer Daniels Midland (UK) Ltd, Erith, England; ADM Trading (UK) Ltd, Erith, England; Société Industrielle des Oléagineux, Saint-Laurent Blangy, France and these companies’ subsidiaries.

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 ar-

rangements – 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 Tending. 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 adher-

ence 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 conforming 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 Purchas-

er'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. Default interest may be charged at the rate of 12%. 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 contractual rights and obligations to another company in the ADM Group. This also applies to those ADM companies not listed in Clause 1.1

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 9.1 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 deferred 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 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.

11.3 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.

11.4 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.

11.5 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 – Fertilisers

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

2.1 Quality, weight, sampling. Quality and weight to be final at the time and place of shipment as per certificate/s issued by an independent surveyor, cost being for the exporter's account. The Purchaser has the option, at his expense, and for his own guidance, to request joint weighing/sampling and sealing, advising ADM in due time the name of the independent surveyor he is appointing. If there is a variation on any quality specification between ADM and Purchaser certificates a third test shall be carried out by a mutually agreed independent laboratory. The mean of the two results closest to each other shall be final and settlement shall be made by a complementary debit note.

2.2 ICC Incoterms. The International Chamber of Commerce International Rules for the Interpretation of Trade Terms (Incoterms 2000) as amended from time to time including supplements valid at the time the contract is concluded shall apply.

2.3 Default interest. Default interest shall be charged at the rate of 4% over the New York prime rate.